
Inspection Report:

Crimes (Controlled Operations) Act 2004

Wildlife Act 1975

Fisheries Act 1995

Report by the Victorian Inspectorate on controlled operations records and reports for the period 1 July 2022 to 30 June 2023

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Overview

This report presents the findings of the Victorian Inspectorate (the VI) on the work and activities of the five Victorian agencies authorised to conduct controlled operations. It includes the results of the VI's inspection of controlled operations records belonging to these agencies, as well as an assessment of the comprehensiveness and adequacy of their six-monthly reports to the VI. The five agencies are:

- Department of Energy, Environment and Climate Action (DEECA)¹
- Game Management Authority (GMA)
- Independent Broad-based Anti-corruption Commission (IBAC)
- Victorian Fisheries Authority (VFA)
- Victoria Police

Only the VFA and Victoria Police exercised their controlled operation powers during the period.

The following Acts authorise the five agencies to conduct controlled operations for the purpose of obtaining evidence that may lead to the prosecution of persons for offences (with the applicable agencies listed in parentheses):

- *Crimes (Controlled Operations) Act 2004* ('CCO Act') (Victoria Police and IBAC)
- *Wildlife Act 1975* ('Wildlife Act') (DEECA and GMA)
- *Fisheries Act 1995* ('Fisheries Act') (VFA)

The provisions of these Acts are similar; however, the Wildlife Act and Fisheries Act limit the types of offences that may be investigated and the operational scope of a controlled operation. Only Victoria Police and IBAC may apply for and be granted an urgent authority to conduct a controlled operation, and only in limited circumstances. Additionally, controlled operations undertaken by Victoria Police and IBAC are classified into cross-border, local major and local minor operations.

Law enforcement officers of these agencies may apply to the chief officer of the agency for authority to conduct a controlled operation. In the case of Victoria Police, the power to authorise controlled conduct (that is, conduct that would otherwise constitute a criminal offence) under an authority may be delegated by the Chief Commissioner to specific classes of officers. Among Victorian law enforcement agencies, almost all controlled operations are conducted by Victoria Police under the CCO Act.

The role of the VI is to independently oversight agencies authorised to conduct controlled operations. The VI is required to inspect from time to time, and at least once every 12 months, the records of agencies that have exercised their powers to conduct controlled operations to determine the level of compliance achieved by the agency and its law enforcement officers. The VI reports on the work and activities of each agency on an annual basis to each House of Parliament, as well as the Attorney-General and the relevant agency itself.

¹ Until a machinery of government change that took effect on 1 January 2023, DEECA was known as the Department of Environment, Land, Water and Planning.

The VI notes in this report the cooperative and transparent engagement by the officers of the VFA and Victoria Police—these being the only agencies that exercised their powers, and at which the VI inspected a controlled operations file relevant to the period covered by this report. In total, the VI inspected 68 controlled operations files—one at the VFA, and 67 at Victoria Police. The findings for all other agencies included in this report deal only with the comprehensiveness and adequacy of the six-monthly reports they make to the VI.

The VI's biannual inspections deal with records that ceased during the preceding six-month period, and therefore this report gives findings for inspections conducted during the 2023 calendar year. These inspections covered authorities that ceased, as well as the work and activities undertaken by the agency, during the 1 July 2022 to 30 June 2023 period – the 'reporting period'.

In our previous inspection report, the VI noted that enquiries with respect to a disclosure by Victoria Police of unauthorised conduct by one of its officers were ongoing. During the reporting period, Victoria Police made a further disclosure of unauthorised conduct to the VI. While the VI's engagement with Victoria Police in respect of these serious disclosures remains ongoing, an account of the compliance issues, as well as the actions Victoria Police has taken in response to two recommendations made by the VI, is provided on pages 21-23 of this report.

Except in the case of the disclosures of unauthorised conduct, the VI has not made any recommendations as a result of its inspections of controlled operations records for the reporting period.

Introduction

The legislative framework that enables Victorian law enforcement agencies to conduct controlled operations imposes strict controls on their use of controlled authorities and requires them to meet record-keeping and reporting obligations.

OUR ROLE

Through its inspections program, the VI performs an independent oversight function to determine the extent of compliance achieved by each agency authorised to conduct controlled operations and its law enforcement officers.

In order to fulfil our requirement to report to Parliament annually on the work and activities of each agency, the VI conducts six-monthly inspections of completed controlled operations files. The VI inspects hard copy documents, including printouts of electronic registers, to confirm agencies are keeping proper records connected with authorities to conduct a controlled operation and are meeting prescribed reporting obligations.

