



VICTORIA POLICE

Victoria Police further submission

Parliamentary Joint Committee on Law Enforcement

## **Inquiry into law enforcement capabilities in relation to child exploitation**

November 2022

On 22 October 2021, Victoria Police formally lodged a submission with the Inquiry into law enforcement capabilities in relation to child exploitation ([Submission](#)). The Inquiry lapsed at the end of the 46<sup>th</sup> Parliament when the House of Representatives was dissolved for the general election (Lapsed Inquiry). On 9 December 2021, Mary-Jane Welsh, Detective Superintendent, Cybercrime Division, Crime Command, Victoria Police, [gave evidence](#) at a public hearing of the Lapsed Inquiry (Public Hearing). On 7 February 2022, Victoria Police provided [Responses to Questions on Notice](#) (RQON) arising from the Public Hearing.

On 3 August 2022, the Committee re-initiated the inquiry in the 47<sup>th</sup> Parliament.

### Further submission in response to the Terms of Reference (TOR)

Victoria Police welcomes the opportunity to make a further submission to the Inquiry into law enforcement capabilities in relation to child exploitation (the Inquiry). This further submission updates, amends or expands upon matters raised in the Submission, the Public Hearing and the RQON in relation to the Inquiry's TOR b and c.

### TOR b: The efficacy of and any gaps in the legislative tools and tactics of law enforcement used to investigate and prosecute offenders

#### ***Efficacy and efficiency opportunities***

The following expands upon the issues raised at page 5 of the Submission and pages 37–38 of the transcript of evidence in the Public Hearing, regarding the inability of State and Territory police to authorise Commonwealth controlled operations under Part IAB of the *Crimes Act 1914* (Cth) (Act).

Under s 3 of the Act, “constable” means a member or special member of the Australian Federal Police (AFP) or a member of the police force or police service of a State or Territory. This enables members of State and Territory police to exercise the Act’s various powers and authorities of constables, including those relating to search, information gathering, arrest and related powers (Part IAA). While s 15GC of the Act provides for a State or Territory law enforcement officer to be a “law enforcement participant” in a controlled operation, State and Territory police forces or police services must apply to an “authorising officer” to conduct a controlled operation on behalf of the law enforcement agency. Under s 15GF of the Act, an “authorising officer” for a controlled operation is limited to Executive level and sworn officers in the AFP, ACC and ACLEI.

The exclusion of comparably ranked State or Territory police from being authorising officers is a significant impediment to the investigation of a range of very serious crimes where those crimes are not limited to the one State or Territory jurisdiction, or where the investigation relates to a Commonwealth offence.

Under the existing legislative framework, the AFP carries the considerable responsibilities for the management and reporting on the controlled operation authority (COA) and any subsequent variations. This limits the capacity of the AFP to issue such authorities which in turn leads to a significant deficit in the investigational strategies available. The following are examples of child exploitation investigations that Victoria Police were unable to progress due to the inability to source a COA:

- Information received about a suspect who was performing the role of a darknet administrator and uploading child abuse material (CAM). Police identified opportunities to progress the investigation but were unable to due to the absence of a COA. Related information was forwarded to another law enforcement agency.
- Distribution of CAM via an encrypted communication platform. Police identified multiple online CAM groups being accessed but were unable to progress the investigation due to the absence of a COA.

- Covert online engagement with a suspect who was involved in sex tourism offences involving children in an overseas location. Police were unable to progress the investigation due to the absence of a COA.
- A suspect was charged with CAM offences, which involved sharing images and videos in darknet forums. Police identified several CAM groups involved but were unable to progress the investigation due to the absence of a COA.

Victoria Police notes that the inability to access a COA under the Act, is not confined to investigations into child exploitation. It extends to other offences, including the importation of border-controlled drugs, which are regularly investigated by State or Territory police.

At page 5 of the Submission, Victoria Police referred to the delays experienced with mutual assistance requests when requesting information from overseas organisations. It was noted that response times are *likely to be reduced with the implementation of bilateral arrangements with the United States Government pursuant to the Clarifying Lawful Overseas Use of Data Act (CLOUD Act) from late 2022*. Victoria Police notes that these arrangements are now expected to commence in early 2023, and not in late 2022.

#### ***Ensuring offences are prosecutable and holding offenders to account***

At pages 5 to 6 of the Submission and page 40 of the Public Hearing Transcript, Victoria Police referred to the challenges faced in prosecutions. Further to the information previously provided to the Committee, Victoria Police notes that prosecutors are often faced with incomplete briefs of evidence due to an inability by investigators to access social media content, or other international sites. This can lead to substantial delay, and in some cases the inability to prosecute certain charges.

#### **TOR c: Opportunities and suitability of streamlining legislative constraints to enable faster investigations that can better respond to rapidly evolving trends in offending**

To clarify content provided at page 6 of the Submission, with respect to the delays experienced by Victoria Police investigators when awaiting responses to requests from internet service providers (ISPs), it was noted that *these response times should be reduced from late 2022 with the implementation of the CLOUD Act (USA)*. As noted above in TOR b, *the implementation of bilateral arrangements with the United States Government pursuant to the CLOUD Act* are now expected to commence in early 2023.

Victoria Police thanks the Parliamentary Joint Committee on Law Enforcement for the opportunity to make this further submission and welcomes any questions or feedback from the Committee.