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Our reference: 01829/2022

8 August 2023

Hon Paul Papalia CSC, MLA
Minister for Police
10th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

By email: Minister.Papalia@dpc.wa.gov.au

Dear Minister

Criminal Investigation (Covert Powers) Act 2012: Annual Report

I enclose the Corruption and Crime Commission's Annual Report on the work and activities of the Australian Crime Commission (ACC), which is also now known as the Australian Criminal Intelligence Commission, under *Criminal Investigation (Covert Powers) Act 2012* (CICP Act) Part 2 for the period 1 July 2022 - 30 June 2023.

The report is provided to you pursuant to CICP Act s 38(1). It has also been provided to the Chief Executive Officer of the ACC who is the Chief Officer for the purposes of the CICP Act.

As you will be aware, CICP Act s 38(4) requires you to cause a copy of the report to be laid before each House of Parliament within 15 sitting days of the day on which you receive it. CICP Act s 38 also makes provision for the Chief Officer of the ACC to advise you of any information which, in his opinion, should be excluded and how you must deal with that.

I commend the report to you.

Yours sincerely



John McKechnie, KC
Commissioner

Encl

*Criminal Investigation
(Covert Powers) Act 2012*

Annual Report
1 July 2022 to 30 June 2023

Australian Crime Commission

8 August 2023

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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 was not protected by a controlled operation authority.
- [3] The CICP Act allows the Chief Executive Officer of the Australian Crime Commission (ACC) to grant controlled operation authorisations for the ACC.¹ The CICP Act also provides civil indemnification when certain criteria are met.
- [4] The Corruption and Crime Commission is required to inspect the records of each agency at least once every 12 months to determine the extent of compliance with CICP Act Part 2 by the agency and law enforcement officers of the agency.²
- [5] This report sets out the results of the inspection for the ACC during the period 1 July 2022 to 30 June 2023.
- [6] The ACC did not complete any controlled operations under the CICP Act during this reporting period.

¹ On 1 July 2016, the Australian Crime Commission and CrimTrac merged to form the Australian Criminal Intelligence Commission (ACIC). ACC is therefore also known as ACIC however it continues to be referred to as ACC for the purposes of reporting under the CICP Act.

² CICP Act s 41(1).

CHAPTER ONE

LEGISLATIVE REQUIREMENTS

- [7] 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.³
- [8] The Commission is required to provide the Minister and the Chief Officer of each law enforcement agency with a copy of the report.⁴
- [9] 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.⁵
- [10] The report must include, for each law enforcement agency concerned, comments by the Commission on the comprehensiveness and adequacy of the Chief Officer reports which are required to be submitted to the Commission twice a year.⁶
- [11] The Chief Officer of each agency must advise 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:⁷
- endanger a person's safety; or
 - prejudice an investigation or prosecution; or
 - compromise any law enforcement agency's operational activities or methodologies.
- [12] 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.⁸

³ CICP Act s 38(1).

⁴ CICP Act s 38(1).

⁵ CICP Act s 38(6).

⁶ CICP Act s 38(5).

⁷ CICP Act s 38(2).

⁸ CICP Act s 38(3).

- [13] 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.⁹
- [14] A copy of this report was provided to the Office of the Minister for Police on 8 August 2023.

⁹ CICP Act s 38(4).

CHAPTER TWO

AUSTRALIAN CRIME COMMISSION CONTROLLED OPERATIONS

2.1 Summary of work and activities of the Australian Crime Commission with respect to controlled operations

[15] 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:¹⁰

- (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*;
 - (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*.

[16] During this reporting period of 1 July 2022 to 30 June 2023:

- no controlled operation authorities were granted under WA legislation;
- no controlled operations were refused authority under WA legislation;
- no controlled operations were completed under WA legislation; and
- the ACC did not apply for any retrospective authorities under WA legislation.

¹⁰ Definition of "relevant offence": CICP Act s 5.

2.2 Chief Officer reports

[17] Pursuant to the CICP Act, the Chief Officer of the ACC is required to submit a report to the Commission as soon as practicable after 30 June and 31 December each year setting out the following details in relation to controlled operations conducted on behalf of the agency during the previous six months: ¹¹

- 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 illicit goods were involved, the nature and quantity of the goods and the route through which the 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.

[18] 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. ¹²

[19] The Commission received the Chief Officer's reports from the ACC on 9 February 2023 and 3 August 2023 in relation to ACC controlled operations.

¹¹ CICP Act s 37(2).

¹² CICP Act s 37(5).

- [20] 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.¹³
- [21] The Chief Officer's reports from the ACC were in compliance with the CICP Act. The ACC reported that the agency exercised powers under Commonwealth controlled operations legislation, and not Western Australian legislation, during the reporting period.

¹³ CICP Act s 38(5).

CHAPTER THREE

OUTCOME OF INSPECTIONS

3.1 Agency general register

- [22] Law enforcement agencies are required under the CICP Act to keep a general register.¹⁴ The CICP Act specifies the details the general register is to contain in respect of each application made under CICP Act Part 2, each authority granted and each variation of authority.¹⁵
- [23] As the ACC did not complete any controlled operations during this reporting period, the Commission did not inspect any documents other than the ACC's general register which was provided to the Commission electronically.
- [24] The general register was inspected to ensure it conformed with the CICP Act. The Commission is satisfied that the ACC's general register is structured to fully cater for the legislative requirements specified in CICP Act s 40(2).

¹⁴ CICP Act s 40(1).

¹⁵ CICP Act s 40(2).

CHAPTER FOUR

RECOMMENDATIONS

4.1 Recommendations in this Annual Report

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

4.2 Comment on recommendations made in previous Annual Report

- [26] The Commission did not make any recommendations in the 2021 - 2022 ACC Annual Report.