



Proposed New Police Powers to Access Personal Devices are Unnecessary and Unfair

Comment on the Major Crime and Community Safety Legislation Amendment Bill 2022

1. If enacted the Major Crime and Community Safety Legislation Amendment Bill 2022 (Vic) (the Bill) would result in a dangerous expansion of police investigative powers, including the power to compel people to provide access to personal devices.
2. The proposed insertion of s 80A and s 80B of the *Confiscation Act 1997* (Vic) would allow police to apply for a warrant which gives them the power to direct people to provide "any information or assistance that is reasonable and necessary" to allow police to gain access to computers and data.
3. The warrant process is one of the most invasive of police powers, allowing police to enter and search property. It is a power that should be used sparingly and only where necessary, and the proposed amendments have the potential to extend this power in inappropriate and unintended ways.
4. Liberty Victoria is concerned about a number of elements in the proposed legislation, which undermines the right to privacy^[1] and the presumption of innocence.^[2]
5. We note the following:
 - (a) The process of applying for a warrant is conducted in the absence of the suspect. Police make their application *ex parte* (without notifying the suspect), and the suspect is denied the opportunity to make any submissions to the court;

^[1] Section 13 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) provides that "[a] person has the right (a) not to have that person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and (b) not to have that person's reputation unlawfully attacked".

^[2] Section 25 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law (s 25(1) and is entitled not to be compelled to testify against themselves (s 25(2)(k)).

- (b) Proposed s 80C sets out that people who refuse to comply with a direction to allow access to a device can be subject to penalty of up to 5 years' imprisonment. This is too severe and not reflective of the potential criminality involved in the offence;
- (c) The proposed sections may place undue pressure on innocent parties who are caught up in an investigation. Proposed s 80A(3)(b) sets out that specified people that can be obliged to provide information to allow access to devices that do not belong to them. "An employee of the owner of a computer" (s 80A(b)(iii)) or "a person who uses or has used the computer" (s 80A(b)(v)) are examples of potentially innocent third parties that could face criminal prosecution if they do not immediately provide access to devices. Parents having to provide information that could implicate their children, employees having to provide evidence against their employer, or spouses having to provide information against each other are all possibilities under the proposed reforms;
- (d) The execution of a search warrant is likely to be a difficult and unsettling event for many people. With no time for reflection, and in the absence of legal advice, people who are directed to comply with a police direction to allow access to a device will be forced to make swift decisions and potentially expose themselves to criminal prosecution. This is likely to impact upon innocent third parties; and
- (e) The proposed amendments provide for almost unfettered access to any device on a warrant premises, a significant extension of the police's current ability to access private devices.

For the above reasons Liberty Victoria opposes the Bill. It should not be enacted in its current form. The case has not been made as to why such powers – which are likely to impact on innocent people caught up in a police investigation – are necessary or proportionate limitations to human rights, particularly the rights to privacy and freedom from self-incrimination.