

**VICTORIAN
INSPECTORATE**

Inspection Report:

Crimes (Controlled Operations) Act 2004

Wildlife Act 1975

Fisheries Act 1995

Report by the Victorian Inspectorate on controlled operations records and reports for the period 1 July 2019 to 30 June 2020

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Overview

This report presents the findings of the Victorian Inspectorate (the VI) on the work and activities of the five Victorian agencies authorised to conduct controlled operations. It includes the results of the VI's inspection of controlled operations records belonging to these agencies, as well as an assessment of the comprehensiveness and adequacy of their six-monthly reports to the VI. The five agencies are:

- Department of Environment, Land, Water and Planning (DELWP)
- Game Management Authority (GMA)
- Independent Broad-based Anti-corruption Commission (IBAC)
- Victorian Fisheries Authority (VFA)
- Victoria Police

The following Acts authorise these agencies to conduct controlled operations for the purpose of obtaining evidence that may lead to the prosecution of persons for offences (with the applicable agencies listed in parentheses):

- *Crimes (Controlled Operations) Act 2004* (CCO Act)(Victoria Police and IBAC)
- *Wildlife Act 1975* (Wildlife Act)(DELWP and GMA)
- *Fisheries Act 1995* (Fisheries Act)(VFA)

The provisions of these Acts are generally similar, however, the Wildlife Act and Fisheries Act limit the types of offences that may be investigated and the operational scope of a controlled operation. Only Victoria Police and IBAC may apply for and be granted an urgent authority to conduct a controlled operation, and only in limited circumstances. Additionally, controlled operations undertaken by Victoria Police and IBAC are classified into cross-border, local major and local minor operations.

Law enforcement officers of these agencies may apply to the chief officer of the agency for authority to conduct a controlled operation. In the case of Victoria Police, the power to authorise controlled conduct (that is, conduct that would otherwise constitute a criminal offence) under an authority may be delegated by the chief officer to specific classes of officers.

The role of the VI is to independently oversight agencies authorised to conduct controlled operations. The VI is required to inspect from time to time, and at least once every 12 months, the records of agencies that have exercised their powers to conduct controlled operations in order to determine the level of statutory compliance achieved by the agency and its law enforcement officers. The VI reports on the work and activities of each agency on an annual basis to each House of Parliament, as well as the Attorney-General and chief officer of each agency.

While the VI ordinarily conducts biannual inspections of an agency's controlled operations records, on this occasion the VI conducted one inspection round for authorisations that ceased during the 1 July 2019 to 30 June 2020 period. Between 1 January and 30 June 2020, the VI did not conduct an inspection of records belonging to Victorian agencies authorised to conduct controlled operations.

Although the VI had scheduled its first biannual inspection for the year at each agency during this period, workplace restrictions made in response to the COVID-19 pandemic caused the VI to postpone its inspection program. The VI subsequently consolidated records for each agency over a 12-month period into one inspection.

In addition to not being able to inspect controlled operations records during the first half of 2020, the COVID-19 pandemic also caused the VI to postpone inspections it had scheduled in the second half of 2020. In the case of Victoria Police, an inspection round scheduled on 8-10 September 2020 was re-scheduled to 26-28 October 2020. An inspection of VFA records initially scheduled on 13 October 2020 was postponed until 9 March 2021.

Temporary regulations made under the *COVID-19 Omnibus (Emergency Measures) Act 2020* – the *COVID-19 Omnibus (Emergency Measures) (Integrity Entities) Regulations 2020* (‘the COVID-19 Omnibus Regs’) – were amended on 4 November 2020 to modify the application of the CCO Act so “for the financial year ending on 30 June 2021, the Victorian Inspectorate is not required under this section to inspect all records of the law enforcement agency and may determine which records to inspect.”

Among Victorian law enforcement agencies, nearly all controlled operations are conducted by Victoria Police under the CCO Act. The VI inspected a representative sample of records at Victoria Police’s Controlled Operations Registry (COR) in late October 2020. A sampling approach was adopted due to the significant volume of records within the VI’s remit, the consolidation of records from 1 July 2019 to 30 June 2020 into a single inspection and the VI’s resource constraints.

By selecting a representative sample of Victoria Police records for inspection, the VI has been able to draw conclusions about the entire population of the records and report on compliance with legislative provisions. An element of sampling risk is acknowledged as a representative sample may produce a different result from an inspection of 100% of records. However, the VI selected a sample size to ensure sufficient evidence could be obtained to support inspection objectives and findings. The number of records sampled at the October 2020 inspection kept the sampling error rate at 8.6%. This rate represents the maximum deviation for error identification from conducting an inspection of 100% of records.

