



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

23 October 2015

Contents

INTRODUCTION.....	1
FEATURES OF THE LEGISLATION	1
CRIMES (CONTROLLED OPERATIONS) ACT 2004.....	1
THE VICTORIAN INSPECTORATE.....	3
INSPECTION	3
REPORTING.....	3
ASSESSING COMPLIANCE	4
INSPECTION RESULTS	5
INSPECTION OF AGENCY RECORDS AND DOCUMENTS	5
CHIEF OFFICER REPORTS.....	10
WORK AND ACTIVITIES OF VICTORIA POLICE.....	11
STATISTICAL INFORMATION AND OVERVIEW OF OPERATIONS	13
SUMMARY.....	14
RECOMMENDATIONS	15
ACKNOWLEDGEMENT.....	15
REPORTING.....	15
APPENDIX 1 – GENERAL STATISTICS.....	16
<i>Explanatory Notes - Appendix 1.....</i>	<i>17</i>
<i>Explanatory Notes - Appendix 2.....</i>	<i>21</i>
APPENDIX 3 – COMPLETED CONTROLLED OPERATIONS	23
<i>Explanatory Notes – Appendix 3.....</i>	<i>25</i>

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, Victoria Police during the 2014-2015 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 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 section 28 and section 35 of the CCO Act, be criminally responsible.²

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

¹ CCO Act s. 6.

² Ibid s. 7.

³ Ibid s. 12.

chief officer⁴ 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 Inspectorate²⁰ 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 Inspectorate provides independent oversight of the use made by Victoria Police of controlled operations. The Inspectorate 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 Inspectorate has established processes which involve reviewing applications, authorities, reports and other documents. This enables the Inspectorate 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 Inspectorate and the processes established for undertaking compliance inspections was provided in an earlier report.²⁶

As required by the CCO Act, the Inspectorate 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 Inspectorate 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 Inspectorate 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.

REPORTING

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

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.

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.

- 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 Inspectorate by the CCP in his capacity as chief officer.

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

INSPECTION RESULTS

For the purposes of inspecting controlled operations records, the Inspectorate attended Victoria Police twice during 2014-2015, in December 2014 and June 2015. 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 Inspectorate 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 Inspectorate 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 and may therefore include controlled operations not inspected by the Inspectorate.

INSPECTION OF AGENCY RECORDS AND DOCUMENTS

A total of 103 controlled operation files were inspected during 2014-2015 year. Fifty completed controlled operation files were inspected in December 2014 and 53 completed controlled operation files in June 2015.

Tables 1 and 2 below summarise the principal compliance requirements of the CCO Act and the Inspectorate'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 - section 12

Section 12 of the CCO Act states that an application for a controlled operation may be made in writing and signed by the applicant. 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. Section 12 of the CCO Act also states that the application must contain a sufficient level of information, state the type of controlled operation being sought and state if an operation has previously been undertaken in relation to the same criminal activity.³⁰

Of the 103 controlled operation applications inspected, one application was refused. All were formal applications; no urgent applications were made. Three applications were identified as non-compliant (see commentary below). The low number of applications identified as non-compliant is consistent with the previous year's reporting and continues to demonstrate that Victoria Police has a thorough understanding of the requirements of section 12 of the CCO Act.

³⁰ Section 12(4)(c) of the CCO Act.

Table 1: Compliance requirements with *Crimes (Controlled Operations) Act 2004*³¹

Compliance criteria	No. of records compliant	No. of records not compliant	Notes
Application for authority to conduct controlled operations (s. 12)	100	3	See comments below
Determination of application (s. 13) (with consideration of relevant factors set out in ss. 14-17)	103	0	
Form of authority (s. 18)	101	1	See comments below
Duration of authorities and extensions by variation (ss. 19-20)	101	1	See comments below
Applications for variation of an authority (s. 21)	102	0	
Determination of application to vary authority (consideration of relevant ss. 14-17 factors) (s. 22)	33	0	
Manner of varying authority and form of variation of authority (ss. 23-24)	33	0	
Cancellation of authorities (s. 25)	7	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)	99	3	See comment below
Documents required to be kept (s. 40)	103	0	

Table 2: Compliance requirements section 38 and section 41

Compliance criteria	Level of compliance Fully compliant/Satisfactory/Unsatisfactory	Notes
Chief officer's reports (s. 38)	Satisfactory	See comments below
General register (s. 41)	Fully compliant	

³¹ One application was refused and is therefore only included in categories relating to s. 12, ss. 14-17 and s. 40 in Table 1 above.

