

Controlled Operations Annual Report for the period ending 30 June 2024

Section 23 Law Enforcement (Controlled
Operations) Act 1997

December 2024

Acknowledgement of Country

The Office of the Inspector of the Law Enforcement Conduct Commission acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people.

Controlled Operations Annual Report for the period ending 30 June 2024

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1 Introduction

Traditional investigation methods used by law enforcement officers are not always completely effective. The use of covert methods, such as controlled operations, have proven valuable to gather evidence for law enforcement investigations and to increase the likelihood of successful prosecutions.

As outlined, in this report, the granting of an authority to conduct a controlled operation, allows law enforcement officers and/or civilians, to participate in criminal activities. For example, a controlled operation authority might authorise Law Enforcement Participant (LEP-Y) to negotiate and buy drugs from Person of Interest (POI-X), to gather evidence of drug supply by X and if possible, identify and obtain evidence against the drug importer Person of Interest (POI-Z).

Without the immunity that a controlled operation authority provides, all participants involved in the specific criminal activities, could be prosecuted for their unlawful actions. For example, without an authority, Y could be prosecuted for possession of drugs. Furthermore, without a controlled operation authority, there is a greater risk that the evidence obtained, might be rejected in the prosecution of X or Z.

Given the immense power associated with authorising certain persons to participate in criminal activities and protect them from prosecution for such activities, the Inspector of the Law Enforcement Conduct Commission ('the Inspector') has been given the responsibility to inspect the controlled operation records of the law enforcement agencies.

This is the report of the Inspector as to his work and activities, as well as those of his delegates, referable to controlled operations, completed during the 12-month period ending on 30 June 2024.

1.1 Objectives of the Law Enforcement (Controlled Operations) Act 1997

In recognition of the importance of controlled operations, as an investigative method, the *Law Enforcement (Controlled Operations) Act* (hereafter known as "the Act") was introduced in 1997.

In New South Wales, the phrase "police operation" is typically associated with a specific police activity carefully planned before execution.

Controlled conduct means conduct which, but for sections 17 or 18 (for standard NSW controlled operations) or sections 20K or 20L of the Act (for cross-border operations), a person could be criminally liable and face prosecution. Sections 17, 18, 20K, and 20L of the Act provide protection from criminal responsibility for criminal conduct during authorised operations and for certain ancillary conduct.

A **controlled operation** undertaken by police officers or other law enforcement agencies in NSW as defined in Section 3 of the Act is a lawful controlled operation, if the operation is to be conducted for the purpose of:

- a. Obtaining evidence of criminal activity or corrupt conduct, or
- b. Arresting any person involved in criminal activity or corrupt conduct, or
- c. Frustrating criminal activity or corrupt conduct, or
- d. Conducting an activity or controlled activity that is reasonably necessary to facilitate the achievement of the above.

Like most standard police operations, controlled operations are carefully planned by law enforcement agencies before execution. In fact, it is a requirement of the Act that a plan of each proposed operation be included in any application for authorisation to conduct a controlled operation¹.

1.2 NSW and Commonwealth Law Enforcement Agencies

The Act and its associated *Law Enforcement (Controlled Operations) Regulation 2017* (hereafter referred to as ‘the Regulations’) provide the power for the chief executive officers of certain NSW and Commonwealth law enforcement agencies to authorise and conduct controlled operations in particular circumstances.

Under section 3(1) of the Act, the NSW law enforcement agencies with the power to authorise controlled operations are:

- a. NSW Police Force
- b. NSW Crime Commission
- c. NSW Law Enforcement Conduct Commission
- d. NSW Independent Commission Against Corruption

Under Clause 4 of the Regulations, the Commonwealth law enforcement agencies are:

- a. Australian Federal Police
- b. Australian Crime Commission (now part of the Australian Crime Intelligence Commission)
- c. Commonwealth Department of Immigration and Border Protection (now part of the Department of Home Affairs)

In some instances, due to the high volume of operations conducted each year, a chief executive officer might formally delegate their powers under the Act. Accordingly, references in this report to actions which can or must be taken by a chief executive officer, might be exercised by delegates, if the Act, the Regulations or another Act provide the power to delegate such functions.

