



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

25 September 2014

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List of Abbreviations

CCO Act	<i>Crimes (Controlled Operations) Act 2004</i>
DEPI	Department of Environment and Primary Industries
Fisheries Act	<i>Fisheries Act 1995</i>
IBAC	Independent Broad-based Anti-corruption Commission
PLEO	Principal law enforcement officer (in respect of a controlled operation)
VI	Victorian Inspectorate
Wildlife Act	<i>Wildlife Act 1975</i>

INTRODUCTION

This report is prepared for the Parliament of Victoria by the Victorian Inspectorate (VI) pursuant to s. 39 of the *Crimes (Controlled Operations) Act 2004* (CCO Act). This report details the use of controlled operation provisions by, and the result of inspections undertaken at, the Independent Broad-based Anti-corruption Commission (IBAC) during the 2013-2014 year, and the level of compliance with regulatory requirements achieved by the agency.

In the state of Victoria three law enforcement agencies are authorised to conduct controlled operations. They are the IBAC, Victoria Police, and the Department of Environment and Primary Industries (DEPI). The IBAC and Victoria Police are authorised to undertake controlled operations under the CCO Act. DEPI can undertake a controlled operation pursuant to the *Fisheries Act 1995* (Fisheries Act) and *Wildlife Act 1975* (Wildlife Act). The provisions under the three different Acts are generally the same, although aspects of the legislation in relation to DEPI contain specific provisions limiting the types of offences investigated and the operational scope of a controlled operation. The VI is required to carry out inspections and provide reports relating to all agencies.

The practical approach adopted by the VI has been to prepare separate reports under the CCO Act relating to Victoria Police and the IBAC, and to combine the reports under the Fisheries and Wildlife Acts.

FEATURES OF THE LEGISLATION

CRIMES (CONTROLLED OPERATIONS) ACT 2004

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

Under the provisions of the CCO Act a controlled operation² means an operation that -

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

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

¹ Section 1(a) *Crimes (Controlled Operations) Act 2004* (CCO Act).

² *Ibid* s. 6.

³ *Ibid* s. 7.

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

Three categories of authority are provided for¹⁰ and each category of authority has certain restrictions¹¹ and a maximum period of validity.¹²

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

The CCO Act requires that certain documents and a register be kept by the IBAC.¹⁷ These obligations are the responsibility of the IBAC Commissioner as the IBAC chief officer. Inspection of these records by the VI¹⁸ and a comprehensive statutory reporting regime¹⁹ are two important controls established under the Act. The reporting requirements include a report from the designated principal law enforcement officer (PLEO) to the agency chief officer upon completion of each authorised operation²⁰ and a six-monthly report by the IBAC Commissioner, as the agency chief officer, to the VI,²¹ covering the use of controlled operations by the IBAC. The content of these reports is prescribed within the

⁴ Ibid s. 12.

⁵ Ibid s. 13.

⁶ Ibid s. 18(3).

⁷ Ibid ss. 14 - 17.

⁸ Ibid ss. 20 - 24.

⁹ Ibid s. 25.

¹⁰ Ibid s. 8.

¹¹ Ibid ss. 9 - 11.

¹² Ibid s 19.

¹³ Ibid s. 10.

¹⁴ Ibid s. 11.

¹⁵ Ibid s. 9.

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

¹⁷ Sections 40 - 41 CCO Act.

¹⁸ Ibid s. 42.

¹⁹ Ibid ss. 34(1), 37 - 39.

²⁰ Ibid s. 37.

²¹ Ibid s. 38.

legislation. There are also statutory obligations to report loss of or serious damage to property and personal injury that occurs in the conduct of an authorised controlled operation.²²

THE VICTORIAN INSPECTORATE

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

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

INSPECTION

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

REPORTING

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

- results of inspections undertaken at the IBAC;
- an assessment of the level of compliance with the CCO Act;

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

²³ Section 42(1) CCO Act.

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

²⁵ Section 39 CCO Act.

²⁶ *Ibid* s. 42.

²⁷ *Ibid* s. 39.

