

Version No. 004

Terrorism (Community Protection) Act 2003

Act No. 7/2003

Version as at 1 July 2004

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purposes

The main purposes of this Act are—

- (a) to provide new powers and obligations relating to the prevention of, and the response to, terrorist acts; and
- (b) to provide for the application for, and the grant and execution of, warrants authorising the covert search of premises by members of the police force; and
- (c) to provide for mandatory reporting of the theft or loss of certain chemicals and other substances; and
- (d) to provide for the operators of certain essential services to prepare risk management plans to identify and mitigate the risk of terrorist acts; and
- (e) to protect counter-terrorism methods from disclosure in legal proceedings.

2. Commencement

- (1) This Part and Parts 3, 5, 7 and 8 come into operation on the day after the day on which this Act receives the Royal Assent.

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- (2) Subject to sub-section (3), Parts 2, 4 and 6 come into operation on a day or days to be proclaimed.
- (3) If a provision of this Act does not come into operation before 1 July 2004, it comes into operation on that day.

3. Definitions

In this Act—

"Assistant Commissioner" means an Assistant Commissioner appointed under section 4(2) of the **Police Regulation Act 1958**;

"Chief Commissioner" means the Chief Commissioner of Police appointed under section 4(1) of the **Police Regulation Act 1958**;

"counter-terrorism information" means information relating to covert methods of investigation of a terrorist act or suspected terrorist act;

"declared essential service" means an essential service or part of an essential service declared under section 28;

"Deputy Commissioner" means a Deputy Commissioner appointed under section 4(2) of the **Police Regulation Act 1958**;

"essential service" has the meaning given by section 26;

"member of the force" has the same meaning as in the **Police Regulation Act 1958**;

"operator", in relation to a declared essential service, means—

- (a) a person specified or in a class specified in relation to that declared essential service under section 28; or

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- (b) if no person or class is specified in relation to the declared essential service, the person who is responsible for the day to day management of the declared essential service;

"premises" includes—

- (a) land; and
(b) a building or vehicle; and
(c) a part of a building or vehicle; and
(d) any place, whether built on or not;

"terrorist act" has the meaning given by section 4;

"thing" includes any object, article or material.

4. What is a terrorist act?

- (1) In this Act, **"terrorist act"** means an action or threat of action where—
- (a) the action falls within sub-section (2) and does not fall within sub-section (3); and
- (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
- (c) the action is done or the threat is made with the intention of—
- (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
- (ii) intimidating the public or a section of the public.

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- (2) Action falls within this sub-section if it—
- (a) causes serious harm that is physical harm to a person; or
 - (b) causes serious damage to property; or
 - (c) causes a person's death; or
 - (d) endangers a person's life, other than the life of the person taking the action; or
 - (e) creates a serious risk to the health or safety of the public or a section of the public; or
 - (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to—
 - (i) an information system; or
 - (ii) a telecommunications system; or
 - (iii) a financial system; or
 - (iv) a system used for the delivery of essential government services; or
 - (v) a system used for, or by, an essential public utility; or
 - (vi) a system used for, or by, a transport system.
- (3) Action falls within this sub-section if it—
- (a) is advocacy, protest, dissent or industrial action; and
 - (b) is not intended—
 - (i) to cause serious harm that is physical harm to a person; or
 - (ii) to cause a person's death; or
 - (iii) to endanger the life of a person, other than the person taking action; or
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- (iv) to create a serious risk to the health or safety of the public or a section of the public.

Note: The above definition is in the same terms as that to be inserted into Part 5.3 of the Commonwealth Criminal Code by a Commonwealth Act based on the reference to the Parliament of the Commonwealth of certain matters relating to terrorist acts made by the **Terrorism (Commonwealth Powers) Act 2003**.

PART 2—COVERT SEARCH WARRANTS

5. Jurisdiction

A covert search warrant under this Part may only be issued by the Supreme Court.

6. Covert search warrants

- (1) A member of the force, with the approval of the Chief Commissioner, a Deputy Commissioner or an Assistant Commissioner, may apply to the Supreme Court for the issue of a warrant under this Part in respect of any premises if that member suspects or believes, on reasonable grounds, that—
 - (a) a terrorist act has been, is being, or is likely to be, committed; and
 - (b) the entry and search of the premises would substantially assist in preventing or responding to that terrorist act or suspected terrorist act; and
 - (c) it is necessary for that entry and search to be conducted without the knowledge of any occupier of those premises.
- (2) An application for a warrant is to be heard in closed court.