Please note, typically, Commonwealth law enforcement agencies rely on the power to authorise controlled operations pursuant to Part IAB of the *Crimes Act 1914* (Cth) rather than under the Act.

2 Legislative Framework

For details of the legislation framework for controlled operations in NSW, reference should be had to the current contents of the Act itself. However, for ease in reading, a summary of the principal sections of the Act, relevant to the application, grant, execution, cancellation, lawful effect and reporting processes of law enforcement agencies, are summarised below.

¹ Section 5(2A) of the Act sets out the particulars which must be included in any application for a controlled operation, whether formal or urgent. Those particulars are summarised later in this report.

2.1 Legislative changes made during the reporting period.

There were no legislative changes to the Act during the reporting period, 1 July 2023 to 30 June 2024.

2.2 Authority for a controlled operation – s. 5

Authorising controlled operations differs from other covert investigative methods such as surveillance devices and telecommunications interceptions. These types of covert methods are authorised externally through a warrant issued by a judicial officer or other duly authorised individual. Controlled operations are authorised internally by the chief executive officer of the respective law enforcement agency.

Section 5 of the Act prescribes how an application for a controlled operation authority may be made and the particulars that must be provided in any application.

In summary, each application, must include the following:

1. an operation plan,
2. the nature of the alleged criminal or corrupt activity being investigated,
3. the nature of the controlled activity proposed,
4. whether or not there have been any previous controlled operation for the same criminal activity or corrupt conduct and if so, whether an authority was given and variation granted,
5. the names and ranks of the law enforcement officers who will be the principal law enforcement officer (PLEO) and the secondary law enforcement officer (SLEO) of the proposed operation, and
6. whether or not there is an intention to use surveillance devices in the controlled operation.

2.3 Determination of Applications – s. 6

Under section 6(1) of the Act, applications for controlled operations may be refused, authorised unconditionally or authorised subject to conditions.

A code of conduct for those involved in controlled operations is set out in Schedule 2 of the Regulations. It applies to all law enforcement agencies exercising power under the Act.

Under s. 6(3) of the Act, an authority to conduct a controlled operation may not be granted unless the chief executive officer of the law enforcement agency is satisfied as to the following matters –

- a. that there are reasonable grounds to suspect that the criminal activity or corrupt conduct has been, is being or is about to be conducted in relation to matters within the administrative responsibility of the agency,
- b. that the nature and extent of the suspected criminal activity or corrupt conduct are such as to justify the conduct of a controlled operation,
- c. that the nature and extent of the proposed controlled activities are appropriate to the suspected criminal activity or corrupt conduct,
- d. that the proposed controlled activities will be capable of being accounted for in sufficient detail to enable the reporting requirements of the Act to be fully complied with.

Section 6(4) of the Act states that in determining whether to grant a controlled operation authority, chief executive officers of the law enforcement agencies must also consider the reliability of

information provided, the nature and extent of the criminal or corrupt activity, and the likelihood of success of the proposed controlled operation.

2.4 Controlled activities that are excluded - s. 7

An authority to conduct a controlled operation must not be granted in relation to a proposed operation that involves any participant in the operation –

- a. inducing or encouraging another person to engage in criminal activity or corrupt conduct of a kind that the other person could not reasonably be expected to engage in unless so induced or encouraged, or
- b. engaging in conduct that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or to result in serious loss or damage to property, or
- c. engaging in conduct that involves the commission of a sexual offence against any person.

A person must not be authorised to participate in a controlled operation unless the chief executive officer is satisfied that the person has the appropriate skills to participate in the operation.

A civilian participant –

- a. must not be authorised to participate in any aspect of a controlled operation unless the chief executive officer is satisfied that it is wholly impracticable for a law enforcement participant to participate in that aspect of the operation, and
- b. must not be authorised to engage in a controlled activity unless it is wholly impracticable for the civilian participant to participate in the aspect of the controlled operation referred to in paragraph (a) without engaging in that activity.

2.5 Formal and Urgent Authorisations – s. 8

A formal controlled operation authority is a document (or facsimile of a document) signed by the chief executive officer.

A formal authority should not grant authorisation for a period exceeding 6 months in length, although as indicated below, such authorities can be varied and extended for further periods up to 6 months in length.

An urgent authority is typically one made by the chief executive officer orally or via telephone or radio transmission. Urgent authorities cease 72 hours after being granted, or sooner if the authority ceases to have effect.

