



Office of the Inspector of the  
**Law Enforcement Conduct Commission**

# **Annual Report**

**2020 – 2021**

*Law Enforcement*

*(Controlled Operations) Act 1997*

**November 2021**

*This work is copyright, however material from this publication may be copied and published by State or Federal Government Agencies without permission of the Inspector of the LECC on the condition that the meaning of the material is not altered and the Inspector of the LECC is acknowledged as the source of the material. Any other persons or bodies wishing to use material must seek permission.*

# Contents

<b>Chapter 1. Introduction.....</b>	<b>2</b>
<i>1.1. Inspector's functions.....</i>	<i>3</i>
<i>1.2. Legislative Framework which governs controlled operations.....</i>	<i>3</i>
1.2.1. Part 1 – Preliminary.....	3
1.2.2. Part 2 – Authorisation of controlled operations.....	6
1.2.3. Part 3 – Conduct of controlled operations.....	13
1.2.4. Part 3A – Cross-border controlled operations.....	19
1.2.5. Part 4 – Monitoring of controlled operations.....	20
1.2.6. Part 5 – Miscellaneous.....	26
<i>1.3. OILECC inspection methodology.....</i>	<i>28</i>
<b>Chapter 2. NSW Police Force.....</b>	<b>32</b>
<i>2.1. Section 15 reports.....</i>	<i>32</i>
<i>2.2. Section 21 notifications.....</i>	<i>32</i>
<i>2.3. Annual Report required by section 23.....</i>	<i>32</i>
<i>2.4. Concluding comments.....</i>	<i>35</i>
<b>Chapter 3. All agencies other than the NSW Police Force.....</b>	<b>37</b>
<i>3.1. NSW Crime Commission.....</i>	<i>37</i>
<i>3.2. Law Enforcement Conduct Commission.....</i>	<i>37</i>
<i>3.3. Independent Commission Against Corruption.....</i>	<i>37</i>
<i>3.4. Australian Crime Commission.....</i>	<i>37</i>
<i>3.5. Australian Federal Police.....</i>	<i>37</i>
<i>3.6. Commonwealth Department of Immigration and Border Protection.....</i>	<i>37</i>
<i>3.7. Comparative overview.....</i>	<i>37</i>

## Chapter 1. Introduction

Conventional investigative approaches to solving crime have not always proved to be totally effective. Experience has demonstrated that the use of undercover operations can sometimes provide a powerful investigative tool. History suggests that on occasions it is necessary to infiltrate criminal organisations in order to obtain the evidence that is required to prosecute offenders. Frequently that will entail the involvement of individuals associated with law enforcement agencies in the commission of criminal offences (e.g. in the actual purchase and or supply of prohibited drugs). Such involvement however renders the participants in those activities liable to prosecution. Furthermore, any evidence obtained during such investigations may be excluded in any subsequent prosecution.

Those, and related issues, were considered by the High Court of Australia in *Ridgeway v R* (1995) 184 CLR 19. The Court held that evidence obtained by the Australian Federal Police during a controlled importation of prohibited drugs should have been excluded because the actions of the law enforcement officers who had engaged in the controlled importation were unlawful.

The legislature responded by introducing the *Law Enforcement (Controlled Operations) Act 1997* (the Act) which enables a “controlled operation” to be authorised in certain circumstances. The Act regulates their use and also provides for immunities to be granted to authorised participants who are involved in them. Furthermore, a three-tier regime of accountability is created for those law enforcement agencies which are authorised to conduct controlled operations. The first level is an internal accountability mechanism. It requires the principal law enforcement officer for an operation to provide a report to the chief executive officer of a law enforcement agency within 2 months after the completion of an authorised operation. The next level of accountability is external to the agency. It requires the chief executive officer to notify the Inspector of certain matters within 21 days of their occurrence. The final level of accountability arises from the obligations which are cast upon the Inspector. The Inspector is required to inspect the records of law enforcement agencies and then to report to Parliament about the results of those inspections.

The process of monitoring controlled operations may be contrasted with the process for monitoring other covert investigative methods, such as the use of surveillance devices and telecommunication interceptions. Moreover, those other covert investigative methods are authorised externally by means of a warrant which is usually issued by a judicial officer whereas controlled operations are authorised internally by the law enforcement agencies empowered to conduct operations under the Act.

## 1.1. Inspector's functions

Section 122(1) of the *Law Enforcement Conduct Commission Act 2016* (LECC Act) provides that:

*(1) The Inspector has the functions conferred or imposed on the Inspector by or under this or any other Act.*

**Note—**

*Functions conferred on the Inspector under other Acts include the functions of an inspecting officer under the *Telecommunications (Interception and Access) (New South Wales) Act 1987* and of the Inspector under the *Surveillance Devices Act 2007* and the *Law Enforcement (Controlled Operations) Act 1997*.*

The specific functions which are conferred upon the Inspector in relation to the *Law Enforcement (Controlled Operations) Act 1997* are set out in Part 4 of the Act. In due course, those functions will be considered in some detail. It will be necessary to include references to the *Law Enforcement (Controlled Operations) Regulation 2017* (the Regulation) as it also contains information which is of relevance to the performance of the Inspector's functions under the Act.

## 1.2. Legislative Framework which governs controlled operations

### 1.2.1. Part 1 – Preliminary

Included in this Part is section 3 which provides the following definitions:

*(1) In this Act—*

**authorised operation** means a controlled operation for which an authority is in force and, in Parts 3 and 5, includes any operation in the nature of a controlled operation that is authorised by or under the provisions of a corresponding law.

**authority** means an authority in force under Part 2, and includes any variation of such an authority and any retrospective authority granted under section 14.

**chief executive officer** means the person for the time being holding office or acting as—

*(a) in relation to the NSW Police Force, the Commissioner of Police, and*

*(b) in relation to the Independent Commission Against Corruption, the Chief Commissioner of that Commission, and*

*(c) in relation to the New South Wales Crime Commission, the Commissioner for that Commission, and*

*(d) in relation to the Law Enforcement Conduct Commission, the Chief Commissioner of that Commission, and*

*(e) in relation to a law enforcement agency prescribed by the regulations, the chief executive officer (however described) of that agency,*

*and, in relation to an authorised operation, means the chief executive officer of the law enforcement agency on whose behalf the operation has been, is being or is proposed to be conducted.*

**civilian participant** in an authorised operation means a participant in the operation who is not a law enforcement officer.

**code of conduct** means a code of conduct referred to in section 20.

**conduct**, when used as a noun, includes any act or omission.

**controlled activity** means an activity that, but for section 16, would be unlawful.

**controlled conduct** means conduct in respect of which, but for section 20K or 20L, a person would be criminally liable.

**controlled operation** means an operation conducted for the purpose of—

*(a) obtaining evidence of criminal activity or corrupt conduct, or*

*(b) arresting any person involved in criminal activity or corrupt conduct, or*

*(c) frustrating criminal activity or corrupt conduct, or*

*(d) carrying out an activity that is reasonably necessary to facilitate the achievement of any purpose referred to in paragraph (a), (b) or (c),*

*being an operation that involves, or may involve, a controlled activity.*

**corresponding authorised operation** means any operation in the nature of a cross-border controlled operation that is authorised by or under the provisions of a corresponding law.

