



**Victorian Inspectorate Report to the Parliament of
Victoria on Victoria Police pursuant to s. 39 *Crimes
(Controlled Operations) Act 2004***

5 January 2015

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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>
DEPI	Department of Environment and Primary Industries
IBAC	Independent Broad-based Anti-corruption Commission
PLEO	Principal law enforcement officer (in respect of a controlled operation)
TPU	Technical Projects Unit (Professional Standards Command)
VI	Victorian Inspectorate
Wildlife Act	<i>Wildlife Act 1975</i>

INTRODUCTION

This report is prepared for the Parliament of Victoria by the Victorian Inspectorate (VI) pursuant to s. 39 of the *Crimes (Controlled Operations) Act 2004* (CCO Act).

In the state of Victoria three law enforcement agencies are authorised to conduct controlled operations. They are Victoria Police, the Independent Broad-based Anti-corruption Commission (IBAC) and the Department of Environment and Primary Industries (DEPI). Victoria Police and the IBAC are authorised to undertake controlled operations under the CCO Act. DEPI may undertake controlled operations pursuant to the *Fisheries Act 1995* (Fisheries Act) and 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.

The VI is required to carry out inspections and provide reports relating to all three agencies. The practical approach adopted by the VI has been to prepare separate reports under the CCO Act relating to Victoria Police and the IBAC and to combine the reports under the Fisheries and Wildlife Acts. This report relates only to controlled operations carried out by Victoria Police. It details the use of controlled operations provisions by Victoria Police, as well as the results of inspections undertaken by VI officers during the 2013-2014 year to determine the level of compliance with regulatory requirements achieved by Victoria Police.

FEATURES OF THE LEGISLATION

CRIMES (CONTROLLED OPERATIONS) ACT 2004

The CCO Act provides for the authorisation, conduct and monitoring of controlled operations. It defines a controlled operation as 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.¹

Controlled conduct means conduct for which a person would, but for the indemnity provisions of s. 28 and s. 35 of the CCO Act, be criminally responsible.²

Provision is made in the CCO Act for law enforcement officers within Victoria Police to apply for an authority to conduct a controlled operation.³ The authority, if granted, must be authorised in writing by

¹ CCO Act s. 6.

² Ibid s. 7.

³ Ibid s. 12.

the agency chief officer,⁴ being the Chief Commissioner of Police (CCP), or otherwise by certain senior officers under delegation.⁵ The scope of the authority and any conditions attached to its exercise must be detailed within the authority document.⁶ A number of factors must be taken into account by the officer determining the application before an authority may be granted.⁷ Provision is made for the granting of urgent authorities, the variation of an authority for certain permissible purposes⁸ and the cancellation of an authority.⁹

Authority may be granted for three different types of controlled operation,¹⁰ as follows:

- **Local major:** a controlled operation investigating a relevant offence¹¹ and conducted wholly within the state of Victoria.¹²
- **Local minor:** a controlled operation investigating an offence punishable by less than three years imprisonment and conducted wholly within the state of Victoria.¹³
- **Cross border:** a controlled operation investigating a relevant offence¹⁴ that may be conducted in the state of Victoria as well as one or more participating jurisdictions.¹⁵

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.¹⁶

Certain different conditions apply to the granting of authority for the different types of controlled operation¹⁷ and the maximum period of validity of an authority depends upon which type of operation is authorised.¹⁸

The CCO Act requires that certain documents and a register be kept by Victoria Police.¹⁹ These obligations are the responsibility of the CCP. Inspection of these records by the VI²⁰ and a comprehensive statutory reporting regime²¹ are two important controls established under the CCO 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 operation²² and a six-monthly report by the CCP, as the agency chief officer, to the VI²³ covering the use of controlled operations by

⁴ Ibid s. 13.

⁵ Ibid s. 44.

⁶ Ibid s. 18(3).

⁷ Ibid ss. 14 - 17.

⁸ Ibid ss. 20 - 24.

⁹ Ibid s. 25.

¹⁰ Ibid s. 8.

¹¹ As defined in CCO s. 3.

¹² Ibid s. 10.

¹³ Ibid s. 11.

¹⁴ As defined in CCO s. 3.

¹⁵ Ibid s. 9.

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

¹⁷ Ibid ss. 15 - 17.

¹⁸ Ibid s 19.

¹⁹ Sections 40 - 41 CCO Act.

²⁰ Ibid s. 42.

²¹ Ibid ss. 34(1), 37 - 39.

²² Ibid s. 37.

²³ Ibid s. 38.

Victoria Police in the preceding six months. The nature and type of information to be included in these reports is set out in the CCO Act. There is also a statutory obligation to report the loss of or serious damage to property and also any personal injury that occurs in the conduct of an authorised controlled operation.²⁴

THE VICTORIAN INSPECTORATE

The VI provides independent oversight of the use made by Victoria Police of controlled operations. The VI is required to inspect the records of Victoria Police in order to determine the level of statutory compliance achieved by Victoria Police and its law enforcement officers.²⁵ To ensure an accurate assessment, the VI has established processes which involve reviewing applications, authorities, reports and other documents. This enables the VI to assess whether the authority for a controlled operation was properly issued and whether the operation was conducted in compliance with the CCO Act. A more comprehensive description of the role of the VI and the processes established for undertaking compliance inspections is provided in an earlier report.²⁶

As required by the CCO Act, the VI prepares an annual report of the work and activities of the agency during the year, a copy of which is provided to the CCP and the Minister and tabled in the Parliament of Victoria.²⁷

INSPECTION

The VI must inspect the records of Victoria Police from time to time but at least once every 12 months to determine the extent of compliance with the CCO Act.²⁸ The established practice of the VI is to schedule two inspections each year. These involve attending two work units within Victoria Police - the Controlled Operations Registry (COR) and the Technical Projects Unit (TPU) within Professional Standards Command.

