



REPORT TO

MINISTER FOR POLICE, FIRE & EMERGENCY SERVICES

CONTROLLED OPERATIONS

COMPLIANCE WITH *POLICE (SPECIAL INVESTIGATIVE
AND OTHER POWERS) ACT 2015 – PART 2*

2020/21

INTRODUCTION

Part 2 of the *Police (Special Investigative and Other Powers) Act 2015* (the Act) deals with controlled operations. A controlled operation is an undercover law enforcement operation that may involve a law enforcement officer or other person engaging in what would otherwise be unlawful conduct for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence.

The objects of Part 2 of the Act are:

- (a) to provide for the authorisation, conduct and monitoring of controlled operations; and*
- (b) to facilitate mutual recognition of things done in relation to controlled operations conducted within, or partially within, the Territory and authorised under corresponding laws of other jurisdictions; and*
- (c) to provide, for the conduct of the authorised operations:*
 - (i) indemnity for participants against civil liability arising out of the operations; and*
 - (ii) protection for participants from criminal responsibility for conduct engaged in as part of the operations which would otherwise be an offence.*

The statutory definition of a **controlled operation** is an operation that:

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

Controlled conduct means conduct for which a person would, apart from section 20 or 27, be criminally responsible.

The Northern Territory Police Force (NT Police) and the Australian Criminal Intelligence Commission (ACIC) are law enforcement agencies under the Act.

RECORDING, REPORTING AND MONITORING OBLIGATIONS

The Chief Executive Officer of an agency (the CEO) must cause to be kept a General Register of applications, authorities and variations relating to controlled operations (section 33).

The CEO is also required to keep a range of documents relating to applications, authorities and variations (section 32).

Within 2 months after the completion of an authorised operation, the principal law enforcement officer for an operation must give a report to the CEO (section 29).

The CEO must submit a report to the Ombudsman as soon as practicable after 31 March and 30 September each year, in relation to authorised operations conducted during the previous six months (section 30).

The Ombudsman must inspect the records of the agency at least once every 12 months, to determine the extent of compliance with Part 2 by the agency and its law enforcement officers (section 34).

The Ombudsman must, as soon as practicable after 30 June each year, report on the work and activities of the agency under this Part for the preceding 12 months (section 31).

A copy of each Ombudsman report must be given to the Minister and the CEO, and the Minister must, within 15 sitting days after receiving a report, table it in the Legislative Assembly (section 31).

NT POLICE

In 2020/21, there were two inspections. They took place on 10 December 2020 and 17 June 2021. They related to the reporting period 1 April 2020 to 31 March 2021.

Questions and issues to be raised by Ombudsman staff regarding compliance with Part 2 (to the extent they are relevant in the particular circumstances) are set out in Attachment A.

Reports received from the NT Police Commissioner in line with section 30 and advice from NT Police at the time of the inspections confirm that no applications were made or controlled operations undertaken under Part 2 during the reporting period. No authorities were carried over at the start of the reporting period.

ACIC

The CEO of ACIC has provided two six monthly reports covering the period 1 July 2020 to 30 June 2021. Each states that ACIC did not exercise powers under the Act during the relevant period. This has been the case in each year from 2016/17.

In light of that ongoing advice, no physical inspection of records has been undertaken.

FINDING

On the basis of the information provided and the records inspected, no instances of non-compliance with Part 2 of the Act have been identified.



Peter Shoyer
Ombudsman
October 2021

ATTACHMENT A

Questions and issues relating to controlled operations

When conducting inspections and considering compliance with Part 2, sufficient investigations must be undertaken to answer the following questions.

Ombudsman reports are based on an April-March cycle, represented by the two most recent chief officer reports.

Apart from the *Numbers* section, most of the questions require consideration of each instance, eg, each authority or variation.

Numbers

| Numbers for period 1 April to 31 March | No. |
|---|------------|
| formal authorities granted | |
| urgent authorities granted | |
| applications for formal authority refused or withdrawn | |
| applications for urgent authority refused or withdrawn | |
| formal variations of authority granted | |
| urgent variations of authority granted | |
| applications for formal variation of authority refused or withdrawn | |
| applications for urgent variation of authority refused or withdrawn | |
| retrospective authorities granted | |
| applications for retrospective authority refused or withdrawn | |
| Total authorities cancelled | |
| Total authorities expired | |
| Total authorities carried over at start of period | |
| Total authorities completed during period | |
| Total authorities uncompleted at end of period | |

Authorities

Authorities may be formal or urgent. An urgent authority may not be given for more than 7 days.