Section 8(2) of the Act sets out the required content of an authority, whether formal or urgent.

Pursuant to clause 5 of the Regulations, the form in which a formal authority is to be granted is -

- a. Form 1, in respect of a controlled operation other than a cross-border controlled operation, or
- b. Form 2, in respect of a cross-border controlled operation.

Template copies of those forms, which contain the current requirements of s. 8(2) can be found in Schedule 1 of the Regulations.

2.6 Variation of an Authority – s. 10

Variation of an authority for a controlled operation may be made at any time before the authority ceases to have effect.

Section 10(6) of the Act describes two types of variations, formal and urgent. A formal variation involves a signed document. An urgent variation is typically granted verbally over a two-way radio or telephone.

According to section 10(1)(1A) and 10(1)(1B) of the Act, variations are made for any combination of the following reasons:

1. to extend the period the authority has effect, with a maximum of a 6-month extension for each formal variation,
2. provide alternative principal and/or secondary law enforcement officers,
3. to authorise additional or alternative participants to engage in controlled activities, and/or
4. to authorise participants to engage in additional or alternative controlled activities.

Any urgent variation made to a controlled operation authority, will cease to have effect 72 hours after it was granted, unless it ceases to have effect sooner.

2.7 Cancellation of a Controlled Operation Authority – s. 12

Sections 12(1) and 12(2) of the Act provide that an authority for a controlled operation can be cancelled at any time and for any reason, by an order in writing made by the chief executive officer of the relevant law enforcement agency. Cancellation occurs when the order is signed by the chief executive officer, or on the date and time specified in the order.

2.8 Retrospective Authority - s. 14

Pursuant to s. 14 of the Act, a principal law enforcement officer can, within 24 hours after the participant engages in additional or alternative criminal conduct, apply to their chief executive officer for retrospective authority. However, retrospective approval, is not unlimited, specific special requirements must exist for a grant of retrospective authority but the crime of murder and any other offence for which the common law defence of duress would not be available, cannot be the subject of retrospective approval.

2.9 Effect and Lawfulness of a Controlled Operation Authority – s. 13, s. 16, s. 18

A controlled operation authority allows each law enforcement and/or civilian participant to engage in the **specific** criminal activities identified in the authority. If the criminal activity(s) are approved by, and engaged in, in accordance with a controlled operation authority, pursuant to the Act, the criminal activities are not unlawful and do not constitute an offence or corrupt conduct.

In contrast, a criminal activity outside the controlled operation authority and not the subject of retrospective authority, if carried out, remains unlawful. So, for example, if a civilian participant was authorised to buy a firearm but then used it to carry out a robbery, the purchase of the gun would be lawful, as it was approved by the authorisation, however, the bank robbery would be unlawful.

2.10 Assumed names - s. 17

Participants in controlled operations may be authorised to use assumed names during an operation. Section 17 of the Act provides that actions taken in preparation of false documentation or false information to facilitate those assumed names are also not unlawful. Similarly, the use of such documentation and/or information during, and for the purposes of, an authorised operation, are not unlawful.

2.11 Exclusion of Civil Liability – s. 19

Under s. 19 of the Act, protections are provided for the chief executive officer, the principal law enforcement officer, secondary law enforcement officer, other persons acting under the direction of the former and the participants in the operation. They cannot be held personally liable for any action, claim, liability or demand, if their conduct during the controlled operation was in good faith and for the purpose of executing the Act.

2.12 Cross-Border Controlled Operation – Part 3A

A **cross-border controlled operation** is a controlled operation that is, will be, or is likely to be, conducted in this jurisdiction (NSW) and in one or more participating jurisdictions (other States or territories). Cross-border controlled operations may, but not in all cases, involve the movement of illicit goods across jurisdictions.

For controlled operations which will, or are likely to, involve the crossing from NSW into another State or Territory, the Act places additional requirements on the law enforcement agencies. There are additional criteria to be met when a chief executive officer of the law enforcement agency is determining whether to grant a cross-border controlled operation. For example, additional to the requirements in s.6, chief executive officers must also be satisfied that steps are to be taken to minimise the risk of illicit goods being under the control of persons other than law enforcement officers at the conclusion of the operation (s.20D).

