

*Criminal Investigation  
(Covert Powers) Act 2012*

Annual Report  
1 July 2020 - 30 June 2021

Western Australia Police Force

8 March 2022



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## EXECUTIVE SUMMARY

- [1] The *Criminal Investigation (Covert Powers) Act 2012* (CICP Act) Part 2 facilitates criminal investigation and intelligence-gathering in relation to criminal activity by providing for the authorisation, conduct and monitoring of covert law enforcement controlled operations.
- [2] Controlled operations are law enforcement operations that involve or may involve controlled conduct to target criminal activity. Controlled conduct is conduct for which a person would be criminally responsible if the person were not protected by a controlled operation authority.
- [3] The CICP Act allows controlled operation authorisations to be granted by the Western Australia Police Force (WA Police) senior officers.<sup>1</sup>
- [4] The Commission is required to inspect the records of each law enforcement agency at least once every 12 months to determine the extent of compliance with Part 2 of the CICP Act by the agency and law enforcement officers of the agency.<sup>2</sup>
- [5] This report sets out the results of the inspections for WA Police during the period 1 July 2020 to 30 June 2021 and provides details as to the work and activities of the WA Police in relation to controlled operations. For the most part, the Commission undertook inspections of WA Police completed controlled operation records fortnightly during the reporting year. This ensured the Commission had sufficient time to consider controlled operation records and promptly communicate any errors or issues to WA Police, reducing the likelihood of such issues occurring again.
- [6] There has been a significant increase in the number of controlled operations completed in this reporting year compared to previous years. During this reporting period WA Police completed 95 controlled operations. Twenty nine of those controlled operations were subject to two controlled operation authorities. As a result, 124 authorisations were granted for participants to engage in controlled conduct. Within the 95 completed controlled operations, 19 variations of authority were granted.
- [7] WA Police had a high level of compliance with the CICP Act. Specific incidents of non-compliance are included in this report and have been raised by the Commission with WA Police.

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<sup>1</sup> CICP Act s 43(1).

<sup>2</sup> CICP Act s 41(1).

- [8] The Commission sought further information from WA Police about a number of controlled operations completed during the reporting year to assist in determining the extent of compliance with CICP Act Part 2, particularly where it was unclear from initial review of controlled operation records as to the extent of compliance.
- [9] Provision of additional information enabled the Commission to confirm CICP Act Part 2 had been complied with. Some controlled operations are still under consideration by the Commission at the time of this report. The extent to which those controlled operation records complied with the CICP Act will be reported on in the 2021 - 2022 Annual Report.
- [10] A positive working relationship between the Commission and WA Police continues. The Commission commends the Special Operations Applications Unit (SOAU) for its ongoing assistance, for being receptive to the Commission's feedback and continually developing its processes to improve compliance with CICP Act Part 2.
- [11] Throughout this Annual Report the Commission has replaced WA Police controlled operation authority numbers with a "Commission reference number". This is a precautionary measure to minimise the likelihood of the identification of any controlled operation. A Commission reference has also been allocated to refused applications for a controlled operation authority (45-20/21, 103-20/21 and 123-20/21 refer).
- [12] Some examples of non-compliance might be considered trivial or technical. However the Commission approaches its function of review very seriously. A controlled operation allows activity that would be unlawful without authorisation. It is proper that the process is scrutinised to ensure compliance and even minor errors are noted.

# CHAPTER ONE

## LEGISLATIVE REQUIREMENTS

- [13] The CICP Act requires the Commission to prepare a report of the work and activities of relevant law enforcement agencies with respect to controlled operations for the preceding 12 months as soon as practicable after 30 June each year.<sup>3</sup>
- [14] The Commission must provide the Minister and the Chief Officer of the law enforcement agency with a copy of the report.<sup>4</sup> The Chief Officer of WA Police is the Commissioner of Police.
- [15] The report must not disclose any information that identifies any suspect or participant in an authorised operation or that is likely to lead to such a person being identified.<sup>5</sup>
- [16] The report must include, for each law enforcement agency concerned, comments by the Commission on the comprehensiveness and adequacy of the Chief Officer's reports which are required to be submitted to the Commission twice a year.<sup>6</sup>
- [17] The Chief Officer of each agency must inform the Minister of any information in the Commission's Annual Report that, in the Chief Officer's opinion, should be excluded before the report is laid before each House of Parliament because the information, if made public, could reasonably be expected to:<sup>7</sup>
- endanger a person's safety; or
  - prejudice an investigation or prosecution; or
  - compromise any law enforcement agency's operational activities or methodologies.
- [18] If the Minister is satisfied as to the grounds for exclusion of material from the report, the Minister must exclude the information and insert a statement to the effect that information has been excluded from the report.<sup>8</sup>

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<sup>3</sup> CICP Act s 38(1). In order to comply with its functions, it is necessary for the Commission to inspect all Principal Law Enforcement Officer (PLEO) reports for completed controlled operations and to await provision of the agency's Chief Officer s 37 report post 30 June. This impacts upon when the Commission is able to complete its Annual Report.

<sup>4</sup> CICP Act s 38(1).

<sup>5</sup> CICP Act s 38(6).

<sup>6</sup> CICP Act s 38(5).

<sup>7</sup> CICP Act s 38(2).

<sup>8</sup> CICP Act s 38(3).

- [19] The Minister is to cause a copy of the report to be laid before each House of Parliament within 15 sitting days of receipt of the report.<sup>9</sup>
- [20] A copy of this report was provided to the Office of the Minister for Police on 8 March 2022.

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<sup>9</sup> CACP Act s 38(4).

## CHAPTER TWO

### WA POLICE CONTROLLED OPERATIONS

#### 2.1 Summary of work and activities of the WA Police with respect to controlled operations

- [21] During this reporting period of 1 July 2020 to 30 June 2021:<sup>10</sup>
- 110 controlled operation authorities were granted:<sup>11</sup>
    - (i) 89 authorities were formal authorities;
    - (ii) 21 were urgent authorities;
    - (iii) 101 were local controlled operation authorities; and
    - (iv) 9 were cross-border controlled operation authorities.
  - 35 variations of authority were granted;
  - 3 applications for a controlled operation were refused authority; and
  - 95 controlled operations were completed.

#### 2.2 Controlled operations completed during this reporting period

- [22] During this reporting period 95 controlled operations were completed.<sup>12</sup> Twenty nine of those controlled operations were subject to two authorities, totalling 124 authorities.
- [23] Twenty one urgent controlled operation authorities were granted in response to urgent applications.
- [24] Nineteen variations of authority were granted in relation to 14 of the 95 completed controlled operations.<sup>13</sup> Two of those variations were urgent variations. Some controlled operations were varied on more than one occasion.

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<sup>10</sup> The figures recorded in section 2.1 are as reported by WA Police in their Chief Officer's reports.

<sup>11</sup> This figure encompasses both controlled operations that were completed during the reporting period and controlled operations that were ongoing at the end of this reporting period.

<sup>12</sup> This figure includes controlled operations granted during a previous reporting period but completed during this reporting period and controlled operations granted and completed during this reporting period. The number of controlled operations completed during the reporting year therefore does not correlate with the number of controlled operation authorities granted during the same period.

<sup>13</sup> Three of the variations were granted during the previous reporting period and 16 were granted during this reporting period.

- [25] Four of the completed controlled operations were authorised as cross-border controlled operations.<sup>14</sup> The other 91 completed controlled operations were local controlled operations.
- [26] No applications were made for a retrospective authority.
- [27] One hundred and twenty four controlled operation authorities were cancelled or expired during this reporting year. Of those, 88 controlled operation authorities were cancelled and 36 controlled operation authorities expired.
- [28] Table 1 below shows the number of completed controlled operations and the number of variations granted to those controlled operation authorities for the last five reporting years.

<b>Table 1</b> <b>Yearly comparison of completed controlled operations and variations to completed controlled operation authorities</b>					
	<b>2016/2017</b>	<b>2017/2018</b>	<b>2018/2019</b>	<b>2019/2020</b>	<b>2020/2021</b>
<b>Controlled Operations Completed</b>	38	51	74	75	95
<b>Variations of Authorities</b>	5	16	34	21	19

- [29] Of the 95 completed controlled operations, 53 involved authorised participants engaging in controlled conduct.
- [30] Controlled operation authorities generally provide authority for a number of law enforcement participants to engage in controlled conduct.<sup>15</sup> In total, the authorities authorised 885 law enforcement

<sup>14</sup> According to WA Police records, after one of the four cross-border controlled operations was authorised, namely 52-20/21, WA Police concluded the operation should have been classified as a local controlled operation. Refer to Table 9 for further information.

<sup>15</sup> For operational flexibility, multiple law enforcement officers may be authorised as participants in a controlled operation. There may be no intention for all officers to participate in the operation.

participants and 49 civilian participants to engage in controlled conduct.<sup>16</sup>

- [31] The nature of the criminal activity targeted by WA Police in completed controlled operations is detailed in Table 2 overleaf. Several controlled operations targeted more than one type of criminal activity but a majority of controlled operations were drug related, with approximately 73% of controlled operations targeting drug offences.<sup>17</sup>

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<sup>16</sup> These figures reflect the total number of law enforcement and civilian participants authorised across all authorities, including variations of an authority. The same participant may be included in this figure more than once if they were authorised as a participant in more than one controlled operation.