The VI notes in this report the cooperative and transparent engagement by the officers of each agency whose records were subject to our inspection. While the VI reports on some errors, no significant compliance issues were identified. The VI commends the remedial actions taken by the relevant agencies to address the identified errors.

This report gives the inspection results for authorities that ceased, as well as the work and activities undertaken by the agency, during the 1 July 2019 to 30 June 2020 period – the ‘reporting period’. The VI has not made any recommendations as a result of its inspections of controlled operations records for the reporting period.

Introduction

The legislative framework that enables Victorian law enforcement agencies to conduct controlled operations imposes strict controls on their use of controlled authorities, as well as record-keeping and reporting obligations.

OUR ROLE

Through its inspections program, the VI performs an independent oversight function to determine the extent of compliance achieved by law enforcement agencies that have exercised their powers to conduct controlled operations.

In order to fulfil our requirement to report to Parliament annually on the work and activities of each agency, the VI schedules six-monthly inspections of completed controlled operations files – however, on this occasion, the VI conducted annual inspections for the reporting period. Additionally, the VI assesses the reports made every six months by the Chief Officer of each agency.

The VI inspects hard copy documents and electronic registers to ensure that agencies are keeping proper records connected with authorities to conduct controlled operations, and other records connected with controlled conduct. The VI also confirms that each law enforcement agency has met its prescribed reporting obligations.

HOW WE ASSESS COMPLIANCE

The objective of our inspections is to determine the extent of compliance achieved by each Victorian law enforcement agency authorised to conduct controlled operations and their officers. We assess compliance based on the records made available to us at the time of inspection and our discussions with the relevant agencies, as well as the action they take in response to any issues we have raised.

In this report, the VI also assesses the reports it receives from the Chief Officer of each agency that give specific details about the authorised operations conducted by the agency against statutory criteria. For the 1 July 2019 to 30 June 2020 period, each agency was required to make two reports to the VI in accordance with the following timeframes:

- First report – due no later than 28 February 2020;
- Second report – due no later than 31 August 2020.

These reports cover controlled operations conducted from 1 July to 31 December 2019 and 1 January to 30 June 2020, respectively.

HOW WE REPORT ON COMPLIANCE

To ensure procedural fairness, each agency is given an opportunity to comment on the VI's findings from our inspections and furnish additional records that might assist our assessment. Following this process, the inspection results are considered finalised.

Included in this report are findings resulting from our inspection and assessment of records and documents relating to authorities to conduct controlled operations and comments on the comprehensiveness and adequacy of biannual reports provided by the agencies. We provide more detail where there is a finding of non-compliance. The VI may, in its discretion, not report on administrative issues (such as typographical or transposition errors) or instances of non-compliance where the consequences are negligible.

In accordance with the legislative framework governing the use of controlled operations by Victorian law enforcement agencies, the VI must provide a copy of this report to the Chief Officer of each agency to facilitate the redaction of information where, in the Chief Officer's opinion, to include that information could reasonably be expected to –

- (a) endanger a person's safety; or
- (b) prejudice an investigation or prosecution; or
- (c) compromise operational activities or methodologies of the agency.

Our consultation with the relevant agencies has resulted in no information been excluded from the report to be tabled in Parliament.

The following sections of this report provide the results of the VI's inspection of controlled operations records that were either cancelled or expired from 1 July 2019 to 30 June 2020 for each Victorian law enforcement agency with the authority to conduct controlled operations. This report also includes comments on the comprehensiveness and adequacy of reports provided to the VI by each agency's Chief Officer.

Department of Environment, Land, Water and Planning

DELWP's Intelligence and Investigations Unit administers authorisations to conduct controlled operations that can be made under the Wildlife Act.

INSPECTION FINDINGS

The VI did not inspect any DELWP files as DELWP did not make an application for an authority to conduct a controlled operation during the period covered by this report, and nor were there any historical issues that needed to be addressed.

In this report, the VI's assessment of the extent of DELWP's compliance with the Wildlife Act is limited to whether the reporting requirements of section 74O of the Act were met.

COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 74O(1) of the Wildlife Act requires DELWP to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months. The VI received both reports within the required timeframes.