Pursuant to section 12(4)(c) an application must state whether the same criminal activity has previously been the subject of a controlled operation. Three applications were assessed as non-compliant as this requirement was not answered on the application documentation. Victoria Police were not aware of the errors until they were raised by the Inspectorate following the inspection. The following is known regarding the three applications:

- In one application there is a discrepancy between the paperwork submitted and the information contained on the Victoria Police database, however it is not known at which point during the process the discrepancy arose.
- Of the three applications, only one had been the subject of a previous controlled operation.
- Of the three authorities, covert operatives were deployed in only one, which was not the operation in respect of which there had previously been an application for an authority.

This error has been assessed against the requirement of section 27 of the CCO Act which provides that an error does not invalidate an application unless it is a defect in a material particular. The term 'material particular' is not defined in the CCO Act but its meaning in the context of the New South Wales equivalent of that Act was considered by the New South Wales Court of Appeal in *Dowe v Commissioner of the New South Wales Crime Commission* [2007] NSWCA 296, although the facts in that case were different from the situation just described. This report is not the place to discuss the findings and implications of that decision, except to say that in the Inspectorate's view it may well be the case that the omission from an application of information as to whether an authority had previously been applied for in respect of the same criminal conduct may well be a material defect. One consequence of an authority being invalid is that the covert operatives do not have immunity in respect of criminal acts that they may commit; but it is unlikely that any such operatives would ever be charged. It is not possible to say whether another consequence might be that evidence obtained in the course of the operation conducted pursuant to the invalid authority would be rendered inadmissible.

It is obviously extremely important for all necessary information to be included in an application for an authority. The Inspectorate has not been able to ascertain the precise reasons why the information was omitted from these three applications, nor the reasons why the omission was not noticed and remedied on the applications' progress through the Victoria Police system. Errors inevitably occur from time to time, but thorough quality control of the applications may assist in avoiding similar errors in the future. Victoria Police has advised that the issues regarding these applications have been highlighted with COR staff and the Inspectorate is confident this type of error will remain an infrequent one.

Form of Authority - section 18

Section 18 of the CCO Act details the information that must be included in an authority (whether formal or urgent). One authority has been assessed as non-compliant while one further authority contains an anomaly that had the potential for it to impact on Victoria Police compliance with the CCO Act.

Section 18(1)(a) of the CCO Act states that a formal authority to conduct a controlled operation may be granted by means of a written document, signed by the chief officer. One authority had not been signed.

While the name and rank of the approving officer was included on the authority it was deficient as the signature of the approving officer was not included on the documentation. In the view of the Inspectorate, it is unlikely that this error would be regarded by a court as material, and a court would probably hold the authority to be valid. The error did not impact on the information contained within the authority and it was also possible to identify the name and rank of the authorised officer who approved the application.

Other matters

Section 18(3)(d) requires that an authority must specify the type of controlled operation authorised as cross-border, local major or local minor. In one case an authority was issued that described the authorised operation as a local minor operation, which was incorrect: the operation was a local major operation. The error was identified within an hour of the approval being granted, and amended documentation was immediately prepared and submitted to and re-approved by an authorised officer less than 24 hours after the original approval. Following the inspection of this file the Inspectorate advised Victoria Police that as the legislation does not provide for amending an authority in that manner, best practice would be to cancel the incorrect authority and submit amended documentation for a new authority describing the operation correctly. Victoria Police is receptive to the feedback and advice provided and the Inspectorate has been advised that all COR staff are aware of the issues concerning this operation. This particular operation is also one of the operations referred to above regarding non-compliance in respect of the requirements under section 12.

Duration of an authority - section 19

Section 19 of the CCO Act specifies the period of validity for each operation type. It is a requirement of section 18(3)(j), to state the period of validity of the operation sought in accordance with the timeframes provided in section 19 of the Act.

One authority was assessed as non-compliant as it was approved for a period exceeding the legislated time period for a local minor operation. An authority, whether formal or urgent, for a local minor operation cannot exceed seven days, but in this case it was expressed to operate for nine days. Victoria Police was unaware of the error until the Inspectorate informed COR following the inspection. Further information was sought from Victoria Police and the circumstances which led to the error were explained: the authority was signed in preparation for the operation to commence on a specific date in the future. However the CCO Act does not provide for delayed commencement; an authority comes into force on the day it is signed.