<sup>17</sup> Refer to Appendix A for the nature of the criminal activity targeted in each of the controlled operations.

<b>Table 2</b> <b>Nature of criminal activity targeted in completed controlled operations</b>	
<b>Nature of criminal activity targeted</b>	<b>Number of controlled operations in which the criminal activity was targeted</b>
Drug offences	69
Property laundering	18
Possession of unlawfully obtained property (including cash)	14
Use of electronic communications to engage in sexual related offences against persons under 16 years	10
Firearms offences	6
Attempting to procure the commission of an indictable offence <sup>18</sup>	3
Burglary	2
Conspiracy/Attempt to pervert the course of justice	2
Murder	1
Doing an act intended to cause grievous bodily harm	1
Sexual offences against children	1
Corruption of a witness/procuring a witness to make a false statement on oath	1
Fraud	1

<sup>18</sup> The indictable offences included murder and grievous bodily harm.



## **2.3 Record keeping by WA Police**

[32] The CICP Act sets out record keeping requirements for agencies.<sup>19</sup> The files relating to completed controlled operations were inspected by the Commission to ensure they contained:

- each application;
- each authority;
- each variation application and variation of authority;
- each order cancelling an authority;
- each retrospective authority granted under CICP Act s 25; and
- each report of a Principal Law Enforcement Officer (PLEO) under CICP Act s 36.

[33] WA Police complied with the record keeping requirements.

## **2.4 Result of operations**

### **Charges**

[34] As a direct result of controlled conduct, 26 controlled operations resulted in charges. This equates to approximately 27.4% of controlled operations resulting in charges as a direct result of the controlled operation. In some instances, charges may not have been laid as a direct result of controlled conduct but information gathered during the operation may have resulted in other investigative methods being used that may have led to criminal charges.

### **Seizures**

[35] As a direct result of controlled conduct, seizures of illicit goods were made in 34 of the completed controlled operations. This equates to about 35.8% of all completed controlled operations resulting in seizures as a direct result of controlled conduct. A significant number of controlled operations also indirectly resulted in seizures of considerable quantities of illicit goods.

[36] The total amounts of illicit goods seized are shown in Table 3.

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<sup>19</sup> CICP Act s 39.

<b>Table 3</b> <b>Quantities of illicit goods seized as a direct result of controlled conduct and under the control of WA Police at the end of the controlled operation</b>	
<b>Illicit goods seized</b>	<b>Quantity</b>
Methylamphetamine	21.29 kilograms
Cash (believed to have been unlawfully obtained)	In excess of \$2.3 million
Cocaine	131.41 grams
Cannabis	58.5 grams
Ephedrine	54.19 grams
MDMA (3,4-methylenedioxymethamphetamine)	23.27 grams
MDMA (tablets/capsules)	19
Substance purporting to be MDMA	11.96 grams
LSD (tabs)	13
Heroin	3 grams
Indecent matter <sup>20</sup>	10 images 2 videos 1 written matter

[37] Additional controlled operation authorities are sometimes granted as a result of intelligence gathered during controlled operations. However, a controlled operation is generally only one aspect of a wider investigative strategy.

[38] Many operations which include a controlled operation also resulted in numerous seizures, arrests and charges as part of the wider WA Police investigative strategy, albeit not as a direct result of controlled conduct. Those seizures, arrests and/or charges are not addressed in this Annual Report given they are not a direct result of controlled conduct.

<sup>20</sup> As defined in *Criminal Code* s 204B(1).

## 2.5 Chief Officer reports

[39] The Chief Officer of WA Police is required to submit a report to the Commission as soon as practicable after 30 June and 31 December each year.<sup>21</sup> The report must set out, for the relevant six month period:

- the number of formal and urgent authorities granted or varied by the Authorising Officer for the agency;
- the number of formal and urgent applications for the granting or variation of authorities that have been refused by the Authorising Officer for the agency;
- the number of authorities cancelled by the Authorising Officer for the agency, or that have expired;
- the nature of the criminal activities against which the authorised operations were directed;
- the nature of the controlled conduct engaged in for the purposes of the authorised operations;
- if any of the authorised operations involved illicit goods, the nature and quantity of the illicit goods and the route through which the illicit goods passed;
- any loss or serious damage to property or any personal injuries occurring in the course of or as a direct result of the authorised operations;
- any seizure, arrest and prosecution arising from the authorised operations; and
- the operations must be classified into cross-border controlled operations and local controlled operations.

[40] The Chief Officer's report must not disclose any information that identifies any suspect or participant in an authorised operation or that is likely to lead to such a person being identified.<sup>22</sup>

[41] For the period 1 July to 30 December 2020, the Commission received the Chief Officer's reports from WA Police on 8 March 2021 and 12 March

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<sup>21</sup> CICP Act s 37(1).

<sup>22</sup> CICP Act s 37(5).

2021 for Internal Affairs Unit (IAU) and SOAU controlled operations, respectively.<sup>23</sup>

- [42] For the period 1 January to 30 June 2021, the Commission received the Chief Officer's reports on 15 July 2021 and 13 September 2021 for IAU and SOAU controlled operations, respectively.
- [43] The Commission identified some errors in the Chief Officer's reports for the July to December 2020 period and the January to June 2021 period, primarily in relation to the number of authorities granted and the number of authorities that were cancelled or expired during the relevant reporting period. These issues were raised with WA Police and corrected.
- [44] In accordance with the CICP Act, the Commission must comment on the comprehensiveness and adequacy of the reports provided by the Chief Officer of each law enforcement agency.<sup>24</sup> The Chief Officer's reports from WA Police were comprehensive and adequate, with the exception of the issues reported in the tables below.

<b>Table 4</b> <b>Chief Officer's s 37 report for the period of 1 July to 31 December 2020</b> <b>(Special Operations Application Unit)</b>	
<b>CICP Act requirement</b>	<b>Defect</b>
<b>s 37(2)(h)</b>  Seizures, arrests and prosecutions	<p>The Chief Officer's report stated no illicit goods were seized in 68-20/21 as was reported in the PLEO report for 68-20/21 but a seizure had arisen from the controlled operation.</p> <p>The omission of the seizure from the PLEO report was rectified in an addendum inspected by the Commission but at the time the Chief Officer's report was prepared details of the seizure were likely not known by the Chief Officer. The Commission informed the Chief Officer of this defect by way of correspondence.</p>

<sup>23</sup> Controlled operation records of WA Police are now managed separately by IAU and SOAU. The Commission therefore usually receives two s 37 reports from WA Police for each six month reporting period, one pertaining to IAU controlled operations and the other to SOAU controlled operations.

<sup>24</sup> CICP Act s 38(5).

<b>Table 5</b> <b>Chief Officer's s 37 report for the period of 1 January to 30 June 2021</b> <b>(Special Operations Application Unit)</b>	
<b>CICP Act requirement</b>	<b>Defect</b>
<b>s 37(2)(a)</b>  Number of formal authorities granted	The number of formal authorities reported as having been granted during the reporting period was inaccurate.  This calculation error was addressed by WA Police by way of an amended Chief Officer's report.
<b>s 37(2)(b)(i)</b>  Number of urgent authorities granted	The number of urgent authorities reported as having been granted during the reporting period was inaccurate.  This calculation error was addressed by WA Police by way of an amended Chief Officer's report.
<b>s 37(2)(g)</b>  Cancelled and expired authorities	The number of cancelled authorities and the number of expired authorities reported was inaccurate.  These calculation errors were addressed by WA Police by way of an amended Chief Officer's report.

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## CHAPTER THREE

### OUTCOME OF INSPECTIONS

[45] The Commission inspected all completed controlled operation documents including:

- applications;
- forms of authority;
- applications and authorities to vary an authority;
- principal law enforcement officer (PLEO) reports;
- Authorising Officer checklists; and
- other relevant records.

[46] Table 6 demonstrates compliance by WA Police with various sections of the CICP Act. In some instances the Commission has exercised discretion and not reported on minor administrative issues that, in the Commission's view, are inconsequential to compliance with the CICP Act or issues that were rectified by WA Police once raised by the Commission.