Each report made to the VI pursuant to section 74O of the Act stated that no controlled operations were undertaken by DELWP during the six-monthly period covered by the report.

WORK AND ACTIVITIES OF DELWP

DELWP conducted no controlled operations during the period 1 July 2019 to 30 June 2020. No controlled operations have been undertaken by DELWP for at least the past seven years.

Game Management Authority

The GMA may conduct controlled operations pursuant to Part IX of the Wildlife Act.

INSPECTION FINDINGS

GMA has yet to make an application to conduct a controlled operation. The VI therefore did not inspect any GMA files during the period covered by this report.

The VI's assessment of the extent of GMA's compliance with the Wildlife Act is limited to assessing whether the reporting requirements of section 74OA of the Act were met.

COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 74OA(1) of the Wildlife Act requires GMA to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months. The VI received both reports within the required timeframes.

Each report made to the VI pursuant to section 74OA of the Act stated that no controlled operations were undertaken by GMA during the six-monthly period covered by the report.

WORK AND ACTIVITIES OF GMA

GMA conducted no controlled operations during the period 1 July 2019 to 30 June 2020.

Independent Broad-based Anti-corruption Commission

IBAC's Legal Compliance Unit administers authorities to conduct controlled operations that can be made under the CCO Act.

INSPECTION FINDINGS

The VI did not inspect any IBAC controlled operations files as IBAC did not make an application for an authority to conduct a controlled operation during the period covered by this report, and nor were there any historical issues that needed to be addressed.

In this report, the VI's assessment of the extent of IBAC's compliance with the CCO Act is limited to assessing whether the reporting requirements of section 38 of the CCO Act were met.

COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 38(1) of the CCO Act requires IBAC to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months. The VI received both reports within the required timeframes.

Each report made to the VI pursuant to section 38 of the Act stated that no controlled operations were undertaken by IBAC during the six-monthly period covered by the report.

WORK AND ACTIVITIES OF IBAC

IBAC conducted no authorised operations during the period 1 July 2019 to 30 June 2020. The most recent controlled operation conducted by IBAC was in early 2018.

Victorian Fisheries Authority

The VFA can conduct controlled operations pursuant to Part 7A of the Fisheries Act.

INSPECTION FINDINGS

The VI inspected one controlled operations file at the VFA for the reporting period. The inspection of the file was postponed from 13 October 2020 to 9 March 2021. This was the only controlled operation undertaken by the VFA that expired or was cancelled during the reporting period.

AUTHORITIES

Were applications for authorities to conduct controlled operations (including extensions and variations) properly made?

The VFA is required to comply with the requirements of sections 131C and 131E of the Fisheries Act for making applications for authorities to conduct controlled operations.

Specifically, an application must:

- be in writing and signed by the applicant;
- contain sufficient information to enable the Chief Executive Officer (CEO) to decide whether to grant the application, including that:
 - a relevant offence has been, is being or is likely to be, committed;
 - the nature and extent of criminal activity justifies a controlled operation;
 - any unlawful conduct will be limited to the maximum extent consistent with conducting an effective controlled operation;
 - the risk of more illicit goods being held by non-law enforcement officers is minimised;
 - reporting requirements can be complied with;
 - the controlled operation will not be likely to induce a person to commit an offence they would not otherwise commit; and
 - any conduct will not seriously endanger the health or safety of, or cause death or serious injury to, any person, nor result in unlawful loss of or serious damage to property (other than illicit goods);
- state whether any previous applications for an authority or variation have been made with respect to the same proposed operation or same criminal activity and, if so, the outcome of the previous application.

The VI found the VFA complied with these requirements for the one application it made during the reporting period.

The VFA made no applications for the authority to be extended or varied.

Were authorities (including variations) in proper form and cancellations properly made?

Authorities to conduct a controlled operation must be in writing, signed by the CEO and specify the following matters in accordance with section 131F of the Fisheries Act:

- the principal law enforcement officer and each law enforcement officer who may engage in controlled conduct;
- the nature of the controlled conduct the participants may engage in;
- the criminal activity and suspected offences targeted by the controlled conduct;
- any suspect (to the extent known);
- the period of validity (not exceeding three months) and any conditions;
- the date and time the authority is granted; and
- the nature and quantity of any illicit goods involved in the operation, as well as the route through which they will pass (to the extent known).

The VI found the VFA complied with these requirements except for one error made to the form of the authority.

Finding 1 – Incorrect date and time specified in the granted authority.