7. Application for warrant

- (1) An application for a warrant under this Part must be made in writing, supported by an affidavit, setting out the grounds on which the warrant is sought.

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- (2) The Supreme Court must not issue a warrant unless—
- (a) the application for the warrant sets out the grounds on which the warrant is being sought; and
 - (b) the applicant has given the Court, either orally or in writing, any further information that it requires concerning the grounds on which the warrant is being sought; and
 - (c) the information given by the applicant is verified before the Court on oath (or affirmation) or by affidavit.
- (3) A Judge of the Supreme Court may administer an oath or affirmation or take an affidavit for the purposes of an application for a warrant.

8. Determining the application

- (1) The Supreme Court may issue a warrant under this Part if the Court is satisfied that there are reasonable grounds for the suspicion or belief founding the application for the warrant.
 - (2) In determining whether a warrant should be issued, the Court must have regard to—
 - (a) the nature and gravity of the terrorist act or suspected terrorist act; and
 - (b) the extent to which the exercise of powers under the warrant would assist the prevention of, or response to, the terrorist act or suspected terrorist act; and
 - (c) the extent to which the privacy of any person is likely to be affected; and
 - (d) any conditions to which the warrant may be made subject.
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- (3) A warrant must specify—
- (a) that the purpose of the warrant is to assist the prevention of, or response to, a terrorist act or suspected terrorist act; and
 - (b) the address or location of any premises to which the warrant relates; and
 - (c) the name of the applicant; and
 - (d) the name or a description of any other person who may enter premises named or described in the warrant; and
 - (e) whether more than one entry of premises named or described in the warrant is authorised; and
 - (f) the date on which the warrant is issued; and
 - (g) the period during which the warrant is in force, being a period not exceeding 30 days; and
 - (h) if known, the names of occupiers of premises named or described in the warrant; and
 - (i) if relevant, the name or a description of the kind of thing to be searched for, seized, placed, copied, photographed, recorded, operated, printed, tested or sampled; and
 - (j) if applicable, any further conditions to which the warrant is subject.
- (4) Nothing in this Part prevents the issue of a further warrant in respect of premises in respect of which a warrant under this Part has previously been issued.
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9. What does a warrant authorise?

- (1) A warrant issued under this Part authorises the person to whom it is directed, together with any other person named or described in the warrant and with any necessary equipment—
 - (a) to enter, by force or impersonation if necessary, any premises named or described in the warrant, or other specified premises adjoining or providing access to the premises for any of the purposes referred to in paragraph (b), (c), (d), (e), (f) or (g); and
 - (b) to search the premises for any kind of thing named or described in the warrant; and
 - (c) if the warrant authorises seizure of a kind of thing, to seize any thing of that kind; and
 - (d) if the warrant authorises placing a kind of thing, to place any thing of that kind on the premises in substitution for a thing seized under paragraph (c); and
 - (e) if the warrant authorises copying, photographing or otherwise recording a description of a kind of thing, to copy, photograph or otherwise record a description of any thing of that kind on the premises; and
 - (f) to operate any electronic equipment that is on the premises and copy, print or otherwise record information from that equipment; and
 - (g) if the warrant authorises testing, or taking and keeping a sample of, a kind of thing, to test, or take and keep a sample of, any thing of that kind.

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- (2) The Supreme Court may direct that any thing seized under a warrant be returned to its owner, subject to any condition that the Court thinks fit, if in the opinion of the Court it can be returned consistently with the interests of justice.
- (3) Except as provided by this Part, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this Part.