<b>Table 6</b> <b>Compliance with the <i>Criminal Investigation (Covert Powers) Act 2012</i></b>							
Commission reference number	Application complied with s 10 criteria	Authorising Officer considered s 12 criteria	Authorising Officer considered s 13 or 14 criteria	Authority/Variation of authority complied with s 15 or 21 criteria	PLEO report submitted within two months (s 36(1))	PLEO report complied with s 36(2) criteria	General register complied with s 40 criteria
01-20/21	✓	✓	✓	✓	✓	✓	✓
01-20/21 variation	N/A	✓	✓	✓	✓	✓	✓
02-20/21	✓	✓	✓	✓	✓	✓	✓

<b>Commission reference number</b>	<b>Application complied with s 10 criteria</b>	<b>Authorising Officer considered s 12 criteria</b>	<b>Authorising Officer considered s 13 or 14 criteria</b>	<b>Authority/Variation of authority complied with s 15 or 21 criteria</b>	<b>PLEO report submitted within two months (s 36(1))</b>	<b>PLEO report complied with s 36(2) criteria</b>	<b>General register complied with s 40 criteria</b>
03-20/21	✓	✓	✓	✓	✓	✓	✓
03-20/21 variation	N/A	✓	✓	✓	✓	✓	✓
04-20/21	✓	✓	✓	Refer to Table 12	✓	✓	✓
05-20/21	✓	✓	✓	✓	✓	Refer to Table 14	Refer to Table 21
05-20/21 variation	N/A	✓	✓	✓	✓	✓	Refer to Table 17
06-20/21	✓	✓	✓	✓	✓	Refer to Table 14	Refer to Table 21
07-20/21	✓	✓	✓	✓	✓	✓	✓
07-20/21 variation	N/A	✓	✓	✓	✓	✓	✓
08-20/21	✓	✓	✓	✓	✓	✓	✓
09-20/21	✓	✓	✓	✓	✓	✓	✓
10-20/21	✓	✓	✓	✓	✓	✓	✓
11-20/21	✓	✓	✓	✓	✓	✓	✓
12-20/21	✓	✓	✓	✓	✓	✓	✓
12-20/21 variation 1	N/A	✓	✓	✓	✓	✓	✓
12-20/21 variation 2	N/A	✓	✓	✓	✓	✓	✓



<b>Commission reference number</b>	<b>Application complied with s 10 criteria</b>	<b>Authorising Officer considered s 12 criteria</b>	<b>Authorising Officer considered s 13 or 14 criteria</b>	<b>Authority/Variation of authority complied with s 15 or 21 criteria</b>	<b>PLEO report submitted within two months (s 36(1))</b>	<b>PLEO report complied with s 36(2) criteria</b>	<b>General register complied with s 40 criteria</b>
<b>12-20/21 variation 3</b>	N/A	✓	✓	✓	✓	✓	✓
<b>13-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>14-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>15-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>16-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>17-20/21</b>	✓	✓	✓	✓	✓	✓	Refer to Table 21
<b>18-20/21</b>	✓	✓	✓	✓	✓	✓	Refer to Table 21
<b>19-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>20-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>21-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>22-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>23-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>24-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>25-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>26-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>27-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>28-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>29-20/21</b>	✓	✓	✓	✓	✓	✓	✓

<b>Commission reference number</b>	<b>Application complied with s 10 criteria</b>	<b>Authorising Officer considered s 12 criteria</b>	<b>Authorising Officer considered s 13 or 14 criteria</b>	<b>Authority/Variation of authority complied with s 15 or 21 criteria</b>	<b>PLEO report submitted within two months (s 36(1))</b>	<b>PLEO report complied with s 36(2) criteria</b>	<b>General register complied with s 40 criteria</b>
30-20/21	✓	✓	✓	✓	✓	✓	✓
31-20/21	✓	✓	✓	✓	✓	✓	✓
32-20/21	✓	✓	✓	✓	✓	✓	✓
33-20/21	✓	✓	✓	✓	✓	✓	✓
34-20/21	✓	✓	✓	✓	✓	✓	✓
35-20/21	✓	✓	✓	✓	✓	✓	✓
36-20/21	✓	✓	✓	✓	✓	✓	Refer to Table 20
37-20/21	✓	✓	✓	✓	✓	✓	✓
38-20/21	✓	✓	✓	✓	✓	✓	✓
39-20/21	✓	✓	✓	✓	✓	✓	✓
40-20/21	✓	✓	✓	✓	✓	✓	✓
41-20/21	✓	✓	✓	✓	✓	✓	✓
42-20/21	✓	✓	✓	✓	✓	✓	✓
43-20/21	✓	✓	✓	✓	✓	✓	✓
44-20/21	✓	✓	✓	✓	✓	✓	✓
45-20/21 <sup>25</sup>	✓	✓	✓	N/A	N/A	N/A	✓
46-20/21	✓	✓	✓	✓	✓	✓	✓
47-20/21	✓	✓	✓	✓	✓	✓	✓

<sup>25</sup> 45-20/21 was a refused application and therefore not all criteria are applicable.

<b>Commission reference number</b>	<b>Application complied with s 10 criteria</b>	<b>Authorising Officer considered s 12 criteria</b>	<b>Authorising Officer considered s 13 or 14 criteria</b>	<b>Authority/Variation of authority complied with s 15 or 21 criteria</b>	<b>PLEO report submitted within two months (s 36(1))</b>	<b>PLEO report complied with s 36(2) criteria</b>	<b>General register complied with s 40 criteria</b>
48-20/21	✓	✓	✓	✓	✓	✓	✓
48-20/21 variation	N/A	✓	✓	✓	✓	✓	✓
49-20/21	✓	✓	✓	✓	✓	✓	✓
50-20/21	✓	✓	✓	✓	✓	✓	✓
51-20/21	✓	✓	✓	✓	✓	✓	✓
52-20/21	✓	✓	Refer to para [82]	Refer to Table 9	✓	Refer to Table 15	Refer to Tables 18 & 19
53-20/21	✓	✓	✓	✓	✓	✓	✓
54-20/21	✓	✓	✓	✓	✓	✓	✓
55-20/21	✓	✓	✓	✓	✓	✓	✓
56-20/21	✓	✓	✓	✓	✓	✓	✓
57-20/21	✓	✓	✓	✓	✓	✓	✓
58-20/21	✓	✓	✓	✓	✓	✓	✓
59-20/21	✓	✓	✓	✓	✓	✓	✓
60-20/21	✓	✓	✓	✓	✓	✓	✓
61-20/21	✓	✓	✓	✓	✓	✓	✓
62-20/21	✓	✓	✓	✓	✓	✓	✓
63-20/21	✓	✓	✓	✓	✓	✓	✓

<b>Commission reference number</b>	<b>Application complied with s 10 criteria</b>	<b>Authorising Officer considered s 12 criteria</b>	<b>Authorising Officer considered s 13 or 14 criteria</b>	<b>Authority/Variation of authority complied with s 15 or 21 criteria</b>	<b>PLEO report submitted within two months (s 36(1))</b>	<b>PLEO report complied with s 36(2) criteria</b>	<b>General register complied with s 40 criteria</b>
<b>63-20/21 variation</b>	N/A	✓	✓	✓	✓	✓	✓
<b>64-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>65-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>65-20/21 variation</b>	N/A	✓	✓	✓	✓	✓	✓
<b>66-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>67-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>68-20/21</b>	✓	✓	✓	Refer to Table 11	✓	✓	✓
<b>69-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>70-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>70-20/21 variation</b>	N/A	✓	✓	✓	✓	✓	✓
<b>71-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>72-20/21</b>	✓	✓	✓	✓	Refer to Table 13	✓	✓
<b>73-20/21</b>	✓	✓	✓	✓	Refer to Table 13	✓	✓
<b>74-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>75-20/21</b>	✓	✓	✓	✓	✓	✓	✓
<b>76-20/21</b>	✓	✓	✓	✓	✓	✓	✓

<b>Commission reference number</b>	<b>Application complied with s 10 criteria</b>	<b>Authorising Officer considered s 12 criteria</b>	<b>Authorising Officer considered s 13 or 14 criteria</b>	<b>Authority/Variation of authority complied with s 15 or 21 criteria</b>	<b>PLEO report submitted within two months (s 36(1))</b>	<b>PLEO report complied with s 36(2) criteria</b>	<b>General register complied with s 40 criteria</b>
77-20/21	✓	✓	✓	✓	✓	✓	✓
78-20/21	✓	✓	✓	✓	✓	✓	✓
78-20/21 variation	N/A	✓	✓	✓	✓	✓	✓
79-20/21	✓	✓	✓	✓	✓	✓	✓
80-20/21	✓	✓	✓	✓	✓	✓	✓
81-20/21	✓	✓	✓	✓	✓	✓	✓
82-20/21	✓	✓	✓	✓	✓	Refer to Table 16	✓
82-20/21 variation	✓	✓	✓	✓	✓	✓	✓
83-20/21	✓	✓	✓	✓	✓	✓	✓
84-20/21	✓	✓	✓	✓	✓	✓	✓
85-20/21	✓	✓	✓	✓	✓	✓	✓
86-20/21	Under consideration by the Commission						
86-20/21 variation 1	Under consideration by the Commission						
86-20/21 variation 2	Under consideration by the Commission						
86-20/21 variation 3	Under consideration by the Commission						
87-20/21	Under consideration by the Commission						

Commission reference number	Application complied with s 10 criteria	Authorising Officer considered s 12 criteria	Authorising Officer considered s 13 or 14 criteria	Authority/Variation of authority complied with s 15 or 21 criteria	PLEO report submitted within two months (s 36(1))	PLEO report complied with s 36(2) criteria	General register complied with s 40 criteria
87-20/21 variation	Under consideration by the Commission						
88-20/21	✓	✓	✓	✓	✓	✓	✓
89-20/21	✓	✓	✓	✓	✓	✓	✓
90-20/21	✓	✓	✓	✓	✓	✓	✓
91-20/21	✓	✓	✓	✓	✓	✓	✓
92-20/21	✓	✓	✓	✓	✓	✓	✓
93-20/21	✓	✓	✓	✓	✓	✓	✓
94-20/21	✓	✓	✓	✓	✓	✓	✓
95-20/21	✓	✓	✓	Refer to Table 10	✓	✓	✓
96-20/21	✓	✓	✓	✓	✓	✓	✓
97-20/21	✓	✓	✓	✓	✓	✓	✓
98-20/21	✓	✓	✓	✓	✓	✓	✓
99-20/21	✓	✓	✓	✓	✓	✓	✓
100-20/21	✓	✓	✓	✓	✓	✓	✓
101-20/21	✓	✓	✓	✓	✓	✓	✓
102-20/21	✓	✓	✓	✓	✓	✓	✓
103-20/21 <sup>26</sup>	✓	✓	✓	N/A	N/A	N/A	✓
104-20/21	✓	✓	✓	✓	✓	✓	✓

<sup>26</sup> 103-20/21 was a refused application and therefore not all criteria are applicable.