An authority to conduct a controlled operation is required by section 131F(1)(g) of the Fisheries Act to specify the period of validity for the authority. While the inspected authority gives a period of validity that commenced on 5 May 2020 at 3pm, it was signed – and consequently granted – on 6 May 2020 at 2.30pm.

Enquiries with the VFA found this error was caused by an unexpected delay in obtaining the CEO's authorisation. The VI nonetheless acknowledges the controlled operation commenced on 6 May 2020 when signed copies of the documents were received by the VFA's State-wide Investigation Group, and therefore no officers of the VFA engaged in any unlawful conduct.

The VFA has informed the VI it has since amended its procedures to include additional instructions in the brief to the CEO that requests the granting of an authority. The change is designed to ensure the validity period shown in the Authority accurately reflects when the CEO grants the Authority, rather than the dates proposed in the brief. The VI will inspect this procedural change at the next scheduled inspection.

The inspected authority was cancelled in writing by order of the CEO in accordance with s 131K of the Fisheries Act.

RECORDS

Did the VFA keep all records connected with authorised operations?

The VFA is required to keep certain records in connection with authorised controlled operations, including:

- each application made for an authority as well as variation of an authority;
- each authority and variation of authority;
- the order cancelling the authority; and
- the report made by the principal law enforcement officer to the CEO.

The VFA complied with these record-keeping requirements.

Did the VFA keep a general register?

The VI found that a general register was kept by the VFA, as required by section 131V of the Fisheries Act.

The general register specified the following particulars with respect to each application made for an authority or variation of an authority:

- the date of application, and whether it was granted, refused or withdrawn; and
- the date and time an application was refused or withdrawn, as applicable.

For each authority granted, the general register must include the following details:

- the date and time it was granted;
- each offence engaged in with respect to the controlled conduct;
- the period of validity, and if cancelled, the date and time of the cancellation;
- the date and time the authorised operation began and the date it was completed;
- the date the principal law enforcement officer made the report under section 131R of the Fisheries Act;
- if the authorised operation involved illicit goods, the nature and quantity of such goods, as well as the route through which they passed, to the extent known;
- any loss of or serious damage to property, or any personal injuries, resulting from the operation; and
- for each variation of authority, the date and time it was made.

The VI identified two errors in the general register kept for the one inspected authority. These errors were made with respect to recording the date the application was made and the date the authority was granted by the CEO.

Finding 2 – Incorrect date and time recorded in the general register.

Pursuant to section 131V(2) of the Fisheries Act the general register is required to record, amongst other things, dates and times associated with each application and authority.

The application was made on 6 May 2020 but the general register records this date as 24 January 2020.

The general register correctly records the date (6 May 2020) the authority was granted but incorrectly gives the time as 12.30pm instead of 2.30pm.

Enquiries with the VFA determined these errors were the result of transcription errors and corrections have since been made to the general register. The VFA also advised it is formalising its standard operating procedures to further strengthen its ability to comply with legislative provisions. The VI commends the VFA's work to develop more robust procedures and looks forward to inspecting these changes, as well as the corrected general register, at the next scheduled inspection.

REPORTS

Were Principal Law Enforcement Officers' reports properly made?

The principal law enforcement officer is required, within two months after the completion of an authorised operation, to make a report to the CEO. Each report must give the following details for the authorised operation:

- the date and time it commenced and its duration;
- the nature of the controlled conduct;
- the outcome of the operation;
- if the operation involved illicit goods, the nature and quantity of such goods, as well as the route through which they passed, to the extent known; and
- any loss of or serious damage to property, or personal injuries, resulting from the operation.

While the inspected report was made within two months of completion of the authorised operation, the VI identified two errors in the information given in the report that relate to the above-mentioned matter.

Finding 3 – Incorrect information given in the report made by the principal law enforcement officer.

The report made by the principal law enforcement officer under section 131R of the Fisheries Act must include certain details for the completed authorised operation. In the case of the one report inspected for the period, the VI found two errors in the reported information.

While the authorised operation began on 6 May 2020 at 2.30pm, the report incorrectly records it commenced on 5 May 2020 at 3pm. The VI notes this error repeats the error referred to at Finding 1 (page 11) for the signed authority.

An additional error was identified with respect to reporting any controlled conduct under the authority. The report states no controlled conduct was engaged in, however, it further reports there was one unsuccessful attempt to sell a priority species to an unknown person. While unsuccessful, this conduct nonetheless constitutes a form of controlled conduct.