²⁴ The PLEO is required under s. 34 of the CCO Act to inform the CCP 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 CCP's report to the VI under s. 38 of the CCO Act must also contain those details.

²⁵ Section 42(1) CCO Act.

²⁶ 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 Victoria Police.

²⁷ Section 39 CCO Act.

²⁸ *Ibid* s. 42.

REPORTING

The annual report of the VI must be made as soon as practicable following receipt of the chief officer's second report to the VI for that reporting period.²⁹ Reports prepared by the VI include the following information:

- results of inspections undertaken at Victoria Police COR and TPU;
- an assessment of the level of compliance with the CCO Act;
- an overview of the work and activities of Victoria Police officers carried out pursuant to the provisions of the CCO Act; and
- comment regarding the comprehensiveness and adequacy of the reports provided to the VI by the CCP in his capacity as chief officer.

The VI's report must not include information that enables the identification of a participant in an operation. The chief officer must also advise the VI of any information that should be excluded from the VI report if in his or her 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.

ASSESSING COMPLIANCE

At each inspection the VI examines certain documents, records, reports and registers to assess and determine the level of compliance achieved by Victoria Police under the CCO Act.

Each inspection involves undertaking a detailed examination of:

- 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 properly determine 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 as defined in the CCO Act.

The VI must also determine whether the reports of the chief officer were received within the required timeframes and assess the reports in relation to required content.

²⁹ Ibid ss. 38 - 39 CCO Act. The second chief officer report is due as soon as practicable after 30 June of each year but no more than 2 months after this date.

INSPECTION RESULTS

For the purposes of inspecting controlled operations records, the VI attended Victoria Police twice during 2013-2014, being in November/December 2013 and June 2014. The number of records inspected does not directly correlate with the number of applications made or operations completed for the year as reported to the VI by the chief officer in the six monthly reports (and which are included in the appendices to this report). This is because in conducting an inspection, the VI officers view only those operations which have been completed and for which PLEO reports have been submitted. The reports of the chief officer provide required information relating to a six month period during which various reportable matters occurred. Such reports will therefore include controlled operations not inspected by the VI.

INSPECTION OF AGENCY RECORDS AND DOCUMENTS

A total of 105 controlled operations were inspected during 2013-2014 year. Forty-one completed controlled operations were inspected in November/December 2013 and 64 completed controlled operations in June 2014.

Tables 1 and 2 below summarise the principal compliance requirements of the CCO Act and the VI's compliance assessment. While it is not practicable to provide comment on each compliance requirement, further comment is made when, for example, a compliance issue has been identified.

Applications for authorities to conduct controlled operations - s. 12

Section 12 of the CCO Act provides that an application for a controlled operation may be made in writing and signed by the applicant (a formal application).³⁰ However, there is provision for the making of urgent applications where it is believed that a delay caused by having to make a formal application may impact on the success of the operation; in such a case an application (an urgent application) may be made orally (in person or by telephone), or by fax, email or any other means of communication.³¹

Of the 105 applications inspected, none were urgent applications. No applications were refused. Of the applications reviewed by the VI, the vast majority were compliant, demonstrating that Victoria Police had a thorough understanding of the requirements of s. 12. Only two applications were identified as non-compliant (discussed further below), while a third file inspected failed to include a copy of the application (see the discussion later in this report under the part dealing with s. 40 of the CCO Act). The remaining 102 files were assessed as compliant with s. 12 of the CCO Act.

³⁰ Ibid s. 12(2)(a).

³¹ Ibid s. 12(2)(b).

Table 1: Compliance requirements with *Crimes (Controlled Operations) Act 2004*

Compliance criteria	No. of records compliant	No. of records not compliant	Notes
Application for authority to conduct controlled operations (s. 12)	102	3	See comments below.
Determination of application (s. 13) (with consideration of relevant factors set out in ss. 14-17)	105	0	See comments below.
Form of authority (s. 18)	102	3	See comments below.
Duration of authorities and extensions by variation (ss. 19-20)	105	0	-
Applications for variation of an authority (s. 21)	35	0	-
Determination of application to vary authority (consideration of relevant ss. 14-17 factors) (s. 22)	35	0	-
Manner of varying authority and form of variation of authority (ss. 23-24)	33	2	See comments below.
Cancellation of authorities (s. 25)	8	0	-
Notifications requirements (loss of or serious damage to property or personal injury to any person (s. 34)	N/A	N/A	Nil reports of loss of or serious damage to property or personal injury to any person.
Principal law enforcement officers' reports (s. 37)	103	2	See comments below.
Documents required to be kept (s. 40)	103	2	See comments below.