<b>Commission reference number</b>	<b>Application complied with s 10 criteria</b>	<b>Authorising Officer considered s 12 criteria</b>	<b>Authorising Officer considered s 13 or 14 criteria</b>	<b>Authority/Variation of authority complied with s 15 or 21 criteria</b>	<b>PLEO report submitted within two months (s 36(1))</b>	<b>PLEO report complied with s 36(2) criteria</b>	<b>General register complied with s 40 criteria</b>
105-20/21	✓	✓	✓	Refer to Table 8	Refer to Table 13	✓	✓
106-20/21	Refer to Table 7	✓	✓	✓	✓	✓	✓
107-20/21	Refer to Table 7	✓	✓	✓	✓	✓	✓
108-20/21	✓	✓	✓	✓	✓	✓	✓
109-20/21	✓	✓	✓	✓	✓	✓	✓
110-20/21	Under consideration by the Commission						
111-20/21	Under consideration by the Commission						
112-20/21	✓	✓	✓	✓	✓	✓	✓
113-20/21	✓	✓	✓	✓	✓	✓	✓
114-20/21	✓	✓	✓	✓	✓	✓	✓
114-20/21 variation	N/A <sup>27</sup>	✓	✓	✓	✓	✓	✓
115-20/21	✓	✓	✓	✓	✓	✓	✓
116-20/21	✓	✓	✓	✓	✓	✓	✓
117-20/21	✓	✓	✓	✓	✓	✓	✓
118-20/21	✓	✓	✓	✓	✓	✓	✓
118-20/21 variation	N/A	✓	✓	✓	✓	✓	✓

<sup>27</sup> Refer to paragraphs [70] - [72] for a compliance issue identified with regards to 114-20/21 variation.

Commission reference number	Application complied with s 10 criteria	Authorising Officer considered s 12 criteria	Authorising Officer considered s 13 or 14 criteria	Authority/Variation of authority complied with s 15 or 21 criteria	PLEO report submitted within two months (s 36(1))	PLEO report complied with s 36(2) criteria	General register complied with s 40 criteria
119-20/21	✓	✓	✓	✓	✓	✓	✓
120-20/21	✓	✓	✓	✓	✓	✓	✓
121-20/21	✓	✓	✓	✓	✓	✓	✓
122-20/21	✓	✓	✓	✓	✓	✓	✓
123-20/21 <sup>28</sup>	✓	✓	✓	N/A	N/A	N/A	✓
124-20/21	✓	✓	✓	✓	✓	✓	✓
125-20/21	✓	✓	✓	✓	✓	✓	✓
126-20/21	✓	✓	✓	✓	✓	✓	✓
127-20/21	✓	✓	✓	✓	✓	✓	✓

### 3.1 Applications to conduct a controlled operation

[47] The CICP Act enables the Commissioner of Police, Chief Executive Officer or delegate of a prescribed law enforcement agency to authorise the conduct of a controlled operation for a relevant offence, being:<sup>29</sup>

- (a) *an offence against the law of this jurisdiction punishable by imprisonment for 3 years or more; or*
- (b) *an offence not covered by paragraph (a) that is prescribed for the purposes of this definition, being an offence under any of the following Acts -*
  - (i) *the Classification (Publications, Films and Computer Games) Enforcement Act 1996;*
  - (ii) *The Criminal Code;*
  - (iii) *the Firearms Act 1973;*

<sup>28</sup> 123-20/21 was a refused application and therefore not all criteria are applicable.

<sup>29</sup> Definition of "relevant offence": CICP Act s 5.



(iv) *the Fish Resources Management Act 1994*;

(v) *the Misuse of Drugs Act 1981*;

(vi) *the Prostitution Act 2000*; and

(vii) *the Weapons Act 1999*.

[48] The Commission inspected each application to ensure it met the criteria set out in the CICP Act, including:<sup>30</sup>

- whether it was a formal or urgent application;
- whether it provided sufficient information on which the application could be granted;
- whether there had been any previous applications for an authority or variation of an authority in respect of the same criminal activity and, if so, whether or not it was granted; and
- that the applicant was a law enforcement officer and the application was made to an Authorising Officer.

[49] Applications to vary an authority were also inspected to ensure they met the criteria as set out in the CICP Act.<sup>31</sup>

[50] The Authorising Officer may require the applicant to furnish such additional information concerning the proposed controlled operation or proposed variation as is necessary for the Authorising Officer's proper consideration of the application.<sup>32</sup>

[51] Therefore, in addition to the application, the Commission considers any supplementary information furnished to the Authorising Officer.

[52] During the reporting year, WA Police commenced a practice whereby the applicant's Officer in Charge also signs the formal application for a controlled operation and the corresponding PLEO report upon completion of the controlled operation. While not a requirement of the CICP Act, this self-initiated practice provides a further level of governance and greater general oversight of the use of controlled operations.

[53] WA Police applications to conduct controlled operations and applications to vary an authority included comprehensive detail and provided sufficient information to the Authorising Officer. However, it is the Commission's view that in one instance the written record of the urgent application contained insufficient information to enable the authorising

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<sup>30</sup> CICP Act s 10.

<sup>31</sup> CICP Act s 19.

<sup>32</sup> CICP Act ss 10(8) and 19(7).

officer to be satisfied of the legislative requirements of CICP Act ss 12(1) and 14(b). This matter is under further consideration by the Commission.

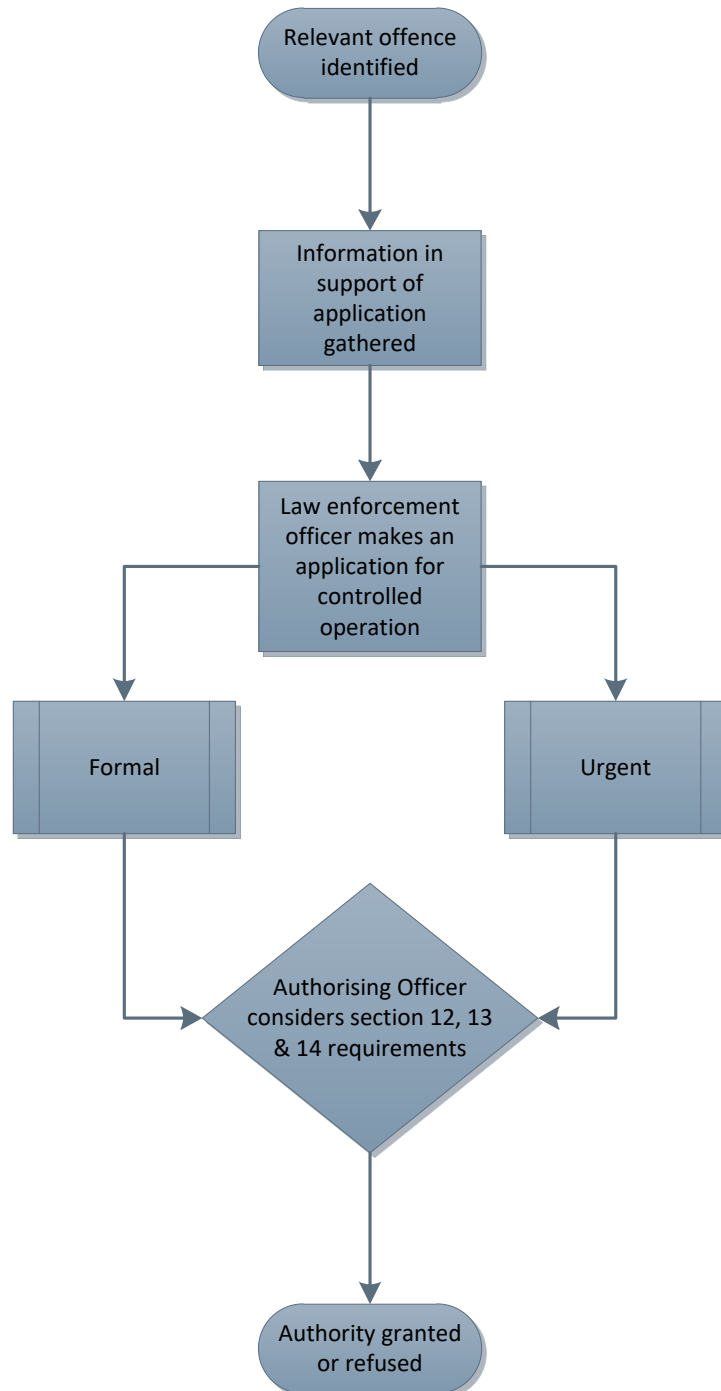
- [54] The table overleaf reports on the issue of timeliness in which WA Police written records of urgent applications were submitted to the Authorising Officer.