10. Warrant may be granted by telephone

- (1) If, in urgent circumstances, a member of the force considers it necessary to do so, the member may apply for a warrant under this Part by telephone in accordance with this section.
- (2) Before making the application, the member must prepare an affidavit setting out the grounds on which the warrant is sought, but may, if necessary, make the application before the affidavit has been sworn.
- (3) If transmission by facsimile machine is available, the member must transmit a copy of the affidavit, whether sworn or unsworn, to the Supreme Court.
- (4) Subject to sections 7(2) and 8(1) and having regard to the factors in section 8(2), the Supreme Court may issue a warrant on an application made by telephone after considering—
 - (a) the terms of the affidavit; and
 - (b) any further information required by the Court concerning the grounds on which the warrant is sought.
- (5) If the Supreme Court issues a warrant on an application made by telephone, it must—
 - (a) inform the applicant of the terms of the warrant and of the date on which and the time at which it was issued, and record on

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- the warrant the reasons for issuing the warrant; and
- (b) if transmission by facsimile machine is available, transmit a copy of the warrant to the applicant.
- (6) If a copy of the warrant has not been transmitted by facsimile machine, the applicant must—
- (a) complete a form of warrant in the terms furnished to the applicant by the Supreme Court and must write on it the name of the Judge who constituted the Court and the date on which and the time at which the warrant was issued; and
- (b) not later than the day following the date of the execution of the warrant or the expiry of the warrant, whichever is earlier, send the form of warrant completed by the applicant to the Court.
- (7) If an application is made by telephone, whether or not a warrant is issued, the applicant must, not later than the day following the day on which the application was made, send the original affidavit duly sworn to the Supreme Court.
- (8) In any proceeding, if it is material for a court to be satisfied that an entry, search or seizure was authorised in accordance with this section, and a warrant issued by the Supreme Court in accordance with this section authorising the entry, search or seizure is not produced in evidence, the court must assume, unless the contrary is proved, that the entry, search or seizure was not authorised by such a warrant.
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11. Report to court

- (1) The person to whom a warrant is issued under this Part must, no later than 7 days after the warrant expires, make a report in accordance with this section to the Supreme Court.

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

- (2) The report must—
- (a) state which powers were exercised under the warrant; and
 - (b) give details of the compliance with the conditions, if any, to which the warrant was subject; and
 - (c) state the period during which the entry and search was conducted; and
 - (d) state the name or description of any person who entered premises named or described in the warrant; and
 - (e) if known, state the names of the occupiers of premises entered; and
 - (f) give details of the seizure, placement, copying, photographing, recording, operation, printing, testing or sampling of any thing; and
 - (g) if known, give details of the benefit of the execution of the warrant to the prevention of or response to the terrorist act or suspected terrorist act.

12. No publication of report of proceeding

A person must not publish—

- (a) a report of the whole or any part of a proceeding on an application for a warrant under this Part; or
- (b) any information derived from a proceeding referred to in paragraph (a); or
- (c) a report of, or any information derived from, a report to the Supreme Court made under section 11(1)—

unless the Supreme Court orders otherwise.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate, 1000 penalty units for a first offence and 20 000 penalty units for a subsequent offence.

13. Annual reports

- (1) The Chief Commissioner must submit a report relating to this Part to the Minister that includes the following information in respect of each financial year—
 - (a) the number of applications by, and the number of warrants issued to, members of the force during that year; and
 - (b) the number of telephone applications during that year; and
 - (c) the number of applications by members of the force that were refused; and
 - (d) the number of premises covertly entered; and

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- (e) the number of occasions on which items were seized; and
 - (f) the number of occasions on which items were placed; and
 - (g) the number of occasions on which electronic equipment was operated; and
 - (h) any other information that the Minister considers appropriate.
- (2) The report must be submitted to the Minister as soon as practicable after the end of each financial year.
 - (3) The Minister must cause the report to be laid before each House of the Parliament, within 12 sitting days of that House, after it is received by the Minister.
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**PART 3—POLICE POWERS TO DETAIN AND
DECONTAMINATE**

14. Interpretation

In giving an authorisation or exercising powers under this Part, it is the intention of the Parliament that no unnecessary restrictions on personal liberty or privacy should be imposed.

15. Definitions

In this Part—

"danger area" means an area in respect of which an authorisation is given by a senior police officer under Part 3;

"DISPLAN" has the same meaning as in the **Emergency Management Act 1986**;

"emergency" has the same meaning as in the **Emergency Management Act 1986**;

"emergency services agency" means any of the following—

- (a) the Country Fire Authority established under the **Country Fire Authority Act 1958**;
- (b) the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958**;
- (c) an agency established by or under an Act of the Commonwealth or of another State or a Territory with functions corresponding to those of an agency referred to in paragraph (a) or (b);
- (d) any other prescribed agency;

"senior police officer" means a member of the force of or above the rank of inspector;

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"volunteer emergency worker", in relation to an emergency services agency, means a person who, with the approval of the agency, provides services (without remuneration or reward) on behalf of the agency for or in relation to the decontamination of any person.