Table 2: Compliance requirements s. 38 and s. 41

Compliance criteria	Compliant Yes/No	Notes
Chief officer's reports (s. 38)	Yes	-
General register (s. 41)	Yes	-

Non-compliant matters

The application in support must state whether the proposed operation or any other controlled operation regarding the same criminal activity had been the subject of an earlier application for an authority or variation and state whether the authority was given or variation granted and, if so, the type of controlled operation authorised.³² One application inspected did not address the previous application section and was therefore assessed by VI officers as non-compliant.

In the second non-compliant application, the error concerned the type of controlled operation for which authority was sought (local major, local minor or cross-border).³³ Potentially the error was of some significance. The targeted offence was that of bringing a prohibited weapon into Victoria, contrary to section 5(1)(a) of the *Control of Weapons Act* 1990, which carries a maximum penalty of two years' imprisonment. The only type of authority which may be granted where the maximum penalty is imprisonment for less than three years is an authority for a local minor operation, and the application in question correctly stated that the authority sought was for a local minor operation. Section 19(2) of the CCO Act provides that an authority in respect of a local minor operation may be granted for a maximum period of seven days. However when approval was sought for the authority, it was presented as a local major operation and authority was granted for a period of 30 days. The completed PLEO report also stated the operation was a local major operation. The operation was subsequently cancelled after 14 days. As the targeted offence was punishable by less than three years' imprisonment, the authority could not have been a local major operation and hence the authority was granted for a period in excess of the maximum permitted by the legislation. Section 27 of the CCO Act provides that an authority is not invalidated by any defect other than a defect that affects the authority in a 'material particular'. Arguably the granting of the authority for a period greater than was permitted by the CCO Act meant that the authority was defective in a material particular, in which case it would have been invalid and any person engaging in the controlled conduct purportedly authorised by it would not have been indemnified against prosecution. As a matter of fact, however, no such person has been prosecuted or is likely to be prosecuted.

Victoria Police has acknowledged the error and explained to the VI the circumstances that led to it occurring, which involved a miscommunication between the investigators and COR. This potentially serious breach of the legislation has highlighted to Victoria Police personnel the importance of quality assurance for controlled operation documentation, particularly when unfamiliar offences are being targeted.

Practice Issues

Although minor errors were also detected in two applications, these were not considered to be compliance issues. This was either because the required information was present on the application or could be inferred from the information included. These errors included:

³² Ibid s. 12(4)(c).

³³ Ibid s. 12(4)(b).

- a failure to list or make reference to supporting documentation used in a previous related authority (one application)
- an incorrect date on the application (the application was dated 2014 when it should have been 2013) (one application).

Further matters to be taken into account - cross-border controlled operations - s. 15

A total of six cross-border operations were applied for and authorised during the reporting period. The VI assessed all as compliant, although one application was considered to have raised a minor practice issue which related to s. 15(1)(c) of the CCO Act. This provision requires the chief officer to be reasonably satisfied about the nature and extent of the suspected criminal activity so as to justify conducting a controlled operation both in Victoria and interstate. In assessing the application VI officers concluded that although the information indicated why a cross-border operation was required, a clearer statement highlighting the need for a cross-border controlled operation would have been more useful.

Form of authority - s. 18

Section 18 of the CCO Act sets out a range of matters which must be included in an authority (whether formal or urgent). Three authorities were assessed as non-compliant.

Section 18 of the CCO Act requires the name and rank or position of the person granting the authority to be stated on the authority.³⁴ Two authorities were assessed as non-compliant as in both instances the name and rank of the authorising officer could not be determined by reference only to the authority.

These two errors were assessed against the requirements of s. 27, which, as noted above, provides that a defect in an authority does not render it invalid unless the defect is in a material particular. The VI officers assessed the error in each of these cases to be administrative and not in respect of a material particular, as neither of them prejudiced the application or gave rise to any information sought being misconstrued.

The third error was detected in relation to the requirements under s. 18(h) for an authority to include, for each participant in an operation, a statement of the controlled conduct which that participant may engage in.³⁵ In respect of one authority, the conduct authorised was not specified for one law enforcement participant. It appears that the non-compliance was an oversight, but it was again potentially of some significance, as the participant might have been led to engage in conduct for which he or she was liable to prosecution without an authority in existence that authorised the conduct and thus indemnified him or her against any such prosecution. As a matter of fact in this case no controlled conduct was engaged in, but this error nevertheless highlights the importance of attention to detail in relation to completing the authority paperwork.

³⁴ Ibid s. 18(3)(a).

³⁵ Ibid s. 18(3)(h).

Application and determination of application for variation of an authority - ss. 21-22

Of the 105 authorities inspected by the VI 35 were varied during 2013-2014 with 17 varied on more than one occasion. An authority may be varied for any of the following reasons:

- to extend the period of validity
- to include alternative or additional participants
- to authorise participants to engage in additional or alternative conduct and
- to identify additional suspects.³⁶

Each variation application inspected has been assessed as compliant with the Act.

Variation of an authority - ss. 23-24

Of the 35 authorities inspected that were varied, the VI assessed two as non-compliant.