**corresponding authority** means an authority authorising a cross-border controlled operation (within the meaning of a corresponding law) that is in force under a corresponding law.

**corresponding law** means a law of the Commonwealth, or of another State or Territory, referred to in Schedule 1.

**corresponding participant** means a person who is authorised by a corresponding authority to participate in a corresponding authorised operation.

**corrupt conduct** has the same meaning as it has in the *Independent Commission Against Corruption Act 1988*.

**criminal activity** means any activity that involves the commission of an offence by one or more persons.

**cross-border controlled operation** means a controlled operation that is, will be, or is likely to be, conducted in this jurisdiction and in one or more participating jurisdictions.

**exercise a function** includes perform a duty.

**function** includes a power, authority or duty.

**Inspector** means the Inspector of the Law Enforcement Conduct Commission.

**law enforcement agency** means each of the following—

- (a) the NSW Police Force,
- (b) the Independent Commission Against Corruption,
- (c) the New South Wales Crime Commission,
- (d) the Law Enforcement Conduct Commission,
- (e) such of the following agencies as may be prescribed by the regulations as law enforcement agencies for the purposes of this Act—
  - (i) the Australian Federal Police,
  - (ii) the Australian Crime Commission,
  - (iii) the Commonwealth Department of Immigration and Border Protection.

[Clause 4 of the Regulation provides that each of those agencies are so prescribed.]

**law enforcement officer** means—

- (a) an officer or employee of a law enforcement agency or a person who is seconded to such an agency, including (but not limited to) a police officer, or
- (b) a member of a police force or police service (however described) of another State, a Territory or another country.

**law enforcement participant** in an authorised operation means a participant in the operation who is a law enforcement officer.

**participant** in an authorised operation means a person who is authorised under this Act to engage in controlled activities for the purposes of the operation.

**participating jurisdiction** means a jurisdiction in which a corresponding law is in force.

**Presiding Officer**, in relation to a House of Parliament, means the President of the Legislative Council or the Speaker of the Legislative Assembly.

**principal law enforcement officer** for an authorised operation means the law enforcement officer who is identified by the authority for the operation as the principal law enforcement officer.

**secondary law enforcement officer** for an authorised operation means the law enforcement officer who is identified by the authority for the operation as the secondary law enforcement officer.

**sexual offence** means—

- (a) an offence under Division 10 or 10A of Part 3 of the Crimes Act 1900, or
- (b) any other offence of a similar kind prescribed by the regulations for the purposes of this definition.

**this jurisdiction** means New South Wales.

**Note—**

The Interpretation Act 1987 contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) For the purposes of this Act, a cross-border controlled operation is taken to be conducted in this jurisdiction (whether or not it is also conducted in another jurisdiction) if a participant in the operation is a law enforcement officer of this jurisdiction.

**Note—**

Subsection (2) is intended to cover the situation where an officer of this jurisdiction is conducting an operation in another jurisdiction for the purposes of obtaining evidence of an offence in this jurisdiction (for example, a NSW officer is investigating a conspiracy to import drugs into NSW from Victoria, and the operation is to be conducted wholly in Victoria).

- (3) Notes included in this Act do not form part of this Act.

### **1.2.2. Part 2 – Authorisation of controlled operations**

Section 5, which concerns the application process, is in the following terms:

- (1) A law enforcement officer for a law enforcement agency may apply to the chief executive officer of the agency for authority to conduct a controlled operation on behalf of the agency.



(2) *An application for an authority may be made—*

- (a) by means of a written document, signed by the applicant, or by means of a facsimile transmission of a document so signed (a formal application), or*
- (b) by such other means as are available, including (but not limited to) orally in person, by telephone or by 2-way radio (an urgent application).*

*(2A) In any application, whether formal or urgent, the applicant must provide the following particulars—*

- (a) a plan of the proposed operation,*
- (b) the nature of the criminal activity or corrupt conduct in respect of which the proposed operation is to be conducted,*
- (c) the nature of the controlled activity in respect of which an authority is sought,*
- (d) a statement of whether or not the proposed operation, or any other controlled operation with respect to the same criminal activity or corrupt conduct, has been the subject of an earlier application for an authority or variation of an authority and, if so, whether or not the authority was given or variation granted,*
- (e) the names and ranks of the law enforcement officers nominated to be the principal law enforcement officer and the secondary law enforcement officer for the proposed operation,*
- (f) details of the proposed use of a listening device or optical surveillance device (within the meaning of the Surveillance Devices Act 2007) if the use will be carried out other than in accordance with a surveillance device warrant under that Act.*

*(2B) The regulations may make provision for or with respect to the following matters—*

- (a) the circumstances in which an urgent application may be made [as to which see clause 5(1) of the Regulation],*
- (b) the procedure for making an urgent application,*
- (c) the extent to which a chief executive officer is to be satisfied as to the validity of the circumstances in which an urgent application is made,*
- (d) the keeping of records in relation to an urgent application,*
- (e) the form in which a formal application may be made [as to which see clause 5(2) of the Regulation].*

*(3) The chief executive officer may require the applicant to furnish such additional information concerning the proposed controlled operation as is necessary for the chief executive officer's proper consideration of the application.*

Section 6, which concerns the determination of applications, relevantly provides that:

*(1) After considering an application for authority to conduct a controlled operation, and any additional information furnished under section 5(3), the chief executive officer—*

*(a) may authorise a law enforcement officer for the law enforcement agency concerned to conduct the operation, either unconditionally or subject to conditions, or*

*(b) may refuse the application.*

*(2) An authority to conduct a controlled operation on behalf of a law enforcement agency may not be granted unless a code of conduct is prescribed by the regulations in relation to that agency.*

*(3) An authority to conduct a controlled operation may not be granted unless the chief executive officer is satisfied as to the following matters—*

*(a) that there are reasonable grounds to suspect that criminal activity or corrupt conduct has been, is being or is about to be conducted in relation to matters within the administrative responsibility of the agency,*

*(b) that the nature and extent of the suspected criminal activity or corrupt conduct are such as to justify the conduct of a controlled operation,*

*(c) that the nature and extent of the proposed controlled activities are appropriate to the suspected criminal activity or corrupt conduct,*

*(d) that the proposed controlled activities will be capable of being accounted for in sufficient detail to enable the reporting requirements of this Act to be fully complied with.*

*(4) In considering the matters referred to in subsection (3), the chief executive officer must have regard to the following—*

*(a) the reliability of any information as to the nature and extent of the suspected criminal activity or corrupt conduct,*

*(b) the likelihood of success of the proposed controlled operation compared with the likelihood of success of any other law enforcement operation that it would be reasonably practicable to conduct for the same purposes,*

*(c) the duration of the proposed controlled operation.*

Section 7 places restrictions upon the type of controlled operations that may be conducted and the persons that may participate in them. It is in the following terms:

*(1) An authority to conduct a controlled operation must not be granted in relation to a proposed operation that involves any participant in the operation—*

*(a) inducing or encouraging another person to engage in criminal activity or corrupt conduct of a kind that the other person could not reasonably be expected to engage in unless so induced or encouraged, or*

*(b) engaging in conduct that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or to result in serious loss or damage to property, or*

*(c) engaging in conduct that involves the commission of a sexual offence against any person.*

*(2) A person must not be authorised to participate in a controlled operation unless the chief executive officer is satisfied that the person has the appropriate skills to participate in the operation.*

*(3) A civilian participant—*

*(a) must not be authorised to participate in any aspect of a controlled operation unless the chief executive officer is satisfied that it is wholly impracticable for a law enforcement participant to participate in that aspect of the operation, and*

*(b) must not be authorised to engage in a controlled activity unless it is wholly impracticable for the civilian participant to participate in the aspect of the controlled operation referred to in paragraph (a) without engaging in that activity.*

Section 8 addresses issues concerning the form and content of an authority. Subsection (1) is in the following terms:

*An authority to conduct a controlled operation may be granted—*

*(a) by means of a written document, signed by the chief executive officer, or by means of a facsimile transmission of a document so signed (a formal authority), or*

*(b) by such other means as are available, including (but not limited to) orally in person, by telephone or by 2-way radio (an urgent authority).*

Section 8(2) is in the following terms:

*An authority, whether formal or urgent—*

- (a) must identify the operation by reference to the plan referred to in section 5(2A)(a), and*
- (b) must identify the principal law enforcement officer who is the person who is to conduct, and to have responsibility for, the operation, and*
- (b1) must identify the secondary law enforcement officer who is the person who is to conduct, and to have responsibility for, the operation whenever the principal law enforcement officer is unavailable to do so, and*
- (c) must identify each person who may engage in controlled activities for the purposes of the operation, and*
- (d) must state whether or not any such person may operate under an assumed name, and*
- (e) must identify—*
  - (i) with respect to the law enforcement participants, the nature of the controlled activities that those participants may engage in, and*
  - (ii) with respect to the civilian participants, the particular controlled activities (if any) that each such participant may engage in, and*
- (f) in respect of an urgent authority, must specify the period (not exceeding 72 hours) for which the authority is to remain in force, and*
- (g) in respect of a formal authority, must specify the period (not exceeding 6 months) for which the authority is to remain in force, and*
- (h) must specify any conditions to which the conduct of the operation is subject under section 6(1)(a).*

Section 8(3) sets out the circumstances, for the purposes of subsection (2)(b), (b1) or (c), in which a person is sufficiently identified in relation to the use of an assumed name, code name or code number.

Section 8(4) provides that “[u]nless it sooner ceases to have effect, an urgent authority ceases to have effect 72 hours after it is granted.” Section 8(5) requires a chief executive officer who grants an urgent authority to ensure that written notes are kept of various matters which are specified.

Section 8(6) provides that the regulations may make provision for or with respect to:

- (a) the procedure for granting an urgent authority,*

*(b) the keeping of records in relation to an urgent authority,*

*(c) the form in which a formal authority may be granted.*

*[Clause 6 of the Regulation makes provision for such a form. There are two such forms which are set out in Schedule 1 to the Regulation.]*

Section 9 concerns the duration of authorities and provides that “[u]nless it is sooner cancelled, an authority has effect for the period specified in the authority in accordance with section 8(2)(f) or (g).”

Section 10(1), which makes provision for the variation of an authority, is in the following terms:

*The principal law enforcement officer for an authorised operation, or any other law enforcement officer on behalf of the principal law enforcement officer, may apply to the chief executive officer for a variation of an authority for any one or more of the following purposes—*

*(a) to extend the period for which the authority has effect,*

*(b) to provide for an alternative principal law enforcement officer for the operation,*

*(b1) to provide for an alternative secondary law enforcement officer for the operation,*

*(c) to authorise additional or alternative persons to engage in controlled activities for the purposes of the operation,*

*(d) to authorise participants in the operation to engage in additional or alternative controlled activities.*

Section 10(1A) provides that “[m]ore than one application for a variation may be made in respect of the same authority, but no single variation may extend an authority for more than 6 months at a time.”

Section 10(1B) provides that an application for a variation may be made either by means of a written document (a formal application) or “by such other means as are available” (an urgent application).

Section 10(1C) is in the following terms:

- The regulations may make provision for or with respect to the following matters—*
- (a) the circumstances in which an urgent application may be made [as to which see clause 7(1) of the Regulation],*
  - (b) the procedure for making an urgent application,*
  - (c) the extent to which a chief executive officer is to be satisfied as to the validity of the circumstances in which an urgent application is made,*
  - (d) the keeping of records in relation to an urgent application [as to which see clause 7(2) of the Regulation],*
  - (e) the form in which a formal application may be made.*

In other parts of section 10, provision is made for the matters to which the chief executive officer must have regard when deciding an application to vary an authority and the written notes that they are required to keep. [Clause 8 of the Regulation makes provision for the form in which a formal variation of authority is to be granted. That form (form 3) is set out in Schedule 1 of the Regulation.]

Section 12, which provides for the cancellation of authorities, is in the following terms:

- (1) An authority for a controlled operation may be cancelled by the chief executive officer, by order in writing, at any time and for any reason.*
- (2) Cancellation of an authority for a controlled operation takes effect at the time the order is made or at such later time as may be specified in the order.*
- (3) It is a sufficient defence to criminal or disciplinary proceedings arising from conduct that has been engaged in by the defendant in reliance on an authority that has been cancelled if the defendant satisfies the court or tribunal before which the proceedings are being heard—*
  - (a) that the defendant engaged in the conduct in good faith for the purposes of, and in the course of, a controlled operation for which the authority had been in force, and*
  - (b) that, had the authority been in force when the defendant engaged in the conduct, the conduct would have been lawful by operation of section 16, and*
  - (c) that the defendant was unaware, and could not reasonably be expected to have been aware, that the authority had been cancelled.*

Section 13, which identifies the effect of an authority, is in the following terms:

*While it has effect, an authority for a controlled operation—*

- (a) authorises each law enforcement participant to engage in the controlled activities specified in the authority in respect of the law enforcement participants, and*
- (b) authorises each civilian participant (if any) to engage in the particular controlled activities (if any) specified in the authority in respect of that participant.*

That provision should be read in conjunction with section 13A which is in the following terms:

*An application for an authority or variation of authority, and any authority or variation of authority granted on the basis of such an application, is not invalidated by any procedural defect, other than a defect that affects the substance of the application, authority or variation in a material particular.*

Section 13B makes provision for what is to occur when the principal law enforcement officer is unavailable to exercise the function conferred on them for an authorised operation.