16. Authorisation

- (1) A senior police officer may, for the purpose of protecting people from chemical, biological or radiological contamination, give an authorisation to a member of the force under this Part in relation to an area if that senior police officer forms a belief on reasonable grounds that—
 - (a) a terrorist act has or may have occurred; and
 - (b) that area, or people in that area, may have been exposed to such contamination.
- (2) If the senior police officer who has given an authorisation under sub-section (1) ceases to have the belief referred to in that sub-section, he or she must immediately notify the Chief Commissioner of that fact.

17. How may an authorisation be given?

- (1) An authorisation under this Part may be given orally or in writing.
- (2) If the authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable.
- (3) An authorisation must—
 - (a) state that it is given under this Part; and
 - (b) generally describe the terrorist act or suspected terrorist act to which it relates; and
 - (c) specify the name or description of any member of the force to which it is given; and

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Part 3—Police Powers to Detain and Decontaminate

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- (d) name or describe the area that may have been exposed, or in which there are people that may have been exposed, to contamination; and
- (e) specify the time at which it is given.

18. What is authorised?

- (1) An authorisation may authorise a member of the force to—
 - (a) direct another member of the force to exercise powers referred to in paragraph (b), (c) or (d) in respect of people in the danger area suspected of exposure to contamination; and
 - (b) direct a person or group of people to enter, not to enter or to leave any particular premises or area; and
 - (c) detain a person (whether alone or with others); and
 - (d) direct a person to submit to decontamination procedures by an officer of, or person employed by, or volunteer emergency worker of, an emergency services agency.
- (2) If an oral direction is given to a group of people, it is deemed to have been given to each member of the group if the oral direction is made in a manner which is likely to be audible to all the members of the group or as many of them as reasonably practicable.
- (3) An authorised member of the force may exercise a power under sub-section (1) for the purpose of preventing or limiting the spread of contamination caused by the terrorist act or suspected terrorist act and may give any direction necessary in connection with the exercise of the power.

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Part 3—Police Powers to Detain and Decontaminate

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- (4) A member of the force must facilitate any reasonable request for communication made by a person subject to detention under section 18(1)(c).

19. When does an authorisation lapse?

- (1) An authorisation (including an authorisation extended under section 20(1)) lapses—
- (a) on notification to the Chief Commissioner under section 16(2);
 - (b) if the agency primarily responsible under DISPLAN for responding to the emergency caused by the suspected contamination notifies the Chief Commissioner that the authorisation should lapse, on that notification;
 - (c) in any event, 8 hours after the time at which it is given or on expiry of the extended period under section 20(1), as the case requires.

Note: By section 15 of the **Emergency Management Act 1986**, DISPLAN contains provisions identifying, in relation to each form of emergency specified, the agency primarily responsible for responding to the emergency.

- (2) The Chief Commissioner must ensure that any person to whom an authorisation was given is notified of the lapse of that authorisation immediately after receiving a notification under sub-section (1)(b) or section 16(2).

20. Extended authorisation

- (1) The Chief Commissioner, a Deputy Commissioner or an Assistant Commissioner may extend the period of authorisation beyond the 8 hour period referred to in section 19(1)(c) if he or she decides that extended authorisation is necessary for the purpose of protecting public health.

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Part 3—Police Powers to Detain and Decontaminate

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- (2) The extended period of authorisation must not be for more than 16 hours duration in total (whether that total is a continuous period or a cumulative total of separate periods).
 - (3) An extension may only be granted under subsection (1) with the agreement of the agency referred to in section 19(1)(b).

21. Use of reasonable and necessary force

If a person refuses to comply with a direction given under this Part, an authorised member of the force, or another member of the force acting under the direction of an authorised member of the force, may use reasonable and necessary force to ensure compliance with that direction.

