

**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 2021 to 30 June 2022

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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)¹
- 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 Commissioner to specific classes of officers. Among Victorian law enforcement agencies, almost all controlled operations are conducted by Victoria Police under the CCO Act.

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.

¹ As a result of machinery of government changes that took effect on 1 January 2023, DELWP is now known as the Department of Energy, Environment and Climate Action.

The VI notes in this report the cooperative and transparent engagement by the officers of the VFA and Victoria Police—these being the only agencies at which the VI inspected a controlled operations file relevant to the period covered by this report. In total, the VI inspected 99 controlled operations files—two at the VFA, and 97 at Victoria Police. The findings for all other agencies included in this report deal only with the comprehensiveness and adequacy of the six-monthly reports they make to the VI.

In addition to making available for inspection files for all relevant authorised operations that were expired or cancelled, Victoria Police also disclosed to the VI an instance of unauthorised conduct by one of its officers. This compliance issue is mentioned on pages 20 and 21 of this report. Since the VI's enquiries with Victoria Police in this matter were ongoing at the conclusion of the period for this report, the VI will give a finalised account of the actions taken in respect of this error in the next controlled operations inspection report.

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 2021 to 30 June 2022 period – the 'reporting period'.

The VI's biannual inspections deal with records that ceased during the preceding six-month period, and therefore this report gives findings for inspections conducted during the 2022 calendar year. 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 Victorian law enforcement agencies authorised to conduct controlled operations and their officers.

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. The VI inspects hard copy documents, including printouts of electronic registers, to confirm agencies are keeping proper records connected with authorities to conduct a controlled operation and are meeting prescribed reporting obligations.

HOW WE ASSESS COMPLIANCE

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.

The VI also assesses the reports it receives from the chief officer of each agency, which give specific details about the authorised operations conducted by the agency against statutory criteria. For the 1 July 2021 to 30 June 2022 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 2022
- Second report – due no later than 31 August 2022

These reports cover controlled operations conducted from 1 July to 31 December 2021 and 1 January to 30 June 2022, 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 assessments. 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, as well as 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 Victoria Police and the VFA 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 2021 to 30 June 2022 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 Planning²

DELWP's Major Operations 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 SECRETARY'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 met all reporting criteria and stated that no controlled operations were undertaken by DELWP during the six-month period covered by the report.

WORK AND ACTIVITIES OF DELWP

DELWP conducted no controlled operations during the period 1 July 2021 to 30 June 2022. No controlled operations have been undertaken by DELWP for at least the past nine years.

² Since 1 January 2023, this agency has become the Department of Energy, Environment and Climate Action.

Game Management Authority

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

INSPECTION FINDINGS

GMA has yet to exercise its powers under Part IX of the Wildlife Act 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 GMA'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 2021 to 30 June 2022.

Independent Broad-based Anti-corruption Commission

IBAC's Legal Compliance Unit administers authorities to conduct controlled operations 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-month period covered by the report.

WORK AND ACTIVITIES OF IBAC

IBAC conducted no authorised operations during the period 1 July 2021 to 30 June 2022. 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 two controlled operations files at the VFA for the reporting period. These represent all controlled operations undertaken by the VFA that ceased during the 1 July 2021 to 30 June 2022 period. One of the ceased controlled operations was authorised during the preceding 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
 - 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
- 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).

In the case of the one authority granted during the period, the VI found the VFA complied with these requirements.

For the two authorities that ceased in the reporting period, each had expired rather than being cancelled in writing by order of the CEO.

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
- 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
- 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
- for each variation of authority, the date and time it was made.

The VI found the VFA 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 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
- any loss of or serious damage to property, or personal injuries, resulting from the operation.

The VFA complied with its prescribed reporting obligations under section 131R of the Fisheries Act.

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.

The VI reviewed and provided feedback on draft procedures developed by the VFA during the reporting period. The VI notes the VFA has undertaken work to develop formal written procedures for administering controlled operations. The VFA advised that once finalised, these procedures will be published internally and referenced in its 'Fisheries Officer Handbook'. The VI looks forward to reviewing the finalised procedures at the next scheduled inspection.

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 during the reporting period and confirmed the VFA amended the general register to show the correct date on which it made the report under section 131R of the Fisheries Act.

