



**Victorian Inspectorate Report to the Parliament of Victoria on  
the Independent Broad-based Anti-corruption Commission  
pursuant to s. 39 *Crimes (Controlled Operations) Act 2004*  
2015-2016**

November 2016



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## List of Abbreviations

CCO Act	<i>Crimes (Controlled Operations) Act 2004</i>
CCP	Chief Commissioner of Police
COR	Controlled Operations Registry
Fisheries Act	<i>Fisheries Act 1995</i>
DEDJTR	Department of Economic Development, Jobs, Transport and Resources
DELWP	Department of Environment, Land, Water and Planning
GMA	Game Management Authority
IBAC	Independent Broad-based Anti-corruption Commission
Inspectorate	Victorian Inspectorate
PLEO	Principal law enforcement officer (in respect of a controlled operation)
TPU	Technical Projects Unit (Professional Standards Command)
Wildlife Act	<i>Wildlife Act 1975</i>



## INTRODUCTION

This report is prepared for the Parliament of Victoria by the Victorian Inspectorate (the Inspectorate) pursuant to section 39 of the *Crimes (Controlled Operations) Act 2004* (CCO Act). This report details the use of controlled operation provisions by, and the result of inspections undertaken at, Independent Broad-based Anti-corruption Commission (IBAC) during the 2015-2016 year, and the level of compliance with regulatory requirements achieved by the agency.

In the state of Victoria five law enforcement agencies are authorised to conduct controlled operations. They are

- Victoria Police,
- the Independent Broad-based Anti-corruption Commission (IBAC),
- the Department of Environment, Land, Water and Planning (DELWP),
- the Department of Economic Development, Jobs, Transport and Resources (DEDJTR) and
- the Game Management Authority (GMA).

Victoria Police and the IBAC are authorised to undertake controlled operations under the CCO Act. DEDJTR may undertake controlled operations pursuant to the *Fisheries Act 1995* (Fisheries Act), while DELWP and GMA are authorised to undertake a controlled operation under the *Wildlife Act 1975* (Wildlife Act). The provisions of these Acts are generally the same, although the Fisheries Act and the Wildlife Act contain specific provisions limiting the types of offences that may be investigated and the operational scope of a controlled operation.

While the legislation provides for a single controlled operations report to be produced, the practical approach adopted by the Inspectorate is to prepare separate reports for each agency under applicable legislation.

# FEATURES OF THE LEGISLATION

## CRIMES (CONTROLLED OPERATIONS) ACT 2004

The CCO Act legislates for the authorisation, conduct and monitoring of controlled operations for the purpose of obtaining evidence which may lead to the prosecution of persons for offences.<sup>1</sup>

Under the provisions of the CCO Act a controlled operation<sup>2</sup> means an operation that -

- (a) is conducted, or is intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and
- (b) involves, or may involve, controlled conduct.

Controlled conduct means conduct for which a person would, but for the indemnity provisions of s. 28 and s. 35 the CCO Act, be criminally responsible.<sup>3</sup>

Provision is made in the CCO Act for law enforcement officers within the IBAC to apply for an authority to conduct a controlled operation.<sup>4</sup> An authority, if granted, must be in writing by the agency chief officer,<sup>5</sup> being the IBAC Commissioner. The scope of the authority and any conditions attached to its exercise must be detailed within the authority document.<sup>6</sup> A number of prescribed factors must be taken into account by the officer determining the application before an authority may be issued.<sup>7</sup> Provision is made for urgent authorities as well as the variation of an authority within certain restrictions,<sup>8</sup> and for the cancellation of an authority.<sup>9</sup>

Three categories of authority are provided for<sup>10</sup> and each category of authority has certain restrictions<sup>11</sup> and a maximum period of validity.<sup>12</sup>

- **Local major:** a controlled operation investigating a relevant offence, conducted wholly within the state of Victoria.<sup>13</sup>
- **Local minor:** a controlled operation investigating a relevant offence punishable by less than three years imprisonment, conducted wholly within the state of Victoria.<sup>14</sup>
- **Cross-border:** a controlled operation investigating a relevant offence that may be conducted in the state of Victoria as well as one or more participating jurisdictions.<sup>15</sup>

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<sup>1</sup> Section 1(a) *Crimes (Controlled Operations) Act 2004* (CCO Act).