In the opinion of the Inspectorate, an authority for a local minor operation which is expressed to operate for a period exceeding the legislated maximum is probably defective in a material particular, rendering the authority invalid and depriving the covert operative of the protection offered by section 28 of the CCO Act, and also possibly rendering inadmissible any evidence obtained during the operation. Fortunately in this case no covert operative was actually deployed and no controlled conduct was engaged in. The Inspectorate discussed a similar issue in its 2013-2014 Victoria Police Controlled

Operations Report. While in terms of actual numbers, this type of error is infrequent, the error needs to be raised due to the serious implications it could have for covert operatives and Victoria Police more broadly. It is positive that Victoria Police have advised relevant staff of the error and are reviewing procedures and the Inspectorate is confident that such errors will remain infrequent in the future.

Principal Law Enforcement Officer's Report - section 37

Section 37 of the CCO Act provides for the timeframe in which the PLEO report is due and specifies what information must be included in the report. A PLEO report is required for every controlled operation. Three PLEO reports were identified as non-compliant with these requirements.

One PLEO report was not made within two months of the controlled operation ceasing: it was eight days late. This error was self-identified by Victoria Police and a file note was made to explain the circumstances of the error. It is pleasing that the error rate in relation to making reports on time has remained low for this reporting period.

A second PLEO report has been assessed as non-compliant due to a failure to correctly record the quantity of illicit goods obtained.³² There were two illicit substances obtained during the controlled operation. The PLEO report failed to record one of the substances in the illicit goods section of the report (although it was mentioned in another section of the report) and the reported weight of the second substance was incorrect. In the opinion of the Inspectorate it is very important for the PLEO report to be accurate in this respect and to detail very clearly what has occurred during the controlled operation and in particular what illicit substances have been seized.

The third PLEO report was assessed as non-compliant because it failed to include in the report the information prescribed under section 37(2). The information in the PLEO report raised concerns as to whether the controlled operation had been undertaken in accordance with the authority granted. Further information obtained from Victoria Police revealed that the operation was in fact undertaken in accordance with the authority, but that the PLEO report was substantially deficient in the level of information it contained. Specifically the PLEO lacked details of the outcome of the operation,³³ the nature and quantity of illicit goods and the route through which the illicit goods passed during the course of the operation.³⁴ It has therefore been assessed as non-compliant with the requirements of the legislation.³⁵ Had the report in the first instance contained all of the required information, the original concerns raised by the Inspectorate would not have arisen and while it is pleasing that those concerns were allayed, this particular PLEO report highlights the need to ensure that the reports are clear, accurate and contain all of the information as prescribed under the legislation.

³² As required by s. 37(2)(e)(i).

³³ Section 37(2)(d).

³⁴ Section 37(2)(e).

³⁵ Section 37(2)(c).

Other matters

Four PLEO reports were identified which, while compliant with section 37(2), would have benefited, in the Inspectorate's view, from clearer statements regarding the details of the operations concerned. Victoria Police has indicated that they have undertaken a review of the PLEO reporting process and implemented new practices to assist in the production of the PLEO report.

CHIEF OFFICER REPORTS

Chief officer reports made by the due date - section 38

Section 38 of the CCO Act requires the CCP, as Victoria Police 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 section 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.

Each year two such reports are required to be made by the chief officer pursuant to section 38 of the CCO Act. In the 2014-2015 year:

- The first report was due no later than 28 February 2015
- The second report was due no later than 31 August 2015.

Both reports were received by the required date.

Comprehensiveness and adequacy of chief officer reports - section 38 and section 39

Under section 39 of the CCO Act the Inspectorate must comment on the comprehensiveness and adequacy of the chief officer reports provided to it pursuant to section 38 of the Act. The reports must contain the specific information set out in section 38 of the CCO Act. Although the two reports submitted to the Inspectorate for 2014-2015 have been assessed as generally satisfactory in that they addressed the prescribed information, that information contained inaccuracies which were of some concern.

It is prescribed in the legislation that the chief officer must report on how many formal authorities were granted, varied and refused. In the first report for 2014-2015, the number of authorities reported as varied included two which were not varied and the refusal of one application was omitted. Furthermore, the information provided in respect of the authorities contained numerous inaccuracies.

In the second report for 2014-2015 the number of authorities reported as granted included 13 from the previous reporting period and the variation of another was omitted. There were again also inaccuracies in the information provided in respect of the authorities, but fewer than in the first report.

In all instances clarification of the information was sought from Victoria Police and each question raised by the Inspectorate was answered. All figures have now been rectified and the incorrect information has been corrected.