An actual authority for a cross-border controlled operation must also contain additional requirements to those contained in s.8(2) of the Act. For example, the authority must identify (to the extent known) –

- i. the nature and quantity of any illicit goods that will be involved in the operation, and
- ii. the route through which those goods will pass during the operation.²

Unlike standard controlled operation authorities which can be valid for up to 6 months (unless varied), cross-border authorities can be granted for no more than 3 months (unless varied). However, whilst standard urgent controlled operations can be valid for up to 3 days, urgent cross-border authorities can be valid for up to 7 days.

² For a full list of the additional requirements, see s.20E of the Act.

Once granted, a cross-border authority permits each participant to engage in the specified controlled activities in this jurisdiction (NSW) and in the participating jurisdiction/s (states or territories) identified in the Authority.

Like participants in standard controlled operations, participants in cross-border operations are protected from certain criminal responsibility. They are protected to the extent specified in sections 20K and 20L of the Act. They are also indemnified against civil liability to the extent provided for in s. 20M of the Act.

In addition to cross-border controlled operations, authorised by NSW law enforcement agencies, the Act also recognises cross-border controlled operation authorities authorised in other states. Schedule 1 of the Act provides a list of the corresponding laws of the Commonwealth, Queensland, Victoria, the Australian Capital Territory, Tasmania and Western Australia.

2.13 Accountability of law enforcement agencies for controlled operations

There is a three-tier regime of accountability for authorised law enforcement agencies conducting controlled operations:

Internal accountability: Pursuant to s. 15 of the Act, the principal law enforcement officer of each controlled operation must provide a report to their agency's chief executive officer within 2 months after completing an authorised operation.

External accountability: As outlined below, the chief executive officer of the law enforcement agency must notify the Inspector of certain matters related to controlled operations within 21 days of their occurrence.

Inspector accountability: As mentioned previously and described in more detail below, the Inspector has the responsibility to inspect the records of law enforcement agencies pertaining to controlled operations.

2.14 Reports on controlled operations – s. 15

Clause 9 of the Regulations provides that a report referred to in section 15(2) of the Act, with respect to an authorised operation, must include the following matters –

- a. the date and time when the controlled operation began and its duration³,
- b. the nature of the controlled conduct engaged in for the purposes of the operation,
- c. details of the outcome of the operation,
- d. if the operation involved any illicit goods (within the meaning of Part 3A of the Act), a statement (to the extent known) of –
- e. the nature and quantity of the illicit goods, and
- f. the route through which the illicit goods passed in the course of the operation,

³ Some controlled operations involve a single deployment, others can involve multiple deployments over a period of time.

- g. details of any loss of, or serious damage to, property or any personal injuries occurring in the course of, or as a direct result of, the operation.

Pursuant to the Code of Conduct in the Regulations, in preparing a report on the conduct of an authorised operation, the reporting officer must at all times act in good faith.

In particular, the reporting officer must ensure that the report –

- a. discloses all information of which the officer is aware as to matters required to be included in the report, and
- b. does not contain anything significantly that is incorrect or misleading,

If the reporting officer subsequently becomes aware of –

- a. information that, had it been known to the officer when the report was prepared, should have been included in the report, or
- b. information that indicates that something significant in the report is incorrect or misleading,

the officer must ensure that the information and/or corrected information is given to the chief executive officer of their law enforcement agency as soon as is practicable.

3 Functions of the Inspector of the Law Enforcement Conduct Commission

Section 122(1) of the *Law Enforcement Conduct Commission Act 2016* (the LECC Act) states that the Inspector has the functions conferred or imposed on the Inspector by or under that or any other Act.

Section 128A of the LECC Act provides that the Inspector may delegate his functions to members of his staff. The compliance officers and senior compliance officers of the Surveillance Monitoring Unit (SMU) based in the Office of the Inspector are delegated by the Inspector to conduct inspection functions under the Act.

3.1 Inspection of the Records of Law Enforcement Agencies – s. 22

Section 22(1) of the Act states that the Inspector must inspect the records of each law enforcement agency at least once every 12 months and may inspect the records of any law enforcement agency at any time to ascertain that the requirements of the Act are being complied with.

3.2 Inspections conducted during the reporting period

During the reporting period, the Inspector only received notices of the granting of controlled operation authorities from the New South Wales Police Force (NSWPF).