<sup>2</sup> *Ibid* s. 6.

<sup>3</sup> *Ibid* s. 7.

<sup>4</sup> *Ibid* s. 12.

<sup>5</sup> *Ibid* s. 13.

<sup>6</sup> *Ibid* s. 18(3).

<sup>7</sup> *Ibid* ss. 14 - 17.

<sup>8</sup> *Ibid* ss. 20 - 24.

<sup>9</sup> *Ibid* s. 25.

<sup>10</sup> *Ibid* s. 8.

<sup>11</sup> *Ibid* ss. 9 - 11.

<sup>12</sup> *Ibid* s 19.

<sup>13</sup> *Ibid* s. 10.

<sup>14</sup> *Ibid* s. 11.

<sup>15</sup> *Ibid* s. 9.

The CCO Act provides for recognition in Victoria of corresponding controlled operation authorities issued in another State or Territory of Australia under legislation that has been recognised by Victoria as corresponding law.<sup>16</sup>

The CCO Act requires that certain documents and a register be kept by the IBAC.<sup>17</sup> These obligations are the responsibility of the IBAC Commissioner as the IBAC chief officer. Inspection of these records by the VI<sup>18</sup> and a comprehensive statutory reporting regime<sup>19</sup> are two important controls established under the Act. The reporting requirements include a report from the designated principal law enforcement officer (PLEO) to the agency chief officer upon completion of each authorised operation<sup>20</sup> and a six-monthly report by the IBAC Commissioner, as the agency chief officer, to the VI,<sup>21</sup> covering the use of controlled operations by the IBAC. The content of these reports is prescribed within the legislation. There are also statutory obligations to report loss of or serious damage to property and personal injury that occurs in the conduct of an authorised controlled operation.<sup>22</sup>

## THE VICTORIAN INSPECTORATE

The Inspectorate provides independent oversight of the use of controlled operations by the IBAC. The Inspectorate is required to inspect the records of the IBAC to determine the level of compliance with the CCO Act by the IBAC and IBAC law enforcement officers.<sup>23</sup> To make an accurate assessment the Inspectorate has an established process which involves reviewing applications, authorities, reports and other documents. This process enables the Inspectorate to assess whether a controlled operation authority was properly issued and used in compliance with the CCO Act. A more comprehensive description of the role of the Inspectorate and the processes established for undertaking compliance inspections was included in the previous report on the IBAC.<sup>24</sup>

The Inspectorate compiles an annual report detailing the results of inspections and an assessment of compliance which is provided to the Commissioner and the Minister and is tabled in the Parliament of Victoria.<sup>25</sup>

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<sup>16</sup> Ibid ss. 8(a), 9, 15 and 35. Recognition requires that the law of the other jurisdiction be declared by the *Crimes (Controlled Operations) Regulations* 2008 to correspond with the CCO Act.

<sup>17</sup> Ibid s. 40 - 41.

<sup>18</sup> Ibid s. 42.

<sup>19</sup> Ibid ss. 34(1), 37 - 39.

<sup>20</sup> Ibid s. 37.

<sup>21</sup> Ibid s. 38.

<sup>22</sup> The PLEO is required under s. 34 of the CCO Act to inform the Commissioner of any loss or serious damage to property, and of any personal injury, occurring in the course of or as a direct result of an authorised operation. The Commissioner's report to the VI under s. 38 of the CCO Act must also contain those details.

<sup>23</sup> Ibid s. 42(1).

<sup>24</sup> Report of the Victorian Inspectorate for the year ending 30 June 2013 pursuant to s. 39 of the *Crimes (Controlled Operations) Act* 2004 in respect of the Office of Policy Integrity and the Independent Broad-based Anti-corruption Commission.

<sup>25</sup> Ibid s 39.

## INSPECTION

The Inspectorate must inspect the records of IBAC from time to time but at least once every 12 months to determine the extent of compliance with the CCO Act.<sup>26</sup> The Inspectorate schedules two inspections each year to inspect the records of the IBAC.

