CRIMINAL INVESTIGATION
(COVERT POWERS)
ACT 2012

Annual Report
1 July 2016 - 30 June 2017

Australian Crime Commission

Report for Minister for Police

1 November 2017
1 November 2017

Hon Michelle Roberts MLA
Minister for Police
12th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

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 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 Chief Executive Officer of the ACC 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 ACC to advise you of any information which in her opinion should be excluded and how you must deal with that.

I commend the report to you.

Yours sincerely

[Signature]
John 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")¹ and the Australian Crime Commission.² 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.³

[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:⁴

(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;

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 former Department of Fisheries.
² 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 purposes of reporting under the CICP Act.
³ CICP Act s 41(1).
⁴ 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.

[6] This report sets out the results of the inspection for the ACC during the period 1 July 2016 to 30 June 2017.

[7] The ACC did not complete any controlled operations under the CICP Act during this reporting period.
CHAPTER ONE
ANNUAL REPORT BY THE CCC

[8] The CICP Act\(^5\) requires the CCC to prepare a report of the work and activities of the law enforcement agencies in respect to controlled operations for the preceding 12 months as soon as practicable after 30 June each year.\(^6\)

[9] The CCC is required to provide the Minister and the Chief Officer of each law enforcement agency with a copy of the report.\(^7\)

[10] 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.\(^8\)

[11] 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.\(^9\)

[12] 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:\(^10\)

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

[13] 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.\(^11\)

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\(^5\) CICP Act s 38(1).
\(^6\) In order to comply with its functions, it is necessary for the CCC to inspect all Principal Law Enforcement Officer (PLED) 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.
\(^7\) CICP Act s 38(1).
\(^8\) CICP Act s 38(6).
\(^9\) CICP Act s 38(5).
\(^10\) CICP Act s 38(2).
\(^11\) CICP Act s 38(3).
[14] 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.12

[15] A copy of this report was provided to the Office of the Minister for Police on 1 November 2017.

12 CICP Act s 38(4).
CHAPTER TWO
WORK AND ACTIVITIES OF THE ACC

2.1 Summary of Work and Activities of the ACC

[16] During this reporting period:

- 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 during this reporting period; and
- The ACC did not apply for any retrospective authorities under WA legislation.

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 CCC 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 6 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;

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• 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 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.14

[19] The CCC received Chief Officer reports from the ACC on 21 February 2017 and 1 September 2017 in relation to ACC controlled operations.

[20] In accordance with the CICP Act15 the CCC must comment on the comprehensiveness and adequacy of the reports provided by the Chief Officer of each law enforcement agency.

[21] The Chief Officer reports for the ACC were in compliance with the CICP Act. The ACC reported that the agency exercised powers under Commonwealth controlled operation legislation, and not Western Australian legislation, during the reporting period.

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14 CICP Acts 37(5).
15 CICP Acts 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.\textsuperscript{16} 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.\textsuperscript{17}

[23] 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.

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

\textsuperscript{16} CICP Act s 40(1).
\textsuperscript{17} CICP Act s 40(2).
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CHAPTER FOUR
RECOMMENDATIONS

4.1 Recommendations in this Annual Report


4.2 Recommendations Made in Previous Annual Reports

[26] 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.

[27] 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.

[28] 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.

[29] The CCC's 2015 - 2016 Annual Report for the ACC was provided to the Minister for Police on 12 September 2016, prior to the JSCCCC’s recommendation being made.

[30] The CCC made the following recommendations in the 2013 - 2014 ACC Annual Report dated 6 February 2015:

Recommendation 1
The Commission recommends that the Australian Crime Commission review its practice and procedures in relation to completed operations, and consider adopting a similar process to the Western Australian Police in cancelling completed controlled operations if concluded prior to expiration of the authorisation.

Recommendation 2
The Commission recommends that the chief officer's report is submitted to the Commission no later than two months and two weeks after 30 June and 31 December each year.
[31] Recommendation 1 was a general recommendation made by the CCC identifying a matter of best practice as used by the Western Australia Police Force and was not made as a result of any practice or procedures of the ACC.

[32] The ACC has advised the CCC that its processes are set up to achieve the best practice of cancelling authorisations as soon as practicable after an operation concludes.

[33] In relation to recommendation 2, the ACIC has advised that it has adopted this recommendation.

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