<b>Table 7</b> <b>CICP Act issue - s 10(9)</b>	
<b>s 10(9)</b> <b>As soon as practicable after making an urgent application, the applicant must make a record in writing and give a copy to the Authorising Officer.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>106-20/21</b>	The written record of the urgent application for 106-20/21 was signed by the applicant and provided to the Authorising Officer 5 days after the urgent authority had been granted.
<b>107-20/21</b>	<p>The written record of the urgent application for 107-20/21 was signed by the applicant and provided to the Authorising Officer 7 days after the urgent authority had been granted.</p> <p>In both instances, the copy of the signed written record of the urgent application was provided to the Authorising Officer after the controlled operation authority had expired.</p> <p>WA Police are of the view that the urgent record in writing was provided to the Authorising Officer as soon as reasonably practicable. The Commission takes a different view. For the Authorising Officer to be satisfied the written record accurately reflected the urgent verbal application that was made, the record in writing should have been provided to the Authorising Officer prior to the authority expiring.</p>

### 3.2 Authority to conduct a controlled operation

[55] The following flowchart depicts the authorisation process.

**Figure 2: Controlled operation authorisation process**



[56] The CICP Act lists a number of matters for which the Authorising Officer must be satisfied before an authority can be granted.<sup>33</sup> The Authorising Officer must be satisfied that the nature and extent of the suspected criminal activity is such as to justify the conduct of a controlled operation. The Commission carefully assesses the information provided in the controlled operation documents when considering the decision made by the Authorising Officer.

[57] The CICP Act requires that the Authorising Officer must not grant an authority to conduct a controlled operation unless satisfied on reasonable grounds that:<sup>34</sup>

- a relevant offence has been, is being or is likely to be committed;
- the authority is within the administrative responsibility of the law enforcement agency;
- any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation;
- the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons, other than law enforcement officers, at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation;
- the proposed controlled conduct will be capable of being accounted for in a way that will enable reporting requirements of Part 2, Division 4 to be complied with;
- the operation does not involve any participant inducing or encouraging another person to engage in criminal activity of a kind that the other person could not reasonably have been expected to engage in unless so induced or encouraged; and
- any conduct involved in the operation will not seriously endanger the health or safety of any person, cause the death of, or serious injury to, any person, involve the commission of a sexual offence against any person or result in unlawful loss of or serious damage to property (other than illicit goods).

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<sup>33</sup> CICP Act ss 12-14.

<sup>34</sup> CICP Act s 12(1).

- [58] A person must not be authorised to participate in a controlled operation unless the Authorising Officer is satisfied that the person has the appropriate skills or training to participate in the operation.<sup>35</sup>
- [59] A civilian must not be authorised to participate in any aspect of a controlled operation unless the Authorising Officer is satisfied that it is wholly impracticable for a law enforcement participant to participate in that aspect of the operation. A civilian must not be authorised to engage in controlled conduct unless the Authorising Officer is satisfied that it is wholly impracticable for the civilian participant to participate in the aspect of the controlled operation referred to without engaging in that conduct.<sup>36</sup>
- [60] The CICP Act states that an authority, whether formal or urgent, must:<sup>37</sup>
- state the name, and rank or position, of the person granting the authority;
  - identify the PLEO and, if the PLEO is not the applicant for the authority, the name of the applicant;
  - state whether the authority is for a cross-border or local controlled operation;
  - for a cross-border controlled operation, state whether it is to be, or is likely to be, conducted in this jurisdiction and in one or more participating jurisdictions, or in one or more participating jurisdictions;
  - state whether it is a formal or urgent authority;
  - identify each person who may engage in controlled conduct for the purposes of the controlled operation;
  - identify the nature of the criminal activity (including the suspected relevant offences) in respect of which the controlled conduct is to be engaged in;
  - identify, with respect to the law enforcement participants, the nature of the controlled conduct that they may engage in and, with respect to the civilian participants, the particular controlled conduct, if any, that each civilian participant may engage in;
  - identify (to the extent known) any suspect;

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<sup>35</sup> CICP Act s 12(2).

<sup>36</sup> CICP Act s 12(3).

<sup>37</sup> CICP Act s 15(6).

- specify the period of validity of the authority, being a period not exceeding six months for a formal authority or seven days for an urgent authority;
- specify any conditions to which the conduct of the operation is subject;
- state the date and time the authority is granted; and
- identify (to the extent known) the nature and quantity of any illicit goods that will be involved in the operation and the route through which those goods will pass in the course of the operation.

[61] The Commission examined all WA Police authorities to conduct controlled operations to ensure compliance with the above requirements.

[62] The number of urgent authorities granted during the 2020-2021 year has increased threefold compared to the previous year.

[63] The Commission is satisfied that the written records of the urgent authorities sufficiently addressed the requirements of 15(6) though written records of urgent authorities made pursuant to CACP Act s 15(8) lacked specificity in some instances. To avoid any potential conjecture as to whether an urgent authority sufficiently complied with the requirements of s 15(6), the Commission considers that a written record of an urgent authority should contain a similar level of specificity to the written record of the corresponding urgent application made pursuant to s 10(9). This was communicated to WA Police in January 2021 who were receptive to the Commission's feedback.

[64] The tables overleaf report on defects and issues identified in WA Police forms of Authority.

<b>Table 8</b> <b>CICP Act defect - ss 15(6)(a) and 15(8)</b>	
<b>ss 15(6)(a) and 15(8)</b> <b>An authority must state the name, and rank or position, of the person granting the authority.</b> <b>As soon as practicable after granting an urgent authority, the Authorising Officer must make a record in writing of the particulars referred to in s 15(6) relating to the authority.</b>	
<b>Commission reference number</b>	<b>Defect</b>
<b>105-20/21</b>	<p>The written record of the urgent authority specified the Authorising Officer's name but did not state the Authorising Officer's rank or position as required.</p> <p>The Commission confirmed that the specified Authorising Officer had delegated authority under CICP Act s 43 to grant the authority.</p> <p>The issue was raised with WA Police who advised the omission was an administrative oversight that occurred in the haste of issuing an urgent authority.</p>

<b>Table 9</b> <b>CICP Act defect - ss 15(6)(c) and 15(6)(d)</b>	
<b>ss 15(6)(c) and 15(6)(d)</b>  <b>An authority must state whether the authority is for a cross-border controlled operation or a local controlled operation.</b>  <b>For a cross-border controlled operation, the authority must state whether it is to be, or is likely to be, conducted -</b> <ul style="list-style-type: none"> <li><b>(i) in this jurisdiction and in one or more participating jurisdictions specified in the authority; or</b></li> <li><b>(ii) in one or more participating jurisdictions specified in the authority.</b></li> </ul>	
<b>Commission reference number</b>	<b>Defect</b>
<b>52-20/21</b>	<p>The authority specified that it was for a cross-border controlled operation and stated that the operation was to be conducted in Western Australia, New South Wales and South Australia.</p> <p>A file note signed by the Authorising Officer for 52-20/21 (dated after the authority expired) indicated the authority was incorrectly granted as a cross-border controlled operation. According to the file note, the authority should have been granted for a local controlled operation because the controlled conduct was to occur solely in WA (although illicit goods would pass through the other jurisdictions).</p> <p>No controlled conduct was engaged in under the authority of 52-20/21.</p>



<b>Table 10</b> <b>CICP Act issue - s 15(6)(i)</b>	
<b>s 15(6)(i)</b> <b>An authority must identify (to the extent known) any suspect.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>95-20/21</b>	<p>In addressing the requirement of CICP Act s 15(6)(i) the authority stated the suspects (to the extent known) were unknown. However, the authority identified the suspect when addressing the requirement of CICP Act s 15(6)(g) and the suspect was named in the application. The reference to the suspect being unknown was a typographical error.</p> <p>Given the suspect was still named within the authority, the Commission considers this error to be administrative in nature.</p>

<b>Table 11</b> <b>CICP Act defect - s 15(6)(l)</b>	
<b>s 15(6)(l)</b> <b>An authority must state the date and time when it was granted.</b>	
<b>Commission reference number</b>	<b>Defect</b>
<b>68-20/21</b>	<p>The authority stated the date and time it was granted but it erroneously recorded the time as AM rather than PM.</p> <p>This was an inadvertent error. WA Police addressed this issue by way of a file note explaining the error.</p> <p>All controlled conduct engaged in during the course of the controlled operation occurred after the authority had been granted.</p>

<b>Table 12</b> <b>CICP Act issue - s 15(6)(j)</b>	
<b>s 15(6)(j)</b> <b>An authority must specify the period of validity of the authority.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>04-20/21</b>	<p>The validity period specified in the authority pursuant to CICP Act s 15(6)(j) was 6 months, however the expiration date stipulated on the authority was the same date the authority was granted.</p> <p>As the authority still sufficiently identified the period of validity of the authority as required, the Commission considers this issue to be an administrative error.</p>

### 3.3 Variation of authorities

[65] The CICP Act imposes stringent requirements in relation to applications to vary an authority.<sup>38</sup> A variation of an authority can be made at any time on the Authorising Officer's own initiative<sup>39</sup> or on application by the PLEO or a law enforcement officer on behalf of the PLEO.<sup>40</sup>

[66] A variation of an authority can be granted for the following purposes:<sup>41</sup>

- to extend the period of validity of the authority;
- to authorise additional or alternative persons to engage in controlled conduct;
- to authorise participants to engage in additional or alternative controlled conduct;
- to identify additional suspects (to the extent known); or
- to identify a new PLEO.