### **1.2.3. Part 3 – Conduct of controlled operations**

Section 14(1), which enables an application to be made for a retrospective authority, is in the following terms:

*If a participant in an authorised operation engages in unlawful conduct (other than unlawful conduct that is a controlled activity) in the course of the operation, the principal law enforcement officer for the operation may, within 24 hours after the participant engages in that conduct, apply to the chief executive officer for retrospective authority for the conduct.*

The remainder of section 14 identifies the limited circumstances in which such an authority will be granted.

Section 15 provides the important level of accountability within the relevant agency to which reference was made earlier. It requires certain reports to be made and is in the following terms:

*(1) Within 2 months after completing an authorised operation, the principal law enforcement officer for the operation must cause a report on the operation to be given to the chief executive officer.*

*(2) The regulations may make provision for or with respect to the matters to be included in such a report.*

[Clause 9 of the Regulation sets out the matters which must be included in the report that is referred to in section 15(2). Those matters are set out below:

*(a) the date and time when the operation began and its duration,*

*(b) the nature of the controlled conduct engaged in for the purposes of the operation,*

*(c) details of the outcome of the operation,*

*(d) if the operation involved any illicit goods (within the meaning of Part 3A of the Act), a statement (to the extent known) of—*

*(i) the nature and quantity of the illicit goods, and*

*(ii) the route through which the illicit goods passed in the course of the operation,*

*(e) details of any loss of, or serious damage to, property or any personal injuries occurring in the course of, or as a direct result of, the operation.]*

Sections 16 to 19 (inclusive) provide important protections to those persons involved in controlled operations together with their activities. Section 16 is in the following terms:

*Despite any other Act or law, an activity that is engaged in by a participant in an authorised operation in the course of, and for the purposes of, the operation is not unlawful, and does not constitute an offence or corrupt conduct, so long as it is authorised by, and is engaged in in accordance with, the authority for the operation.*

Section 17, which provides that certain activities with respect to the use of assumed names are not unlawful, is in the following terms:

*(1) Despite any other Act or law, the following activities—*

*(a) the preparation of any false documentation (such as the preparation of a driver licence, credit card or identity card under an assumed name) in accordance with a request by the chief executive officer of a law enforcement agency,*



*(b) the inclusion of any false information in any record or register (such as that relevant to the issue of a driver licence, credit card or identity card under an assumed name) in accordance with a request by the chief executive officer of a law enforcement agency,*

*(c) the use of such documentation or information by any person in the course of, and for the purposes of, an authorised operation conducted on behalf of a law enforcement agency,*

*are not unlawful, and do not constitute offences or corrupt conduct, so long as the documentation or information is the subject of a certificate, signed by the chief executive officer of the agency, to the effect that the documentation or information is to be used for the purposes of this Act.*

*(2) Subsection (1) does not render lawful the preparation of false documentation, the inclusion of false information in any record or register or the use of such documentation or information in relation to matters of the kind recorded or registered under the Births, Deaths and Marriages Registration Act 1995.*

Section 18, which provides that certain ancillary activities are not unlawful either, is in the following terms:

*(1) Despite any other Act or law, an activity that is engaged in by a person—*

*(a) in connection with a controlled activity, or*

*(b) in connection with an activity referred to in section 17(1)(a), (b) or (c),*

*is not unlawful, and does not constitute an offence or corrupt conduct, so long as it is engaged in (whether by a participant in an authorised operation or otherwise) in the course of, and for the purposes of, an authorised operation.*

*(2) This section applies to an activity that (but for this section) would be unlawful because (ignoring the operation of sections 16 and 17) the activity in connection with which it is engaged in is unlawful (such as an activity that would otherwise give rise to the offence of aiding and abetting the commission of an offence or of conspiring to commit an offence), and does not apply to any other activity.*

Section 19, which protects the persons who are listed in it from civil liability in certain circumstances, is in the following terms:

*Conduct of—*

*(a) a chief executive officer, or*

- (b) the principal law enforcement officer or the secondary law enforcement officer for an authorised operation, or*
- (c) a participant in an authorised operation, or*
- (d) a person acting in accordance with the directions of—*
  - (i) a chief executive officer, or*
  - (ii) the principal law enforcement officer or the secondary law enforcement officer for an authorised operation,*

*does not, if the conduct was in good faith and for the purpose of executing this Act, subject the chief executive officer, principal law enforcement officer, secondary law enforcement officer, participant or person so acting personally to any action, claim, liability or demand.*

Reference was made earlier to section 6(2) which requires that “an authority to conduct a controlled operation on behalf of a law enforcement agency may not be granted unless a code of conduct is prescribed by the regulations in relation to that agency.” Section 20 provides that regulations may prescribe codes of conduct for authorised operations conducted on behalf of law enforcement agencies. Clause 10 of the Regulation provides that “for the purposes of section 20 of the Act, the code of conduct set out in Schedule 2 is prescribed as the code of conduct for authorised operations and it applies to all law enforcement agencies.” Schedule 2 to the Regulation is set out below:

### ***1 Applicants for authorities to act in good faith***

- (1) In making an application for an authority, or for a variation of an authority, the applicant must at all times act in good faith.*
- (2) In particular, the applicant must ensure that the application—*
  - (a) discloses all information of which the applicant is aware as to the circumstances giving rise to the application, especially those that could affect the way in which the application will be determined, and*
  - (b) does not contain anything that is incorrect or misleading in a material particular.*
- (3) If the applicant subsequently becomes aware of information that, had it been known to the chief executive officer when the application was determined, could have affected the way in which the application would have been determined, the applicant must ensure that the information is given to the chief executive officer as soon as practicable.*

## **2 Disclosure of changed circumstances**

*If the principal law enforcement officer for an authorised operation becomes aware of circumstances that are likely to require a variation of the authority for the operation, the officer must ensure that—*

- (a) information as to those circumstances is given to the chief executive officer as soon as practicable, and*
- (b) a written application for such a variation is made to the chief executive officer before it becomes impracticable to do so.*

## **3 Participants to be properly briefed**

*Before conducting an authorised operation, the principal law enforcement officer for the operation—*

- (a) must ensure that each law enforcement participant and each civilian participant—*
  - (i) has a thorough understanding of the nature and extent of any controlled activities in which the participant may be directed to engage for the purposes of the operation, and*
  - (ii) is made aware of the terms of the authority to the extent to which it authorises the participant to engage in those activities, and*
- (b) must ensure that each civilian participant undertakes not to engage in any controlled activities other than those referred to in paragraph (a), and*
- (c) must make a written record of each undertaking given by a civilian participant as referred to in paragraph (b).*

## **4 Obligations of law enforcement participants with respect to their own actions**

*At all times during the conduct of an authorised operation, each law enforcement participant—*

- (a) must act in good faith, and*
- (b) must comply with any lawful directions given to the participant by the law enforcement officer who is conducting, and has responsibility for, the operation.*

## **5 Obligations of law enforcement participants with respect to the actions of others**

*Each law enforcement participant in an authorised operation must take all reasonable steps to ensure that the conduct of the operation does not involve any participant in the operation—*