One of the non-compliant applications was to vary an authority to extend the period of validity and to identify additional suspects. The application was made prior to the expiry of the authority, but the variation was not granted until the day after the authority expired and thus had no effect, as an authority cannot be extended when it has ceased. The consequences of this error were serious, as the persons who engaged in illegal conduct during this period were not afforded the protections under s. 28 of the CCO Act (see below) as the conduct was not authorised. Victoria Police only became aware of the error following the VI inspection, at which point the controlled operation was already completed, and has advised that the error was an oversight resulting from a deviation in usual practice during the week in which this documentation was to have been signed. Victoria Police has acknowledged this oversight and advised of an amendment to the current practice to ensure that documentation is signed before an authority expires in the future.

In the second case of non-compliance, the variation was granted by an authorised delegate of the Chief Commissioner as required by s. 24(b) the CCO Act, however it was not possible to determine the name or rank of the officer signing the documentation by reference only to the variation documentation. This error appears to have been an oversight and it does not appear to the VI to have been sufficiently material to invalidate the variation.

Practice Issues

Minor errors were also detected in two variations which were not considered to be compliance issues because the required information was either included in the application or could otherwise be readily inferred.

The variation documentation for both operations had date discrepancies and while it was possible in both instances to determine the period of extension of the authorities, it would have been more useful

³⁶ Ibid s. 21(1).

to have amended the information recorded on the variation documentation. It is noted that one of these operations has been referred to earlier in this report.³⁷

Protection from criminal responsibility for controlled conduct during authorised operations - s. 28

Section 28(1) of the CCO Act provides that a person is not criminally responsible for an offence if:

- the conduct is authorised by, and is engaged in in accordance with, the authority
- the conduct does not involve the participant intentionally inducing a person to commit an offence that the person would not otherwise have intended to commit
- the conduct does not involve the participant engaging in conduct that is likely to
 - cause the death of or serious injury to, any person; or
 - involve the commission of a sexual offence against any person, and
- if the participant is a civilian participant - he or she acts in accordance with instructions of a law enforcement officer.

Documentation on file in respect of one controlled operation revealed that the law enforcement participant/s engaged in conduct that had not been authorised and so were not afforded the protection offered under s. 28. This was a serious compliance breach which had real potential to adversely impact the investigation then being undertaken by Victoria Police.

Victoria Police advised that the failure to include additional controlled conduct was an oversight. The controlled operation documentation includes a section detailing the operation, which states the conduct to be engaged in but also indicated the potential for other conduct to be undertaken. However, the section in which the nature of the controlled conduct is detailed, only the main conduct was listed, not the possible conduct. This error was identified at the VI inspection, when the controlled operation was already finalised. Victoria Police has acknowledged this error and highlighted the importance of quality assurance in their application review process.

Principal law enforcement officer's reports (s. 37)

Within two months after the finalisation of an authorised operation the PLEO for the operation must make a report to the chief officer which includes the specific matters set out in the CCO Act.³⁸ Of the 105 reports inspected during the 2013-2014 period, two were assessed as non-compliant.

One PLEO report was not made within the required timeframe; it was one day late and concerned an operation highlighted earlier in this report when discussing 'Form of authority - s.18'.³⁹ The VI, however, is pleased to report a noted improvement on the previous year's results, where, of the 134 inspected, eight were assessed as late.

³⁷ See 'Form of authority - s. 18' at page 8 of this report.

³⁸ Ibid s. 37(2)(a)-(f).

³⁹ See 'Form of authority - s. 18' at page 8 of this report.

The other PLEO report which was assessed as non-compliant failed to correctly state the duration of the controlled operation.⁴⁰ The dates of both commencement and cessation were incorrect. This particular authority was also highlighted when discussing 'Variation of an authority' earlier in this report.⁴¹ As the PLEO should have access to all details regarding the application and authorisation of a controlled operation, this simple error is one that should not arise.

Practice issue

One further PLEO report contained a minor date discrepancy of one day in relation to the date upon which the operation commenced. This operation was also mentioned earlier in this report in relation to a minor date discrepancy found in the application.⁴²

Keeping documents connected with authorised operations - s. 40

Section 40 of the CCO Act requires certain documents connected with authorised operations to be kept including each formal application and authority and each formal variation application and variation authority.

One authority file inspected by the VI did not include a copy of the application⁴³, however the file contained an application which appeared to relate to a previous authority granted for the same investigation. While some details appeared to have been amended, the details included on this application did not match the information included in the authority, specifically in relation to persons authorised to engage in controlled conduct. The failure to retain a copy of the actual application on file adversely affected the VI's ability to assess compliance with the requirements of s. 12 of the CCO Act.

Similarly, the Act requires that the application for a variation must be kept.⁴⁴ Of the 35 controlled operations inspected which were varied, one file failed to include the application for variation on file. It was noted by the VI that this controlled operation was varied on three occasions and the documentation relating to the other two variations was held on file.

CHIEF OFFICER REPORTS

Chief officer reports made by the due date - s. 38

Section 38 of the CCO Act requires the CCP, as Victoria Police chief officer, to report to the VI 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

⁴⁰ Ibid s. 37(2)(a).

⁴¹ See 'Variation of an authority' at page 9 of this report.

⁴² See 'Application for authorities to conduct controlled operations - s. 12' at page 7 of this report.

⁴³ Ibid s. 40(a).