HOW WE ASSESS COMPLIANCE

We assess compliance based on the records made available to us at the time of inspection and our discussions with the relevant agencies, as well as the action they take in response to any issues we have raised.

The VI also assesses the reports it receives from the chief officer of each agency, which give specific details about the authorised operations conducted by the agency against statutory criteria. For the 1 July 2022 to 30 June 2023 period, each agency was required to make two reports to the VI in accordance with the following timeframes:

- First report – due no later than 28 February 2023
- Second report – due no later than 31 August 2023

These reports cover any controlled operations conducted from 1 July to 31 December 2022 and 1 January to 30 June 2023, respectively.

HOW WE REPORT ON COMPLIANCE

To ensure procedural fairness, each agency is given an opportunity to comment on the VI's findings from our inspections and furnish additional records that might assist our assessments. Following this process, the inspection results are considered finalised.

Included in this report are findings resulting from our inspection and assessment of records and documents relating to authorities to conduct controlled operations, as well as comments on the comprehensiveness and adequacy of biannual reports provided by the agencies. We provide more detail where there is a finding of non-compliance. The VI may, in its discretion, not report on administrative issues (such as typographical errors) or instances of non-compliance where the consequences are negligible.

In accordance with the legislative framework governing the use of controlled operations by Victorian law enforcement agencies, the VI must provide a copy of this report to each agency to facilitate the redaction of information where, in the opinion of the agency, to include that information could reasonably be expected to do any of the following:

- (a) endanger a person's safety
- (b) prejudice an investigation or prosecution
- (c) compromise operational activities or methodologies of the agency.

Our consultation with Victoria Police and the VFA has resulted in no information been excluded from the report to be tabled in Parliament.

The following sections of this report provide the results of the VI's inspection of controlled operations records that were either cancelled or expired from 1 July 2022 to 30 June 2023 for each Victorian law enforcement agency with the authority to conduct controlled operations. This report also includes comments on the comprehensiveness and adequacy of reports provided to the VI by each agency.

Department of Energy, Environment and Climate Action

DEECA's Major Operations and Intelligence Unit² administers authorities to conduct controlled operations that can be made under the Wildlife Act. DEECA conducted no controlled operations during the period 1 July 2022 to 30 June 2023 and as a result there are no work and activities conducted under authorities for the VI to report. No controlled operations have been undertaken by DEECA for at least the past 10 years.

In this report, the VI's assessment of the extent of DEECA's compliance with the Wildlife Act is limited to whether the reporting requirements of section 74O of the Act were met.

INSPECTION FINDINGS

The VI did not inspect any DEECA files as it did not make an application for an authority to conduct a controlled operation during the period covered by this report and there were no historical issues that needed to be addressed.

COMPREHENSIVENESS AND ADEQUACY OF THE SECRETARY'S REPORTS

Section 74O(1) of the Wildlife Act requires DEECA to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months.

While DEECA submitted the report for the 1 July to 31 December 2022 period in accordance with the statutory timeframe, the report for the 1 January to 30 June 2023 period (due 31 August 2023) was received late—on 11 September 2023. Otherwise, both reports met all reporting criteria under section 74O of the Act and stated that no controlled operations were undertaken by DEECA during the six-month period covered by each report.

² This unit within DEECA was previously known as the Major Operations and Investigations Unit.

Game Management Authority

GMA may conduct controlled operations pursuant to Part IX of the Wildlife Act. GMA conducted no controlled operations during the period 1 July 2022 to 30 June 2023 and as a result there are no work and activities conducted under authorities for the VI to report.

The VI's assessment of the extent of GMA's compliance with the Wildlife Act is limited to assessing whether the reporting requirements of section 74OA of the Act were met.

INSPECTION FINDINGS

GMA has yet to exercise its powers under Part IX of the Wildlife Act to make an application to conduct a controlled operation. The VI therefore did not inspect any GMA files during the period covered by this report.

COMPREHENSIVENESS AND ADEQUACY OF THE GMA'S REPORTS

Section 74OA(1) of the Wildlife Act requires GMA to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months. The VI received both reports within the required timeframes.

Each report made to the VI pursuant to section 74OA of the Act stated that no controlled operations were undertaken by GMA during the six-monthly period covered by the report.