In response to these findings, the VFA agreed to make a supplementary report correcting the errors identified above. The VI will inspect the corrected report at the next scheduled inspection.

TRANSPARENCY AND COOPERATION

The VI considers an agency's transparency, its cooperation during inspections, and its responsiveness to suggestions and issues to be a measure of its compliance culture. The VFA was responsive and transparent during the inspection process, particularly when the VI raised questions about certain records.

Did the VFA self-disclose compliance issues?

The VFA did not make any self-disclosures.

Were issues identified at previous inspections addressed?

The VI re-inspected one controlled operation file from the previous reporting period and confirmed the VFA amended the general register to show the correct date the report was made under section 131R of the Fisheries Act. At the next inspection, the VI will inspect relevant records to ensure the errors identified in this inspection report have been rectified.

COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 131S of the Fisheries Act requires the VFA to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months. This section also specifies the details that must be included in the reports.

The VFA submitted these reports to the VI, one for the 1 July to 31 December 2019 period and the other for 1 January to 30 June 2020, in accordance with the statutory timeframes. The VI is satisfied that the reports included all required information.

WORK AND ACTIVITIES OF THE VFA

The VFA conducted one authorised operation that ceased between 1 July 2019 and 30 June 2020. This figure is consistent with the historically low number of controlled operations undertaken by the VFA each year.

Table 1: Comparison of number of completed controlled operations over the past 4 years

Year	2016-17	2017-18	2018-19	2019-20
Number of completed controlled operations	2	1	2	1

No applications for the granting of an authority were refused by the VFA's CEO.

For the one authority completed by the VFA during the reporting period, no application was made to vary it, for example, to extend the period of its validity or to authorise additional persons to engage in controlled conduct.

The VFA cancelled the authority to undertake controlled conduct ahead of its expiry date, demonstrating effective review procedures at the VFA to ensure authorities do not remain in force unnecessarily.

While the VFA reported no controlled conduct was engaged in under the authority, as explained at Finding 3 on page 13 of this report, authorised controlled conduct was undertaken.

Victoria Police

There are two units within Victoria Police that administer authorities to conduct controlled operations pursuant to the CCO Act:

- the Controlled Operations Registry (COR), within the Crime Department, is the primary unit responsible for the administration of controlled operations authorities; and
- the Technical Projects Unit (TPU), which resides within Professional Standards Command (PSC).

INSPECTION FINDINGS

As described in the Overview section of this report, the VI inspected a sample of records at Victoria Police, as allowed by the COVID-19 Omnibus Regs. The VI's sampling of records was restricted to the COR since it was the only Victoria Police unit to have made controlled operations records for the period available to the VI for inspection.

The only authority to conduct a controlled operation administered by PSC during the reporting period was inadvertently not made available to the VI during the relevant inspection. This oversight was identified from the VI's review of the relevant six-monthly report it received from Victoria Police under section 38(1) of the CCO Act. This record was subsequently provided to the VI for inspection and will be reported upon in our next inspection report. While PSC was still compliant with the reporting requirements of section 38 of the CCO Act, only limited information about this operation is included in our report on the work and activities of Victoria Police because the section 38 report provided less detail on the PSC operation than was provided for the COR operations.

The VI inspected 54 controlled operations files out of a total of 88 for the reporting period with Victoria Police's COR on 26-28 October 2020. The inspected files included 50 issued authorities - one of which was an urgent authority - and four applications refused by an Assistant Commissioner.¹

AUTHORITIES

Were applications for authorities (including urgent authorities) to conduct controlled operations (including extensions and variations) properly made?

Victoria Police is required to comply with the requirements of sections 12 and 14 of the CCO Act when making applications to conduct controlled operations.

¹ One refused application was from just prior to 1 July 2019. This record was provided late for inspection and so was not included in the previous inspection report.

Specifically, each application must:

- be provided in writing and signed by the applicant (unless it is an urgent application);
- contain sufficient information to enable the chief officer (or other officer delegated by instrument under section 44 of the CCO Act) to decide whether to grant the application, including that:
 - any unlawful conduct will be limited to the maximum extent consistent with conducting an effective controlled operation;
 - the risk of more illicit goods being held by non-law enforcement officers is minimised;
 - reporting requirements can be complied with;
 - the conduct of the operation is not likely to induce a person to commit an offence they would not otherwise commit;
 - any conduct will not seriously endanger the health or safety of, or cause death or serious injury to, any person, involve any sexual offence, or result in unlawful loss of or serious damage to property (other than illicit goods); and
 - the operation will only involve a civilian participant if the assigned role cannot be adequately performed by a law enforcement officer;
- state whether the proposed operation is a cross-border, local major or local minor controlled operation (that is, state the type of operation); and
- state whether any previous applications for an authority or variation have been made with respect to the same proposed operation or same criminal activity and, if so, the outcome of the previous application, as well as the type of controlled operation authorised, as applicable.