COMPREHENSIVENESS AND ADEQUACY OF THE CEO'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 2021 period and the other for 1 January to 30 June 2022, 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 two authorised operations that ceased between 1 July 2021 and 30 June 2022. 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	2018-19	2019-20	2020-21	2021-22
Number of completed controlled operations	2	1	0	2

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

For each 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.

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
- the Technical Projects Unit (TPU), which resides within Professional Standards Command.

INSPECTION FINDINGS

The VI inspected a total of 97 controlled operations files at Victoria Police for authorities that expired or were cancelled during the reporting period. These represent all authorised operations undertaken by Victoria Police that expired or were cancelled during the reporting period.

All applications by Victoria Police for an authority were made based on a formal written document. No application was refused by a delegate of the Chief Commissioner.

For the reporting period, the VI conducted an inspection of controlled operations records at Victoria Police on the following dates in 2022: 28 April; 15-17 and 29 June; 19 October; and 28-30 November.

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.

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 Commissioner (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)
- 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)
- 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. The VI identified one file containing an application for variation of authority that incorrectly recorded the purpose for the variation. Enquiries made with Victoria Police's COR confirmed an officer had incorrectly checked the corresponding box in the application. The VI otherwise notes the information given in the application correlates with the approved variation of authority.

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 be in writing and signed by the Chief Commissioner 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
- 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

- 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).

Each variation to an authority must comply with section 24 of the CCO Act, whereby it:

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

The authorities and variations to an authority granted by Victoria Police met all these requirements.

Victoria Police cancelled an authority to conduct a controlled operation on 30 occasions. In all cases, the authority was cancelled in writing and 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
- 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 must specify, 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 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
- 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 did not meet these requirements on 15 occasions, across 14 different authorities.

Finding 1 – Information either incorrectly recorded or omitted from the general register.

The VI found on a total of eight occasions, the general register kept by Victoria Police recorded incorrect information for the matters it must specify under section 41 of the CCO Act. In relation to seven controlled operations, no information was given for a particular matter required to be specified in the general register.

Incorrect information given in the general register

Pursuant to section 41(2)(b)(viii) of the CCO Act, for each authority granted the general register must specify the date of completion for the authorised operation. With respect to four controlled operations, the general register incorrectly recorded a date that was later than when the relevant authorised operation had concluded.

In the case of two controlled operations, the general register kept by Victoria Police incorrectly specified the date of application for each authority. The VI was advised these errors in relation to section 41(2)(a)(i) of the CCO Act were likely caused by an incorrect update to both records.

Under section 41(2)(b)(v) of the CCO Act, the general register must specify each offence in respect of which controlled conduct under the authority was to be engaged in. In the case of one controlled operation, although the authority identified property-related offences, this type of offence was not specified in the general register.

On one other occasion, the VI identified an error connected to section 41(2)(b)(ix) of the CCO Act. The general register incorrectly recorded the date on which the principal law enforcement officer (PLEO) for the operation made a report under section 37 of the CCO Act.

Information omitted from the general register

Section 41(2)(b)(vii) of the CCO Act requires Victoria Police to record in the general register the date and time that an authority was cancelled, as applicable. In the case of four cancelled authorities, however, the general register omitted this information.

The VI identified three instances where the general register did not specify the name and rank or position of the person who granted the authority. These omissions caused Victoria Police to be non-compliant with section 41(2)(b)(iii) of the CCO Act.

The VI will re-inspect the general register kept by Victoria Police's COR at the next scheduled inspection to ensure all the aforementioned errors have been corrected.

Issue with rank or position of delegate recorded in the general register

From both inspections completed at Victoria Police's COR in 2022, the VI found on multiple occasions the general register recorded incorrect information in connection to the rank or position of the person who granted the authority or made the variation. In total, 25 errors (involving 22 different authorities) were identified with respect to either section 41(2)(b)(iii) or section 41(2)(c)(iii) of the CCO Act.

In each case, the VI confirmed the authority or variation was granted by an officer having the rank of Acting Assistant Commissioner—being an approved delegate of the Chief Commissioner. However, the general register made available to the VI for inspection incorrectly recorded the granting officer as having the rank of Commander—not being an approved delegate.

The VI was advised by the COR these errors with the general register were caused by back-end data provided by Victoria Police's corporate area. This data, which the COR is unable to amend, gives the delegate's substantive rather than upgraded (i.e., acting) position.

