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# 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 2018 to 30 June 2019

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# Overview

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This report presents the findings of the Victorian Inspectorate (the 'VI') on the work and activities of the following 5 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 6-monthly reports.

- 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 provide for 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* (Victoria Police and IBAC)
- *Wildlife Act 1975* (DELWP and GMA)
- *Fisheries Act 1995* (VFA)

The legislative provisions of these Acts are generally similar, however, the *Wildlife Act 1975* and *Fisheries Act 1995* 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 under an authority may be delegated from 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. We report on the work and activities of each agency on an annual basis to each House of Parliament as well as the Minister and chief officer of the agency.

The VI notes in this report the cooperative and transparent engagement by the officers of each agency whose records were subject to our inspection. Whilst the VI reports on some errors in records and reports, no significant compliance issues were identified. The VI commends the remedial actions taken by the respective agencies to address the identified errors. The VI has not made any recommendations as a result of its inspections of controlled operations records for the 1 July 2018 to 30 June 2019 reporting period.

# Introduction

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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

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

In order to fulfil our requirement to report to Parliament annually on the work and activities of each agency, the VI conducts six-monthly inspections of completed controlled operations files. Additionally, the VI assesses the reports made every 6 months by the Chief Officer of each agency.

The VI inspects hard copy documents and electronic registers, with the primary purpose of ensuring that agencies are keeping proper records connected with the authority to conduct a controlled operation, and other records connected with controlled conduct. The VI will also confirm 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 statutory compliance achieved by each Victorian law enforcement agency authorised to conduct controlled operations, and that of their officers. We assess compliance based on the records made available to us at the time of inspection, our discussions with the relevant agencies, as well as the action they take in response to any issues we have raised.

In addition to conducting inspections, 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. For the 1 July 2018 to 30 June 2019 period each agency was required to make 2 such reports to the VI in accordance with the following timeframes:

- First report – due no later than 28 February 2019.
- Second report – due no later than 31 August 2019.

These reports cover controlled operations conducted from 1 July to 31 December 2018, and 1 January to 30 June 2019.

## 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 to 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 reports provided by 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 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 being 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 2018 to 30 June 2019 for each Victorian law enforcement agency with the authority to conduct controlled operations.<sup>1</sup> Also included are comments on the comprehensiveness and adequacy of reports provided to the VI by each agency's Chief Officer.

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<sup>1</sup> The results from the inspection of a small number of Victoria Police controlled operations that were cancelled or expired just prior to 1 July 2018 are also included in this report.

# Department of Environment Land Water and Planning

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The Department of Environment Land Water and Planning (DELWP)'s 'Intelligence and Investigations Unit' administers authorities to conduct controlled operations which can be made under the *Wildlife Act 1975* (the Wildlife Act).

## INSPECTION FINDINGS

DELWP did not complete any controlled operations in the period, therefore the VI inspected no files during the year. There were no historical issues that needed to be addressed.

The VI's assessment of the extent of DELWP's compliance with the Wildlife Act is therefore limited to assessing the reports it made in accordance with s 740 of the Act.

## COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 740(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 2 months after each date, on the details of its authorised operations conducted during the preceding 6 months. The VI received both reports within the required timeframes.

Each report made to the VI pursuant to s 740 of the Act informed that no controlled operations were undertaken by DELWP during the 6-monthly period covered by the report.

## WORK AND ACTIVITIES OF DELWP

DELWP conducted no authorised operations during the period 1 July 2018 to 30 June 2019. No controlled operations have been undertaken by DELWP for at least the past 6 years.

# Game Management Authority

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The Game Management Authority (GMA) may conduct controlled operations pursuant to Part IX of the Wildlife Act.

## INSPECTION FINDINGS

GMA has yet to make an application for an authorised operation, therefore no GMA files were inspected by the VI between 1 July 2018 and 30 June 2019.

The VI's assessment of the extent of GMA's compliance with the Wildlife Act is limited to assessing the reports it made in accordance with s 74OA of the Act.

## COMPREHENSIVENESS AND ADEQUACY OF 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 2 months after each date, on the details of its authorised operations conducted during the preceding 6 months. The VI received both reports within the required timeframes.

Each report made to the VI pursuant to s 74OA of the Act informed that no controlled operations were undertaken by GMA during the 6-monthly period covered by the report.

## WORK AND ACTIVITIES OF GMA

GMA conducted no authorised operations during the period 1 July 2018 to 30 June 2019.