The SMU has since received confirmation, in writing, that during the reporting period, no other law enforcement agencies granted an authorisation to conduct a controlled operation under the Act. In those circumstances, during the reporting period, only the controlled operation records of the NSWPF were inspected by the compliance officers of the SMU, as the other agencies had no records to inspect.

In the period from 1 July 2023 to 30 June 2024, the SMU conducted 4 inspections of the records of the NSWPF over a total of 8 days. During these inspections, 430 controlled operation files were inspected⁴.

With respect to one controlled operation, the Inspector formally required additional information from the NSWPF beyond that contained in the relevant NSWPF controlled operation file. The information sought was subsequently provided to the Inspector in a meeting held at the Office of the Inspector.

3.3 OILECC inspection methodology

During the reporting period, the compliance officers of the SMU examined the following:

- all notifications sent to the Inspector with respect to the grant of a controlled operation authority
- all notifications as to the variation of an authority
- all reports prepared by the NSWPF following completion of the operations; and
- all controlled operation files held by the Covert Applications Unit (CAU) of the NSWPF.

The inspections of the notifications involved reviewing the information contained therein and conducting enquiries of the NSWPF, as to any administrative errors or other matters of concern.

If administrative errors or other issues were identified, the SMU engaged in email correspondence with the responsible manager at the CAU. In all instances, the errors and other matters identified were resolved by the provision of amended notifications.

The inspections of the files at the CAU, focused on documentation used in the authorization process and reporting obligations for agency personnel. SMU's compliance officers cross-checked information received from notifications against the agency's original documents to ensure data consistency as well as the matters described below.

For a more comprehensive understanding of the process that was undertaken by the SMU officers, the CAU inspection of controlled operation files ascertained whether:

- Each application:
 - was formal or urgent – section 5(2)
 - contained the particulars required by section 5(2A)
 - contained the information required by clause 5(2) of the Regulations (if an urgent application) and
 - was authorised or refused (section 6(1)) and if refused, whether the reason for the refusal raised any general compliance issues in the processes and/or training of NSWPF personnel.
- The chief executive officer was provided by the applicant for the authority with any additional information which was required – section 5(3).
- The chief executive officer, before granting the authority, complied with:

⁴ This figure does not reflect the number of controlled operation authorisations granted by the NSWPF during the reporting period or completed during the period, as the SMU may inspect files on multiple occasions. For example, if a post-execution report was outstanding when a file was first inspected, the file might be inspected on a second occasion after the report is received. Likewise, a file might be re-inspected to ensure a compliance issue (an exception to an Act) previously identified at an inspection has since been rectified.

- the requirements of section 6(4), the matters to which the chief executive officer should have regard
- the requirements of section 7, the operation did not seek authorisation of activities which were banned under the Act.

The form of the authority complied with:

- the requirements of section 8, contained all requirements listed in s. 8(2) and was in the form of Form 1 in Schedule 1 of the Regulations.
- The PLEO for an authorised operation, before conducting it, complied with the requirements of the Code of Conduct to the Regulation. The PLEO or SLEO obtained an undertaking that demonstrated the civilian participants had a thorough understanding of the nature and extent of any controlled activities, in which the participant may be directed to engage, for the purposes of the operation.
- Any application for a variation of an authority:
 - was for one of the purposes identified in section 10(1)
 - complied with the requirements of section 10(1A), that is, the authority was not extended beyond 6 months at a time,
 - was granted or refused and if refused, whether the reason for the refusal raised any general compliance issues in the processes and/or training of NSWPF personnel.
- The chief executive officer of the law enforcement agency, before granting the variation, complied with the requirements of section 10(4), that is, was given information such that they could determine whether there were prospects of success, the health and safety of participants would be protected and the protection of property from loss or damage
- Any authority that was cancelled complied with the requirements of section 12.
- Any retrospective authority that was granted complied with the requirements of section 14.
- Any report required by section 15:
 - contained the details required by clause 9 of the Regulation
 - complied with the prescribed timeframe.
- Any cross-border controlled operation that was granted complied with the requirements of Part 3A.
- Any notification required by section 21:
 - contained the details specified in clauses 11-13 of the Regulations; and
 - complied with the prescribed timeframe.
- Any delegated power that was exercised complied with the requirements of section 29 of the Act and clause 14 of the Regulations.