Following further enquiries with Victoria Police, the VI was advised that a covering page for each controlled operation in the database used to serve as the general register includes free text fields that record, amongst other things, the rank of the officer who approved the authority or variation of an authority. This part of the database, however, is unable to be included in the print-out the COR makes available for inspection to satisfy the requirement to keep a general register (noting the print-out comprises data filtered from the database).

As a result of this limitation with the database, coupled with the resourcing implications for Victoria Police's COR to fully maintain a dedicated document as the general register, as well as the increased risk for making data entry errors, the VI accepts the database covering page forms part of the general register.

The VI informed Victoria Police that in cases where the position of the authorising officer shown in print-out of the general register does not correlate with the information shown in a relevant authority or variation of an authority, it will request to inspect the covering page in the database for the controlled operation. Additionally, the VI informed the COR that it may also review Victoria Police records to confirm acting arrangements were formalised during the relevant period.

Victoria Police's COR advised the VI it will ensure the database records a delegate's upgraded rank, as appropriate, to enable general register requirements to be met.

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 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)
- any loss of or serious damage to property, or personal injuries, resulting from the operation.

The VI found Victoria Police did not comply with all prescribed reporting obligations under section 37 of the CCO Act on five occasions.

Finding 2 – Incorrect information given in report made by the principal law enforcement officer.

The reports made by the PLEO under section 37 of the CCO Act for each completed authorised operation rely on accurately recorded information in the general register. An error in the general register will therefore often be repeated in the report by the PLEO for the same matter. As reported on under Finding 1 on page 17 of this report, the general register incorrectly recorded the end date of four authorised operations.

In the case of four reports made by the PLEO, the VI found the report incorrectly stated the duration for the authorised operation under section 37(2)(a) of the CCO Act. On each occasion, the report reflected the incorrect date of completion of the operation recorded in the general register.

With respect to one other report inspected by the VI, although it describes an (unsuccessful) attempt by authorised law enforcement participants that would constitute controlled conduct, the report by the PLEO incorrectly states no controlled conduct was engaged in under the authority.

The VI will re-inspect the files connected to the above-mentioned errors at its next scheduled inspection of records at Victoria Police's COR to confirm supplementary reports have been made to correct the identified errors.

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.

Victoria Police was responsive and transparent during the inspection process, particularly when the VI raised questions about certain records. Victoria Police's COR and PSC provided additional information in response to some questions connected to compliance with the CCO Act and how it administers controlled operations.

During the reporting period, the COR advised the VI that the standard validity period of each authority granted by a delegate of the Chief Commissioner would increase from 28 days to three months—in the case of local major and cross-border operations, and in the absence of any known reason to shorten the validity period. The VI was advised this change was prompted by Victoria Police wanting to reduce the administrative burden associated with regularly extending authorities.

Although the CCO Act does not give a timeframe for causing the cancellation of an authority no longer required, the VI suggested to the COR that it make formal written guidance with respect to:

- regularly reviewing the need to keep an authority active
- cancelling an authority as soon as practicable once it has been determined there is no longer an ongoing intention to engage in controlled conduct.

In response to these suggestions, the COR advised the VI it has introduced a new process whereby it contacts the PLEO and Victoria Police work unit connected to each authority, or variation to an authority, with instructions to contact the COR to seek cancellation of the authority once the controlled conduct has been completed or the investigation has concluded. The VI inspected the template of an email the COR sends to investigators in support of the abovementioned purpose.

The COR further advised the VI that it has developed a process in which fortnightly teleconferences are conducted with the manager of each work unit responsible for an active controlled operation. At these meetings, the grounds for keeping the authority active will be reviewed so that it can be cancelled in a timely manner, as required. The VI commends Victoria Police for taking steps to ensure an authority is cancelled shortly after it has been determined there is no longer an ongoing intention to engage in controlled conduct. As shown on page 24 of this report, the number of authorities cancelled by Victoria Police has increased sharply—from 3 in 2020-21, to 29 in 2021-22 (the period for this report).

Did Victoria Police self-disclose compliance issues?

Victoria Police's COR made one compliance-related disclosure for an authority that ceased during the reporting period. At the November 2022 inspection, it disclosed via a memo included in the file for the controlled operation that a Victoria Police undercover operative engaged in conduct related to the purchase of an illicit drug of dependence without having been authorised in the authority as a person who may engage in controlled conduct. This person engaged in the conduct whilst working with another operative who was appropriately authorised to engage in the controlled conduct.