# Independent Broad-based Anti-corruption Commission

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The Independent Broad-based Anti-corruption Commission (IBAC)'s 'Legal Compliance Unit' administers authorities to conduct controlled operations which can be made under the *Crimes (Controlled Operations) Act 2004* (the COO Act).

## INSPECTION FINDINGS

IBAC did not complete any controlled operations in the period, therefore the VI inspected no files during the year. There were no historical issues that needed to be addressed.

The VI's assessment of the extent of IBAC's compliance with the COO Act is limited to assessing the reports it made in accordance with s 38 of the Act.

## COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 38(1) of the COO Act requires IBAC to report to the VI, as soon as practicable after 30 June and 31 December and no more than 2 months after each date, on the details of its authorised operations conducted during the preceding 6 months. The VI received both reports within the required timeframes.

Each report made to the VI pursuant to s 38 of the Act informed that no controlled operations were undertaken by IBAC during the 6-monthly period covered by the report.

## WORK AND ACTIVITIES OF IBAC

IBAC conducted no authorised operations during the period 1 July 2018 to 30 June 2019. This is consistent with the historically low number of controlled operations undertaken by IBAC, with only two such operations having taken place since late 2015.



# Victorian Fisheries Authority

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The Victorian Fisheries Authority (VFA) can conduct controlled operations pursuant to Part 7A of the *Fisheries Act 1995* (the Fisheries Act).

## INSPECTION FINDINGS

The VI inspected 2 controlled operations files at VFA during the period 1 July 2018 to 30 June 2019. One file was inspected on 18 October 2018, whilst the other was inspected on 16 April 2019. These were the only authorised operations undertaken by VFA that expired or were cancelled during this period.

## AUTHORITIES

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

VFA is required to comply with the requirements of ss 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:
  - A relevant offence has been, is being or is likely to be, committed.
  - Nature and extent of criminal activity justifies a controlled operation.
  - Any unlawful conduct will be limited to the maximum extent required to conduct an effective controlled operation.
  - Risk of more illicit goods being held by non-law enforcement officers is minimised.
  - Reporting requirements can be complied with.
  - Controlled conduct will not likely 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, 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 that VFA complied with these requirements, with the exception of the sufficiency of information provided in one (1) application.

**Finding 1 – Insufficient information provided in the application for an authority.**

One application made by the VFA for an authority to conduct a controlled operation did not appear to contain information sufficient to enable the Chief Executive Officer (CEO) to decide whether or not to grant the application in accordance with s 131C(2)(b) of the Fisheries Act. The CEO must be satisfied on reasonable grounds, before granting an authority, of the matters set out in s 131E, including:

- That any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation.
- That the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons (other than law enforcement officers) at the end of the operation than is reasonably necessary to achieve the purpose of the operation.
- That the proposed controlled operation will be conducted in a way that will enable reporting requirements to be complied with.

These matters were not addressed in the application.

In its inspection feedback, the VI suggested the VFA structure its application against the matters listed in s 131E of the Fisheries Act which the CEO is required to be satisfied about before granting an authority. The VFA subsequently notified the VI that its application template had been amended to highlight the information requirements relating to s 131E of the Act.

VFA made no applications for the inspected authorities to be extended or varied.

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

Authorities to conduct a controlled operation must specify the following matters in accordance with s 131F of the Fisheries Act:

- Be given in writing and signed by the CEO.
- The principal law enforcement officer as well as each law enforcement officer who may engage in controlled conduct.
- Nature of the controlled conduct (i.e. activities the participants may engage in).
- The criminal activity and suspected offences targeted by the controlled conduct.
- Any suspect (to the extent known).
- Period of validity (not exceeding 3 months) and any conditions.
- Date and time authority is granted.
- 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 to VFA met all of these requirements, noting there were no variations to authorities.

The 2 inspected authorities were both cancelled in writing by order of the CEO in accordance with s 131K of the Fisheries Act.

## RECORDS

### *Did VFA keep all records connected with authorised operations?*

VFA is required to keep certain records in connection with authorised 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.
- Report made by the principal law enforcement officer.

VFA complied with these record-keeping requirements.

### *Did VFA keep a general register?*

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

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

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

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

- Date and time it was granted.
- 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 the principal law enforcement officer made the report under s 131R of the Act.
- If the authorised operation involved illicit goods, to the extent known, the nature and quantity of such goods as well as the route through which they passed.
- Any loss of or serious damage to property, or personal injuries, resulting from the operation.
- For each variation of authority, the date and time it was made.