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

- an overview of the work and activities of the IBAC officers under the provisions of the CCO Act; and
- comment regarding the comprehensiveness and adequacy of the reports provided to the VI by the IBAC Commissioner.

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

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

ASSESSING COMPLIANCE

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

At each inspection the following are examined:

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

The content of each document is inspected to determine:

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

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

INSPECTION RESULTS

In accordance with the VI's obligations under the CCO Act, the VI inspected IBAC records to determine the extent of compliance by the agency and its law enforcement officers with the Act. Two inspections were scheduled for the 2013-2014 year.

The VI attended the IBAC in November 2013 and inspected the documentation associated with one controlled operation which commenced and concluded prior to the inspection date. A second inspection was scheduled for May 2014, but the IBAC advised prior to the scheduled inspection date that no controlled operations had been authorised in the period since the first inspection. Therefore, only one inspection of IBAC records was undertaken by the VI in the 2013-2014 year.

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

WORK AND ACTIVITIES OF IBAC

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

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

Some of the information reported to the VI by the IBAC Commissioner in satisfaction of s. 38 is provided in Appendices 1 and 2. It should be noted that the only data included are for the 2013-2014 year. There are no comparative data for previous years as this is the first year in which the IBAC has exercised controlled operations powers.

CHIEF OFFICER REPORTS

Commissioner reports made by the due date - s. 38

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

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

Two such reports were required to be made by the Commissioner pursuant to s. 38 in respect of the 2013-2014 year:

- First report of operations during 2013-2014, due no later than 28 February 2014
- Second report of operations during 2013-2014, due no later than 31 August 2014.

Comments on both those reports are included in this report.

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

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

The Commissioner submitted two reports regarding the IBAC's exercise of controlled operations powers during the 2013-2014 year. Only one controlled operation was authorised and/or concluded during this reporting year, the details of which were included in the Commissioner's first report in respect of the period 1 July to 31 December 2013.

The VI is satisfied with the comprehensiveness and adequacy of the reports provided by the Commissioner in respect of the 2013-2014 year.

SUMMARY

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

RECOMMENDATIONS

As this is the first year in which the IBAC has exercised controlled operations powers, no previous recommendations have been made arising from inspections of IBAC documentation or receipt of the Commissioner's reports.

No recommendations are made in this report.

ACKNOWLEDGEMENT

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

REPORTING

The VI's next report on the work and activities of the IBAC under the CCO Act is due as soon as practicable after 30 June 2015, following receipt of the IBAC Commissioner's second report for the 2014-2015 financial year (due no later than 31 August 2015).

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

Robin Brett QC
Inspector
Victorian Inspectorate

APPENDIX 1 - GENERAL STATISTICS

Crimes (Controlled Operations) Act 2004

Formal Controlled Operation Authorities 2013-2014			s.38(2)(a)
	Granted	Varied	Refused
Cross-Border	0	0	0
Local Major	1	0	0
Local Minor	0	0	0

Urgent Controlled Operation Authorities 2013-2014		s.38(2)(b)
	Granted	Refused
Cross-Border	0	0
Local Major	0	0
Local Minor	0	0

Controlled Operation Authorities Cancelled 2013-2014		s.38(2)(g)
Cross-Border	0	
Local Major	0	
Local Minor	0	

Controlled Operation Authorities that Expired 2013-2014		s.38(2)(g)
Cross-Border	0	
Local Major	1	
Local Minor	0	

APPENDIX 2 - OPERATIONAL DATA

Crimes (Controlled Operations) Act 2004

Number of Participants Authorised to engage in Controlled Conduct 2013-2014		
Authorised Participants	Cross-Border	Local Major/ Minor
Number of civilians authorised across all authorities	0	3
Number of law enforcement officers authorised across all authorities ¹	0	13

Illicit Goods involved in Completed Controlled Operations 2013-2014		
Illicit Goods	Cross-Border	Local Major
Nil	N/A	N/A

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

Completed Controlled Operations That Were Varied 2013-2014		
Variations	Cross-Border	Local Major
Number of Completed Operations with Variations (includes extension of period of authority)	0	0
Total number of Variations across all Completed Operations	0	0

EXPLANATORY NOTES - APPENDIX 2

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