Independent Broad-based Anti-corruption Commission

IBAC's Legal Operations & Internal Compliance Unit³ administers authorities to conduct controlled operations made under the CCO Act. IBAC conducted no authorised operations during the period 1 July 2022 to 30 June 2023 and as a result there are no work and activities conducted under authorities for the VI to report. The most recent controlled operation conducted by IBAC was in early 2018.

In this report, the VI's assessment of the extent of IBAC's compliance with the CCO Act is limited to assessing whether the reporting requirements of section 38 of the CCO Act were met.

INSPECTION FINDINGS

The VI did not inspect any IBAC controlled operations files as IBAC did not make an application for an authority to conduct a controlled operation during the period covered by this report, and nor were there any historical issues that needed to be addressed.

COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 38(1) of the CCO Act requires IBAC to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months. The VI received both reports within the required timeframes.

Each report made to the VI pursuant to section 38 of the Act stated that no controlled operations were undertaken by IBAC during the six-month period covered by the report.

³ This unit within IBAC was previously known as the Legal Compliance Unit.

Victorian Fisheries Authority

The VFA can conduct controlled operations pursuant to Part 7A of the Fisheries Act. The VI inspected one controlled operations file at the VFA for the reporting period. This was the only controlled operation undertaken by the VFA that ceased during the 1 July 2022 to 30 June 2023 period.

INSPECTION FINDINGS

The VI found for the one inspected VFA controlled operation that the authority did not properly identify the nature of the controlled conduct under section 131F(1)(d) of the Fisheries Act. We also identified an opportunity for the VFA to improve the reports it makes under section 131R of the Act. In both cases, the VFA responded positively by making changes to its templates.

The VI also reports on a compliance disclosure made by the VFA during the reporting period. As a result of an error with an extension to an authority, a VFA authorised officer inadvertently engaged in unauthorised controlled conduct. We note the VFA accepted our suggestion with respect to when an extension to an authority takes effect, and as a result, the VFA has updated its procedures.

AUTHORITIES

Were applications for authorities to conduct controlled operations (including extensions and variations) properly made?

The VFA is required to comply with the requirements of sections 131C and 131E of the Fisheries Act when making applications for authorities to conduct controlled operations.

Specifically, an application must:

- be in writing and signed by the applicant
- contain sufficient information to enable the Chief Executive Officer (CEO) to decide whether to grant the application, including that:
 - a relevant offence has been, is being or is likely to be, committed
 - the nature and extent of criminal activity justifies a controlled operation
 - any unlawful conduct will be limited to the maximum extent consistent with conducting an effective controlled operation
 - the risk of more illicit goods being held by non-law enforcement officers is minimised
 - reporting requirements can be complied with
 - the controlled operation will not be likely to induce a person to commit an offence they would not otherwise commit

- any conduct will not seriously endanger the health or safety of, or cause death or serious injury to, any person, nor result in unlawful loss of or serious damage to property (other than illicit goods)
- state whether any previous applications for an authority or variation have been made with respect to the same proposed operation or same criminal activity and, if so, the outcome of the previous application.

The VI found the VFA complied with these requirements for the application it made for an authority during the reporting period.

The VFA also made an application to extend this authority, as well as another to vary it in order to authorise additional persons to engage in controlled conduct for the purposes of the operation.

In regard to the extension, the VFA disclosed a compliance issue to the VI ('the extension of authority issue'), the details of which are described on pages 13-14 of this report.

Were authorities (including variations) in proper form and cancellations properly made?

Authorities to conduct a controlled operation must be in writing, signed by the CEO and specify the following matters in accordance with section 131F of the Fisheries Act:

- the principal law enforcement officer and each law enforcement officer who may engage in controlled conduct
- the nature of the controlled conduct the participants may engage in
- the nature of the criminal activity and suspected offences targeted by the controlled conduct
- any suspect (to the extent known)
- the period of validity (not exceeding three months) and any conditions
- the date and time the authority is granted
- the nature and quantity of any illicit goods involved in the operation, as well as the route through which they will pass (to the extent known).

In the case of the one authority granted during the period, the VI found that the authority did not clearly specify the nature of the controlled conduct that the participants may engage in.

Finding 1 – Error with the form of the authority to conduct a controlled operation.

Under section 131F(1)(d) of the Fisheries Act, the authority to conduct a controlled operation must identify the nature of the controlled conduct that the participants may engage in.

In this regard, the VI found that the authority described the purpose of the controlled conduct, that is, to gather evidence of offending for the suspected offence, rather than the nature of the conduct.