Each application must also comply with section 15, 16 or 17 of the CCO Act, depending on the type of controlled operation proposed.

The VI found that Victoria Police complied with these application requirements.

For all inspected authorities varied by Victoria Police during the period, the applications were found to have complied with sections 21 and 22 of the CCO Act.

Victoria Police made one urgent application for an authority to conduct a controlled operation during the period in accordance with sections 12 and 14 of the CCO Act.

Were authorities (including urgent authorities and variations) in proper form and cancellations properly made?

Authorities to conduct a controlled operation must be in writing and signed by the chief officer or other officer delegated by instrument under section 44 of the CCO Act (unless it is an urgent authority). They must specify the following matters in accordance with section 18 of the CCO Act:

- the principal law enforcement officer and each law enforcement officer or civilian participant who may engage in controlled conduct;
- whether the application was formal or urgent;
- whether it is a cross-border, local major or local minor controlled operation, and in the case of cross-border operations, the participating jurisdictions;

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- the identity of each person who may engage in controlled conduct;
- the nature of controlled conduct law enforcement participants may engage in, and the particular controlled conduct permissible for civilian participants;
- the criminal activity and suspected offences targeted by the controlled conduct;
- any suspect (to the extent known);
- the period of validity of the authority (in accordance with section 19) and any conditions;
- the date and time the authority is granted; and
- the nature and quantity of any illicit goods involved in the operation, as well as the route through which they pass (to the extent known).

The authorities granted by Victoria Police met all these requirements, including the urgent authority granted during the period.

Each variation to an authority complied with section 24 of the CCO Act, whereby each variation:

- identified the authorised operation, as well as the name and rank or position of the person varying the authority;
- stated the name of the applicant and whether it was a formal or urgent variation application; and
- stated the date and time the authority was varied and described the variation.

In all cases, Victoria Police cancelled authorities for a controlled operation in writing, in accordance with section 25 of the CCO Act.

RECORDS

Did Victoria Police keep all records connected with authorised operations?

Victoria Police is required to keep certain records in connection with authorised operations, including:

- each formal application made for an authority to be granted or varied;
- each formal authority and variation granted;
- all written notes made in connection with the granting of an urgent authority, as well as notes connected to varying an authority, specifically, the date and time the authority was varied and the identity of relevant law enforcement officer;
- the order cancelling the authority; and
- the report made by the principal law enforcement officer.

Victoria Police complied with these record-keeping requirements.

Did Victoria Police keep a general register?

The VI found that a general register was kept by Victoria Police, as required by section 41 of the CCO Act.

The general register specified, with respect to each application made for an authority or variation of an authority (formal and urgent), the following particulars:

- date of application, and whether it was formal or urgent;
- whether it was made with respect to a cross-border, local major or local minor controlled operation; and
- whether the application was granted, refused or withdrawn, and if refused or withdrawn, the date and time that occurred.

For each authority granted, the general register must include the following details:

- date and time it was granted, and whether it was formal or urgent;
- name and rank/position of person who granted the authority;
- whether it was a cross-border, local major or local minor controlled operation;
- each offence engaged in with respect to the controlled conduct;
- period of validity, and if cancelled, the date and time of the cancellation;
- date and time the authorised operation began, and date it was completed;
- date of the principal law enforcement officer's report under section 37 of the CCO Act;
- if the authorised operation involved illicit goods, the nature and quantity of such goods, as well as the route through which they passed (to the extent known);
- any loss of or serious damage to property, or personal injuries, resulting from the operation; and
- for each variation of authority, the date and time it was made, whether it was formal or urgent, and the name and rank/position of person who made the variation.

The VI found that Victoria Police complied with these requirements.

REPORTS

Were Principal Law Enforcement Officers' reports properly made?