⁴⁴ Ibid s. 40(d).

controlled conduct engaged in, and the nature of the criminal activities against which any authorised operations were directed.

Each year two such reports are required to be made by the chief officer pursuant to s. 38 of the CCO Act. In the 2013-2014 year:

- The first report was due no later than 28 February 2014
- The second report was due no later than 31 August 2014.

Both reports were received by the required date.

Comprehensiveness and adequacy of chief officer reports - s. 38 and s. 39

Under s. 39 of the CCO Act the VI must comment on the comprehensiveness and adequacy of the chief officer reports provided to it pursuant to s. 38 of the Act. The reports must contain the specific information set out in s. 38 of the CCO Act. Having reviewed the two chief officer reports for 2013-2014, the VI considered both to be adequate and comprehensive.

WORK AND ACTIVITIES OF VICTORIA POLICE

Victoria Police utilises the controlled operations provisions more than any other Victorian agency. As was substantially the case during 2012 - 2013, illicit drug offending was targeted more frequently than any other offence type.

Victoria Police granted a total of 100 formal authorities during 2013-2014.⁴⁵ This figure continues a downward trend, with fewer formal authorities recorded than the previous year (refer to Table 3 for comparative figures of the last four years). No urgent applications or authorities were granted, nor were any authorities refused during the current reporting period.

Table 3: Comparison of number of authorities issued over 4 year period

Year	2010-2011	2011-2012	2012-2013	2013-2014
Number of authorities issued	143	138	114	100

Victoria Police has established a sound process for drafting and vetting an application before it is submitted for consideration. That no applications were refused suggests that Victoria Police has a very thorough pre-application vetting process in place, as well as highly skilled and knowledgeable COR staff. This conclusion is consistent with the results of the VI's inspections, which, although detecting

⁴⁵ These are the figures reported by Victoria Police in s. 38 Chief Officer reports as the number of authorities listed in each financial year. They are not the same as the number of completed authorities inspected by the VI in those periods.

some serious instances of non-compliance, generally found few errors among the large number of applications inspected.

Use by Victoria Police of controlled operations to obtain evidence for later use in a prosecution most often occurs in conjunction with traditional investigative methods. The nature and extent of the criminal activity targeted must justify the use and conduct of a controlled operation. It is apparent from inspecting the controlled operation records that these operations have been successful in uncovering evidence capable of supporting the prosecution of criminal offences or have otherwise provided a firm basis for the further investigation of criminal activity.

Authorised controlled operations to be conducted wholly within Victoria are categorised as either local minor or local major, local minor operations target offending which is punishable by less than three years' imprisonment and local major operations target offending punishable by three years' imprisonment or more. In 2013-2014, six local minor operations were authorised by Victoria Police, while 88 were local major. The clear focus of Victoria Police was seen to be on targeting serious offending. This included serious unlawful criminal activity under local minor operations, notwithstanding that the alleged offences were punishable by less than three years imprisonment.

Of the 103 authorised controlled operations which ceased during the reporting period, 33 were varied on 67 occasions. Consistently with previous years, the majority of variations were to extend the period of validity. As noted in the VI's 2012-2013 report, Victoria Police rarely authorises a local major operation for the permitted maximum period of three months, but rather authorises it initially for a shorter period and varies the authority if operational circumstances so require. The VI continues to support this approach, particularly when non-law-enforcement participants are authorised to engage in controlled conduct.

In 2013-2014 six cross border operations were granted, compared with two in 2012-2013. The CCO Act permits the use of controlled conduct in jurisdictions other than Victoria provided that other jurisdiction is a 'participating jurisdiction' as defined in the CCO Act. As has been the theme across previous reporting years, the most common reason for undertaking a cross border controlled operation has been to target serious drug offending.

In 2013-2014 seven authorities were formally cancelled pursuant to s. 25 of the CCO Act, compared with 21 in 2012-2013. Victoria Police continues to demonstrate tight control of the use of controlled operations powers and ensures that an operation does not continue longer than necessary. This is evident both in the cancelling of authorities and the fact that authorities are granted for a period less than the maximum time permitted.

Authorised controlled operations may target multiple types of offending during the one operation and, therefore, the authorised conduct may extend to include multiple offence types. As noted in Table 11 below, there are a number of operations in which no conduct was engaged in by the authorised participants. This can occur for different reasons, including targets having travelled out of Victoria and into a jurisdiction not covered by an authority, or situations where evidence was obtained by other means or when it was considered unsafe to deploy authorised participants.

Controlled operations are a valuable investigative tool for Victoria Police and while not all operations are successful in obtaining evidence that may be used to prosecute offending, many do, and in some instances the operation secures evidence which could not otherwise have been obtained. Victoria Police continues to adhere to a rigorous application process which is well complemented by close monitoring. Such a process not only enables serious offending to be targeted, but also ensures community interests are protected.

STATISTICAL INFORMATION AND OVERVIEW OF OPERATIONS

The appendices to this report contain general statistical information. Some of that data has been referred to in the preceding sections of this report.

Appendix 1 - statistical information

Appendix 1 provides statistical data regarding the number of controlled operations granted, varied, cancelled and concluded in 2013-2014. Such information must be reported to the VI in the chief officer reports made pursuant to s. 38 of the Act. The 2012-2013 data is also provided by way of comparison.