- (a) inducing or encouraging another person to engage in criminal activity or corrupt conduct of a kind that the other person could not reasonably be expected to engage in unless so induced or encouraged, or*
- (b) engaging in conduct that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or to result in serious loss or damage to property, or*
- (c) engaging in conduct that involves the commission of a sexual offence against any person, or*
- (d) engaging in any activity that, not being a controlled activity, is unlawful.*

## **6 Reports to be made in good faith**

- (1) In preparing a report on the conduct of an authorised operation, the reporting officer must at all times act in good faith.*
- (2) In particular, the reporting officer must ensure that the report—*
  - (a) discloses all information of which the officer is aware as to matters required to be included in the report, and*
  - (b) does not contain anything that is incorrect or misleading in a material particular.*
- (3) If the reporting officer subsequently becomes aware of—*
  - (a) information that, had it been known to the officer when the report was prepared, should have been included in the report, or*
  - (b) information that indicates that anything contained in the report is incorrect or misleading in a material particular,**the officer must ensure that the information is given to the chief executive officer as soon as practicable.*

## **7 Breaches of code to be reported**

- (1) If a law enforcement participant in an authorised operation becomes aware that a breach of this code has occurred in relation to the operation, the participant must ensure that notice of the breach is given to the chief executive officer as soon as practicable.*

(2) *It is sufficient compliance with this clause if notice of the breach is reported in accordance with the internal reporting procedures applicable to the law enforcement agency to which the law enforcement participant belongs.*

## **8 Relationship to other codes of conduct**

*In its application to a law enforcement agency, the provisions of this code are in addition to, and do not derogate from, the provisions of any other code of conduct that applies to that agency.*

### **1.2.4. Part 3A – Cross-border controlled operations**

Section 20A(1) provides that “this Act applies in respect of cross-border controlled operations (with any necessary modifications), subject to the modifications set out in this Part.”

The Act also provides for the recognition in NSW of corresponding authorities issued under a corresponding law of another jurisdiction. In understanding the scope of such operations, it is to be recalled that the terms “corresponding authority”, “corresponding law”, “cross-border controlled operation” and “participating jurisdiction” are defined in section 3 which was set out earlier.

For the purposes of Part 3A, Schedule 1 of the Act provides that the following laws are corresponding laws:

- The *Crimes Act 1914* of the Commonwealth
- Chapters 11 and 12 of the *Police Powers and Responsibilities Act 2000* of Queensland
- The *Crimes (Controlled Operations) Act 2004* of Victoria
- The *Crimes (Controlled Operations) Act 2008* of the Australian Capital Territory
- The *Police Powers (Controlled Operations) Act 2006* of Tasmania
- The *Criminal Investigation (Covert Powers) Act 2012* of Western Australia.

Sections 20B to 20S (inclusive) provide details as to what is required for cross-border controlled operations to be authorised, how they may be conducted and the nature of the protections given to participants.

In general terms, the provisions in relation to controlled operations apply equally to cross-border applications. However, there are several important differences, some of which can be briefly mentioned. First, a cross-border controlled operation can only be conducted in relation to a “relevant offence”. Secondly, in relation to an urgent application for an authority to conduct a proposed cross-border controlled operation, section 20C(2) provides that the application may only be made “if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the operation.” Thirdly, section 20D specifies that in determining applications for authorities to conduct cross-border controlled operations, certain additional criteria which are identified are to be met. Fourthly, section 20E provides that certain matters, which are in addition to the requirements of section 8(2), are to be included in the form of authority to conduct a cross-border controlled operation [as to which see form 2 of the Regulation.] Fifthly, section 20F provides that formal cross-border authorities can be granted for a maximum of three months rather than six months, whilst urgent cross-border authorities can be granted for a maximum of seven days rather than 72 hours. Finally, section 20N provides that a cross-border authority does not give protection from criminal responsibility for breaches of a number of categories of laws (which are listed), that are or could have been authorised under a law of NSW.

### **1.2.5. Part 4 – Monitoring of controlled operations**

#### **Requirement to notify Inspector**

Section 21, which provides that the Inspector is to be notified of certain matters, is in the following terms:

*(1) Within 21 days after—*

*(a) granting an authority (other than a retrospective authority) or variation of authority, or*

*(b) receiving a report on the conduct of an authorised operation to which an authority relates,*

*a chief executive officer must cause written notice of that fact to be given to the Inspector.*

*(1A) A chief executive officer who grants a retrospective authority must provide the Inspector with written details of the retrospective authority and the circumstances justifying that authority.*

*(1B) The details are to be provided as soon as practicable after the retrospective authority is granted but, in any case, no later than 7 days after it is granted.*

*(2) The Inspector may require the chief executive officer to furnish such information concerning the authority, variation or report as is necessary for the Inspector's proper consideration of it.*

The details that must be included in such notifications are specified in clauses 11 to 13 of the Regulation which are set out below:

### **11 Written notice to Inspector of granting of authority**

*Without limiting section 21 of the Act, a written notice given to the Inspector with respect to the granting of an authority (other than a retrospective authority granted under section 14 of the Act) for a controlled operation must include the following details—*

- (a) the date on which the authority was granted,*
- (b) the serial number or other identifying code for the authority,*
- (c) the nature of the suspected criminal activity or corrupt conduct in respect of which the authority was granted,*
- (d) the period for which the authority is to remain in force,*
- (e) the nature of the controlled activities authorised by the authority,*
- (f) the number of participants in the operation, specifying—*
  - (i) how many of them are law enforcement participants, and*
  - (ii) how many of them are civilian participants.*

### **12 Written notice to Inspector of variation of authority**

*Without limiting section 21 of the Act, a written notice given to the Inspector with respect to the variation of an authority for a controlled operation must include the following details—*

- (a) the date on which the variation was granted,*
- (b) the serial number or other identifying code for the authority to which the variation relates,*
- (c) if the variation extends the period for which the authority has effect, the period for which the authority is to remain in force as a consequence of its extension,*

*(d) if the variation authorises an alternative principal law enforcement officer or secondary law enforcement officer for the operation, the fact that it does so,*

*(e) if the variation authorises additional or alternative persons to engage in controlled activities for the purposes of the operation, the number of persons so authorised, specifying—*

*(i) how many of them are law enforcement participants, and*

*(ii) how many of them are civilian participants,*

*(f) if the variation authorises participants in the operation to engage in additional or alternative controlled activities, the nature of the controlled activities so authorised.*

### **13 Written notice to Inspector of receipt of report of authorised operation**

*Without limiting section 21 of the Act, a written notice given to the Inspector with respect to the receipt of a report on the conduct of an authorised operation must include the following details—*

*(a) the date on which the report was received,*

*(b) the serial number or other identifying code for the authority for the operation,*

*(c) the serial numbers or other identifying codes for any variations that have been granted with respect to the authority for the operation,*

*(d) the serial numbers or other identifying codes for any authorities, and any variations of authority, that have been granted for previous controlled operations with respect to the same criminal activity or corrupt conduct,*

*(e) the nature of the controlled activities engaged in for the purposes of the operation,*

*(f) the number of participants who engaged in controlled activities, specifying—*

*(i) how many of them were law enforcement participants, and*

*(ii) how many of them were civilian participants,*

*(g) a statement as to whether the operation was conducted in accordance with the authority for the operation and, in particular, as to—*

*(i) whether any unlawful conduct was engaged in by any participant in the operation, and*



- (ii) if so, whether that unlawful conduct was the subject of an application for retrospective authority under section 14 of the Act, and
- (iii) if so, whether retrospective authority under section 14 of the Act was granted,
- (h) the date on which the operation was completed.

