

Our reference: [REDACTED]

11 June 2021

[REDACTED]  
Executive Director, Priority Projects  
Department of Justice and Community Safety  
121 Exhibition Street  
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By email: [REDACTED]

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Dear [REDACTED]

— **Stage 2 of the Review of the *Terrorism (Community Protection) Act 2003***

I refer to Ms Rebecca Falkingham's letter of 6 May 2021, inviting Victoria Legal Aid (VLA) to make a submission to Stage Two of the Review of the *Terrorism (Community Protection) Act 2003 (TCPA)*.

VLA is an independent statutory authority established under the *Legal Aid Act 1978 (Vic)*. The TCPA gives VLA a statutory responsibility to arrange for a lawyer to be present during questioning of a child detained under the Act, and to offer to provide legal advice to the child (section 13AZG(4)). To support this requirement, VLA has established a *Youth Preventative Detention Service*, to ensure that a lawyer is available at any time for a child detained under the TCPA.

We are concerned with the proposal to create a time extension mechanism for police preventative-detention decisions, beyond the maximum period of 36 hours for a child and 4 days for an adult. In our view the availability of a Supreme Court Order to detain a person for up to 14 days, including the ability to seek a 48 hour interim order, addresses the need to detain a person beyond the maximum period under the police detention power.

While the issues paper refers to a pause mechanism available under the Commonwealth *Crimes Act 1914*, we note that detention period is only four hours - significantly shorter than the maximum Victorian periods of 36 hrs or 4 days. Furthermore, extensions must be ordered by a Magistrate, and may only be up to 24 hours, with a maximum period of 7 days that maybe disregarded under the extension mechanism. This maximum period is half the maximum length of Court ordered detention in Victoria. Furthermore, we note the Commonwealth extension mechanism is only employed by Court order.

In our submission, the current maximum periods for police preventative detention without court oversight should not be extended for any reason. Where a longer detention is warranted, it is appropriate that such the extended period of preventative detention without charge is ordered and overseen by the Supreme Court.

If you would like to discuss any aspect of our response or the VLA service, please contact [REDACTED], Strategic Policy Manager, Criminal Law at [REDACTED].

Yours faithfully [REDACTED]

**DAN NICHOLSON**  
Executive Director, Criminal Law Melbourne