[67] The Authorising Officer may vary an authority for any one or more of the above purposes. More than one application for a variation can be made in respect of the same authority, but no single variation can extend the

<sup>38</sup> CICP Act s 20(2).

<sup>39</sup> CICP Act ss 17(1)(a) and 18.

<sup>40</sup> CICP Act ss 17(1)(b) and 19(1).

<sup>41</sup> CICP Act ss 18 and 19(1).

period of validity of an authority for more than six months at a time.<sup>42</sup> A variation of an authority cannot extend the period of validity of an urgent authority.<sup>43</sup> A variation of an authority must not be granted unless the Authorising Officer is satisfied on reasonable grounds that the variation will not authorise a significant alteration to the nature of the authorised operation.<sup>44</sup>

- [68] If one or more of the purposes for which an authority may be varied arise, a variation must be sought to the original authority in order to protect any conduct which would be outside the scope of the authority if left unvaried.
- [69] All variation of authority documents were examined by the Commission to ensure compliance with the CICP Act.<sup>45</sup> One issue was identified, with respect to an urgent variation of authority.
- [70] CICP Act s 19(8) requires an applicant to make a written record of an urgent application as soon as practicable after making the urgent application and give a copy to the authorising officer. An urgent application for variation was made for 114-20/21, resulting in the variation being granted. The variation permitted the authorised participants to engage in additional controlled conduct. The applicant did not make a written record of the urgent application for variation nor provide a copy to the authorising officer as required by CICP Act s 19(8).
- [71] CICP Act s 20(3) stipulates that a variation of authority must not be granted unless the Authorising Officer is satisfied on reasonable grounds that the variation would not authorise a significant alternation of the nature of the authorised operation concerned. As the applicant did not make a written record in writing of the urgent application for variation to 114-20/21, the Commission could not ascertain how the Authorising Officer was satisfied on reasonable grounds that the variation would not authorise a significant alteration of the nature of the authorised operation concerned.
- [72] This issue was raised with WA Police. The Commission was subsequently advised of the information provided to the Authorising Officer during the urgent verbal application process which satisfied him that the variation would not significantly alter the nature of the controlled operation. The Commission accepts the information was sufficient to enable the

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<sup>42</sup> CICP Act s 19(2).

<sup>43</sup> CICP Act s 17(2).

<sup>44</sup> CICP Act s 20(3).

<sup>45</sup> CICP Act s 21.

Authorising Officer to be satisfied the nature of the controlled operation would not be significantly altered.

### **3.4 Retrospective authority**

[73] If a participant in an authorised operation engages in unlawful conduct (other than controlled conduct) in the course of a local controlled operation, the PLEO for the operation may, within 24 hours (or any longer period that the Authorising Officer may, in exceptional circumstances, allow) after the participant engages in that conduct, apply to the Authorising Officer for retrospective authority for the conduct.<sup>46</sup>

[74] No retrospective authorities were applied for, or granted, by WA Police.

### **3.5 Protection from criminal responsibility for controlled conduct during authorised operations**

[75] The CICP Act provides that a participant in an authorised operation who engages in conduct in the course of, and for the purposes of, the operation is not, if engaging in that conduct is an offence, criminally responsible for the offence if:<sup>47</sup>

- the conduct is authorised by, and is engaged in accordance with, the authority for the operation; and
- the conduct does not involve the participant inducing or encouraging another person to engage in criminal activity of a kind that the other person could not reasonably be expected to engage in unless so induced or encouraged; and
- the conduct does not involve the participant engaging in any conduct that is likely to cause the death of, or serious injury to, any person, or involve the commission of a sexual offence against any person; and
- if the participant is a civilian participant, he or she acts in accordance with the instructions of a law enforcement officer.

[76] The CICP Act also provides participants with indemnification against civil liability if criteria similar to those stipulated in paragraph [75] above are met.<sup>48</sup>

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<sup>46</sup> CICP Act s 25(2).

<sup>47</sup> CICP Act s 27.

<sup>48</sup> CICP Act s 28.

### **3.6 Protection from criminal responsibility for certain ancillary conduct**

- [77] CICP Act s 31 provides protection, in certain circumstances, from criminal responsibility for 'ancillary conduct'. 'Ancillary conduct' includes aiding and abetting the commission of what would, but for section 27, be a criminal offence by another person.<sup>49</sup>
- [78] The CICP Act requires that the PLEO report include specified details in relation to ancillary conduct.
- [79] In a small number of instances, the Commission identified that the PLEO report had omitted to include information about persons that were not criminally responsible for ancillary conduct because of section 31.
- [80] This issue was raised with WA Police and identified to be the result of an administrative oversight. In the majority of those instances, information about persons protected by section 31 was subsequently included in addenda to the PLEO reports for the relevant controlled operations.

### **3.7 Cross-border controlled operations**

- [81] The CICP Act allows for controlled operations to be authorised in Western Australia which may be conducted in this jurisdiction and in one or more participating jurisdictions, or in one or more participating jurisdictions.<sup>50</sup>
- [82] During the reporting year, WA Police completed four controlled operations that were authorised as cross-border controlled operations. However the WA Police concluded, post-authorisation, that 52-20/21 should have been granted for a local controlled operation rather than a cross-border controlled operation because the controlled conduct was intended to be physically conducted within Western Australia only. No controlled conduct was engaged in under authority 52-20/21.
- [83] The Commission and WA Police have previously communicated about the categorisation of controlled operations as local or cross-border controlled operations, as outlined in the Commission's 2018-2019 Annual Report dated 7 February 2020. The Commission and WA Police have settled on an agreed and preferred view that an authorised operation should be classified as a cross-border controlled operation if the controlled conduct is intended to be physically conducted either within Western Australia and another State or Territory or wholly in another Australian State or Territory.

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<sup>49</sup> CICP Act s 31.

<sup>50</sup> CICP Act s 6.

### **3.8 Cancellation of authorities**

- [84] The Authorising Officer may, by order in writing given to the PLEO for an authorised operation, cancel the authority at any time and for any reason.<sup>51</sup>
- [85] The Authorising Officer may cancel an authority for an authorised operation at any time at the request of the PLEO for the operation.
- [86] The order must specify the reasons for the cancellation of the authority.
- [87] Eighty eight controlled operation authorities were cancelled by the Authorising Officer. The remaining 36 controlled operation authorities expired.

### **3.9 PLEO reports**

- [88] Within two months after the completion of an authorised operation the PLEO is required to submit a report to the Chief Officer of the agency.<sup>52</sup> The CICP Act states the report must include all of the following details:<sup>53</sup>
- dates and times when the authorised operation began and was completed;
  - whether the operation was a cross-border controlled operation or a local controlled operation;
  - 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; and
    - 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, occurring in the course of or as a direct result of the operation;

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<sup>51</sup> CICP Act s 22(1).

<sup>52</sup> CICP Act s 36(1).

<sup>53</sup> CICP Act s 36(2).

- details (to the extent known) of any loss of or serious damage to property, or any personal injuries, occurring as an indirect result of the operation;
- information as to whether:
  - in the course of the operation, any participant engaged in unlawful conduct (other than controlled conduct that the participant was authorised to engage in for the purposes of the operation); and
  - any unlawful conduct (other than controlled conduct) was engaged in during the operation; and
  - any person is, because of section 31, not criminally responsible for ancillary conduct (as defined in that section); and
  - any variations were made to an authority for the operation; and
  - any of those variations were to extend the period of validity of the authority; and
  - any retrospective authority was granted in respect of the operation; and
  - any urgent authority was granted in respect of the operation; and
  - any conditions of an authority for the operation were breached.

[89] The PLEO reports were inspected by the Commission to ensure they were made within two months of completion of the operation and met the requirements of the CICP Act.

[90] The PLEO reports were submitted within time except one. WA Police self-identified this matter and proactively raised it with the Commission.

[91] The reports mostly complied with the requirements of CICP Act s 36(2) although a small number of issues were identified by the Commission. In those instances, addenda reports were submitted rectifying the issues identified.

[92] The tables overleaf set out the issues identified with regards to the PLEO reports.