The SMU's post-inspection process includes-

- an exit interview conducted by inspecting SMU officers with the responsible manager of the law enforcement agency
- correspondence between the SMU and the manager following the interview to address any identified inspection issues
- formal post-inspection feedback correspondence sent by the Inspector to the chief executive officer of the law enforcement agency as to the outcome of the inspection.

In addition to the inspections at CAU, with respect to the controlled operations authorised by the NSWPF, the SMU has, in the past, performed 'Operational Command Inspections'. Operational

Command Inspections involve examining controlled operation files at various commands/police stations throughout the metropolitan and country areas.

These Operational Command inspections serve as an auditing tool for OILECC's oversight functions. They are specifically carried out with respect to the NSWPF, due to extensive number of controlled operations conducted by the NSWPF. Other law enforcement agencies do not require this type of inspection as their operations and record keeping functions are centralized at their respective head offices.

During the period of this report, no Operational Command Inspections were conducted by the SMU, Previous COVID restrictions and staff changes at the SMU had reduced the inspection capacity of the SMU during the period. The engagement of an additional compliance officer at the SMU early in 2024, has assisted in inspecting the backlog of files to inspect. Operational Command Inspections are scheduled to re-commence in December 2024.

3.4 The Inspector's reporting functions - s. 23

Section 23(1) of the Act states that as soon as practicable after 30 June in each year, the Inspector must prepare a report of his work and activities under this Act for the preceding 12 months. Pursuant to the Act, the report is to be furnished to the Presiding Officer of each House of Parliament. As PLEO's and SLEO's have up to 2 months to provide their reports to the chief executive officer, the Inspector typically provides his report to Parliament towards the end of each calendar year.

The Inspector's report must include:

1. The number of formal controlled operation authorisations and variations that have been granted and refused
2. The number of urgent controlled operation authorisations and variations that have been granted
3. The nature of criminal activity or corrupt conduct against which the controlled operations were conducted
4. The number of law enforcement and civilian participants involved in the controlled operations
5. The nature of controlled activities engaged in
6. The number of law enforcement and civilian participants involved in the controlled activities

Note – The outcome section of this report, for the NSWPF below, pertains solely to authorised controlled operations that have been completed in the 12 months to 30 June 2024. If an operation has not been completed as of 30 June 2024, the particulars of the operation will be included in the report for the year in which the operation is completed.

3.5 Ancillary Matters Concerning the Inspector's Report – s. 24

Pursuant to s. 24(1) of the Act, in preparing the report, the Inspector must not endanger the health and safety of any person, disclose any investigation methodology, prejudice any investigation or legal proceedings arising from any such investigation.

Section 24(2) of the Act provides that section 142 of the *Law Enforcement Conduct Commission Act 2016* applies to a report prepared under this Part by the Inspector in the same way as it applies to an annual report prepared under section 141 of that Act.

In addition to providing a copy of this report to the Presiding Officer of each House of Parliament, the Inspector must give a copy of his report to each chief executive officer of the law enforcement agency to which the report relates and to the Minister responsible for that agency.

4 New South Wales Police Force

This section of the report sets out the outcomes of the inspections at CAU, during the inspection period, with respect to controlled operations completed during the period from 1 July 2023 to 30 June 2024.

4.1 Authorisations and Variations

4.1.1 Section 5, Applications for authorities

Between 1 July 2023 to 30 June 2024, of the files inspected by the SMU, 276 files involved operations completed during that period.

Five of the 276 grantings were for urgent controlled operations.

The inspections found that nil controlled operations were refused during the reporting period.

All applications for a controlled operation authority were granted by a delegate of the Commissioner of the Police.

4.1.2 Section 10, Variation of authority.

During the reporting period, 81 variations were granted across 54 controlled operations. Most of these 54 operations received only one variation; however, the number of variations per operation ranged from one authority variation to a maximum of five variations.

There were no urgent variations granted during the reporting period.

All applications for the variation of a controlled operation authority were granted by a delegate of the Commissioner of the Police. No variations were refused.