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Part 4—Mandatory Reporting of Theft or Loss of Prescribed Chemicals and other Substances

PART 4—MANDATORY REPORTING OF THEFT OR LOSS OF PRESCRIBED CHEMICALS AND OTHER SUBSTANCES

22. Reporting of theft or loss of prescribed chemical or other substance

An occupier of any premises, on becoming aware of any theft or loss from those premises of a prescribed quantity of a prescribed chemical or other prescribed substance—

- (a) must inform a member of the force of that fact without delay; and
- (b) if so requested by a member of the force, must supply a written report to that member setting out details of the theft or loss.

Penalty: In the case of a natural person, level 10 fine (10 penalty units maximum);

In the case of a body corporate,
120 penalty units.

**PART 5—PROTECTION OF COUNTER-TERRORISM
INFORMATION**

**23. Protection of counter-terrorism information in legal
proceedings**

- (1) If in any legal proceeding within the meaning of the **Evidence Act 1958** an issue arises relating to the disclosure of counter-terrorism information and (but for this section) a person would be entitled to require another person to disclose that information, the court (within the meaning of that Act) may excuse that person from the requirement to disclose if satisfied that—
- (a) disclosure would prejudice the prevention, investigation or prosecution of a terrorist act or suspected terrorist act; and
 - (b) the public interest in preserving secrecy or confidentiality outweighs the public interest in disclosure.

Note: Under the **Evidence Act 1958**, "**legal proceeding**" includes a civil or criminal proceeding before a court, an inquest held by a coroner and a Royal Commission. Also under that Act, "**court**" includes a person acting judicially.

- (2) Without limiting the matters the court may consider for the purposes of sub-section (1), the court must consider the following—
- (a) the importance of the information in the legal proceeding; and
 - (b) if the legal proceeding is a criminal proceeding, whether the party seeking disclosure of the information is the defendant or the prosecutor; and

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Part 5—Protection of Counter-terrorism Information

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- (c) if the legal proceeding is a criminal appeal proceeding, including an application for leave to appeal, whether the party seeking disclosure of the information was the defendant or the prosecutor in the judgment or order from which the appeal is brought; and
 - (d) the nature of the offence, cause of action or defence to which the information relates, and the nature of the subject matter of the proceeding; and
 - (e) the likely effect of disclosure of the information, and the means available to limit its publication; and
 - (f) whether the substance of the information has already been disclosed; and
 - (g) if the proceeding is a criminal proceeding and the party seeking disclosure of the information is the defendant, whether the order is to be made subject to the condition that the prosecution be stayed.
- (3) In deciding whether to excuse a person from a requirement to disclose information, the court may inform itself in any way it thinks fit.
- (4) In this section, "**disclosure**" includes disclosure, whether by order, subpoena or otherwise, by the—
- (a) inspection, production or discovery of documents; and
 - (b) giving of evidence; and
 - (c) answering of interrogatories; and
 - (d) provision of particulars.
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Part 5—Protection of Counter-terrorism Information

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24. Court may inspect documents

If a question arises under section 23 in relation to a document, the court may order the production of the document and may inspect it for the purpose of determining the question.

**PART 6—ESSENTIAL SERVICES INFRASTRUCTURE RISK
MANAGEMENT**

25. Object of this Part

The object of this Part is to provide for the involvement of the operators of essential services in planning for the protection of those essential services from the effects of terrorist acts.

26. What is an essential service?

- (1) For the purposes of this Part, "**essential service**" means any of the following services—
 - (a) transport;
 - (b) fuel (including gas);
 - (c) light;
 - (d) power;
 - (e) water;
 - (f) sewerage;
 - (g) a service (whether or not of a type similar to the foregoing) declared to be an essential service by the Governor in Council under sub-section (2).
- (2) The Governor in Council, by Order published in the Government Gazette, may declare any service to be an essential service for the purposes of this Part.

27. Who is the relevant Minister?

For the purposes of this Part, "**relevant Minister**" in relation to an essential service, means the Minister for the time being designated by the Premier as the relevant Minister for that essential service.