Both reports for 2014-2015 contained a higher number of errors and inconsistencies than those of previous years, particularly the first report for 2014-2015. While it is anticipated that a report may contain a small number of errors or inconsistencies, the number of issues identified this year has impacted on their comprehensiveness and adequacy.

The Victoria Police COR has undergone significant staff changes during the first six months of the reporting period, resulting in a loss of knowledge and experience from the unit. This may well account for the increased error rate for the 2014-2015 reports, and it was noted that the number of errors in the second report was lower than in the first report. The Inspectorate has discussed the issues with Victoria Police COR. Victoria Police is receptive to feedback and the Inspectorate is confident that in the next reporting period the error rate will decrease as staff within COR continue to become more familiar with controlled operations.

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 2013-2014, illicit drug offending was targeted more frequently than any other offence type.

Victoria Police granted a total of 106 formal authorities during 2014-2015.³⁶ This figure is a slight increase on the number for the previous reporting year, where 100 formal authorities were granted (see Table 3 below for comparative figures). One application for a formal authority was refused and no urgent authorities were applied for.

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

Year	2011-2012	2012-2013	2013-2014	2014-2015
Number of authorities issued	138	114	100	106

Victoria Police has established a sound process for drafting and vetting an application before it is submitted for consideration. One application was refused, but considering the large number of applications that Victoria Police COR handle in a 12 month period, the Inspectorate is confident that Victoria Police has a very thorough pre-application vetting process in place. This confidence derives from the results of the Inspectorate's inspections, which, although detecting some concerning instances

³⁶ 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.

of non-compliance, generally found few errors among the large number of controlled operations files inspected.

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 2014-2015, three local minor operations were authorised by Victoria Police, while 98 were local major. The predominant criminal activity for local major operations was illicit drug offences which was a targeted offence in 93 controlled operations, notwithstanding that some of those operations targeted numerous other offence types as well. The clear focus of Victoria Police was seen to be on targeting serious offending. However serious unlawful criminal activity was also targeted under local minor operations, notwithstanding that the alleged offences were punishable by less than three years imprisonment.

Of the 101 authorised controlled operations which ceased (expired or cancelled) during the reporting period, 35 were varied on 61 occasions. Consistently with previous years, the majority of variations were to extend the period of validity, however variations to add additional suspects or participants and to authorise alternate or additional conduct were also made during the reporting period. As noted in the Inspectorate's 2013-2014 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 Inspectorate continues to support this approach, particularly when civilian participants are authorised to engage in controlled conduct.

In 2014-2015 five cross border operations were granted, compared with six in 2013-2014. 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. Serious drug offending has continued to be the most common reason for undertaking a cross border controlled operation.

In 2014-2015 eight authorities were formally cancelled pursuant to section 25 of the CCO Act, compared with seven in 2013-2014. Ninety-three authorities expired during the period under report. That Victoria Police cancels authorities and grants authorities for a period less than the maximum time permitted highlights the tight control that Victoria Police exercises over the use of controlled operations powers and ensures that an operation does not continue longer than necessary.

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.

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. Forty completed controlled operations reported on by Victoria Police resulted in illicit goods being obtained and in many other operations attempts were made to obtain illicit goods. 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 2014-2015. Such information must be reported to the Inspectorate in the chief officer reports made pursuant to section 38 of the Act. The 2013-2014 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 2014-2015. 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 2014-2015. 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 2014-2015 period (Table 14). This includes the total number of authorities that have been varied and the total number of variations

across all operations.³⁷ This shows a total of 61 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 2014-2015. Data from earlier years is included for comparative purposes.

Authorities granted but not completed within same reporting year

Appendix 2 provides information regarding all authorities issued in the 2014-2015 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 2014-2015, but not completed in the same year, will be included in the Inspectorate's next report.

The level of detail reported

Whilst the Inspectorate's report must cover the work and activities of the agency under the Act, it must also take account of sections 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

Victoria Police has continued to undertake a high number of controlled operations during the 2014-2015 reporting year. While the majority of controlled operations files inspected by the Inspectorate were fully compliant, significant compliance failures were identified in others, some of which could have implications under section 27 of the CCO Act regarding the validity of the authorities and section 28 regarding the protections offered under the Act. Each error has been raised with Victoria Police which is receptive to the information the Inspectorate provides. Victoria Police has indicated that its processes and procedures will be reviewed as a result of these errors.