4.1.3 The Nature of Criminal Activity and Corrupt Conduct

Criminal activity is defined in section 3 of the Act as any activity that involves the commission of an offence by one or more persons. Corrupt conduct involves dishonesty, breach of public trust or the misuse of information gained from official roles which adversely impacts a public officials' ability to carry out their duties with honesty and fairness.

The nature of the criminal activity and corrupt conduct, the subject of investigation, for which controlled operations were authorised and conducted are listed below:

- Aggravated assault, robbery, theft and other property offences
- Bribery/ Misconduct in Public Office
- Child exploitation offences
- Dealing with the proceeds of crime
- Drug offences
- Drug and firearm offences
- Drug and other offences
- Firearm offences
- Fraud offences
- Incite violence offence
- Money laundering

- Murder
- Pervert the course of justice
- Possession and supply of illegal species
- Sexual offences
- Terrorism
- Unlawful access to police information

Despite the range of offences listed above, over 50% of the investigations involving controlled operation authorities, related to drug offences, either the supply of illegal drugs alone, or a combination of drug offences with other offences, such as drug and firearm offences, or drug offences combined with dealing with the proceeds of crime.

4.2 Law Enforcement and Civilian Participants

Of the files inspected by the SMU, the number of law enforcement participants authorised to participate in controlled operations was 6,375. However, the number of law enforcement participants who engaged in controlled operations was 397.

The significant differences, in the number of participants authorised to undertake controlled activities, compared with those who participated in the operations, is explained by the tendency for the NSWPF, with respect to certain types of operations, to seek approval of large numbers of law enforcement personnel for potential involvement in the proposed controlled operation. In such cases, it seems that the identification of the specific officers who will undertake the controlled activities will be determined later when, for example, the actual deployment dates have been established.

137 civilian participants were authorised to participate in controlled operations during the relevant period. 100 civilian participants engaged in controlled activities.

4.3 The Nature of Controlled Activities

The nature of controlled activities which were engaged in during the reporting period are broadly outlined below:

- purchasing and possession of prohibited drugs
- supplying prohibited drugs
- being knowingly concerned in the manufacture of prohibited drugs,
- money laundering and dealing with proceeds of crime
- purchasing stolen property
- purchasing and possession of prohibited firearms, firearm parts or ammunition
- engaging in online discussions regarding child abuse and/or exploitation material
- accessing restricted data
- aiding and abetting, agreeing to or acting in concert with a range of serious offences such as murder

4.4 Exceptions Identified at Inspections

Of the 276 controlled operations completed during the reporting period, the SMU identified the following exceptions to the Act and/or Regulations.

Types of Exceptions	Number	Key Issues	Corrective Actions
<p>A law enforcement participant (LEP) engaged in controlled activities but was not authorised to do so. (NSWPF self-disclosed)</p>	<p>One</p>	<p>The relevant investigation involved multiple controlled operations and multiple law enforcement participants.</p> <p>It was determined that details from an old deployment form, one in which this LEP was not involved had been inadvertently cut and paste into the draft Authority for an operation in which the LEP was to participate.</p> <p>The lack of reference to the LEP in the Authority was not identified until after the completion of the operation.</p> <p>A review subsequently conducted by an independent officer of the NSWPF, that is, one not attached to the relevant investigation, determined that the multiple operations and deployments likely contributed to the failure by the PLEO to include reference to the LEP in the application and draft authority. It also contributed to the failure of the LEP to confirm he was authorised to participate in these specific controlled activities.</p> <p>The review conducted by the NSWPF, determined that this is the first instance between 2021-2023 of a LEP erroneously not being listed in a controlled operations authority. The review found that this exception does not reflect a systemic issue within the NSWPF but was an isolated human error. Nevertheless, the NSWPF are taking steps to reduce the risk of a reoccurrence.</p>	<p>Improvement to the control of version changes to proformas used for deployment planning, such that inconsistencies cannot occur prior and during deployments.</p> <p>LEPs and civilian participants (CP) operating in all controlled operations are to be clearly identified in future controlled operation orders. Operational orders are disseminated to all authorised LEPs prior to their deployment for checking.</p> <p>The inclusion in the system of a risk mitigation form that is filled out by each LEP verifying they have checked the details of the controlled operation prior to their deployment.</p>