<b>Table 13</b> <b>CICP Act issues - s 36(1)</b>	
<b>Within two months after completion of an authorised operation, the PLEO must make a report in accordance with this section to the chief officer of the law enforcement agency.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>72-20/21</b> <b>73-20/21</b>	The PLEO report was not signed by the PLEO within two months of completion of the authorised operation as the PLEO was on annual leave at the time. The PLEO report had been prepared within the two month time frame and records confirm that the PLEO endorsed the content of the report, via email, within two months of completion of the operation. The PLEO then signed the PLEO report approximately two months and two weeks after the controlled operation was completed.
<b>105-20/21</b>	The PLEO report was not made within the two month time frame. Due to an administrative error the report was made approximately two months and three weeks after completion of the authorised operation.  WA Police self-identified this issue and proactively reported it to the Commission.

<b>Table 14</b> <b>CICP Act issues - s 36(2)(a)</b>	
<b>The report must include details of the dates and times when the authorised operation began and was completed.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>05-20/21</b> <b>06-20/21</b>	The PLEO report detailed the date and time the operation began and the date the operation was completed. However, it did not specify the time when the authorised operation was completed.



<b>Table 15</b> <b>CICP Act issue - s 36(2)(b)</b>	
<b>The report must include details as to whether the operation was a cross-border controlled operation or a local controlled operation.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>52-20/21</b>	<p>The PLEO report reported that the operation was a local controlled operation. However the authority had been granted for a cross-border controlled operation under CICP Act s 15(6)(c).</p> <p>The authorising officer made a file note for 52-20/21 after the authority expired stating that the authority was incorrectly granted as a cross-border controlled operation and should have been a local controlled operation. Despite this, at the time of authorisation, 52-20/21 was granted as a cross-border controlled operation and therefore reference to the operation being a local controlled operation in the PLEO report is inaccurate.</p>

<b>Table 16</b> <b>CICP Act issue - ss 36(2)(h)(iv) and 36(2)(h)(v)</b>	
<b>The report must include information as to whether any variations were made to an authority for the operation and whether any of those variations were to extend the period of validity of the authority.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>82-20/21</b>	<p>The PLEO report reported that no variations to the authority for the operation were made and that there had been no variation(s) to extend the period of validity of the authority. However, a variation had been granted for 82-20/21 which extended the period of validity of the authority.</p>

### 3.10 Agency general register

- [93] Law enforcement agencies are required under the CICP Act to keep a general register.<sup>54</sup> The CICP Act specifies the details the general register is required to contain in respect of each application made under the CICP Act, each authority granted and each variation of authority.<sup>55</sup>
- [94] The general register was inspected by the Commission to ensure it conformed with the CICP Act. The WA Police general register is structured to fully cater for the legislative requirements specified in CICP Act s 40(2).
- [95] The Commission identified some minor administrative errors on the general register in relation CICP Act s 40(2) requirements. These issues were raised with WA Police and, for the most part, were promptly corrected. Accordingly, the Commission is satisfied that the general register is fully compliant with CICP Act s 40(2) in those instances.
- [96] The Commission acknowledges that, since these issues were raised with WA Police, fewer general register errors have been identified. It is evident that there has been an improvement in the level of accuracy of the information contained in the WA Police general register.
- [97] The tables below reports on some of the issues identified on the general register that the Commission raised with WA Police. Errors on the general register which have since been corrected by WA Police are not included in the below tables.

<b>Table 17</b> <b>CICP Act issues - s 40(2)(a)(i)</b>	
<b>The general register is to specify for each application under the CICP Act Part 2 made by a law enforcement officer of the agency (including an application for variation of an authority), the date of the application.</b>	
<b>Commission reference number</b>	<b>Issues</b>
<b>05-20/21 variation</b>	The date of the application specified on the general register was the date the original application for authority was made, rather than the date of the application for variation of the authority.

<sup>54</sup> CICP Act s 40(1).

<sup>55</sup> CICP Act s 40(2).

<b>Table 18</b> <b>CICP Act issue - s 40(2)(a)(iii)</b>	
<b>The general register is to specify, for each application under the CICP Act Part 2 made by a law enforcement officer of the agency (including an application for variation of an authority), whether the application was made for a cross-border or local controlled operation.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>52-20/21</b>	The general register incorrectly specified the application had been made for a local controlled operation, rather than a cross-border controlled operation.

<b>Table 19</b> <b>CICP Act issue - s 40(2)(b)(iii)</b>	
<b>The general register is to specify, for each authority granted under the CICP Act Part 2 to a law enforcement officer of the agency, whether the authority was granted for a cross-border controlled operation or a local controlled operation.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>52-20/21</b>	The general register incorrectly specified the authority was granted for a local controlled operation, rather than a cross-border controlled.

<b>Table 20</b> <b>CICP Act issue - s 40(2)(b)(iv)</b>	
<b>The general register is to specify for each authority granted under the CICP Act Part 2 to a law enforcement officer of the agency, whether the authority was a retrospective authority granted under section 25.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>36-20/21</b>	The general register did not specify whether or not the authority was a retrospective authority granted under section 25.

<b>Table 21</b> <b>CICP Act issues - s 40(2)(b)(ix)</b>	
<b>The general register is to specify for each authority granted under the CICP Act Part 2 to a law enforcement officer of the agency, the date and time when the authorised operation began and the date of completion of the operation.</b>	
<b>Commission reference number</b>	<b>Issue</b>
<b>05-20/21</b> <b>06-20/21</b> <b>17-20/21</b> <b>18-20/21</b>	The general register specified the date but did not specify the time the authorised operation began.

### 3.11 Notification requirements

- [98] If during the course of, or as a direct result of, an authorised operation, any loss of or damage occurs to property (other than property of the State or that is under the management or control of a participating law enforcement officer), the PLEO for the authorised operation must report the loss or damage to the Chief Officer as soon as practicable.<sup>56</sup>
- [99] There were no occasions of any damage to property occurring as a result of controlled operations completed during the 2020-2021 reporting year.

### 3.12 Ongoing matters

- [100] At the time of this report the Commission is still considering matters in relation to WA Police controlled operations 86-20/21 (including variations 1, 2 and 3) and 87-20/21, 110-21/21 and 111-20/21.
- [101] The Commission has requested further information from WA Police in relation to these controlled operations to assist with the Commission's determination as to the extent of compliance with CICP Act Part 2.
- [102] The Commission will report on these controlled operations in the Annual Report for 2021 - 2022.

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<sup>56</sup> CICP Act s 33(1).

## CHAPTER FOUR

### RECOMMENDATIONS

#### 4.1 Recommendations in this Annual Report

- [103] The Commission has not made any recommendations in this Annual Report.

#### 4.2 Comment on recommendations made in previous Annual Report

- [104] The Commission made the below recommendations in the 2019 - 2020 WA Police Annual Report.

##### **Recommendation 1**

Where applicable, an applicant confirm within the written record of a formal or urgent application for a controlled operation that the Chief Officer holds records enabling a participant's identity to be matched to their assumed identity or code name or number, as required by CICP Act s 15(7). This will ensure greater transparency and accountability in demonstrating compliance with s 15(7).

##### **Recommendation 2**

As proposed by the WA Police Force, processes be implemented to enable direct reporting to an Authorising Officer when circumstances require such reporting in accordance with a condition imposed on an authority under CICP Act s 15(6)(k). The Commission further recommends that written records are maintained of all direct reporting.

##### **Recommendation 3**

If the involvement of an authorised participant in a controlled operation results in the participant requiring reimbursement for any reason, the money should be obtained from a WA Police Force bank account and a written record kept detailing any such reimbursement. As a general rule, participants should not maintain possession of any cash/money originating from or involved in controlled conduct.

This process would reflect the WA Police Force Standard Operating Procedures for money handling, standardising the approach for all transactions of monies in controlled operations in which cash might be seized by the WA Police Force.

- [105] In February 2021 WA Police wrote to the Commission advising that WA Police would be implementing the recommendations. Since that time, the Commission has sighted records as part of its inspection process which confirms Recommendation 1 has been adopted.
- [106] In late September 2021 the Commission sought an update from WA Police as to the status of the implementation of the recommendations. WA Police confirmed that changes have been made to the practices of SOAU in response to the recommendations, including changes to administrative processes, which have put the recommendations into effect.
- [107] The action taken by SOAU sufficiently addresses each of the recommendations and will improve overall record keeping, as well as assist with demonstrating compliance with the requirements of the CICP Act for future controlled operations.

## APPENDIX A

### WA POLICE COMPLETED CONTROLLED OPERATIONS 2020 - 2021

Commission reference number	Nature of criminal activity targeted	Controlled conduct engaged in under the authority?	Charges <sup>57</sup>	Seizures <sup>58</sup>
<b>01-20/21 &amp; variation</b>	Drug offences	Yes	Yes	Yes
<b>02-20/21</b>	Drug offences and property laundering	No	No	No
<b>03-20/21 &amp; variation 04-20/21</b>	Property laundering	Yes	No	No
<b>05-20/21 &amp; variation 06-20/21</b>	Drug offences	Yes	No	No
<b>07-20/21 &amp; variation</b>	Drug offences and property laundering	Yes	Yes	Yes
<b>08-20/21 09-20/21</b>	Property laundering	No	No	No
<b>10-20/21 11-20/21</b>	Drug offences	Yes	Yes	Yes
<b>12-20/21 &amp; variations 1, 2 &amp; 3 13-20/21</b>	Drug offences	No	No	No
<b>14-20/21 15-20/21</b>	Drug offences	No	No	No
<b>16-20/21</b>	Drug offences	No	No	No

<sup>57</sup> The table only reports on charges that arose from the authorised operations/that was a direct result of controlled conduct. In some of these controlled operations, the charges were deferred.