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Part 6—Essential Services Infrastructure Risk Management

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28. Application of this Part to an essential service

- (1) The Governor in Council, by Order published in the Government Gazette, may declare that this Part is to apply to an essential service or to any part of an essential service.
- (2) For the purposes of this section, a part of an essential service may include—
 - (a) any infrastructure, premises, assets or goods used for the purpose of generation, production, extraction, storage, transmission, distribution, administration or operation of the essential service;
 - (b) any communication system used for or relating to the essential service, including any system used to generate, send, receive, store or otherwise process electronic communications for the purpose of the essential service.
- (3) An Order under sub-section (1) may specify that a person or a person in a specified class of person is the operator of the essential service for the purposes of this Part.

29. Duty to prepare risk management plan

- (1) The operator of a declared essential service must prepare a risk management plan for that essential service in accordance with this Part.
- (2) The plan must be prepared within the time determined by the relevant Minister and notified to the operator.
- (3) The plan may form part of any other risk management plan prepared by the operator for the essential service.

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Part 6—Essential Services Infrastructure Risk Management

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30. What are the objectives of a risk management plan?

The objectives of a risk management plan are—

- (a) the prevention of terrorist acts in relation to the declared essential service; and
- (b) the mitigation of the effects of a terrorist act; and
- (c) the recovery of the declared essential service from a terrorist act; and
- (d) the continuity of the declared essential service in the event of a terrorist act.

31. What must a risk management plan contain?

A risk management plan for a declared essential service must contain—

- (a) an assessment of the risks to the declared essential service of terrorist acts; and
- (b) a plan of the measures to be undertaken to prevent or reduce the risk including ensuring the physical security of key infrastructure; and
- (c) a plan for the measures to be taken in the event of a terrorist act including—
 - (i) the procedures for response to the terrorist act; and
 - (ii) the procedures for recovery of the declared essential service from the terrorist act; and
 - (iii) the procedures to provide for the continued safe operation of the declared essential service; and
- (d) details of the positions of the persons responsible for the operation of the risk management plan in the event of a terrorist act; and

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- (e) procedures for determining whether or not there should be public notification of a terrorist act and if so, the procedures for that notification; and
- (f) procedures for immediate communication with the relevant Minister and with emergency services in the event of a terrorist act; and
- (g) details of the measures to be taken to protect the declared essential service in the event of a terrorist act on another essential service on which the declared essential service is dependent; and
- (h) details of the co-ordination of the risk management plan with any relevant municipal emergency management plan prepared under the **Emergency Management Act 1986**; and
- (i) details of the training to be provided to staff in relation to the procedures to be followed to prevent or respond to terrorist acts.

32. Duty to audit and update risk management plan

- (1) The operator of a declared essential service must ensure that the risk management plan is audited on an annual basis to ensure that the plan is still adequate to meet the requirements of section 31.
- (2) The operator of a declared essential service must ensure that the risk management plan is amended as soon as practicable after an audit of the plan to address any deficiencies identified in the audit.

33. Duty to participate in training exercises

- (1) At least once in each year (or any longer period determined by the Minister in a particular case), the operator of a declared essential service must—

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- (a) prepare a training exercise to test the operation of the risk management plan for the declared essential service; and
 - (b) participate in that training exercise under the supervision of the Chief Commissioner.
- (2) The training exercise is to be conducted at a time and place determined by the relevant Minister after consultation with the Chief Commissioner and the operator.

34. Certificate as to plan

If required by the relevant Minister, the operator of a declared essential service must certify in writing to the relevant Minister as to whether or not—

- (a) a risk management plan has been prepared for the essential service in accordance with this Part;
- (b) the risk management plan for the essential service has been audited in accordance with this Part.

35. Duty to provide copy of plan

If required by the relevant Minister, the operator of a declared essential service must provide the relevant Minister with a copy of the risk management plan for that essential service.

36. Minister may issue directions

If the relevant Minister believes on reasonable grounds that the operator of a declared essential service has failed to comply with section 29, 32, 33, 34 or 35, the relevant Minister may in writing direct the operator to comply with that section within the time specified by the relevant Minister in the direction.

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37. Application to Supreme Court

- (1) If the operator of a declared essential service fails to comply with a direction of the relevant Minister under section 36 within the time specified in the direction, the relevant Minister may apply to the Supreme Court for an order under sub-section (2) in respect of the operator.
- (2) If the Supreme Court is satisfied, on an application under sub-section (1), that the operator of a declared essential service has failed to comply with a direction of the relevant Minister under section 36 within the time specified in the direction, it may make an order requiring the operator to comply with the duty to which the direction referred within the time specified in the order.

