

Controlled operations

Context

Victoria Police can use a number of covert methods to gather evidence and intelligence when conducting an investigation. This includes controlled operations.

Controlled operations must be strictly managed as they can be intrusive, give members access to sensitive information and have the potential to put police members and the public at risk. As a result, they are governed by the *Crimes (Controlled Operations) Act 2004* and specific processes to ensure they are:

- used in appropriate circumstances
- used lawfully and in accordance with the properly issued authority
- undertaken by properly trained employees or authorised persons acting on behalf of Victoria Police
- recorded and reported where required.

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Definitions

- **Authorising Officer** – a police member who has been delegated the Chief Commissioner’s functions under the *Crimes (Controlled Operations) Act 2004* (the Act) relating to the authorisation of controlled operations (see Delegation IS 2). These responsibilities cannot be delegated further. The Authorising Officers are, as follows:
 - cross border and local major controlled operations – a Deputy Commissioner or an Assistant Commissioner

- local minor controlled operations – a Commander, or Superintendent of the MITaCC.
- **Controlled Operation Registry (COR)** – provides support to investigators in the Regions and Crime and is responsible for the facilitation of applications, including maintaining records and meeting reporting requirements, and quality assurance. The COR also provides a registry function for all major drug investigations and administration of the Controlled Operations Fund. The COR is part of Crime Command.
- **Controlled operation** – an operation conducted, or intended to be conducted, to obtain evidence that may lead to a prosecution of a person for an offence, which involves or may involve controlled conduct (s.6, the Act).
- **Controlled conduct** – conduct that a person would be criminally responsible for if they were not protected by s. 28 and 35 of the Act (s.7, the Act).
- **Cross-border controlled operation** – a controlled operation in respect of a Victorian offence punishable by a maximum term of imprisonment of three years or more that is, will be or is likely to be conducted in Victoria and in one or more participating jurisdiction/s.
- **Local major controlled operation** – a controlled operation that is or will be conducted wholly in Victoria, in respect of a Victorian offence which is punishable by a term of imprisonment of three years or more.
- **Local minor controlled operation** – a controlled operation that is or will be conducted wholly in Victoria, in respect of a Victorian offence which is punishable by a term of imprisonment of less than three years or by a fine.
- **Minor drug investigation** – is any drug investigation conducted by and within a Division that does not require support from other Divisions, specialist personnel or other law enforcement agencies.
- **Major drug investigation (MDI)** – is one that involves:
 - the use of specialist personnel or services
 - the cultivation, manufacture or trafficking of a commercial quantity of a drug of dependence
 - criminal groups, drug identities or any criminal action which impacts adversely on the wellbeing of a particular community
 - other law enforcement agencies
 - a clandestine drug laboratory operation
 - an application for Controlled Operations Fund allocation; see **VPMG Drug investigations**
 - a controlled operation authority.
- **Major Investigation Tasking and Coordination Committee (MITaCC)** - MITaCC considers applications on a weekly basis and is chaired by the Superintendent, Specialist Support Division, Crime Command and comprises a group of superintendents with at least one representative from:
 - Intelligence and Covert Support Command
 - Crime Command
 - Regional Operational Support.

The Committee's role includes:

- assessing applications for all local major/minor and cross border controlled operations (including drug investigations that involve controlled operations

- but excluding Professional Standards Command (PSC) investigations) before submitting them to an assistant commissioner or above for final consideration and authorisation
 - assessing and approving all major drug investigations (MDIs)
 - assessing applications for funding from the Controlled Operations Fund.
- **Principal Law Enforcement Officer (PLEO)** – the police member who is responsible for the conduct of the controlled operation (s.3, the Act).
- **Participants** – in controlled operations may include police members or civilians (such as registered human sources) acting under the supervision of a police member.
- **Victorian Inspectorate (VI)** – this role is defined in the *Victorian Inspectorate Act 2011*. The Inspector is appointed under section 18 of the Act.

Responsibilities and procedures

1. Oversight

- The *Crimes (Controlled Operations) Act 2004* (the Act) regulates the use of controlled operations by Victoria Police.
- Controlled operations are oversighted by the Victorian Inspectorate (VI).
- The Controlled Operations Registry (COR) ensures that applications meet the standards of the Major Investigation Tasking and Coordination Committee (MITaCC) and the VI.

