



**CORRUPTION
AND CRIME
COMMISSION**

**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

***CRIMINAL INVESTIGATION
(COVERT POWERS) ACT 2012***

**ANNUAL REPORT
1 JULY 2015 - 30 JUNE 2016**

AUSTRALIAN CRIME COMMISSION

REPORT FOR MINISTER FOR POLICE

12 September 2016

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EXECUTIVE SUMMARY

- [1] 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.
- [2] Part 2 of the *Criminal Investigation (Covert Powers) Act 2012* ("the CICIP Act") facilitates investigation and intelligence-gathering in relation to criminal activity by providing for authorisation, conduct and monitoring of covert law enforcement controlled operations.
- [3] The CICIP Act allows Western Australia Police ("WA Police"), Department of Fisheries (WA) and the Australian Crime Commission ("ACC")¹ to grant authorities to conduct controlled operations. The CICIP Act also provides civil indemnification when certain criteria are met.
- [4] The Corruption and Crime Commission ("the CCC") is required to inspect the records of each agency at least once every 12 months to determine the extent of compliance with Part 2 of the CICIP Act by the agency and law enforcement officers of the agency.
- [5] The CICIP 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:²

(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.

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

² Definition of "relevant offence": s. 5 CICIP Act.

- [6] This report sets out the result of those inspections for the ACC during the period 1 July 2015 to 30 June 2016.
- [7] The ACC did not complete any controlled operations under the CACP Act during this reporting year.

CHAPTER ONE

ANNUAL REPORT BY THE CCC

- [1] The CICIP Act³ requires the CCC to prepare a report of the work and activities of the law enforcement agencies in respect of controlled operations for the preceding 12 months as soon as practicable after 30 June each year.⁴
- [2] The CCC is required to provide the Minister and the Chief Officer of each law enforcement agency with a copy of the report.⁵
- [3] 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.⁶
- [4] The report must include, for each law enforcement agency concerned, comments by the CCC on the comprehensiveness and adequacy of the Chief Officer reports which are required to be submitted to the CCC twice a year.⁷
- [5] The Chief Officer of each agency must advise the Minister of any information in the CCC 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 be reasonably expected to:⁸
 - endanger a person's safety; or
 - prejudice an investigation or prosecution; or
 - compromise any law enforcement agency's operational activities or methodologies.
- [6] 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.⁹

³ s. 38(1) CICIP Act

⁴ In order to comply with its functions, it is necessary for the CCC to inspect all Principal Law Enforcement Officer (PLEO) reports for completed controlled operations and to await provision of the agency Chief Officer s. 37 report post 30 June. This impacts upon when the CCC is able to complete its Annual Report.

⁵ s. 38(1) CICIP Act

⁶ s. 38(6) CICIP Act

⁷ s. 38(5) CICIP Act

⁸ s. 38(2) CICIP Act

⁹ s. 38(3) CICIP Act

- [7] 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.¹⁰
- [8] A copy of this report was provided to the Office of the Minister for Police on 12 September 2016.

¹⁰ s. 38(4) CACP Act

CHAPTER TWO WORK AND ACTIVITIES OF THE ACC

- [9] No controlled operations were authorised under WA legislation during this reporting period.
- [10] No controlled operations were refused authority under WA legislation during this reporting period.
- [11] No controlled operations were completed under WA legislation during this reporting period.
- [12] The ACC did not apply for any retrospective authorities under WA legislation.

2.1 Chief Officer Reports

- [13] Pursuant to the CICIP Act¹¹ the Chief Officer of the ACC is required to submit a report to the CCC as soon as practicable after 30 June and 31 December each year, setting out the following details in relation to controlled operations conducted by the agency during the previous six months:
 - 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

¹¹ s. 37 CICIP Act

- the operations must be classified into cross-border controlled operations and local controlled operations.

- [14] The Chief Officer 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
- [15] The CCC received Chief Officer Reports from the ACC on 4 April 2016 and 29 August 2016.
- [16] In accordance with the CICIP Act¹³ the CCC must comment on the comprehensiveness and adequacy of the reports provided by the Chief Officer of each law enforcement agency.
- [17] The Chief Officer reports for the ACC were in compliance with the CICIP Act. The ACC reported that the agency exercised powers under Commonwealth controlled operation legislation and not Western Australian legislation.

¹² s. 37(5) CICIP Act

¹³ s. 38(5) CICIP Act

CHAPTER THREE OUTCOME OF INSPECTIONS

3.1 Agency General Register

- [18] Law enforcement agencies are required by the CICIP Act¹⁴ to maintain a general register. The CICIP Act¹⁵ specifies the details the general register is to contain in respect of each application made under Part 2 of the CICIP Act, each authority granted and each variation of authority.
- [19] As the ACC did not complete any controlled operations during this reporting period, the CCC did not inspect any documents other than the ACC's general register.
- [20] The CCC is satisfied that the ACC general register is structured to fully cater for the legislative requirements set out in the CICIP Act.

¹⁴ s. 40(1) CICIP Act

¹⁵ s. 40(2) CICIP Act