The chief officers reports for 2014-2015 were received on time however a significant number of errors and inconsistencies were detected in the reports, particularly in the first report for 2014-2015. Due to this, the comprehensiveness and adequacy of the reports has been affected and Victoria Police is not fully compliant with this particular requirement.

During this reporting period the Inspectorate has had to seek additional information on various controlled operations. This has particularly been the case with the chief officer's report where either errors were detected or the information was inconsistent and/or unclear. The Victoria Police COR has undergone significant staff changes during this reporting period. Staff changes inevitably result in a loss of

³⁷ 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 2014-2015 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.

knowledge and experience and anecdotally, the errors detected during this reporting period, particularly those arising from the chief officer's report, are likely to be as a direct result of these staffing changes.

Victoria Police understands its legislative compliance requirements and notwithstanding that some serious compliance failures were identified during this reporting period, there is generally a good level of compliance in respect of the high number of controlled operations that the unit is involved with. Victoria Police is receptive to Inspectorate's feedback and has answered all of the Inspectorate's requests for clarification or further information in a timely manner. The Inspectorate is confident that in the next reporting period the errors and inconsistency of information will decrease.

RECOMMENDATIONS

No recommendations were made in the previous report.

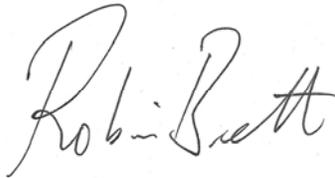
No recommendations are made in this report.

ACKNOWLEDGEMENT

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

REPORTING

The Inspectorate's next report on the work and activities of Victoria Police under the CCO Act is due as soon as practicable after 30 June 2016, following receipt of the CCP's second chief officer report (due no later than 31 August 2016).

A handwritten signature in cursive script that reads "Robin Brett". The signature is written in black ink on a white background.

Robin Brett QC
Inspector
Victorian Inspectorate

APPENDIX 1 - GENERAL STATISTICS

General Statistics 2014-2015 with previous year comparison

Table 4: Formal authorities granted, varied and refused

Formal Controlled Operation Authorities					s. 38(2)(a)	
	Granted		Varied		Refused	
	2013-14	2014-15	2013-14	2014-15	2013-14	2014-15
Cross-Border	6	5	1	2	0	0
Local Major	88 ¹	98	38	52	0	1
Local Minor	6 ²	3	0	0	0	0

Table 5: Urgent authorities granted and refused

Urgent Controlled Operation Authorities			s.38(2)(b)	
	Granted		Refused	
	2013-14	2014-15	2013-14	2014-15
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)
	2013-14	2014-15
Cross-Border	0	0
Local Major	6 ³	8
Local Minor	1 ⁴	0

Table 7: Expired authorities

Controlled Operation Authorities that Expired		s.38(2)(g)
	2013-14	2014-15
Cross-Border	6	5
Local Major	85	85
Local Minor	5	3

EXPLANATORY NOTES - APPENDIX 1

Reference¹ The number of formal local major authorities granted was reported by the Chief Commissioner as 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	2012-2013		2013-2014		2014-2015	
	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Arson	0	0	0	0	0	1
Obtaining secret commissions	0	1	0	0	0	0
Drugs	2	97	5	78	4	93
Firearms and Explosives	0	16	0	9	0	8
Murder	0	1	0	3	0	2
Misconduct in Public Office	0	3	0	0	0	0
Pervert or conspire to pervert the course of justice	0	1	0	3	0	1
Fraud and deception offences ⁶	0	4	0	4	0	1
Robbery and property offences ⁷	0	12	2	11	1	10
Solicitation	0	3	0	3	0	0
Other	0	3	0	3	0	6