The VI found that VFA complied with these requirements, with the exception of one (1) instance involving an incorrect date recorded for the report made by the principal law enforcement officer under s 131R of the Fisheries Act. Following the inspection, the VFA notified this error was corrected by amending their general register to differentiate between when a draft report is provided for endorsement and when it has been made or endorsed. The VI will re-inspect this controlled operations file at the next scheduled inspection.

## REPORTS

### *Were Principal Law Enforcement Officers' reports properly made?*

The principal law enforcement officer is required, within 2 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:

- Date and time it commenced as well as its duration.
- Nature of the controlled conduct engaged in.
- Outcome of the operation.
- If the operation involved illicit goods, to the extent known, the nature and quantity of such goods as well as the route through which they passed.
- Any loss of or serious damage to property, or personal injuries, resulting from the operation.

VFA complied with these requirements, with the exception of one (1) report that was made more than 2 months after completion of the authorised operation.

### **Finding 2 – Late report made by the principal law enforcement officer.**

In one (1) controlled operation file inspected by the VI the authorised operation was cancelled on 25 January 2019 however the principal law enforcement officer's report was made more than 2 months later, on 9 April 2019.

Whilst on this occasion the requirement of s 131R(1) of the Fisheries Act was not met, the VI has been informed by the VFA that it has revised its procedures and systems to ensure no future re-occurrence of this issue. The VI will inspect these changes at the next scheduled inspection.

## 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. The VFA was responsive and transparent during the inspection process, in particular where the VI raised questions about certain records.

### *Did VFA self-disclose compliance issues?*

VFA did not make any self-disclosures.

### *Were issues identified at previous inspections addressed?*

Since no issues were identified from the VI's inspection of the one (1) authorised operation conducted during the previous reporting period, there were no historical issues to be addressed.

## 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 2 months after each date, on the details of its authorised operations conducted during the preceding 6 months. This section also specifies the details which must be included in the reports.

The VFA submitted these reports to the VI, one for the 1 July to 31 December 2018 period and the other for 1 January to 30 June 2019, in accordance with the statutory timeframes. The VI is satisfied that the reports included all required information.

## WORK AND ACTIVITIES OF VFA

VFA conducted 2 authorised operations which were completed during the period 1 July 2018 to 30 June 2019. This is consistent with the historically low number of controlled operations undertaken by VFA.

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

Year	2015-16	2016-17	2017-18	2018-19
Number of completed controlled operations	0	2	1	2

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

Neither of the 2 authorities completed during the period were subject to an application for a variation, such as an extension to its period of validity, or to authorise additional persons to engage in controlled conduct.

The VFA’s authorities to conduct controlled conduct were both cancelled ahead of their expiry dates. Each authority was granted for a period within the maximum allowed 3 months and was cancelled less than a month before the expiry date. This demonstrates effective review procedures at the VFA to ensure authorities do not remain in force unnecessarily.

For one (1) authority the VFA did not engage in any controlled conduct. For the other, the conduct engaged in was undertaken in accordance with the conduct authorised.

# Victoria Police

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There are two units within Victoria Police that administer authorities to conduct a controlled operation pursuant to the COO 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

The VI inspected a total of 91 controlled operations files at Victoria Police for authorities expired or cancelled in the period 1 July 2018 to 30 June 2019.<sup>2</sup> The inspected files related to 91 authorities to conduct a controlled operation, 56 of which were varied on at least one (1) occasion. These represent all authorised operations undertaken by Victoria Police that had expired or were cancelled during the period. No application was made for an urgent authority.

A total of 90 files were inspected at Victoria Police's COR over these dates: 3, 4 and 10 December 2018, 9 May 2019, and 30 July-1 August 2019. One (1) file was inspected at the TPU on 1 April 2019.

## 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 ss 12 and 14 of the COO Act when making applications to conduct controlled operations.

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 s 44 of the COO Act) to decide whether to grant the application, including:
  - Any unlawful conduct will be limited to the maximum extent required to conduct an effective controlled operation.
  - Risk of more illicit goods being held by non-law enforcement officers is minimised.
  - Reporting requirements can be complied with.

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<sup>2</sup> Included within the total number of files inspected are 9 controlled operations that were expired or cancelled just prior to 1 July 2018.