Appendix 2 - offences targeted and controlled conduct authorised

Appendix 2 provides general information about authorities granted in 2013-2014. It provides an overview of the criminal activity targeted (Table 8), the controlled conduct authorised (Table 9), and the number of authorised participants for those operations (Table 10). Data from earlier years is included for comparative purposes.

Appendix 3 - authorised participants, property damage and personal injury

Appendix 3 provides general information about the authorities which expired or were cancelled in 2013-2014. This includes a summary of the controlled conduct actually engaged in for completed operations (Table 11), the nature of the illicit goods involved in these operations (Table 12) and the resultant impact (if any) to property or to a person (Table 13). Appendix 3 also provides a summary of variation data for operations that concluded (either expired or cancelled) in the 2013-2014 period (Table 14). This includes the total number of authorities that have been varied and the total number of variations across all operations.⁴⁶ This shows a total of 67 variations were granted in respect of those authorities. This data should not be confused with variation data in Appendix 1, which refers to the number of operations varied during 2013-2014. Data from earlier years is included for comparative purposes.

⁴⁶ Authorities can be varied more than once and for any one of a number of permitted reasons. It should also be noted that a number of variations occurred outside of the 2013-2014 period. However the purpose of these figures is to provide insight into how many operations are varied and the number of variations that can occur during the life of an operation.

Authorities granted but not completed within same reporting year

Appendix 2 provides information regarding all authorities issued in the 2013-2014 year. The results of controlled operations in Appendix 3 relate only to those operations completed in the reporting year. The results of operations authorised in 2013-2014, but not completed in the same year, will be included in the VI's next report.

The level of detail reported

Whilst the VI's report must cover the work and activities of the agency under the Act, it must also take account of ss. 39(2)-(4), pursuant to which matters of a 'sensitive' nature must be excluded. Therefore, the level of detail in this report provides an overview of the work and activities undertaken by Victoria Police, without compromising any investigation or prosecution, the safety of any person, or the operational activities and methodologies of the agency.

SUMMARY

The VI's inspection of Victoria Police controlled operation files found that generally Victoria Police has continued in 2013-2014 to demonstrate compliance with the provisions of the CCO Act in the great majority of cases. Victoria Police frequently used the provisions of the CCO Act during 2013-2014, and the number of errors detected was low in comparison with the number of controlled operations conducted. However, as noted throughout this report, at least three of the errors detected were of a more serious nature, with possible implications for participants involved in the operations and for the integrity of the investigation. Other errors were administrative in nature and minor.

The Chief Commissioner continues to provide the reports required by s. 38 of the CCO Act on time and with all the necessary information included. The reports for 2013-2014 comprehensively detail the work and activities of Victoria Police during that period.

It is evident to the VI that Victoria Police takes seriously the need to comply with legislative and regulatory requirements. All errors identified, including the serious errors referred to above, were the result of unintentional oversight or mistake. The VI is confident that in having highlighted the areas of non-compliance, Victoria Police will identify areas for improvement to strengthen an already established process, ensuring that these errors are avoided in the future.

RECOMMENDATIONS

No recommendations were made in the previous report.

No recommendations are made in this report.

ACKNOWLEDGEMENT

The VI acknowledges the total cooperation of the Chief Commissioner of Victoria Police and the Controlled Operations Registry staff with all aspects of the VI's role in the inspection of Victoria Police records.

REPORTING

The VI's next report on the work and activities of Victoria Police under the CCO Act is due as soon as practicable after 30 June 2015, following receipt of the CCP's chief officer report (due no later than 31 August 2015).

A handwritten signature in blue ink that reads "Robin Brett". The signature is written in a cursive, flowing style.

Robin Brett QC
Inspector
Victorian Inspectorate

APPENDIX 1 - GENERAL STATISTICS

General Statistics 2013-2014 with previous year comparison

Table 4: Formal authorities granted, varied and refused

Formal Controlled Operation Authorities					s. 38(2)(a)	
	Granted		Varied		Refused	
	2012-13	2013-14	2012-13	2013-14	2012-13	2013-14
Cross-Border	2	6	2	1	0	0
Local Major	104	88 ¹	65	38	2	0
Local Minor	8	6 ²	0	0	0	0

Table 5: Urgent authorities granted and refused

Urgent Controlled Operation Authorities			s.38(2)(b)	
	Granted		Refused	
	2012-13	2013-14	2012-13	2013-14
Cross-Border	0	0	0	0
Local Major	0	0	0	0
Local Minor	0	0	0	0

Table 6: Cancelled authorities

Controlled Operation Authorities Cancelled		s.38(2)(g)
	2012-13	2013-14
Cross-Border	1	0
Local Major	20	6 ³
Local Minor	0	1 ⁴

Table 7: Expired authorities

Controlled Operation Authorities that Expired		s.38(2)(g)
	2012-13	2013-14
Cross-Border	2	6
Local Major	89	85
Local Minor	8	5

EXPLANATORY NOTES - APPENDIX 1

Reference¹ The number of formal local major authorities granted was reported by the Chief Commissioner was 89. However, this has been revised downward by one as one was granted as a local major operation but was, technically, a local minor operation.