2. Application

2.1 Formal applications

- A formal application is a written application for a non-urgent operation.
- Members should liaise with the COR when preparing a controlled operation to ensure that the material and Interpose Investigation meet the required standard.
- Members applying to conduct a controlled operation members must ensure the following has been completed:

Interpose
• The investigation: - has been recorded on Interpose - is in a covert security group - has been altered from 'Draft' status to 'Active'. • The Investigation Plan has been completed and approved by the Work Unit Manager • All relevant entities including applications, profiles, logs, targets, vehicles and locations are linked to the investigation • All information reports (IRs) have been associated to the investigation. The IRs are to support the investigation narrative, investigation plan and operational objectives. • The Controlled Operation module is completed.

Documentation	
- A Risk Assessment [VP1117] (including treatment controls) has been completed and attached - Target Profiles have been prepared for primary targets and uploaded as individual documents - The MITaCC checklist is printed and signed by applicant and attached to the Controlled Operations module.	
Consultation	
- Applications for resources have been recorded appropriately with supporting comments by the Work Unit Manager - Liaison has occurred with a Sergeant or above at any relevant work area as per the below. Appropriate comments are to be recorded in Interpose by that member.	
If the operation (one or more may apply):	then members must. . .
is to be conducted by a uniform operation unit	consult with the local DRU, RRU or CIU to access Interpose to facilitate the application process
requires the use of an undercover operative	consult with the Undercover Unit, Intelligence and Covert Support Command
relates to drugs of dependence	consult with the Drug Task Force and/or Clandestine Laboratory Squad
relates to the purchase of a firearm	consult with the Armed Crime Squad
the target is linked to an OMCG	consult with ECHO Taskforce
is part of a joint operation or investigation with another police jurisdiction	see VPM Crime Attendance and Investigation . If the operation is a cross-border operation, this must be specified on the relevant application and authority forms
Submitting the application	
The Work Unit Manager and the supervising Local Area Commander, Detective Inspector/Superintendent are then to include their recommendations on Interpose and forward this to COR via a secure link.	

- If endorsed, the COR will present the application to the MITaCC for assessment and to the relevant Authorising Officer (see Delegation IS 2).
- Additional information concerning the proposed controlled operation may be requested by the Authorising Officer.
- MDIs that do not involve controlled operations, although not governed by the Act, still follow the same process of application and approval through MITaCC; see **VPMG Drug investigations** for details.
- If the controlled operation has been the subject of a previous application, any subsequent applications are to be formal applications (s.12(3), the Act).

2.2 Urgent applications

- Section 12 of the Act makes provision for urgent applications in circumstances where the delay involved in submitting a formal application may impact the success of the operation. Members must consult with the COR regarding the degree of urgency and how the application should be progressed.

- Generally, urgent applications should be made orally, either in person or by telephone. Due to the sensitivity of the information, fax or e-mail should not be used.
- Where approval to conduct a controlled operation is urgently required outside of business hours, an application should be made by contacting the Duty Crime Superintendent via D24. The on call Tactical Intelligence Officer is available to conduct any required checks. The Duty Crime Superintendent will contact the Assistant Commissioner, Crime, for approval. These operations are considered to be high risk and will only be considered in exceptional circumstances. Refer to the Controlled Operations intranet page for further advice.
- An urgent authority is only valid for seven days.

3. Approval

3.1 Approving a formal authority

- Following assessment by the COR, an application will be progressed to the MITaCC for consideration before authorisation is obtained from the relevant Authorising Officer (see Delegation IS 2).
- The Authorising Officer must determine whether the application meets the relevant conditions within ss. 14 – 17 of the Act, including:
 - cross-border controlled operations (s.15)
 - local major controlled operations (s.16)
 - local minor controlled operations (s.17)
 - any additional matters specifically relating to the controlled operation.
- The Authorising Officer must only authorise the application if all of the relevant legislative conditions within the Act have been met.
- Controlled operations must only be conducted for the duration which the authority is valid, unless cancelled before this time expires (s.19 of the Act):

Controlled Operation type	Duration	
	Formal	Urgent
Local Minor	7 days	7 days
Local Major	3 months	7 days
Cross Border	3 months	7 days

3.2 Approving an urgent authority

- For urgent applications, the Authorising Officer must ensure that written notes are made and submitted to the COR as soon as practicable in accordance with s.18 of the Act. These notes are essentially identical to the Interpose Controlled Operations Module and are available on the COR intranet page.
- The Duty Superintendent (Crime) is responsible for the compilation of notes and may require the applicant to provide these notes in the first instance.
- These notes must be retained and forwarded to the COR. The following applies:
 - **written authority** - the Authorising Officer should record their decision on the authority and return the authority to the COR
 - **authority provided by telephone** – the applicant is required to provide information in accordance with the details sought in s.18 of the Act. The

Authorising Officer should ensure notes from the conversation and relevant details are recorded and advise the applicant of the decision. The Authorising Officer should forward the advice of the decision and relevant notes to the COR as soon as practicable.