<p>A civilian participant engaged in an unauthorised activity and breach of code of conduct.</p> <p>(NSWPF self-disclosed)</p>	<p>Three</p>	<p>A civilian participant conducted a criminal activity that was not permitted under the Authority.⁵</p>	<p>The Delegate was informed of the unauthorised activity. The Delegate approved the continuation of the operation. The civilian participant was warned to adhere to the authorised controlled activities. There was no record of retrospective approval of the activity being granted by the Delegate.</p>
		<p>A civilian participant committed a criminal activity that was not permitted under the Authority.</p>	<p>The Delegate was informed of the unauthorised activity. The Delegate approved the continuation of the operation but with the deployment of the LEP only. There was no record of retrospective approval of the activity being granted by the Delegate.</p>
		<p>A civilian participant committed a criminal activity that was not permitted under the Authority.</p>	<p>The Delegate was informed of the unauthorised activity. The Delegate authorised the continuation of the operation with the involvement of the civilian participant. However, it was recommended that the civilian participant should not be involved in future operations.</p>
<p>Delayed conduct reports under s.15(1) of the Act</p> <p>(NSWPF self-disclosed two of the four late reports)</p>	<p>Four</p>	<p>Unless stated below, these delays (ranging between 16 to 72 days late) occurred due to logistical oversight or miscalculations of the due date by the PLEOs.</p> <p>Reports are due based on the date of completion of the operation. Previously, unless the CAU was notified of the earlier completion of the operation, CAU sent reminder notices to the PLEOs based on the expiry dates in the authorities. If PLEOs did not inform the CAU of an earlier completion date, the reminder email could be sent to the</p>	<p>The CAU has commenced sending an email to PLEOs, 45 days after a controlled operation has been granted to remind them of their reporting obligations under section 15 of the Act. The timing of this email is such that it should capture controlled operations that have ceased prior to their expiry date.</p> <p>As part of the approval process PLEOs are also now required to notify the CAU if their operation finishes early.</p>

⁵ Further details of this, and the two exceptions below, are not provided so not to potentially endanger the health and safety of the participants or prejudice any investigation or legal proceedings arising from the investigations.

		<p>PLEO after the date that the report was due.</p> <p>Two PLEOs thought a single report for all controlled operations were sufficient for compliance purposes so delayed in the provision of the report until all operations were completed.</p>	<p>The specific PLEO's involved have been reminded by the CAU of their reporting obligations. A separate report is required for each controlled operation authority.</p>
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During the inspections, several minor administrative deficiencies were identified by members of the SMU, typically date errors or inconsistencies in the contents of final reports. Each of those matters were raised with the CAU and amended reports were provided to the relevant delegates.

4.5 Concluding Comments

SMU is pleased with the increased number of self-disclosures of exceptions to the legislation. Throughout the reporting period, in most circumstances where an exception has occurred, the NSWPF has self-disclosed this exception to the SMU by way of a file note placed in the operational file or by written notification to the SMU. Of the 276 controlled operations completed during the period, only 2 additional exceptions to the Act and/or Regulations were identified by the SMU. Although it is noted a further potential exception is being examined by the SMU and might be mentioned in a future Annual Report.

The SMU continues to encourage officers of the NSWPF to self-disclose compliance issues. Self-disclosing compliance issues assists in ensuring, where appropriate, corrective action is taken as soon as possible after the exception is identified. Self-Disclosure also assists in revealing potential deficiencies in procedures and/or training which can be addressed quickly to reduce the risk of recurrence.

4.6 Recommendations

No specific recommendations are made.

5 NSW Crime Commission

The NSW Crime Commission did not conduct any controlled operations under the Act during the reporting period.

6 NSW Law Enforcement Conduct Commission

The Law Enforcement Conduct Commission did not conduct any controlled operations under the Act during the reporting period.

7 NSW Independent Commission Against Corruption

The Independent Commission Against Corruption did not conduct any controlled operations under the Act during the reporting period.

8 Australian Crime Intelligence Commission

The Australian Crime Intelligence Commission did not conduct any controlled operations under the Act during the reporting period.

9 Australian Federal Police

The Australian Federal Police did not conduct any controlled operations under the Act during the reporting period.

10 Department of Home Affairs

The Australian Border Force, which is now part of the Department of Home Affairs, did not conduct any controlled operations under the Act during the reporting period.

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