Note: Section 18 of the **Supreme Court Act 1986** gives the Supreme Court power to close proceedings to the public in the circumstances mentioned in section 19 of that Act.

PART 7—GENERAL

38. Review

- (1) The Minister must cause a review of the operation of this Act to be undertaken and completed by 30 June 2006.
- (2) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament by 30 June 2006.

39. Operation of Act

This Act does not limit the operation of any other law including the **Emergency Management Act 1986**, the **Health Act 1958**, the **Surveillance Devices Act 1999** and the Health (Infectious Diseases) Regulations 2001.

40. Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this Act may be made so as to apply, adopt or incorporate any matter contained in a document formulated or published by any person or body, whether—
 - (a) without modification or as modified by the regulations; or
 - (b) as formulated or published at the time the regulations are made or at any time before then; or
 - (c) as formulated or published from time to time.

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41. Expiry

This Act expires on 1 December 2006.

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**PART 8—AMENDMENT TO FREEDOM OF INFORMATION
ACT 1982 AND VICTORIAN CIVIL AND ADMINISTRATIVE
TRIBUNAL ACT 1998**

**42. New section 29A inserted in Freedom of
Information Act 1982**

After section 29 of the **Freedom of Information
Act 1982** insert—

**"29A. Documents affecting national security,
defence or international relations**

- (1) A document is an exempt document if disclosure of the document under this Act would, or could reasonably be expected to, cause damage to—
 - (a) the security of the Commonwealth or any State or Territory; or
 - (b) the defence of the Commonwealth; or
 - (c) the international relations of the Commonwealth.
- (2) For the purposes of this Act, a certificate signed by a Department Head or the Chief Commissioner of Police, certifying that a document as described in a request would, if it existed, be one of a kind referred to in a specified paragraph of sub-section (1), establishes that, if such a document exists, it is an exempt document.
- (3) The Ombudsman may not conduct an investigation in respect of a certificate under sub-section (2) or a question whether a document is of a kind referred to in sub-section (1) or a decision to sign such a certificate.

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- (4) In this section a reference to a document includes a reference to a document whether created before or after the commencement of section 42 of the **Terrorism (Community Protection) Act 2003**."

43. New section 53AA inserted in Freedom of Information Act 1982

After section 53 of the **Freedom of Information Act 1982** insert—

"53AA. Procedure where Tribunal determines that there do not exist reasonable grounds for claim under section 29A

- (1) If, after hearing a proceeding referred to in clause 29C(1) of Schedule 1 to the **Victorian Civil and Administrative Tribunal Act 1998**, the Tribunal determines in relation to a document in respect of which a certificate under section 29A(2) is in force that there do not exist reasonable grounds for the claim that the document is an exempt document under section 29A, the Tribunal must notify the responsible Minister in writing of that determination.
- (2) The responsible Minister must, within 28 days after being notified under sub-section (1), make a decision to revoke, or not to revoke, the certificate.
- (3) If the responsible Minister makes a decision under sub-section (2) to revoke a certificate—
- (a) any claim made in the certificate is to be taken, for the purposes of this Act, to have been withdrawn; and

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- (b) the Minister must immediately inform the applicant of the existence or non-existence of the document to which the certificate related.
 - (4) If the Minister makes a decision under sub-section (2) not to revoke a certificate, he or she must—
 - (a) cause written notice of the decision to be given to the applicant immediately; and
 - (b) cause a copy of the notice to be laid before each House of the Parliament within 5 sitting days of that House after the notice is given.
 - (5) A notice under sub-section (4) must state the Minister's findings on any material question of fact, the material on which those findings are based, the reasons for the decision and attach a copy of the Tribunal's notification to the responsible Minister of its determination.
 - (6) The Minister is not required to include in a notice under sub-section (4) matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document under section 28, 29A, 31(3) or 33.
 - (7) The Minister is not required to include in a notice under sub-section (4) information as to the existence or non-existence of a document or the existence or non-existence of a state of fact if that information would, if included in a document of an agency, cause that document to be an exempt document under section 28, 29A, 31(3) or 33.
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- (8) Nothing in this section is to be taken to imply that a certificate under section 29A(2) cannot be revoked otherwise than in accordance with this section."