- Controlled conduct will not likely 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, nor result in unlawful loss of or serious damage to property (other than illicit goods).
- 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 (i.e. type).
- 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 type of controlled operation authorised, as applicable.

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

The VI found that Victoria Police complied with these application requirements, with the exception of 2 instances where details of an earlier refused application made with respect to the same proposed operation was not recorded.

**Finding 1 – No record of previous application made for an authority.**

An application for a controlled operation is required by s 12(4)(c) of the COO Act to state whether or not the proposed operation had been the subject of an earlier application, and if so, to provide details of the outcome of the application. Two applications made by Victoria Police for an authority to conduct a controlled operation omitted reference to an earlier refused application made in connection to the same proposed operation.

In response to the VI's inspection feedback, Victoria Police's COR notified that it had revised its administrative processes and introduced a checklist for all future applications for an authority to conduct a controlled operation.

In total 56 authorities were varied by Victoria Police during the period and in all cases the applications were made pursuant to ss 21 and 22 of the COO Act.

Victoria Police did not make an urgent application for an authority to conduct a controlled operation, including variation of an authority, during the period.

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

Authorities to conduct a controlled operation must specify the following matters in accordance with s 18 of the COO Act:

- Be given in writing and signed by the chief officer or other officer delegated by instrument under s 44 of the COO Act (unless it is an urgent authority).

- The principal law enforcement officer as well as 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.
- Nature of controlled conduct for law enforcement participants, and the particular controlled conduct for civilian participants.
- The criminal activity and suspected offences targeted by the controlled conduct.
- Any suspect (to the extent known).
- Period of validity (in accordance with s 19) and any conditions.
- Date and time authority is granted.
- 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 of these requirements, noting there were no urgent authorities during the period.

During the year period, 56 authorities were varied. In compliance with s 24 of the COO Act, each variation:

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

Victoria Police cancelled 5 authorities for a controlled operation in writing, in accordance with s 24 of the COO 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, date and time the authority was varied and identity of relevant law enforcement officer.
- The order cancelling the authority.
- 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 s 41 of the COO 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.
- 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 s 37 of the COO Act.
- If the authorised operation involved illicit goods, to the extent known, the nature and quantity of such goods as well as the route through which they passed.
- Any loss of or serious damage to property, or personal injuries, resulting from the operation.
- 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, with the exception of some incorrect dates recorded in the register.

**Finding 2 – Incorrect dates recorded in the general register.**

Pursuant to s 41(2) of the COO Act the general register is required to record, amongst other things, dates associated with each authority and variation of authority. In relation to 3 separate controlled operations files, the VI identified incorrect dates recorded in the register for:

- The commencement of the authorised operation (one (1) occasion);
- the completion of the authorised operation (1 occasion); and
- variation (extension) of an authority (2 occasions).

Following the inspection, Victoria Police notified that these errors have been corrected in the general register. The VI will re-inspect these controlled operations files at the next scheduled inspection.

## REPORTS

### *Were Principal Law Enforcement Officers' reports properly made?*

The principal law enforcement officer is required, within 2 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.
- Nature of the controlled conduct engaged in.
- Outcome of the operation.
- If the operation involved illicit goods, to the extent known, the nature and quantity of such goods as well as the route through which they passed.
- Any loss of or serious damage to property, or personal injuries, resulting from the operation.

The VI identified 6 principal law enforcement officer reports made by Victoria Police under s 37 of the COO Act that were either made outside the required timeframe or contained an error for a matter listed above.

### **Finding 3 – Late or inaccurate reports made by the principal law enforcement officer.**

In 2 controlled operation files inspected by the VI, an amended report made by the principal law enforcement officer was made more than 2 months after the authorised operation was completed. In one (1) instance, although the original report was made within the required timeframe, internal compliance checks at the COR identified an error for the non-reporting of controlled conduct and as such an amended report was made, albeit late.

In the other instance, the original report was made more than 2 months after completion of the authorised operation due to an incorrectly recorded conclusion date for the authorised operation. The lateness of original report, which was self-disclosed by COR, and the subsequent amended report was therefore due to the same initial error with the incorrectly recorded authorisation conclusion date.

Whilst these amended reports did not meet the requirements of s 37(1) of the COO Act, the VI commends the COR for employing quality assurance checks to identify issues and self-disclosing errors to the VI. The VI accepts there was no controlled conduct outside the period of the authority and Victoria Police has revised its processes so that all controlled operations files will be reviewed on a monthly basis. It is expected that this change will hasten remedial action taken in response to any errors identified in the future.