- The urgent provisions do not affect members' responsibilities to ensure effective risk management.

3.3 *Variation of authorities*

- To apply for a variation, members should complete the variations section of Interpose Controlled Operation record. Members must liaise with the COR regarding intended variations.
- The Authorising Officer may vary an authority to conduct a controlled operation:
 - on application by the PLEO, or another member on their behalf; or
 - on their own initiative.
- A variation can be made for any one or more the following purposes:
 - to extend the period of validity of the authority, except where it is an authority for a local minor controlled operation (whether formal or urgent) or an urgent authority for a cross-border or local major controlled operation
 - to authorise additional or alternative persons to engage in controlled conduct for the purposes of the operation
 - to authorise participants in the operation to engage in additional or alternative controlled conduct
 - to identify additional suspects (to the extent known).
- The variation application signed by the AC should be forwarded to the COR, using a secure Interpose link.
- More than one application for a variation may be made in respect of the same authority, but a single variation must not extend the period of the authority's validity for more than three months at a time.
- Variations to an authority must not be authorised if they significantly alter the nature of the original authorised operation.
- If there is a significant alteration to the controlled operation originally authorised, a new controlled operation application is required and should be made in accordance with the procedure outlined above.

3.4 *Cancellation of authorities*

- An authority to conduct a controlled operation may be cancelled at any time and for any reason by the Authorised Officer:
 - on the request of the PLEO, or another member on their behalf; or
 - on their own initiative; or
 - on the recommendations of the COR and MITaCC.
- If the Authorising Officer is cancelling the authority, an Order for Cancellation of Authority should be prepared by the COR who are responsible for recording the decision and ensuring relevant notifications are made.
- If the PLEO requests cancellation of an authority, this should be detailed within the controlled operations module in Interpose and progressed to the Crime / Regional Operational Support Superintendent and the COR for immediate action.

- The cancellation of the authority takes effect at the time the order is made or at a later time specified on the order.

4. Risk management and planning

- The applicant work unit is responsible for ensuring risk assessment and planned treatment controls have been completed as part of the application.
- The MITaCC is responsible for ensuring that all approved applications have appropriate risk identification and treatment controls.
- The superintendent with management of the applicant work unit is responsible for ensuring that the identified risk level is communicated to the applicant work unit, and that appropriate risk planning is in place.
- During the conduct of the operation, the PLEO and their Work Unit Manager are responsible for ensuring that the planned risk treatment controls are enacted appropriately.

5. Conduct of the controlled operation

- The PLEO must ensure all participants are fully briefed on the operation to ensure it is conducted in accordance with the authority and within the limits outlined in the Act.
- Participants will be protected from criminal responsibility and civil liability for controlled conduct that they may engage in during the authorised operation, provided the conduct is authorised by and in accordance with the authority for the operation.
- Civilian participants are required to act in accordance with the instructions of a police member.
- The PLEO must ensure that the conduct of the controlled operation will:
 - be limited to the maximum extent consistent with conducting an effective controlled operation
 - as is reasonably necessary to achieve the purpose of the operation, minimise the risk of illicit goods being under the control of persons other than police at the completion of the operation
 - not involve a participant intentionally inducing a person to commit an offence that the person would not have otherwise intended to commit
 - not seriously endanger the health or safety of any person
 - not cause death of, or serious injury to, any person
 - not involve the commission of a sexual offence against any person
 - not involve the unlawful loss of, or serious damage to property (other than illicit goods)
 - not involve assigning a role to a civilian participant, where the role can be adequately performed by a law enforcement officer.
- The PLEO must notify the COR regarding any subsequent loss, damage or injury incurred as a direct result of the controlled operation as soon as practicable after such an event as per section 7.3 of this policy.