In our post-inspection enquiries, the VFA agreed to amend its template for making an authority so that it clearly identifies the controlled conduct for the authorised participants. The VI has subsequently inspected an updated template from the VFA that provides increased guidance for achieving compliance in this respect.

The one authority that ceased in the reporting period had expired rather than being cancelled in writing by order of the CEO.

RECORDS

Did the VFA keep all records connected with authorised operations?

The VFA is required to keep certain records in connection with authorised controlled operations, including:

- each application made for an authority as well as variation of an authority
- each authority and variation of authority
- the order cancelling the authority
- the report made by the principal law enforcement officer to the CEO.

The VFA complied with these record-keeping requirements. The VI notes however that as a result of the extension of authority issue, the VFA did not cause an authority to be varied or cancelled during the reporting period.

Did the VFA keep a general register?

The VI found that a general register was kept by the VFA, as required by section 131V of the Fisheries Act.

The general register specified the following particulars with respect to each application made for an authority or variation of an authority:

- the date of application, and whether it was granted, refused or withdrawn
- the date and time an application was refused or withdrawn, as applicable.

For each authority granted, the general register must include the following details:

- the date and time it was granted
- each offence in respect of which controlled conduct was engaged in
- the period of validity, and if cancelled, the date and time of the cancellation
- the date and time the authorised operation began and the date it was completed
- the date the principal law enforcement officer made the report under section 131R of the Fisheries Act
- if the authorised operation involved illicit goods, the nature and quantity of such goods, as well as the route through which they passed, to the extent known
- any loss of or serious damage to property, or any personal injuries, resulting from the operation
- for each variation of authority, the date and time it was made.

The VI found the VFA complied with these requirements.

REPORTS

Were Principal Law Enforcement Officers' reports properly made?

The principal law enforcement officer is required, within two months after the completion of an authorised operation, to make a report to the CEO. Each report must give the following details for the authorised operation:

- the date and time it commenced and its duration
- the nature of the controlled conduct engaged in
- the outcome of the operation
- if the operation involved illicit goods, the nature and quantity of such goods, as well as the route through which they passed, to the extent known
- any loss of or serious damage to property, or personal injuries, resulting from the operation.

The VFA complied with its prescribed reporting obligations under section 131R of the Fisheries Act with respect to giving details for the authorised operation. As a result of the extension of authority issue, the VFA inadvertently made the report to the CEO more than 2 months after the completion of the authorised operation.

From our inspection of the section 131R report, the VI suggested to the VFA that it would be better practice if these reports also identified each law enforcement officer who engaged in controlled conduct. This additional information will assist the VI to confirm that any controlled conduct engaged in was by authorised participants only.

The VI has since inspected an amended template the VFA uses to make these reports that provides guidance to ensure each law enforcement officer who engaged in controlled conduct is identified.

TRANSPARENCY AND COOPERATION

The VI considers an agency's transparency, its cooperation during inspections, and its responsiveness to suggestions and issues to be a measure of its compliance culture. The VFA was responsive and transparent during the inspection process.

The VI reviewed and provided feedback on the VFA's finalised procedures for administering controlled operations. This included changes to its templates for making an authority and the report it makes under section 131R of the Fisheries Act, as well as procedures connected to seeking an extension to an authority. The VI notes the VFA was responsive to changes we suggested in the previous reporting period as well as the current reporting period.

Did the VFA self-disclose compliance issues?

The VFA disclosed to the VI during the reporting period that it had made an error with an extension to an authority to conduct a controlled operation. The VFA identified this error whilst making its report to the VI under section 131S of the Fisheries Act. In this case, the application sought an extension to the authority that would take effect from 12.01am on 4 April 2023. This same authority,

however, expired at 11.59pm on 3 April 2023. Since the authority expired just prior to when the extension was to take effect, it could not have been extended.

In our discussions with the VFA, we further learnt that a VFA law enforcement officer had engaged in conduct during the period during in which the controlled operation was believed to have been extended. As a result, this person had unwittingly engaged in unauthorised controlled conduct. The VI was advised by the VFA that the conduct engaged in by this officer was unsuccessful in obtaining any evidence related to the prosecution of a person for an offence.

In order to reduce the risk of any recurrence of this error, the VI suggested that the VFA consider having an extension to an authority take effect from when it is made/approved, or at least from a time before the expiry.

The VI notes that the VFA disclosed this issue to us shortly after it identified the error. We further note the VFA has been responsive to our advice, and as a result, has updated its procedures with respect to seeking an extension to an authority, including quality assurance checks to be completed prior to engaging in any controlled conduct.