In one (1) inspected file, the report made by the principal law enforcement officer recorded attempts to purchase firearms for controlled conduct engaged in, however this conduct was not covered by the authority. Following the inspection, however, Victoria Police confirmed this conduct was reported in error and therefore there was no unauthorised activity undertaken. In addition to making an amended report, Victoria Police's COR informed that education was provided to the investigators for correctly completing these reports.

In 3 other inspected reports an error was identified with a date recorded for the duration of the authorised operation. In 2 cases the date recorded for when the authorised operation

concluded was incorrect, whilst in another case, the report gave the incorrect date for its commencement. In response to these findings Victoria Police informed that amended reports were made in all 3 cases. The VI will re-inspect these controlled operations files at the next scheduled inspection.

## 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 questions about certain records. In addition to making timely corrections to identified errors, Victoria Police reviewed its processes in order to further improve its compliance with statutory obligations, such as implementing new checklists and committing to more regular checks on controlled operations files. The VI regards such actions as indicative of a strong compliance culture.

### *Did Victoria Police self-disclose compliance issues?*

Victoria Police made 2 compliance-related self-disclosures during the period, both relating to errors in the initial report made by the principal law enforcement officer pursuant to s 37 of the COO Act. These disclosures were made via a file note kept in the related controlled operations file.

### *Were issues identified at previous inspections addressed?*

The VI re-inspected one (1) controlled operations file during the period and confirmed Victoria Police made an amended report under s 37 of the COO Act in a timely manner. With regards to advised amendments made in response to errors identified at the most recently conducted inspection, the related files will be re-inspected by the VI at the next scheduled inspection.

## COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 38(1) of the COO Act requires Victoria Police to report to the VI, as soon as practicable after 30 June and 31 December and no more than 2 months after each date, on the details of its authorised operations conducted during the preceding 6 months. The VI received both reports within the required timeframes. This section also specifies the details which must be included in the reports.

Victoria Police submitted these reports, one for the 1 July to 31 December 2018 period and the other for 1 January to 30 June 2019, to the VI in accordance with the statutory timeframes. Whilst the VI identified some minor administrative errors in the second report submitted, these errors were

promptly addressed by Victoria Police. The VI is otherwise satisfied that all required information was included in these reports.

WORK AND ACTIVITIES OF VICTORIA POLICE

During the period 1 July 2018 to 30 June 2019 (2018-19), 91 controlled operations files were inspected by the VI. This represents all authorities with Victoria Police that ceased during this period as well as some additional authorities that ceased during the preceding period. Since the VI only inspects files for authorities that have ceased, and for which the reporting requirements have been completed, the number of files inspected does not correlate with the number of authorised operations granted by Victoria Police during the period.

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

Victoria Police granted a total of 76 authorities during 2018-19, representing a significant decrease in the total number recorded in previous periods.

Table 1: Comparison of number of authorities granted over the past 4 years

Year	2015-16	2016-17	2017-18	2018-19
Number of authorities granted	100	112	111	76

Note: These are the figures reported by Victoria Police in its Chief Officer Reports made under s 38 of the COO 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.

Although Victoria Police may, in limited circumstances, make an application for an urgent authority by means of communication other than a signed written document, no urgent applications were made during 2018-19.

A total of 56 authorities to conduct a controlled operation were varied on at least one (1) occasion by Victoria Police. On all but one (1) occasion the variation involved an extension to the validity of the authority. Frequently, these requests were paired with a further variation request such as adding a suspect or a civilian participant to the controlled conduct.

No applications for granting an authority were refused during the period however 2 applications to vary an existing authority were refused; one (1) application involved a request to add a suspect and to extend the validity period, whilst the other involved an extension request only.

Since Victoria Police granted a reduced number of authorities during 2018-19, the total number of authorities that were active at any time during the period (i.e. including authorities commenced prior to reporting period), was also significantly lower than reported for previous periods.

Table 2: Comparison of number of active authorities over the past 4 years

Year	2015-16	2016-17	2017-18	2018-19
Number of active authorities	131	147	137	112

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 3 years' imprisonment whereas the latter by 3 or more years' imprisonment. A cross-border controlled operation on the other hand is one that not only targets offending punishable by 3 or more years imprisonment but is also likely to be partially conducted in at least one (1) jurisdiction outside Victoria that has a corresponding law in force.