## REPORTING

The Inspectorate is required to produce an annual controlled operations report regarding the work and activities of the IBAC for the preceding 12 months.<sup>27</sup> Such a report must be made as soon as practicable following receipt of the IBAC Commissioner's second report to the Inspectorate for the reporting period.<sup>28</sup> Reports prepared by the Inspectorate include the following information:

- results of inspections undertaken at the IBAC;
- an assessment of the level of compliance with the CCO Act;
- an overview of the work and activities of the IBAC officers under the provisions of the CCO Act; and
- comment regarding the comprehensiveness and adequacy of the reports provided to the Inspectorate by the IBAC Commissioner.

The Inspectorate's report must not include information that enables the identification of a participant in an operation. The Commissioner must also advise the Inspectorate of any information that should be excluded from the Inspectorate report, if in the Commissioner's opinion the information may:

- endanger a person's safety; or
- prejudice an investigation or prosecution; or
- compromise any law enforcement agency's operational activities or methodologies.

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<sup>26</sup> Ibid s. 42.

<sup>27</sup> Ibid s. 39.

<sup>28</sup> Ibid ss. 38 - 39. The second report is due as soon as practicable after 30 June of each year but no more than 2 months after this date.

## ASSESSING COMPLIANCE

At each inspection the Inspectorate examines certain documents, records, reports and registers and determines the extent of compliance by the IBAC with the requirements of the CCO Act.

At each inspection the following are examined:

- documents and records relating to completed authorised operations which are required to be kept by the agency; and
- the general register kept pursuant to s. 41 of the CCO Act.

The content of each document is inspected to determine:

- whether each document included the information required;
- whether the information that had accompanied or formed part of each application was sufficient to enable the approving officer to determine properly whether to grant or refuse the application; and
- whether the operation for which authority was sought was consistent with the definition of a controlled operation in the CCO Act.

The Inspectorate must also determine whether the IBAC Commissioner's reports were received within the required timeframes and assess the reports in relation to required content.

## INSPECTION RESULTS

In accordance with the Inspectorate's obligations under the CCO Act, the Inspectorate inspected IBAC records to determine the extent of compliance by the agency and its law enforcement officers with the Act. Two inspections were scheduled for the 2015-2016 year.

The Inspectorate was scheduled to conduct the first inspection of IBAC records in November 2015. However, prior to the scheduled inspection date, the IBAC advised that no controlled operations had been authorised that had commenced and concluded during the inspection period. The Inspectorate attended the IBAC in May 2016 and inspected the documentation associated with one controlled operation which commenced and concluded prior to the inspection date. Therefore, only one inspection of IBAC records was undertaken by the Inspectorate in the 2015-2016 year.

The documentation referable to the single controlled operation which commenced and concluded during the reporting year was found to be fully compliant with the requirements of the CCO Act.

## WORK AND ACTIVITIES OF IBAC

In reporting on the work and activities of the IBAC, the Inspectorate is conscious of the nature of the work undertaken by the agency and the potential for the reporting of certain details to impact on investigations. In particular, it is likely that controlled operations undertaken by the IBAC will involve the investigation of possible criminal offending by members of Victoria Police. Police officers who are under investigation for such offending may themselves have considerable investigative skill and knowledge of how controlled operations are used to obtain evidence. The Inspectorate therefore considers it prudent to be cautious with information included in this report. On that basis, this report does not include information regarding the following:

- the offending targeted by controlled operations
- the controlled conduct authorised
- the controlled conduct subsequently engaged in.

Some of the information reported to the Inspectorate by the IBAC Commissioner in satisfaction of s. 38 is provided in Appendices 1 and 2. The data for the 2014-2015 reporting year has been provided by way of comparison.

## CHIEF OFFICER REPORTS

Commissioner reports made by the due date - s. 38

Section 38 of the CCO Act requires the Commissioner, as IBAC chief officer, to report to the Inspectorate as soon as practicable after each 31 December and 30 June, but not more than two months after each date. The reports must detail matters prescribed in s. 38(2), including the number of controlled operation authorisations granted, varied or refused (if any) during the preceding six months, the nature of any controlled conduct engaged in, and the nature of the criminal activities against which any authorised operations were directed.

Two such reports were required to be made by the Commissioner pursuant to s. 38 in respect of the 2015-2016 year:

- First report of operations during 2015-2016, due no later than 28 February 2016
- Second report of operations during 2015-2016, due no later than 31 August 2016.

Comments on both those reports are included in this report.

Both reports under s. 38 were received by the due date.