Reference² The number of formal local minor authorities granted was reported by the Chief Commissioner as five. However, this has been revised upward by one as one authority reported as a local major operation was, technically, a local minor operation.

Reference³ The number of formal local major authorities cancelled by the CCP was reported by the Chief Commissioner as seven. However, this number has been revised downward by one, as one authority reported as a local major operation was, technically, a local minor operation.

Reference⁴ The number of formal local minor authorities cancelled by the CCP was reported by the Chief Commissioner as zero. However, this number has been revised upward by one, as one authority reported as a local major operation was, technically, a local minor operation.

APPENDIX 2 - AUTHORISED CONTROLLED OPERATIONS

Table 8: Offending targeted by controlled operations - 3 year comparison

Offences Targeted by Authorised Controlled Operations						
Offending Targeted ⁵	2011-2012		2012-2013		2013-2014	
	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Arson	-	1	0	0	0	0
Obtaining secret commissions	0	0	0	1	0	0
Child pornography	-	1	0	0	0	0
Drugs	7	103	2	97	5	78
Firearms and Explosives	2	19	0	16	0	9
Kidnap	0	0	0	0	0	0
Murder	0	5	0	1	0	3
Misconduct in Public Office	0	0	0	3	0	0
Pervert or conspire to pervert the course of justice	2	0	0	1	0	3
Fraud and deception offences ⁶	0	6	0	4	0	4
Robbery and property offences ⁷	0	16	0	12	2	11
Solicitation	0	7	0	3	0	3
Other	0	0	0	3	0	3

Table 9: Controlled conduct authorised - 3 year comparison

Nature of Controlled Conduct Authorised						
Conduct Authorised ⁸	2011-2012		2012-2013		2013-2014	
	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Conspire to commit an indictable offence	0	2	0	0	0	0
Conspire to commit or commit armed robbery, robbery, burglary, aggravated burglary and/or theft	0	4	0	4	0	2
Conspire to commit damage to property	1	1	0	0	0	0
Conspire to handle stolen goods	-	-	0	2	0	0
Conspire to obtain property by deception	0	1	0	0	0	0
Conspire to pervert the course of justice	-	-	0	1	0	0
Deal with property suspected to be proceeds of crime	0	2	0	2	0	1
Drugs - Supply and/or repair laboratory equipment	0	0	0	0	0	0
Drugs - Cultivate a drug of dependence	-	-	0	1	0	0
Drugs - Traffick and/or possess drug of dependence	6	102	2	91	5	77
Drugs - Possess equipment for the manufacture of drug of dependence	1	0	0	1	0	1
Drugs - Possess precursor chemicals	-	-	0	1	0	1
Engage in illegal gambling	0	0	0	1	0	1
Explosives - Possess explosive substance	-	1	0	1	0	0
Firearms - Unlicensed or prohibited person possess firearm	0	14	0	13	0	7
Firearms - possess/dispose unregistered/prohibited firearms/weapon	0	13	0	13	0	8
Give or offer secret commission	0	0	0	1	0	0
Giving of or production of or use of or make false information or documents	0	3	0	1	0	2
Hinder Police	-	-	-	-	0	1
Misconduct in public office	-	-	0	3	0	0
Negotiate to procure and possess confidential documents	0	0	0	0	0	0
Obtaining property by deception	-	-	0	1	0	0
Offensive behaviour	-	-	-	-	0	1
Pervert the course of justice	2	0	0	0	0	1
Purchase, handle, receive or retain stolen goods	0	3	0	4	1	5
Loiter in a public place or solicit for the purpose of sex work	0	7	0	3	0	3
Supply liquor without a licence	0	4	0	0	0	0
Trespass	-	-	-	-	0	1
Unauthorised access, use, disclosure or modification of restricted data	-	-	0	6	0	1
Use carriage service for purposes relating to child pornography	-	1	0	0	0	0

Table 10: Number of authorised participants - 3 year comparison

Number of Participants Authorised to engage in Controlled Conduct						
Authorised Participants	2011-2012		2012-2013		2013-2014	
	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Number of civilians authorised across all authorities ⁹	6	76	0	43	4	35
Number of law enforcement officers authorised across all authorities ¹⁰	41	1805	23	1979	125	1720

EXPLANATORY NOTES - APPENDIX 2

Reference ⁵ The authority documents prepared by Victoria Police detail the offending targeted, including the actual offence as described by common law or legislation. These offences have been grouped into broad offence categories to provide an overview of the type of offences for which controlled operations are utilised. The number of operations in each category will not correlate with the totals of authorities provided in Appendix 1 as some authorities are issued to target multiple offences.

Reference ⁶ Includes offences such as obtaining property by deception, fraud, identity fraud, dealing with proceeds of crime.

Reference ⁷ Includes commit or conspiracy to commit robbery, armed robbery, burglary, aggravated burglary, theft and handling or dealing in stolen goods.

Reference ⁸ The total number of operations in all categories will not correlate with the total number of authorities issued in the 2013-2014 year. Some operations involve multiple types of controlled conduct being authorised in order to target several types of offences.

Reference ⁹ The number of civilians stated is the number of persons authorised across all authorities, not the number of operations in which civilians (or law enforcement officers) were authorised.