In total, Victoria Police had 82 authorised operations that ceased during the 2018-19 period. Of this number, 77 were local major controlled operations and 5 were local minor operations. There were nil cross-border controlled operations that ceased during the period. 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 type over the past 4 years

Operation Type	2015-16	2016-17	2017-18	2018-19
Local Major	82	105	88	77
Local Minor	9	10	12	5
Cross-Border	4	4	1	0

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

In addition to authorising law enforcement participants to engage in controlled conduct (i.e. conduct that would otherwise constitute a criminal offence), authorities may also authorise civilian participants for 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 over the past 4 years

Type of participant	2015-16	2016-17	2017-18	2018-19
Law Enforcement only	47	58	68	51
Civilian only	5	16	5	4
Law enforcement and Civilian	12	8	4	6

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.

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 changes to operational priorities. 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 4 years

Year	2015-16	2016-17	2017-18	2018-19
With controlled conduct	64	82	77	61
Without controlled conduct	31	37	24	21

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

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 3 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 (1) month only. Furthermore, extensions to the validity of these authorities are made for a period of 4 weeks at a time, even though up to 3 months at a time is permitted. This demonstrates the tight controls Victoria Police exercises over its use of controlled operations powers and commitment to ensuring each operation does not continue longer than necessary.

Table 6: Number of authorities expired or cancelled over the past 4 years

Year	2015-16	2016-17	2017-18	2018-19
Expired	80	101	93	80
Cancelled	15	18	8	2

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. For all Victoria Police controlled operations conducted during the period there was no report of any injury to a person, or loss or damage to any property.

## Correction Notice

During the making of this report, the Victorian Inspectorate identified some statistical errors recorded in earlier reports it published connected to controlled operations by Victoria Police. These reports, and the errors made, are set out below. The errors made in the 2015-2016 and 2016-2017 reports were repeated in subsequent reports, however in this report where the same categories of statistics are reported, the correct figures are stated.

Additionally, for each previously published report containing errors, a corrigendum has been made. These can be found on the Controlled Operations reports page of the Victorian Inspectorate's website at: <https://w.www.vic.gov.au/vicinspectorate.html>

Please note that as a result of these errors, some other figures referred to in the body of the same report are inaccurate. The Victorian Inspectorate apologises for any inconvenience caused.

### **Victorian Inspectorate Report to the Parliament of Victoria on Victoria Police pursuant to s. 39 Crimes (Controlled Operations) Act 2004 2015-2016**

#### *Authorities issued*

On page 10 of the report (see Table 3) the number of authorities issued in 2015-2016 was incorrectly recorded as 131. This figure instead represents the total number of authorities that were active during any part of 2015-2016. The correct number for authorities issued during this period is 100.

#### *Expired authorities*

Page 16 of the above-mentioned report incorrectly states that there were 82 authorities for Local Major controlled operations that expired during 2015-2016. This error appears to have been the result of including cancelled authorities in the total for those that expired. The number of expired authorities should instead read as 67, and consequently the combined tally for all types of controlled operations that expired comes to 80, rather than 95.

### **Victorian Inspectorate Report to the Parliament of Victoria pursuant to:**

- **Section 39 of the Crimes (Controlled Operations) Act 2004,**
- **Section 131T of the Fisheries Act 1995, and**
- **Section 74P of the Wildlife Act 1975**

### **2016-17**

#### *Authorities issued*

The number of authorities issued was incorrectly recorded as 141 on page 13 of the report (see Table 1). The number of authorities issued during 2016-2017 should have instead been recorded as 112.

*Expired or cancelled authorities*

Page 14 of the report incorrectly shows that 137 authorities were either expired or cancelled in 2016-2017, however this figure should actually be recorded as 119. This tally error appears to have been caused by counting the number of cancelled authorities twice.

**Victorian Inspectorate Report to the Parliament of Victoria on Controlled Operations  
1 July 2017 to 30 June 2018**

*Authorities issued*

Page 16 (see Table 1) of the report incorrectly gives the total number of authorities issued for 2017-2018 as 137. Rather than giving the number of issued authorities, this figure represents the total number of authorities that were active during any part of 2017-2018. The actual number of issued authorities for the period is 111.

*Expired or cancelled authorities*

On page 17 the report incorrectly states there was a total of 136 authorities that were expired or cancelled during 2017-2018. This figure should instead read as 101, comprising 93 expired authorities and 8 that were cancelled.