There are certain requirements around the form an authority must take but there is also a requirement that the chief officer be satisfied on reasonable grounds of certain elements before granting an authorisation (section 11(2)). The authority and supporting documentation should provide an adequate basis for such a finding and should explain the reasoning of the chief officer in granting the authority.

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| Authority – 11(2) - Each authority: | Y/N |
| states that the chief officer is satisfied on reasonable grounds of the existence of the elements required by 11(2) | |
| is supported by sufficient information to enable the chief officer to be satisfied on reasonable grounds of the elements required by 11(2) | |
| is supported by an explanation as to why the chief officer is satisfied on reasonable grounds of the elements required by 11(2) | |

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| Authority – 12(1) & (2) - Each authority: | Y/N |
| if given by a delegate, is supported by a written delegation from the chief officer | |

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| Formal authority – 12(3) - Each formal authority must: | Y/N |
| be in writing and signed by the person granting the authority | |
| state the name and position of the person granting the authority | |
| identify the principal law enforcement officer and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant | |
| state whether the application is a formal application or an urgent application | |
| identify each person who may engage in controlled conduct for the purposes of the operation (A person may be identified by an assumed name or code – see 12(4)) | |
| state the jurisdictions in which the controlled conduct is, or is likely, to be engaged in | |
| identify the nature of the criminal activity (including the suspected relevant offences) in relation to which the controlled conduct is to be engaged in | |
| identify for participants in the operation who are law enforcement officers – the nature of the controlled conduct that those participants may engage in | |
| identify for each civilian participant – the particular controlled conduct (if any) that the participant may engage in | |
| identify (to the extent known) any suspect | |
| specify the period of validity of the authority, being a period not exceeding 6 months for a formal authority or 7 days for an urgent authority | |
| specify any conditions to which the conduct of the operation is subject | |
| state the date and time when the authority is granted | |
| identify (to the extent known) the nature and quantity of any illicit goods that will be involved in the operation | |
| identify (to the extent known) the route through which those goods will pass in the course of the operation | |

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| Urgent authority – 12(5) – For each urgent authority: | Y/N |
| written notes have been kept of the particulars identified in 12(3) | |

Variations

A variation of authority may be formal or urgent.

It cannot extend an operation for more than three months but more than one variation application can be made.

As with the grant of an approval, the chief officer must be satisfied on reasonable grounds of the elements listed in section 11(2). The variation and supporting documentation should provide an adequate basis for such a finding and should explain the reasoning of the chief officer in granting the authority.

| Variation of authority – 11(2) and 14(8) - Each variation: | Y/N |
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| states that the chief officer is satisfied on reasonable grounds of the existence of the elements required by 11(2) | |
| is supported by sufficient information to enable the chief officer to be satisfied on reasonable grounds of the elements required by 11(2) | |
| is supported by an explanation as to why the chief officer is satisfied on reasonable grounds of the elements required by 11(2) | |

| Variation of authority – 14(9)-(11) & 15 - Each variation: | Y/N |
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| states the chief officer is satisfied on reasonable grounds that the variation would not authorise a significant alteration of the nature of the authorised operation concerned | |
| does not extend the period of validity of the approval for more than three months (at any one time) | |
| if a formal variation, is in writing and signed by the chief officer | |
| may be initially recorded by notes that state the date and time when the authority was varied and the identity of the law enforcement officer to whom the variation of authority was granted but must as soon as practicable be reduced to a document that: | |
| identifies the authorised operation for which the authority is in force | |
| states the name and position of the person granting the authority | |
| if the application for the variation was made under section 14(3) – states the name of the applicant | |
| states whether the application is a formal variation application or an urgent variation application | |
| states the date and time when the authority is to be or was varied | |
| describes the variation having regard to the purposes mentioned in section 14(3) for which the application was made | |

Retrospective authority

A retrospective authority is for unlawful conduct within an existing authorised operation that has happened within the last 24 hours. It is not for a new operation.

| Retrospective authority – 19 - Each retrospective authority: | Y/N |
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| is for unlawful conduct (other than unlawful conduct that is controlled conduct) in the course of an authorised operation | |
| is based on an application made within 24 hours of the unlawful conduct occurring | |
| is not for conduct that gives rise to the offence of murder or any other offence for which the common law defence of duress would not be available. | |
| states that the chief officer is satisfied on reasonable grounds of the existence of the elements required by 19(5) | |
| is supported by sufficient information to enable the chief officer to be satisfied on reasonable grounds of the elements required by 19(5) | |
| is supported by an explanation as to why the chief officer is satisfied on reasonable grounds of the elements required by 19(5) | |