<sup>58</sup> The table only reports on seizures that occurred as a direct result of controlled conduct.

<b>Commission reference number</b>	<b>Nature of criminal activity targeted</b>	<b>Controlled conduct engaged in under authority?</b>	<b>Charges</b>	<b>Seizures</b>
<b>17-20/21 18-20/21</b>	Drug offences and possession of unlawfully obtained property	Yes	No	No
<b>19-20/21</b>	Doing an act intended to cause grievous bodily harm and attempting to procure the commission of an indictable offence	No	No	No
<b>20-20/21</b>	Drug offences	Yes	Yes	Yes
<b>21-20/21 22-20/21</b>	Drug offences and possession of unlawfully obtained property	Yes	No	No
<b>23-20/21</b>	Drug offences	No	No	No
<b>24-20/21 25-20/21</b>	Drug offences	Yes	No	No
<b>26-20/21</b>	Drug offences	Yes	No	No
<b>27-20/21 28-20/21</b>	Drug offences	Yes	No	Yes
<b>29-20/21 30-20/21</b>	Drug offences	Yes	Yes	Yes
<b>31-20/21</b>	Drug offences	Yes	Yes	Yes
<b>32-20/21</b>	Drug offences	Yes	No	Yes
<b>33-20/21</b>	Drug offences	Yes	No	Yes
<b>34-20/21 35-20/21</b>	Drug offences	No	No	No
<b>36-20/21</b>	Drug offences	Yes	No	No
<b>37-20/21</b>	Drug offences	No	No	No



<b>Commission reference number</b>	<b>Nature of criminal activity targeted</b>	<b>Controlled conduct engaged in under authority?</b>	<b>Charges</b>	<b>Seizures</b>
<b>38-20/21</b>	Drug offences	No	No	No
<b>39-20/21</b>	Drug offences and property laundering	No	No	No
<b>40-20/21</b>	Drug offences	No	No	No
<b>41-20/21 42-20/21</b>	Drug offences	No	No	No
<b>43-20/21 44-20/21</b>	Attempting to procure the commission of an indictable offence	Yes	Yes	Yes
<b>46-20/21</b>	Drug offences	Yes	No	No
<b>47-20/21</b>	Drug offences	Yes	Yes	Yes
<b>48-20/21 &amp; variation</b>	Burglary, possession of unlawfully obtained property and property laundering	Yes	Yes	Yes
<b>49-20/21 50-20/21</b>	Drug offences	No	No	No
<b>51-20/21</b>	Drug offences, possession of unlawfully obtained property and property laundering	Yes	No	Yes
<b>52-20/21</b>	Drug offences, possession of unlawfully obtained property and property laundering	No	No	No
<b>53-20/21</b>	Drug offences	No	No	No
<b>54-20/21</b>	Drug offences, use of electronic communication to engage in sexual related offences against a person under 16 years and sexual offences against children	Yes	Yes	Yes

<b>Commission reference number</b>	<b>Nature of criminal activity targeted</b>	<b>Controlled conduct engaged in under authority?</b>	<b>Charges</b>	<b>Seizures</b>
<b>55-20/21</b>	Drug offences	Yes	Yes	Yes
<b>56-20/21</b>	Drug and firearms offences	Yes	Yes	Yes
<b>57-20/21 58-20/21</b>	Burglary and firearms offences	No	No	No
<b>59-20/21</b>	Drug offences	Yes	No	No
<b>60-20/21</b>	Drug offences	No	No	No
<b>61-20/21</b>	Use of electronic communication to engage in sexual related offences against a person under 16 years	Yes	Yes	Yes
<b>62-20/21</b>	Use of electronic communication to engage in sexual related offences against a person under 16 years	Yes	Yes	Yes
<b>63-20/21 &amp; variation</b>	Drug offences and possession of unlawfully obtained property	Yes	No	No
<b>64-20/21</b>	Drug offences	Yes	No	Yes
<b>65-20/21 &amp; variation 66-20/21</b>	Drug offences	Yes	No	Yes
<b>67-20/21</b>	Attempting to procure the commission of an indictable offence and attempting to pervert the course of justice	No	No	No
<b>68-20/21</b>	Drug offences and possession of unlawfully obtained property	Yes	No	Yes

<b>Commission reference number</b>	<b>Nature of criminal activity targeted</b>	<b>Controlled conduct engaged in under authority?</b>	<b>Charges</b>	<b>Seizures</b>
<b>69-20/21</b>	Drug offences	Yes	Yes	Yes
<b>70-20/21 &amp; variation</b>	Drug offences	Yes	Yes	Yes
<b>71-20/21</b>	Drug offences	No	No	No
<b>72-20/21 73-20/21</b>	Drug offences	Yes	Yes	Yes
<b>74-20/21</b>	Use of electronic communication to engage in sexual related offences against a person under 16 years	No	No	No
<b>75-20/21</b>	Property laundering and possession of unlawfully obtained property	Yes	Yes	Yes
<b>76-20/21</b>	Drug offences	Yes	Yes	Yes
<b>77-20/21</b>	Drug offences and possession of unlawfully obtained property	No	No	No
<b>78-20/21 &amp; variation</b>	Use of electronic communication to engage in sexual related offences against a person under 16 years	No	No	No
<b>79-20/21</b>	Drug offences	No	No	No
<b>80-20/21</b>	Use of electronic communication to engage in sexual related offences against a person under 16 years	Yes	Yes	Yes
<b>81-20/21</b>	Drug offences	Yes	Yes	Yes
<b>82-20/21 &amp; variation</b>	Drug offences	Yes	No	Yes

<b>Commission reference number</b>	<b>Nature of criminal activity targeted</b>	<b>Controlled conduct engaged in under authority?</b>	<b>Charges</b>	<b>Seizures</b>
<b>83-20/21</b>	Use of electronic communication to engage in sexual related offences against a person under 16 years	Yes	Yes	Yes
<b>84-20/21</b>	Drug offences	No	No	No
<b>85-20/21</b>	Drug offences	No	No	No
<b>86-20/21 &amp; variations 1, 2 &amp; 3 87-20/21 &amp; variation 1</b>	Drug offences, possession of unlawfully obtained property and property laundering	Yes	Yes	Yes
<b>88-20/21</b>	Firearms offences	No	No	No
<b>89-20/21</b>	Firearms offences	No	No	No
<b>90-20/21</b>	Use of electronic communication to engage in sexual related offences against a person under 16 years	Yes	Yes	Yes
<b>91-20/21 92-20/21</b>	Drug offences	No	No	No
<b>93-20/21 94-20/21</b>	Drug offences, possession of unlawfully obtained property and property laundering	No	No	No
<b>95-20/21</b>	Property laundering	No	No	No
<b>96-20/21 97-20/21</b>	Drug offences	No	No	No

<b>Commission reference number</b>	<b>Nature of criminal activity targeted</b>	<b>Controlled conduct engaged in under authority?</b>	<b>Charges</b>	<b>Seizures</b>
<b>98-20/21</b>	Use of electronic communication to engage in sexual related offences against a person under 16 years	Yes	No <sup>59</sup>	Yes
<b>99-20/21</b>	Drug offences, possession of unlawfully obtained property and property laundering	No	No	No
<b>100-20/21</b>	Use of electronic communication to engage in sexual related offences against a person under 16 years	Yes	Yes	No
<b>101-20/21</b>	Drug offences and property laundering	No	No	No
<b>102-20/21</b>	Murder	No	No	No
<b>104-20/21</b>	Drug offences and property laundering	No	No	No
<b>105-20/21</b>	Drug offences	Yes	No	No
<b>106-20/21</b>	Drug offences	No	No	No
<b>107-20/21</b>	Drug offences	Yes	No	No
<b>108-20/21 109-20/21</b>	Conspiracy to pervert the course of justice, corruption of a witness and procuring a person to make a false statement on oath	Yes	No	No
<b>110-20/21</b>	Drug offences	No	No	No
<b>111-20/21</b>	Drug offences	No	No	No
<b>112-20/21 113-20/21</b>	Drug offences	Yes	Yes	Yes

<sup>59</sup> WA Police intend to arrest and charge the suspect.

<b>Commission reference number</b>	<b>Nature of criminal activity targeted</b>	<b>Controlled conduct engaged in under authority?</b>	<b>Charges</b>	<b>Seizures</b>
<b>114-20/21 &amp; variation 115-20/21</b>	Possession of unlawfully obtained property and property laundering	Yes	No	No
<b>116-20/21 117-20/21</b>	Firearms offences and fraud	No	No	No
<b>118-20/21 &amp; variation 119-20/21</b>	Drug offences	No	No	No
<b>120-20/21</b>	Property laundering	No	No	No
<b>121-20/21 122-20/21</b>	Drug and firearms offences	Yes	No	No
<b>124-20/21 125-20/21</b>	Drug offences	Yes	No	No
<b>126-20/21</b>	Drug offences	Yes	No	No
<b>127-20/21</b>	Possession of unlawfully obtained property and property laundering	Yes	No	No