The aforementioned unauthorised conduct occurred in December 2021. Victoria Police identified the error and made a record of disclosure in its internal database one day after the conduct took

place. The inspected memo states the unauthorised conduct resulted from an administrative error, and further reports a process change has been implemented to ensure no recurrence of this type of error.

The VI views this disclosure as an area of higher risk since the Victoria Police officer engaged in criminal conduct without the protection of an authority to engage in that conduct. The VI questioned the COR about this disclosure at the inspection exit interview, and followed up shortly afterwards with a request to receive a copy of the procedures used by the COR to administer controlled operations, as well as any other documents that deal with specific legal matters connected to an authority and/or conduct engaged in.

Due to the ongoing nature of our enquiries with Victoria Police in this matter, additional actions taken by the VI and Victoria Police with respect to this disclosure will be reported on in the next controlled operations inspection report.

Were issues identified at previous inspections addressed?

The VI re-inspected two controlled operations files during the period that each included a non-compliance issue identified at an earlier inspection. A re-inspection of these files confirmed Victoria Police's COR amended the general register for each controlled operation to give the corrected information. For one controlled operations file, the general register was amended to give the correct date of the application. With respect to one other file, the general register was updated to show the correct date the authorised operation concluded.

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.

Victoria Police submitted these reports to the VI, one for the 1 July to 31 December 2021 period and the other for 1 January to 30 June 2022, in accordance with the statutory timeframes. 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 2021 to 30 June 2022 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 during the period. Therefore, not all records for authorised operations granted by Victoria Police within a reporting period will be eligible for inspection.

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).

Victoria Police granted a total of 85 authorities during 2021-22; this number being near the average for the past three years.

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

Year	2018-19	2019-20	2020-21	2021-22
Number of authorities granted	76	83	95	85

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. No such applications were made by Victoria Police during 2021-22.

A total of 34 authorities to conduct a controlled operation were varied on at least one occasion by Victoria Police. Frequently, an authority is varied on multiple occasions. Twenty-three of the total 34 authorities were varied once, seven were varied twice, three were varied on 3 occasions, and one authority was varied four times.

No 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 2021-22 (i.e., including authorities commenced prior to the relevant reporting period) is significantly greater than for any other period over the past four years.

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

Year	2018-19	2019-20	2020-21	2021-22
Number of active authorities	112	107	119	138

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 96 authorised operations that ceased during the 2021-22 period. Of this number, 92 were local major controlled operations, and two each for local minor operations as well as cross-border controlled operations. 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	2018-19	2019-20	2020-21	2021-22
Local Major	77	83	74	92
Local Minor	5	1	1	2
Cross-Border	0	1	1	2

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 infrequently involves civilian participants in its controlled operations. In 2021-22, on one occasion an authorised civilian engaged in controlled conduct, and this conduct also involved a Victoria Police officer. Victoria Police’s reliance on civilian participants in its controlled operations over the past two years is significantly lower than it was in previous periods.

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

Year	2018-19	2019-20	2020-21	2021-22
Law Enforcement only	51	61	65	62
Civilian only	4	3	0	0
Law Enforcement and Civilian	6	2	0	1

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 operational priorities change. While the number of authorities involving controlled conduct has remained consistent over the past four years, in 2021-22, there was a significant increase in the number of authorities under which no controlled conduct was engaged in.

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

Year	2018-19	2019-20	2020-21	2021-22
With controlled conduct	61	66	65	63
Without controlled conduct	21	18	11	33

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

Until 2020-21, Victoria Police would cancel a relatively small number of its authorities in comparison with the number that are allowed to expire. This was likely the result of Victoria Police granting authorities, and any extension to an authority, for a period significantly less than the maximum

permitted. However, as seen below in Table 6, the number of cancelled authorities in 2021-22 is significantly higher than for previous periods. As noted on page 20 of this report, Victoria Police changed the standard validity period for authorities granted during the current period. The significant increase in the number of authorities cancelled reflects suggestions made by the VI during the period for Victoria Police to regularly review the need to keep each authority active, and to cause its cancellation once determined it is no longer required.

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

Year	2018-19	2019-20	2020-21	2021-22
Expired	80	78	73	67
Cancelled	2	7	3	29

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 63 completed authorities during the period that involved controlled conduct, Victoria Police reported a minor injury was sustained by one of its officers during the course of an authorised operation.