Comprehensiveness and adequacy of Commissioner reports - s. 38 and s. 39

The Commissioner submitted two reports regarding the IBAC's exercise of controlled operations powers during the 2015-2016 year. Only one controlled operation was authorised and concluded during this reporting year, the details of which were included in the Commissioner's first report in respect of the period 1 July to 31 December 2015.

The Inspectorate is satisfied with the comprehensiveness and adequacy of the reports provided by the Commissioner in respect of the 2015-2016 year.

## SUMMARY

This is the third year in which the IBAC has exercised the controlled operations powers provided in the CCO Act having authorised and concluded one controlled operation during the reporting period. By reference to the inspection of the associated documentation and receipt of statutory reports, the VI is satisfied that the IBAC and its law enforcement officers were compliant with the CCO Act.

## RECOMMENDATIONS

No recommendations were made in the report regarding the exercise of controlled operations powers by the IBAC for the 2014-2015 year and none are made in this report.

## ACKNOWLEDGEMENT

The Inspectorate acknowledges the total cooperation of the IBAC Commissioner and staff with all aspects of the Inspectorate role in the inspection of IBAC records.

## REPORTING

The Inspectorate's next report on the work and activities of the IBAC under the CCO Act is due as soon as practicable after 30 June 2017, following receipt of the IBAC Commissioner's second report for the 2016-2017 financial year (due no later than 31 August 2017).

A handwritten signature in black ink that reads "Robin Brett". The signature is written in a cursive style with a large initial 'R' and 'B'.

Robin Brett QC  
Inspector  
Victorian Inspectorate

## APPENDIX 1 - GENERAL STATISTICS

### *Crimes (Controlled Operations) Act 2004*

Formal Controlled Operation Authorities					s.38(2)(a)	
	Granted		Varied		Refused	
	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16
Cross-Border	0	1	0	0	0	0
Local Major	1	0	0	0	0	0
Local Minor	0	0	0	0	0	0

Urgent Controlled Operation Authorities					s.38(2)(b)	
	Granted		Varied		Refused	
	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16
Cross-Border	0	0	0	0	0	0
Local Major	0	0	0	0	0	0
Local Minor	0	0	0	0	0	0

Controlled Operation Authorities Cancelled			s.38(2)(g)
	2014-15	2015-16	
Cross-Border	0	0	
Local Major	0	0	
Local Minor	0	0	

Controlled Operation Authorities that Expired		s.38(2)(g)
	2014-15	2015-16
Cross-Border	0	1
Local Major	1	0
Local Minor	0	0

## APPENDIX 2 - OPERATIONAL DATA

### *Crimes (Controlled Operations) Act 2004*

Number of Participants Authorised to engage in Controlled Conduct				
Authorised Participants	2014-2015		2015-2016	
	Cross-Border	Local Major / Minor	Cross-Border	Local Major / Minor
Number of civilians authorised across all authorities	0	1	4	0
Number of law enforcement officers authorised across all authorities <sup>1</sup>	0	6	1	0

Illicit Goods involved in Completed Controlled Conduct				
Illicit Goods	2014-2015		2015-2016	
	Cross-Border	Local Major / Minor	Cross-Border	Local Major / Minor
Cannabis	0	1	0	0
Cocaine	0	0	1	0

Property Loss or Damage or Injury in Completed Controlled Operations

Impact on Others	2014-2015		2015-2016	
	Cross-Border	Local Major / Minor	Cross-Border	Local Major / Minor
Loss / damage to property	0	0	0	0
Personal injury	0	0	0	0

Completed Controlled Operations That Were Varied				
Variations	2014-2015		2015-2016	
	Cross-Border	Local Major / Minor	Cross-Border	Local Major / Minor
Number of Completed Operations with Variations (includes extension of period of authority)	0	0	0	0
Total number of Variations across all Completed Operations	0	0	0	0

## EXPLANATORY NOTES - APPENDIX 2

**Reference** <sup>1</sup> The number of law enforcement officers authorised represents the number of persons authorised across all issued authorities. A pool of officers is routinely authorised for each authority so that when operational circumstances dictate it is possible to deploy officers, there are sufficient authorised officers immediately available. Certain officers may be authorised in relation to a number of concurrent operations. Consequently, of the pool of officers authorised for an operation many do not, in the event, actually engage in controlled conduct.