### **Inspection function**

Section 22, which requires the Inspector to inspect the records of law enforcement agencies, is in the following terms:

- (1) *The Inspector—*
- (a) *must inspect the records of each law enforcement agency at least once every 12 months, and*
- (b) *may inspect the records of any law enforcement agency at any time, for the purpose of ascertaining whether or not the requirements of this Act are being complied with.*
- (2) *The provisions of the Telecommunications (Interception) (New South Wales) Act 1987 apply to an inspection conducted under this section in the same way as they apply to an inspection conducted under that Act.*
- (3) *The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament with respect to any inspection conducted under this section.*
- (4) *Nothing in this section requires the Inspector to inspect records in relation to an authorised operation that has not been completed.*

Section 22(2) specifies that “the provisions of the *Telecommunications (Interception and Access) (New South Wales) Act 1987* [the TIA NSW Act] apply to an inspection conducted under this section in the same way as they apply to an inspection conducted under that Act.” Accordingly, inspecting officers are also provided with the powers that are conferred upon them by sections 13 and 14 of the TIA NSW Act. Those provisions are in the following terms:

#### **13 Inspecting officer’s general powers**

- (1) *For the purposes of an inspection under this Part of an eligible authority’s records, the inspecting officer—*

- (a) may, after notifying the chief officer of the authority, enter at any reasonable time premises occupied by the authority, and*
  - (b) is entitled to have full and free access at all reasonable times to all records of the authority, and*
  - (c) despite any other law, is entitled to make copies of, and to take extracts from, records of the authority, and*
  - (d) may require an officer of the authority to give the inspecting officer such information as the inspecting officer considers necessary, being information that is in the officer's possession, or to which the officer has access, and that is relevant to the inspection.*
- (2) The chief officer of an eligible authority must ensure that the authority's officers provide to the inspecting officer such assistance in connection with the exercise of the inspecting officer's functions under this Part as the inspecting officer reasonably requires.*

#### **14 Power to obtain relevant information**

- (1) If the inspecting officer has reason to believe that an officer of the eligible authority is able to give information relevant to an inspection under this Part of the authority's records, subsections (2) and (3) have effect.*
- (2) The inspecting officer may, by writing given to the officer, require the officer to give the information to the inspecting officer—*
- (a) by writing signed by the officer, and*
  - (b) at a specified place and within a specified period.*
- (3) The inspecting officer may, by writing given to the officer, require the officer to attend—*
- (a) before a specified inspecting officer, and*
  - (b) at a specified place, and*
  - (c) within a specified period or at a specified time on a specified day,*
- in order to answer questions relevant to the inspection.*
- (4) If the inspecting officer—*
- (a) has reason to believe that an officer of an eligible authority is able to give information relevant to an inspection under this Part of the authority's records, and*
  - (b) does not know the officer's identity,*

*the inspecting officer may, by writing given to the chief officer of the authority, require the chief officer, or a person nominated by the chief officer, to attend—*

*(c) before a specified inspecting officer, and*

*(d) at a specified place, and*

*(e) within a specified period or at a specified time on a specified day,*

*in order to answer questions relevant to the inspection.*

*(5) The place, and the period or the time and day, specified in a requirement under this section must be reasonable having regard to the circumstances in which the requirement is made.*

### **Reporting function**

Section 23, which also provides the Inspector with a reporting function, is in the following terms:

*(1) The Inspector must, as soon as practicable after 30 June in each year, prepare a report of the Inspector's work and activities under this Act for the preceding 12 months and furnish the report to the Presiding Officer of each House of Parliament.*

*(2) The report must include, for each law enforcement agency, the following particulars—*

*(a) the number of formal authorities that have been granted or varied by the chief executive officer of that agency, and the number of formal applications for the granting or variation of authorities that have been refused by the chief executive officer of that agency, during the period to which the report relates,*

*(a1) the number of urgent authorities or urgent variations of authorities that have been granted by the chief executive officer of that agency, and the number of urgent applications for authorities or urgent variations of authorities that have been refused by the chief executive officer of that agency, during the period to which the report relates,*

*(b) the nature of the criminal activity or corrupt conduct against which the controlled operations conducted under those authorities were directed,*

*(c) the number of law enforcement participants, and the number of civilian participants, involved in the controlled operations conducted under those authorities,*

*(d) the nature of the controlled activities engaged in for the purposes of the controlled operations conducted under those authorities,*

*(e) the number of law enforcement participants, and the number of civilian participants, who have engaged in controlled activities for the purposes of the controlled operations conducted under those authorities.*

*(3) Nothing in this section requires particulars of an authorised operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.*

That section is to be read in conjunction with section 24(1) which is in the following terms:

*A report prepared under this Part must not include any information that, if made public, could reasonably be expected—*

- (a) to endanger the health or safety of any person, or*
- (b) to disclose the methodology used in any investigation (whether or not an authorised operation) that is being, has been or is proposed to be conducted by any law enforcement agency, or*
- (c) to prejudice any investigation (whether or not an authorised operation) that is being or is proposed to be conducted by a law enforcement agency, or*
- (d) to prejudice any legal proceedings arising from any such investigation.*

Section 24(3) provides that “the Inspector must give a copy of any report prepared under this Part to the chief executive officer of the law enforcement agency to which the report relates and to the Minister responsible for that agency.”

This report is furnished to the Presiding Officer of each House of Parliament in accordance with section 23. It details the results of inspections conducted of agency records for the period from 1 July 2020 to 30 June 2021 (the reporting period).

#### **1.2.6. Part 5 – Miscellaneous**

Section 26, which places a further obligation on the chief executive officer, is in the following terms:

*The chief executive officer of a law enforcement agency on whose behalf an authorised operation is conducted must ensure that any evidence obtained in the*

*course of the operation that is sent to the Director of Public Prosecutions for the purposes of any legal proceedings is accompanied by—*

- (a) a written notice to the effect that the evidence has been obtained in the course of an authorised operation conducted on behalf of the agency, and*
- (b) a copy of the authority for the operation.*

Section 27 enables a chief executive officer to issue evidentiary certificates for the purpose of legal proceedings. Section 28 provides that the identity of certain participants in a controlled operation is not to be disclosed in legal proceedings.

