7 September 2017

Hon Dave Kelly MLA
Minister for Fisheries
8th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister

CRIMINAL INVESTIGATION (COVERT POWERS) ACT 2012: ANNUAL REPORT

I enclose the CCC’s Annual Report on the work and activities of the former Department of Fisheries ("Fisheries") under Part 2 of the Criminal Investigation (Covert Powers) Act 2012 (the CICP Act) for the period 1 July 2016 - 30 June 2017.

The report is provided to you pursuant to the CICP Act s 38(1). It has also been provided to the Acting Director General of the Department of Primary Industries and Regional Development who is the Chief Officer for the purposes of the CICP Act.

As you will be aware, the 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. The CICP Act s 38 also makes provision for the Chief Officer of the Department of Primary Industries and Regional Development 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

Joho McKechnie, QC
COMMISSIONER
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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.


[3] The CICP Act allows authorities to conduct controlled operations to be granted to the Western Australia Police Force ("the WA Police Force"), the Department of Primary Industries and Regional Development ("Fisheries") and the Australian Crime Commission. The CICP 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 CICP Act by the agency and law enforcement officers of the agency.

[5] 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:

(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;

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1 As the department principally assisting in the administration of the Fish Resources Management Act 1994 (CICP Act s 3), as of 1 July 2017. Prior to 1 July 2017, the relevant department was the Department of Fisheries. As this report relates to the work and activities of the Department of Fisheries between 1 July 2016 and 30 June 2017, reference to Fisheries throughout this Annual Report is reference to the former Department of Fisheries.
2 On 1 July 2016 the Australian Crime Commission and CrimTrac merged to form the Australian Criminal Intelligence Commission.
3 CICP Act s 41(1).
4 Definition of "relevant offence": CICP Act s 5.
(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.

[6] The Authorising Officer for Fisheries is the Commissioner of Police.\(^5\)

[7] This report sets out the result of the inspection for Fisheries during the period 1 July 2016 to 30 June 2017.

[8] Fisheries did not complete any controlled operations under the CICP Act during this reporting period.

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\(^5\) CICP Act s 3.
CHAPTER ONE
ANNUAL REPORT BY THE CCC

[9] The CICP Act\(^6\) 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.\(^7\)

[10] The CCC is required to provide the Minister and the Chief Officer of each law enforcement agency with a copy of the report.\(^8\)

[11] 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.\(^9\)

[12] 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.\(^10\)

[13] 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 reasonably be expected to:

- endanger a person's safety; or
- prejudice an investigation or prosecution; or
- compromise any law enforcement agency's operational activities or methodologies.

[14] 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.\(^12\)

[15] 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.\(^13\)

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\(^{6}\) CICP Act s 38(1).
\(^{7}\) 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's Chief Officer s 37 report post 30 June. This impacts upon when the CCC is able to complete its Annual Report.
\(^{8}\) CICP Act s 38(1).
\(^{9}\) CICP Act s 38(6).
\(^{10}\) CICP Act s 38(5).
\(^{11}\) CICP Act s 38(2).
\(^{12}\) CICP Act s 38(3).
\(^{13}\) CICP Act s 38(4).
[16] A copy of this report was provided to the Office of the Minister for Fisheries on 7 September 2017.
CHAPTER TWO
WORK AND ACTIVITIES OF FISHERIES

2.1 Summary of Work and Activities of Fisheries

[17] During this reporting period:

- 1 local controlled operation was granted, which was a formal authority;
- 3 variations of authority were granted;14
- no urgent authorities were granted;
- no controlled operations were refused authority; and
- no controlled operations were completed.

[18] Table 1 below shows the numbers of completed controlled operations and the number of variations granted to those controlled operation authorities, in each reporting period since enactment of the CICP Act.

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<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
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</tr>
</thead>
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<tr>
<td><strong>Controlled Operations Completed</strong></td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td><strong>Variation to Authorities for Completed Controlled Operations</strong></td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

Table 1: Yearly Comparison of Completed Controlled Operations and Variations to those Operations15

[19] Fisheries did not apply for any retrospective authorities.

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14 A controlled operation granted during the previous reporting period (1 July 2015 - 30 June 2016) was varied three times during this reporting period and was still ongoing as at 30 June 2017.
15 Table 1 does not include data in relation to controlled operations granted or varied during the relevant reporting period which were still ongoing at the conclusion of the reporting period.
2.2 Chief Officer Reports

Pursuant to the CICP Act the Chief Officer of Fisheries\(^\text{16}\) is required to submit a report to the CCC as soon as practicable after 30 June and 31 December each year\(^\text{17}\) setting out the following details in relation to controlled operations conducted on behalf of the agency during the previous 6 months:\(^\text{18}\)

- 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.

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.\(^\text{19}\)

\(^{16}\) As defined in CICP Act s 3.
\(^{17}\) CICP Act s 37(1).
\(^{18}\) In order to comply with its reporting requirements, it is necessary for Fisheries to await completion of the PLEO reports in respect of completed controlled operations during the relevant period, prior to provision of the Chief Officer s 37 report to the CCC.
\(^{19}\) CICP Act s 37(5).
[22] The CCC received Chief Officer reports from Fisheries on 25 January 2017 and 4 August 2017 in relation to Fisheries controlled operations.

[23] In accordance with the CICP Act 20 the CCC must comment on the comprehensiveness and adequacy of the reports provided by the Chief Officer of each law enforcement agency.

[24] The Chief Officer reports for Fisheries were in compliance with the CICP Act and were comprehensive.

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20 CICP Act s 38(5).
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CHAPTER THREE
OUTCOME OF INSPECTIONS

3.1 Agency General Register

[25] Law enforcement agencies are required under the CICP Act to keep a general register. The CICP Act specifies the details the general register is to contain in respect of each application made under Part 2 of the CICP Act, each authority granted and each variation of authority.

[26] As Fisheries did not complete any controlled operations during this reporting period, the CCC did not inspect any documents other than Fisheries' general register.

[27] The general register was inspected to ensure it conformed to the CICP Act. The Fisheries general register is structured to fully cater for the legislative requirements specified in section 40(2) of the CICP Act.

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21 CICP Act s 40(1).
22 CICP Act s 40(2).
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CHAPTER FOUR
RECOMMENDATIONS

4.1 Recommendations in this Annual Report

[28] The CCC has not made any recommendations in this Annual Report.

4.2 Recommendations Made in Previous Annual Reports

[29] In November 2016, the Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) published a report regarding the CCC’s oversight of the use of covert powers by the three law enforcement agencies.

[30] The report recommended that the CCC report on whether recommendations made by the CCC in previous CICP Act Annual Reports have been adopted by the law enforcement agencies.

[31] Since November 2016, the CCC has adopted this recommendation in its Annual Reports and has reported on whether the law enforcement agencies have implemented recommendations made by the CCC in previous reporting periods.

[32] As reported in the CCC’s 2015 - 2016 Annual Report dated 13 January 2017, Fisheries have adopted the two recommendations made by the CCC in previous Annual Reports.

[33] The CCC has not made any further recommendations in relation to Fisheries and did not make any recommendations in the 2015 - 2016 Fisheries Annual Report.