44. Consequential amendments

- (1) In section 27(1)(e) of the **Freedom of Information Act 1982**, after "28" insert ", 29A".
- (2) In section 27(2)(b) of the **Freedom of Information Act 1982**, after "28" (where twice occurring) insert ", 29A".
- (3) In section 50(4) of the **Freedom of Information Act 1982**, after "section 28," insert "section 29A,".
- (4) After section 50(5) of the **Freedom of Information Act 1982** insert—
 - "(5A) Where a certificate has been given in respect of a document under section 29A(2), the powers of the Tribunal do not extend to reviewing the decision to give the certificate and shall be limited to determining the question whether there exist reasonable grounds for the claim that the document is an exempt document under section 29A."
- (5) In section 56(5) of the **Freedom of Information Act 1982**, after "section 28" insert ", section 29A,".

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and Administrative Tribunal Act 1998

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**45. Amendment to Victorian Civil and Administrative
Tribunal Act 1998**

In Part 8 of Schedule 1 to the **Victorian Civil and
Administrative Tribunal Act 1998**, after
clause 29A insert—

"29B. Powers of Tribunal

- (1) This clause applies to an application to the Tribunal for the review of a decision refusing to grant access to a document in accordance with a request, where—
 - (a) the document is claimed to be an exempt document under section 29A of the **Freedom of Information Act 1982**; and
 - (b) a certificate is in force in respect of the document under section 29A(2) of that Act.
- (2) The Tribunal shall, if the applicant so requests, determine the question whether there exist reasonable grounds for the claim referred to in sub-clause (1)(a).

**29C. Constitution of Tribunal for purposes of
proceedings under clause 29B**

- (1) If a request is made to the Tribunal in accordance with clause 29B(2), the Tribunal must be constituted in accordance with sub-clause (2) for the purposes of any proceedings for the determination of the question referred to in that clause.
- (2) For the purposes of a proceeding referred to in sub-clause (1) the Tribunal is to be constituted by a judicial member or judicial members.

**29D. Hearing of certain proceedings before the
Tribunal**

- (1) At the hearing of a proceeding referred to in clause 29C(1), the Tribunal must hold in private the hearing of any part of the proceeding during which—
 - (a) evidence or information is given, or a document is produced, to the Tribunal by—
 - (i) an agency or an officer of an agency; or
 - (ii) a Department Head or a member of staff of a Department Head; or

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- (iii) the Chief Commissioner of Police or a member of staff of the Chief Commissioner of Police; or
 - (b) a submission is made to the Tribunal by or on behalf of an agency, Department Head or the Chief Commissioner of Police in relation to the claim that the document is an exempt document—
and must hold the hearing of any other part of the proceeding in public.
- (2) Where the hearing of any part of a proceeding is held in private in accordance with sub-clause (1), the Tribunal—
- (a) may, by order, give directions as to the persons who may be present at that hearing; and
 - (b) must give directions prohibiting the publication of—
 - (i) any evidence or information given to the Tribunal; or
 - (ii) the contents of any documents lodged with, or received in evidence by, or produced to, the Tribunal; or
 - (iii) any submission made to the Tribunal at that hearing."
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Endnotes

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 27 February 2003

Legislative Council: 27 March 2003

The long title for the Bill for this Act was "to provide for the prevention of and response to terrorist acts, to amend the **Freedom of Information Act 1982** and the **Victorian Civil and Administrative Tribunal Act 1998** and for other purposes."

The **Terrorism (Community Protection) Act 2003** was assented to on 15 April 2003 and came into operation as follows:

Parts 1, 3, 5, 7 and 8 on 16 April 2003: section 2(1); Part 2 on 16 October 2003: Government Gazette 16 October 2003 page 2624; Part 6 on 25 February 2004: Special Gazette (No. 42) 25 February 2004 page 1; Part 4 on 1 July 2004: section 2(3).

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Endnotes

2. Table of Amendments

There are no amendments made to the **Terrorism (Community Protection) Act 2003** by Acts and subordinate instruments.

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Endnotes

3. Explanatory Details

No entries at date of publication.