The principal law enforcement officer is required, within two months after the completion of an authorised operation, to make a report to the chief officer of Victoria Police, which is the Chief Commissioner. Each report must give the following details for the authorised operation:

- date and time it commenced, as well as its duration;
- whether it was a cross-border, local major or local minor controlled operation;
- the nature of the controlled conduct engaged in;
- the outcome of the operation;
- if the operation involved illicit goods, the nature and quantity of such goods, as well as the route through which they passed (to the extent known); and
- any loss of or serious damage to property, or personal injuries, resulting from the operation.

The VI found Victoria Police complied with its prescribed reporting obligations under section 37 of the CCO Act.

The VI did however identify in multiple controlled operations files a discrepancy between the date recorded in the general register for when the report was made under section 37 of the CCO Act and the date stamped on the physical record. Enquiries made with Victoria Police's COR following the inspection determined the general register, rather than the date stamped on the report, accurately records the date each report was made. The COR explained these reports are generated and completed in the database that also forms the general register. The date shown is auto generated, which avoids any potential data entry errors.

The COR acknowledged it is important to ensure the date given in the general register correlates with the date shown on the corresponding report and consequently advised the VI it had made a minor change within the application it uses to produce these reports to enable the dates to properly align.

TRANSPARENCY AND COOPERATION

The VI considers an agency's transparency, its cooperation during inspection, and its responsiveness to suggestions and issues to be a measure of its compliance culture.

Victoria Police was responsive and transparent during the inspection process, in particular where the VI raised a question with respect to how it records the date for making its reports under section 37 of the CCO Act. In response to identified inconsistencies in how this date is recorded, Victoria Police's COR introduced a process change for the metadata so that each printed report is automatically stamped in the footer with the same date that appears in the general register, irrespective of when the print-out is made. The VI regards this action as indicative of a strong compliance culture, especially since it relates to a best practice matter.

Did Victoria Police self-disclose compliance issues?

Victoria Police did not make any compliance-related disclosures during the period.

Were issues identified at previous inspections addressed?

The VI re-inspected three controlled operations files during the period and confirmed Victoria Police made the following corrections to its general register and reports made previously under section 37 of the CCO Act:

- The general register kept for three authorities was amended. Corrections to the register included: the date shown for variation approval (two occasions), the date the authorised operation was completed (one occasion) and the date and time the authorised operation commenced (one occasion).

- The report made under section 37 of the CCO Act was corrected for two authorities. On one occasion the authority end date was amended, and on another occasion, the authorisation commencement date was corrected.

COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 38(1) of the CCO Act requires Victoria Police to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months. This section also specifies the details that must be included in the reports.

While Victoria Police submitted its report for the 1 January to 30 June 2020 period in accordance with the statutory timeframes, the report for the 1 July to 31 December 2019 period was received on 20 March 2020 (due 29 February 2020). Victoria Police explained this error was the result of having earlier aligned its reporting process to the VI inspections calendar, which had since changed to allow the VI to inspect all ceased records at once for the 1 July to 31 December period. As a result of the VI conducting an inspection in early 2020 rather than late 2019, Victoria Police's internal processes caused it to make a late report.

Victoria Police has advised the VI it has since instituted a new process of setting multiple recurring Outlook email reminders for all staff and managers on when to commence preparing these reports, as well as the submission due date. The VI is supportive of these changes and expects no future recurrence of this type of issue.

The VI found that Victoria Police included all required information in these reports.

WORK AND ACTIVITIES OF VICTORIA POLICE

To report on the work and activities of Victoria Police for the 1 July 2019 to 30 June 2020 period, the VI largely depends on the information supplied by Victoria Police in its six-monthly reports made under section 38 of the CCO Act. The information the VI obtains from its inspections is limited to files for authorities that have ceased and for which the reporting requirements have been completed for the period. Therefore, not all records for authorised operations granted by Victoria Police within a reporting period will be made available to the VI to inspect.

Applications for an authority to conduct a controlled operation at Victoria Police are made to an Assistant Commissioner (who has delegated authority in accordance with s 44 of the CCO Act) for consideration.

Victoria Police granted a total of 83 authorities during 2019-20, representing a slight increase from the previous 12-month period but still lower than the four-year average.

Table 1: Comparison of number of authorities granted over the past four years

Year	2016-17	2017-18	2018-19	2019-20
Number of authorities granted	112	111	76	83

Note: These are the figures reported by Victoria Police in its Chief Officer Reports made under s 38 of the CCO Act as the number of authorities granted each financial year. They are not the same as the number of completed authorities inspected by the VI during these periods.