Section 29, which provides for the making of delegations in certain circumstances, is in the following terms:

*(1) Except as provided by this section (and despite any other Act or law to the contrary)—*

- (a) the functions of a chief executive officer under this Act may not be delegated to any other person, and*
- (b) the functions of the Inspector under this Act with respect to the inspection of documentation referred to in section 8(3) may not be delegated to any other person.*

*(2) A chief executive officer may delegate any of the chief executive officer's functions under this Act (except this power of delegation) as follows—*

- (a) in the case of the NSW Police Force—*
  - (i) to a police officer for the time being holding office as a Deputy Commissioner or an Assistant Commissioner, and*
  - (ii) except for functions under Part 3A—to a police officer for the time being holding office as a Superintendent who is nominated from time to time by the Commissioner of Police for the purposes of this subsection (not more than two nominations being in force at any one time),*
- (b) in the case of any other law enforcement agency—to a person for the time being holding a position prescribed by the regulations as a position to which functions under this Act may be delegated.*

*(3) A position cannot be prescribed as a position to which functions under this Act may be delegated unless it is a position within the law enforcement agency concerned.*

*(4) No more than one delegation may be in force under subsection (2)(b) at any one time, and no more than one position may be prescribed at any one time as a position to which functions under this Act may be delegated.*

*(5) Subsection (4) does not apply in respect of the delegation of the functions of the chief executive officer of the Australian Crime Commission.*

*(6) The functions of an Inspector under this Act with respect to the inspection of documentation referred to in section 8(3) may be delegated to an Assistant Inspector, or a member of staff of the Inspector, of the Law Enforcement Conduct Commission.*

[Clause 14 of the Regulation prescribes the positions to which functions may be delegated under section 29(2)(b) in respect of the various law enforcement agencies to which the Act applies.]

### **1.3. OILECC inspection methodology**

Section 128A of the LECC Act provides that the Inspector may delegate his functions to members of his staff. Delegations are in place which enable them to perform the inspection functions in relation to the use of various covert powers, including controlled operations. Those inspecting officers constitute the Secure Monitoring Unit (SMU) within the Office of the Inspector of the Law Enforcement Conduct Commission (OILECC).

As was indicated earlier, the authorisation of a controlled operation is determined within the particular agency itself rather than externally. It follows that there needs to be an even greater degree of scrutiny than might otherwise be the case. Accordingly, inspecting officers examine every controlled operation file at the relevant agency. Furthermore, inspections are conducted in a manner that is designed to ensure that the documentation which is relied upon at all stages of the authorisation process as well as the reporting obligations which are placed on agency personnel, are carefully examined. A sample of records held by the principal law enforcement officers responsible for the conduct of the operation may also be examined in order to ascertain how those officers have accounted for the controlled activities which have been conducted. When inspecting officers conduct inspections, they have available to them the information that is contained in the notifications which are received from the respective agencies. During inspections, that information is cross checked against the information which is contained on the agency's controlled operation file to ensure that there is consistency in the information provided.

By far the largest number of controlled operations are conducted by the NSW Police Force. Accordingly, inspections its records are undertaken approximately 4 times a year for around 4 to 5 days on each occasion. Those inspections are conducted at the Covert Applications Unit (CAU) of the NSW Police Force. The duration and frequency of inspections of the other agencies depend on the controlled operations (if any) which they have conducted during the reporting period. As will be seen in chapter 3, none of the other agencies conducted any controlled operations during the reporting period.

As was stated earlier, every file at the relevant agency is inspected. For a more comprehensive understanding of the process that is undertaken by inspecting officers, the following details are provided (with reference to the relevant section or regulation of the Act). Those inspections are designed to ascertain whether:

- The particular application:
  - was formal or urgent – section 5(2)
  - contained the particulars required by section 5(2A)
  - contained the information required by clause 5(2) of the Regulation (if an urgent application)
  - was authorised or refused – section 6(1).
- The chief executive officer was provided by the applicant for the authority with any additional information which was required – section 5(3).
- The chief executive officer, before granting the authority, complied with:
  - the requirements of section 6(4)
  - the requirements of section 7(1)
  - the requirements of section 7(2)
  - the requirements of section 7(3).
- The form of the authority complied with:
  - the requirements of section 8(1)
  - the requirements of form 1 in Schedule 1 of the Regulation
  - the requirements of section 8(2)
  - the requirements of section 8(3).
- The principal law enforcement officer for an authorised operation, before conducting it, complied with the requirements of Schedule 2 to the Regulation and, in particular, with paragraph 3 of that Schedule.
- Any application for a variation of an authority:
  - was for one of the purposes identified in section 10(1)

- complied with the requirements of section 10(1A)
  - was granted or refused.
- The chief executive officer, before granting the variation, complied with:
  - the requirements of section 10(4)
  - the requirements of section 10(8).
- Any authority that was cancelled complied with the requirements of section 12.
- Any retrospective authority that was granted complied with the requirements of section 14.
- Any report required by section 15:
  - contained the details required by clause 9 of the Regulation
  - complied with the prescribed timeframe.
- Any cross-border controlled operation that was granted complied with the requirements of Part 3A.
- Any notification required by section 21:
  - contained the details specified in clauses 11-13 of the Regulation
  - complied with the prescribed timeframe.
- Any evidentiary certificate that was issued complied with the requirements of section 27.
- Any delegated power that was exercised complied with the requirements of section 29 and clause 14 of the Regulation.

In addition to the inspection functions outlined above, OILECC inspecting officers routinely conduct what are referred to as “Operational Command Inspections”. An Operational Command Inspection is an additional auditing tool which OILECC inspecting officers utilise as part of their overall oversight functions. Such inspections are conducted in relation to the NSW Police Force because, in addition to conducting a high volume of controlled operations, its operations and record keeping functions are dispersed across the state. Operational Command Inspections involve inspecting controlled operation files held by the NSW Police Force at a variety of commands both in the metropolitan and in country areas which are separated from the centralised CAU. This additional form of inspection is not necessary in respect of other agencies because their operations and record keeping functions are all maintained at their respective head offices.

Each of the agencies has a designated unit which is responsible for record keeping and compliance. OILECC’s post-inspection process involves its delegated inspecting officers conducting an exit interview with the relevant manager of warrant administration. The



interview is followed by correspondence between the officers and that manager in order to resolve any issues identified during the inspection. After those steps are taken, formal post-inspection correspondence is sent by the Inspector to the relevant chief executive officer to report upon the outcome of the inspection and to identify any matters of concern which may have arisen.

As a result of these processes, OILECC has developed good working relationships with each of those units. Those cooperative working arrangements have greatly assisted in facilitating the development of best practice models and have also contributed to ensuring that there is a higher level of compliance with the legislative requirements.

## Chapter 2. NSW Police Force

### 2.1. Section 15 reports

As previously indicated, section 15(1) requires that “[w]ithin 2 months after completing an authorised operation, the principal law enforcement officer for the operation must cause a report on the operation to be given to the chief executive officer.”

Inspections revealed that there were 8 instances of delays in delivering those reports during the reporting period.

### 2.2. Section 21 notifications

As also previously indicated, section 21 requires the chief executive officer of a law enforcement agency to provide the Inspector with a written notice of certain matters. Unless it is a retrospective authority (of which there were none during the reporting period), that information must be provided within 21 days of its occurrence.