Reporting

| Reporting – 29(1) - Principal law enforcement officer for the operation provides report to chief officer: | Y/N |
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| within 2 months after the completion of the authorised operation | |

| Reporting – 29(1) – Report of principal law enforcement officer must include: | Y/N |
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| the date and time when the authorised operation began and its duration | |
| the nature of the controlled conduct engaged in for the purposes of the operation | |
| details of the outcome of the operation | |
| if the operation involved illicit goods, a statement (to the extent known) of the nature and quantity of the illicit goods | |
| if the operation involved illicit goods, a statement (to the extent known) of the route through which the illicit goods passed in the course of the operation | |
| details of any loss of or serious damage to property, or any personal injuries, that occurred in the course of or as a direct result of the operation | |

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| Reporting – 30(1) - Chief officer provides report to Ombudsman: | Y/N |
| As soon as practicable after 31 March and 30 September | |

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| Reporting – 30(2) - Chief officer's report includes: | Y/N |
| Number of formal authorities granted | |
| Number of urgent authorities granted | |
| Number of applications for formal authority refused or withdrawn | |
| Number of applications for urgent authority refused or withdrawn | |
| Number of formal variations of authority granted | |
| Number of urgent variations of authority granted | |
| Number of applications for formal variation of authority refused or withdrawn | |
| Number of applications for urgent variation of authority refused or withdrawn | |
| Number of authorities cancelled | |
| Number of authorities expired | |
| Nature of the criminal activities against which the authorised operations were directed adequately described | |
| Nature of the controlled conduct engaged in for the purposes of the authorised operations adequately described | |
| If any of the authorised operations involved illicit goods, the nature and quantity of illicit goods adequately stated (to the extent known). | |
| If any of the authorised operations involved illicit goods, the route through which the illicit goods passed in the course of operations adequately stated (to the extent known). | |
| Details of any loss of, or serious damage to, property, or any personal injuries, that occurred in the course of, or as a direct result of, the authorised operations adequately stated. | |

If an authorised operation has not been completed at the end of a reporting period, details in relation to that operation other than numbers need not be included in the report for that period, but must be included in the report for the period in which the operation concludes.

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| Reporting – 30(4) – For authorised operations that had not been completed by the end of a previous reporting period but were concluded in this period | Y/N |
| Each carry over authorised operation concluded in this period is referenced in the chief officer's report | |
| Chief officer's report complies with section 30(2) for each case | |

Record retention

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| Record retention 32 - The chief officer has kept: | Y/N |
| each formal application made by a law enforcement officer of the agency | |
| each formal authority granted to a law enforcement officer of the agency | |
| each formal variation application made by a law enforcement officer of the agency | |
| each formal variation of authority granted to a law enforcement officer of the agency | |
| each cancellation of an authority that was granted to a law enforcement officer of the agency | |
| each report of a principal law enforcement officer of the agency under section 26(1) or 29 | |
| Register - 33(1) | Y/N |
| a general register is kept | |
| Register – 33(2) - In relation to each application (including for variation), the register specifies: | Y/N |
| date of the application | |
| whether the application was formal or urgent | |
| whether the application was granted, refused or withdrawn | |
| if the application was refused or withdrawn – the date and time of the refusal or withdrawal | |
| Register – 33(2) - In relation to each authority granted, the register specifies: | Y/N |
| the date and time the authority was granted | |
| whether the authority was formal or urgent | |
| the name and position of the person who granted the authority | |
| each relevant offence in relation to which controlled conduct under the authority was to be engaged in | |
| the period of validity of the authority | |
| if the authority was cancelled, the date and time of cancellation | |
| the date and time the authorised operation began and the date of completion of the operation | |
| the date on which the principal law enforcement officer for the operation gave a report on the operation to the chief officer of the agency under section 29 | |
| if the authorised operation involved illicit goods, a statement (to the extent known) of the nature and quantity of the illicit goods | |

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| if the authorised operation involved illicit goods, a statement (to the extent known) of the route through which the illicit goods passed in the course of the operation | |
| details of any loss of, or serious damage to, property, or any personal injuries, that occurred in the course of, or as a direct result of, the operation | |

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| Register – 33(2) - In relation to each variation of an authority granted, the register specifies: | Y/N |
| the date and time the variation was made | |
| whether the variation was formal or urgent | |
| the name and position of the person who made the variation | |

General compliance

There should also be broader consideration as to whether there has been compliance with Part 2.

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| Breach of Part 2 | Y/N |
| For responsible agency officers, has there been any allegation, complaint or finding during the relevant period that the agency or a law enforcement officer in the agency has acted contrary to Part 2? | |
| For Ombudsman investigators, is there anything in the materials reviewed or information provided that gives rise to a concern that the agency or a law enforcement officer in the agency may have acted contrary to Part 2? | |