Reference ¹⁰ The number of law enforcement officers authorised represents the number of persons authorised across all issued authorities, not the number of operations in which law enforcement officers (or civilians) were authorised. In many covert operations a pool of officers is authorised 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. That the number has increased over the past two years is explained by experience establishing the need for a bigger pool of authorised staff for certain types of operations.

APPENDIX 3 - COMPLETED CONTROLLED OPERATIONS

Table 11: Controlled conduct engaged in - 3 year comparison

Completed Controlled Operations - Controlled Conduct Engaged In						
Controlled Conduct Engaged In ¹¹	2011-2012		2012-2013		2013-2014	
	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
No controlled conduct engaged in	1	37	1	27	0	28
Commit or conspire to commit armed robbery, robbery, theft, burglary or aggravate burglary	0	0	0	1	0	0
Conspire to handle stolen goods	-	-	0	1	0	0
Conspire to launder money	0	0	0	1	0	0
Conspire to murder or assault	0	2	0	0	0	0
Conspire to pervert the course of justice	2	0	1	0	0	1
Controlled or attempted controlled delivery of goods	0	0	0	0	0	2
Damage or destroy property	1	1	0	0	0	0
Deal with property suspected of being proceeds of crime	0	0	0	1	0	1
Drugs - Attempt to purchase materials used in the manufacture of a drug of dependence	-	-	0	1	0	0
Drugs - Conspire to traffick drug of dependence	2	1	1	2	0	0
Drugs - Negotiate supply and/or repair of laboratory equipment	1	0	0	0	0	0
Drugs - Purchase and/or possess, or attempt to purchase and/or possess, drugs of dependence	2	74	0	69	5	52
Drugs - Traffick a drug of dependence	-	-	1	0	0	0
Drugs - Traffick and/or possess precursor chemicals	-	-	0	1	0	4
Drugs - Supply, possess and/or repair laboratory equipment	0	0	0	1	0	1
Explosives - Purchase and/or possess, or attempt to purchase and/or possess, an explosive substance	0	1	0	1	0	0
Firearms - Purchase/possess, or attempt/conspire to purchase/possess/sell a firearm or weapon	0	8	0	7	0	6
Firearms - Purchase firearms from other than a licensed dealer	0	0	0	0	0	0
Gained unauthorised access to restricted data	-	-	0	5	0	1
Loiter in public place and negotiate fees for sexual services	0	5	0	3	0	3
Make false report/create false document, or conspire to make and/or use false document or attempt to purchase/possess false document	0	2	0	1	0	2
Misconduct in public office	-	-	0	1	0	0
Participate in illegal gambling	0	0	0	1	0	1
Pay or offered secret commission	0	0	0	1	0	0
Possess/attempt to possess equipment to make false ID	0	0	0	0	0	0
Purchase and/or possess, or attempt to purchase and/or possess, stolen goods	0	2	0	2	1	3
Receive bribe	0	0	0	0	0	0
Sale of liquor without a licence	0	2	0	0	0	0
Use internet for purposes connected with child pornography	-	1	0	0	0	0

Table 12: Illicit goods seized - 3 year comparison

Illicit Goods involved in Completed Controlled Operations With Three Year Comparison							
Illicit Goods		2011-2012		2012-2013		2013-2014	
		Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Cash		0	0	0	0	0	0
Cigarettes		0	0	0	0	0	0
Drugs	Amphetamine and other synthetic drugs	1	32	1	38	5	25
	Cannabis	0	11	0	7	1	7
	Cocaine	0	1	0	4	0	2
	Heroin, morphine and other opiates	0	24	0	13	0	7
	Other chemicals ¹²	0	3	0	1	0	5
Firearms and explosives ¹³		0	5	0	6	0	4
False documentation or identification		-	-	0	1	0	0
Laboratory equipment and similar		1	0	0	1	0	1
Stolen goods		0	1	0	1	0	1

Table 13: Property loss or damage and person injury - 3 year comparison

Property Loss or Damage or Injury in Completed Controlled Operations							
Impact on Others		2011-2012		2012-2013		2013-2014	
		Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Loss / damage to property		0	1	0	0	0	0
Personal injury		0	0	0	0	0	0

Table 14: Total number of Variations - 3 year comparison

Completed Controlled Operations that were Varied						
Variations	2011-2012		2012-2013		2013-2014	
	Cross-Border	Local Major	Cross-Border	Local Major	Cross-Border	Local Major
Number of Completed Operations with Variations (includes extension of period of authority)	4	55	2	65	1	32
Total number of Variations across all Completed Operations ¹⁴	9	105	3	99	1	66

EXPLANATORY NOTES - APPENDIX 3

Reference ¹¹ This data details the nature of controlled conduct actually engaged in by authorised participants and the number of operations in which such conduct occurred. In a number of controlled operations no controlled conduct eventuated for a range of good reasons. Further, some controlled operations involve controlled conduct occurring in more than one category of conduct.

Reference ¹² This may include precursor chemicals or substances purporting to be drugs/chemicals but which in the result are not illicit substances.

Reference ¹³ This may include handguns, rifles, shotguns, explosives and tasers.

Reference ¹⁴ This figure represents the number of variations made for the entire period the operations were in force and necessarily includes some variations made during the 2013-2014 year.