Inspections revealed that there were no instances of delays in notification either of the granting or varying of authorities but that there were 4 instances of delays in notification of conduct reports during the reporting period.

### 2.3. Annual Report required by section 23

As further previously indicated, section 23(2) identifies the range of information which the Inspector must include in the Annual Report in respect of each law enforcement agency. In compiling this report, this Office has had regard to section 23(3) which provides that “[n]othing in this section requires particulars of an authorised operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.”

Inspections conducted of NSW Police Force records during the reporting period revealed the following information about each of the matters identified in section 23(2).

*(a) the number of formal authorities that have been granted or varied by the chief executive officer of that agency, and the number of formal applications for the granting or variation of authorities that have been refused by the chief executive officer of that agency, during the period to which the report relates.*

Number of formal authorities that were granted by delegates of the Commissioner of Police  
– 210.

Number of formal variations that were granted by delegates of the Commissioner of Police  
– 73.

Number of formal authorities that were refused by delegates of the Commissioner of Police  
– nil.

Number of formal variations that were refused by delegates of the Commissioner of Police  
– nil.

*(a1) the number of urgent authorities or urgent variations of authorities that have been granted by the chief executive officer of that agency, and the number of urgent applications for authorities or urgent variations of authorities that have been refused by the chief executive officer of that agency, during the period to which the report relates.*

Number of urgent authorities that were granted by delegates of the Commissioner of Police  
– 3.

Number of urgent variations that were granted by delegates of the Commissioner of Police  
– nil.

Number of urgent authorities that were refused by delegates of the Commissioner of Police  
– nil.

Number of urgent variations that were refused by delegates of the Commissioner of Police  
– nil.

*(b) the nature of the criminal activity or corrupt conduct against which the controlled operations conducted under those authorities were directed.*

The categories of criminal activity or corrupt conduct are listed below:

- Drug offences
- Firearm offences
- Drug and firearm offences
- Drug and other offences
- Murder
- Child exploitation offences

- Fraud offences
- Proceeds of crime
- Sexual offences
- Other.

Of the 213 authorities granted (of which 210 were formal and 3 were urgent), the category of criminal activity or corrupt conduct which most frequently occurred were drug offences, of which there were 120 instances. In addition to that figure, there were 18 instances of drug and firearm offences and 15 instances of drug and other offences.

***(c) the number of law enforcement participants, and the number of civilian participants, involved in the controlled operations conducted under those authorities.***

Number of law enforcement participants who were involved in the controlled operations conducted under those authorities – 3326.

Number of civilian participants who were involved in the controlled operations conducted under those authorities – 127.

***(d) the nature of the controlled activities engaged in for the purposes of the controlled operations conducted under those authorities.***

The categories of controlled activities are listed below:

- Purchasing prohibited drugs (and attempting to purchase prohibited drugs)
- Supplying prohibited drugs
- Being knowingly concerned in the manufacture of drugs
- Money laundering
- Dealing with proceeds of crime
- Purchasing stolen property
- Purchasing prohibited firearms
- Engaging in online discussions regarding child abuse and/or exploitation material
- Accessing restricted data
- Introducing contraband into a place of detention without lawful authority
- Attempting to solicit murder.

*(e) the number of law enforcement participants, and the number of civilian participants, who have engaged in controlled activities for the purposes of the controlled operations conducted under those authorities.*

Number of law enforcement participants who engaged in controlled activities for the purposes of the controlled operations conducted under those authorities – 275.

Number of civilian participants who engaged in controlled activities for the purposes of the controlled operations conducted under those authorities – 110.

In conclusion, it is to be noted that as a result of the controlled operations that were completed during the reporting period, 228 arrests were made and 1134 charges were laid.

#### **2.4. Concluding comments**

During the course of inspections, a number of minor administrative deficiencies were identified. Each of those matters were raised with the relevant members of the CAU staff who were able to satisfactorily address the concerns of the inspecting officers.

In last year's Annual Report I observed that "[d]uring inspections conducted in June 2020, an issue was identified concerning the use of assumed names by civilian participants in controlled operations in contravention of the legislation. When inspecting officers from this Office brought this to the attention of the manager of the CAU, he immediately directed that the 'practice' cease. This Office was subsequently advised that in none of the operations in respect of which the 'practice' had been identified, had the civilian participants actually used an 'assumed name' or represented themselves to be other than who they actually are. Since that time, inspecting officers and staff at the CAU have worked cooperatively with a view to improving existing practices in this area."

I can report that as a result of discussions between the two agencies, a new practice has been adopted by the NSW Police Force. That practice ensures that in every instance in which a participant in a controlled operation operates under an assumed name, they are required to acquire an assumed identity under the *Law Enforcement and National Security (Assumed Identity) Act 2010*.

It is to be observed that there was a decline in the number of controlled operations which were authorised and completed during the current reporting period as compared with the numbers for the previous reporting period. That decline was attributable to Covid-19 restrictions.

Tables which provide comparative data about controlled operations conducted by the NSW Police Force during the last 5 years are set out below.

**Table 1: Controlled Operations Authorised – A five-year comparison**

2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
412	388	389	349	213

**Table 2: Controlled Operations Completed – A five-year comparison**

2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
416	355	378	312	228

Note: Some of the previous year's figures in Table 2 above may differ from those published in previous annual reports. This table provides updated figures that take account of the receipt of previously delayed notifications.

**Table 3: Controlled Operations Varied – A five-year comparison**

2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
114	107	88	104	73

## Chapter 3. All agencies other than the NSW Police Force

### 3.1. NSW Crime Commission

The NSW Crime Commission did not conduct any controlled operations during the reporting period.

### 3.2. Law Enforcement Conduct Commission

The Law Enforcement Conduct Commission did not conduct any controlled operations during the reporting period.

### 3.3. Independent Commission Against Corruption

The Independent Commission Against Corruption did not conduct any controlled operations during the reporting period.

### 3.4. Australian Crime Commission

The Australian Crime Commission did not conduct any controlled operations during the reporting period.

(It should be noted that in 2016 the Australian Crime Commission and CrimTrac merged to form the Australian Criminal Intelligence Commission.)

### 3.5. Australian Federal Police

The Australian Federal Police did not conduct any controlled operations during the reporting period.

### 3.6. Commonwealth Department of Immigration and Border Protection

The Commonwealth Department of Immigration and Border Protection did not conduct any controlled operations during the reporting period.

(It should be noted that in 2017 the Commonwealth Department of Immigration and Border Protection was subsumed into the Department of Home Affairs.)

### 3.7. Comparative overview

During the last 5 years, only the NSW Crime Commission and the Law Enforcement Conduct Commission of the agencies listed above have conducted controlled operations.

The NSW Crime Commission authorised two such operations during the 2017-18 reporting period. It also completed two such operations and varied two such operations during that reporting period.

The Law Enforcement Conduct Commission authorised two such operations during the 2018-19 reporting period. It also completed two such operations during the 2019-20 reporting period.