Table 9: Controlled conduct authorised - 3 year comparison

Nature of Controlled Conduct Authorised						
Conduct Authorised ⁸	2012-2013		2013-2014		2014-2015	
	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Bribery	-	-	-	-	0	1
Commit, or conspire to, damage to property	0	0	0	0	0	3
Conspire to commit or commit armed robbery, robbery, burglary, aggravated burglary and/or theft	0	4	0	2	0	1
Deal with property suspected to be proceeds of crime	0	2	0	1	0	0
Drugs - Cultivate a drug of dependence	0	1	0	0	0	1
Drugs - Traffick and/or possess drug of dependence	2	91	5	77	4	92
Drugs - Possess equipment for the manufacture of drug of dependence	0	1	0	1	1	1
Drugs - Possess precursor chemicals	0	1	0	1	1	0
Engage in illegal gambling	0	1	0	1	0	0
Explosives - Possess explosive substance	0	1	0	0	0	1
Firearms - Unlicensed or prohibited person possess firearm	0	13	0	7	0	4
Firearms - possess/dispose unregistered/prohibited firearms/weapon	0	13	0	8	0	8
Give or offer secret commission	0	1	0	0	0	0
Giving of or production of or use of or make false information or documents	0	1	0	2	0	1
Hinder Police	-	-	0	1	0	3
Misconduct in public office	0	3	0	0	0	0
Obtaining property by deception	0	1	0	0	0	0
Offensive behaviour	-	-	0	1	0	3
Pervert the course of justice or attempt/conspire to	0	1	0	1	0	1
Purchase, handle, receive or retain stolen goods or attempt, conspire to	0	6	1	5	1	4
Loiter in a public place or solicit for the purpose of sex work	0	3	0	3	0	0
Trespass	-	-	0	1	0	3
Unauthorised access, use, disclosure or modification of restricted data	0	6	0	1	0	0

Table 10: Number of authorised participants - 3 year comparison

Number of Participants Authorised to engage in Controlled Conduct						
Authorised Participants	2012-2013		2013-2014		2014-2015	
	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Number of civilians authorised across all authorities ⁹	0	43	4	35	4	35
Number of law enforcement officers authorised across all authorities ¹⁰	23	1979	125	1720	112	2484

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 2014-2015 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	2012-2013		2013-2014		2014-2015	
	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
No controlled conduct engaged in	1	27	0	28	2	36
Commit or conspire to commit armed robbery, robbery, theft, burglary or aggravate burglary	0	1	0	0	0	0
Conspire to launder money	0	1	0	0	0	0
Conspire to pervert the course of justice	1	0	0	1	0	0
Controlled or attempted controlled delivery of goods	0	0	0	2	0	4
Damage or destroy property	0	0	0	0	0	1
Deal with property suspected of being proceeds of crime	0	1	0	1	0	0
Drugs - Attempt to purchase materials used in the manufacture of a drug of dependence	0	1	0	0	0	0
Drugs - Conspire to possess, traffick or cultivate drug of dependence	1	2	0	0	0	1
Drugs - Purchase and/or possess, or attempt to purchase and/or possess, drugs of dependence	0	69	5	52	3	49
Drugs - Traffick a drug of dependence	1	0	0	0	0	0
Drugs - Traffick and/or possess precursor chemicals	0	1	0	4	0	5
Drugs - Supply, possess and/or repair laboratory equipment or equipment to manufacture	0	1	0	1	0	1
Explosives - Purchase and/or possess, or attempt to purchase and/or possess, an explosive substance	0	1	0	0	0	1
Firearms - Purchase/possess, or attempt/conspire to purchase/possess/sell a firearm or weapon or possess/purchase ammunition	0	7	0	6	0	3
Gained unauthorised access to restricted data	0	5	0	1	0	0
Loiter in public place and negotiate fees for sexual services	0	3	0	3	0	0
Make false report/create false document, or conspire to make and/or use false document or purchase/possess, or attempt to, false document	0	1	0	2	0	1
Misconduct in public office	0	1	0	0	0	0
Participate in illegal gambling	0	1	0	1	0	0
Pay or offered secret commission	0	1	0	0	0	0
Purchase and/or possess, or attempt or conspire to purchase and/or possess, stolen goods	0	3	1	3	0	3

Table 12: Illicit goods seized - 3 year comparison

Illicit Goods involved in Completed Controlled Operations With Three Year Comparison							
Illicit Goods		2012-2013		2013-2014		2014-2015	
		Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Drugs	Amphetamine and other synthetic drugs	1	38	5	25	2	17
	Cannabis	0	7	1	7	0	7
	Cocaine	0	4	0	2	0	1
	Heroin, morphine and other opiates	0	13	0	7	0	8
	Other chemicals ¹²	0	1	0	5	0	5
Firearms and explosives ¹³		0	6	0	4	0	2
False documentation or identification		0	1	0	0	0	1
Laboratory equipment and similar		0	1	0	1	0	0
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	2012-2013		2013-2014		2014-2015	
	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor	Cross-Border	Local Major/Minor
Loss / damage to property	0	0	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	2012-2013		2013-2014		2014-2015	
	Cross-Border	Local Major	Cross-Border	Local Major	Cross-Border	Local Major
Number of Completed Operations with Variations (includes extension of period of authority)	2	65	1	32	2	33
Total number of Variations across all Completed Operations ¹⁴	3	99	1	66	6	55

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 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 2014-2015 year.