Victoria Police may, in limited circumstances, make an application for an urgent authority by means of communication other than a signed written document. One urgent application was made, and subsequently granted, by Victoria Police during 2019-20.

A total of 41 authorities to conduct a controlled operation were varied on at least one occasion by Victoria Police. Frequently, an authority is varied on multiple occasions. While 26 of the total 41 authorities were varied once, 12 were varied on two occasions and a further three authorities were varied on three or more occasions.

Four applications for granting an authority were refused by an Assistant Commissioner during the period.

The total number of authorities with Victoria Police that were active at any time during 2019-20 (i.e. including authorities commenced prior to the relevant reporting period) continued the trend to be lower than previous periods.

Table 2: Comparison of number of active authorities over the past four years

Year	2016-17	2017-18	2018-19	2019-20
Number of active authorities	147	137	112	107

Authorised operations undertaken by Victoria Police are categorised as either local minor, local major, or cross-border controlled operations. Local minor and local major controlled operations are conducted wholly within Victoria. The former targets offending punishable by less than three years' imprisonment whereas the latter relates to offending that may result in three or more years' imprisonment. A cross-border controlled operation targets offending punishable by three or more years' imprisonment and is also likely to be partially conducted in at least one jurisdiction outside Victoria that has a corresponding law in force.

In total, Victoria Police had 85 authorised operations that ceased during the 2019-20 period. Of this number, 83 were local major controlled operations, one was a local minor operation, and another was a cross-border controlled operation. The high proportion of local major controlled operations undertaken by Victoria Police is historically consistent, as shown in Table 3.

Table 3: Number of controlled operations by operation type over the past four years

Year	2016-17	2017-18	2018-19	2019-20
Local Major	105	88	77	83
Local Minor	10	12	5	1
Cross-Border	4	1	0	1

Note: These figures are based on authorities that ceased during the period.

In addition to authorising law enforcement participants to engage in controlled conduct, authorities may also authorise civilian participants to engage in controlled conduct. The involvement of civilian participants in an operation is limited to circumstances where their role cannot be adequately performed by a law enforcement officer. Victoria Police involves civilian participants in some of its controlled operations, however in the vast majority of cases only law enforcement participants engage in such conduct.

Table 4: Controlled conduct engaged in by participant type over the past four years

Year	2016-17	2017-18	2018-19	2019-20
Law Enforcement only	58	68	51	61
Civilian only	16	5	4	3
Law Enforcement and Civilian	8	4	6	2

Note: These figures are based on authorities that ceased during the period. The tally for the numbers for each period is lower than the total number of ceased authorities shown at Table 3 since controlled conduct is not engaged in under all authorities. Additionally, the one authority with PSC is not included.

In some situations, controlled conduct is not engaged in at all during the life of an authority. The absence of any controlled conduct can occur for various reasons, such as where evidence has been obtained by other means or operational priorities change. Over recent years, however, the number of authorities not involving any controlled conduct has decreased as a proportion of all authorities granted.

Table 5: Number of authorities with/without controlled conduct over the past four years

Year	2016-17	2017-18	2018-19	2019-20
With controlled conduct	82	77	61	66
Without controlled conduct	37	24	21	18

Note: These figures are based on authorities that ceased during the period. The one authority administered by PSC is not included.

Victoria Police cancels only a relatively small number of its authorities in comparison with the number that are allowed to expire. This can be at least partly explained by Victoria Police granting authorities for periods significantly less than the maximum permitted. Although a local major formal

authority can be valid for a period of up to three months (this being the most common type of authority granted by Victoria Police), Victoria Police typically grants authorities with a validity period of about one month only. Furthermore, extensions to the validity of these authorities are made for a period of four weeks at a time, even though up to three months at a time is permitted. This demonstrates the tight controls Victoria Police exercises over its use of controlled operations powers and its commitment to ensuring each operation does not continue longer than necessary.

Table 6: Number of authorities expired or cancelled over the past four years

Year	2016-17	2017-18	2018-19	2019-20
Expired	101	93	80	78
Cancelled	18	8	2	7

Note: These figures are based on authorities that ceased during the period.

Victoria Police must consider a number of matters before granting an authority to conduct a controlled operation, such as ensuring any conduct under the authority will not endanger the safety of any person or cause serious damage to property. Of the 85 active authorities that ceased during 2019-20, three authorised operations conducted for the period reported either loss of, or serious damage to, property or personal injury.