6. Handling of authorities and document security

- Documents must be classified in accordance with **VPM Information categorisation, collection and recording**.

- Only the COR are permitted to print and store the authority.
- Members will not be supplied with a copy of the relevant Controlled Operation Authority or Variation. The original will be stored by the COR and details recorded on Interpose.
- The Controlled Operation authority must not be included in any brief of evidence, including a hand up brief.
- COR is responsible for answering subpoena requests and assisting with issues of public interest immunity. If the Authority or other Controlled Operations documentation is subpoenaed, members must not provide any comment or such documentation without first consulting with the COR.

7. Reporting requirements

7.1 *COR role*

The COR is responsible for preparing reports on behalf of the Chief Commissioner for submission to the Victorian Inspectorate as required by s.38 of the Act.

7.2 *PLEO's Report*

- Within two months of the expiration of a controlled operation authorisation, the PLEO must complete a Principal Law Enforcement Officer's Report on the Conduct of a Controlled Operation (s.37, the Act). This is located in the Controlled Operations module of Interpose.
- Once the report is completed, the PLEO should send an Interpose link to the COR for recording and subsequent reporting to the Office of the Chief Commissioner.

7.3 *Personal injury and property loss/damage*

- The PLEO must submit a report to the COR as soon as practicable if, in the course of or as a direct result of an approved operation, the following occurs (s.34, the Act):
 - loss or serious damage to property
 - personal injury (see s.34).
- The report must include details of the incident and any subsequent action taken. The COR will then notify the MITaCC and Authorising Officer of the details of the incident.

7.4 *Report to the Victorian Inspectorate*

After 30 June and 31 December each year, the Chief Commissioner must report on the authorised controlled operations conducted by Victoria Police during the previous six months to the VI as per s.38 of the Act. The COR is responsible for collating the necessary data for these reports.

8. Professional Standards Command

- Controlled operations conducted by Professional Standards Command (PSC) are subject to the same authorising, recording and reporting requirements under the Act. However, due to the sensitive nature of their investigations, PSC will manage controlled operations separately.

- PSC must use the same forms and apply the same general process documented in this policy, with the following exceptions:
 - applications will not be considered through the MITaCC approval process. PSC is responsible for managing appropriate application and authorisation processes; and
 - controlled operations records and documents will not be maintained by COR. PSC must maintain their own registries and substitute the relevant register wherever COR is referred to.
- PSC must maintain local instructions to address how controlled operations will be authorised and recorded.
- PSC must provide relevant data to the COR so that reporting requirements can be met.

9. Controlled Operations Fund

- Allocations from the Controlled Operations Fund for the purchase of illicit goods in a controlled operation are made, upon application, at the discretion of the MITaCC.
- Applications to the MITaCC for a Controlled Operations Fund allocation should be made by adding a suitable comment to the Interpose controlled operations record, uploading a buy plan, and referring the Interpose controlled operations record to:
 - the regional Operational Support Superintendent, via the relevant line of management for regional applications; or
 - the relevant Superintendent for Crime, Counter Terrorism and Intelligence and Covert Support Command applications.
- On approving an application by adding a suitable comment to the Interpose investigation record, the authorising superintendent should notify the COR by sending an email with a link to the Interpose record.
- The PLEO is responsible for managing allocations from the Controlled Operations Fund, including recording any spends and organising any return of funds.

10. Victorian Inspectorate

- The role of the Victorian Inspectorate is to inspect records to ensure compliance as detailed s.42, the Act.
- The Victorian Inspectorate has a range of powers including powers of entry and access, powers to ask questions, request production and take copies of documents. Employees must give all reasonable assistance to the Victorian Inspectorate and Victorian Inspectorate Inspection Officers to facilitate inspections.
- Except in the course of a Victorian Inspectorate inspection process, all communications with the Victorian Inspectorate and Victorian Inspectorate Inspection Officers must be made through the relevant Assistant Commissioner.

Further advice and information

For further advice and assistance regarding this Policy, contact the Controlled Operations Registry, Crime Command on 03 8690 2812.

Email: CRIME-CONTROLLEDOPERATIONSREGISTRY-MGR PBEA

Update history

DATE UPDATED	SUMMARY OF CHANGE	FORCE FILE NUMBER
06/11/2019	Converted from VPMG Controlled operations and minor amendments made re MITaCC, Victorian Inspectorate, application process and risk management responsibilities.	FF-124701