Were issues identified at previous inspections addressed?

There were no controlled operation files inspected at the VFA during the previous reporting period that required re-inspection.

COMPREHENSIVENESS AND ADEQUACY OF THE CEO'S REPORTS

Section 131S of the Fisheries Act requires the VFA to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months. This section also specifies the details that must be included in the reports.

The VFA submitted these reports to the VI, one for the 1 July to 31 December 2022 period and the other for 1 January to 30 June 2023, in accordance with the statutory timeframes. The VI notes that the error with the extension to an authority caused the VFA to give incorrect information in the report it made for the 1 January to 30 June 2023 period. This led the VFA to incorrectly report that nil authorities expired during this reporting period, and furthermore, to report that one controlled operation remained ongoing—rather than having been completed—at the end of the same period. Additionally, the VFA incorrectly reported the number of authorities that were varied by its CEO during the period to which this report relates.

WORK AND ACTIVITIES OF THE VFA

The VFA conducted one authorised operation that ceased between 1 July 2022 and 30 June 2023. This figure is consistent with the historically low number of controlled operations undertaken by the VFA each year.

Table 1: Comparison of number of completed controlled operations over the past 4 years

Year	2019-20	2020-21	2021-22	2022-23
Number of completed controlled operations	1	0	2	1

No applications for the granting of an authority were refused by the VFA's CEO.

Victoria Police

There are two units within Victoria Police that administer authorities to conduct controlled operations pursuant to the CCO Act:

- the Controlled Operations Registry (COR), within the Crime Department, is the primary unit responsible for the administration of controlled operations authorities
- the Technical Projects Unit (TPU), which resides within Professional Standards Command.

INSPECTION FINDINGS

The VI inspected a total of 67 controlled operations files at Victoria Police for authorities that expired or were cancelled during the reporting period. These represent all authorised operations undertaken by Victoria Police that expired or were cancelled during the reporting period.

Other than one urgent application for an authority to conduct a controlled operation, all other applications by Victoria Police for an authority were made based on formal applications. One formal application for an authority was refused by a delegate of the Chief Commissioner.

The VI conducted an inspection of controlled operations records at Victoria Police on the following dates in 2023: 13-15 and 22 June; 19 October; and 27-29 November.

The VI identified one authority granted by Victoria Police that incorrectly stated the type of operation that was authorised. In response to this error, we identified opportunities for Victoria Police to improve how it discloses compliance issues to us. In this regard, we acknowledge the responsiveness of Victoria Police to our suggestions.

We also report on Victoria Police disclosures of inadvertent unauthorised controlled conduct performed by law enforcement participants. With regards to two separate instances of unauthorised controlled conduct, one of which was reported on in the previous inspection report, the VI made two recommendations to Victoria Police to improve how it communicates the scope of planned controlled conduct and to further improve its quality assurance measures. While this matter remains ongoing, the VI acknowledges changes Victoria Police has made to its procedures and guidance documents that has resulted in the closure of one recommendation.

AUTHORITIES

Were applications for authorities (including urgent authorities) to conduct controlled operations (including extensions and variations) properly made?

Victoria Police is required to comply with the requirements of sections 12 and 14 of the CCO Act when making applications to conduct controlled operations.

Specifically, each application must:

- be provided in writing and signed by the applicant (unless it is an urgent application)
- contain sufficient information to enable the Chief Commissioner (or other officer delegated by instrument under section 44 of the CCO Act) to decide whether to grant the application, including that:
 - any unlawful conduct will be limited to the maximum extent consistent with conducting an effective controlled operation
 - the risk of more illicit goods being held by non-law enforcement officers is minimised
 - reporting requirements can be complied with
 - the conduct of the operation is not likely to induce a person to commit an offence they would not otherwise commit
 - any conduct will not seriously endanger the health or safety of, or cause death or serious injury to, any person, involve any sexual offence, or result in unlawful loss of or serious damage to property (other than illicit goods)
 - the operation will only involve a civilian participant if the assigned role cannot be adequately performed by a law enforcement officer
- state whether the proposed operation is a cross-border, local major or local minor controlled operation (that is, state the type of operation)
- state whether any previous applications for an authority or variation have been made with respect to the same proposed operation or same criminal activity and, if so, the outcome of the previous application, as well as the type of controlled operation authorised, as applicable.

Each application must also comply with section 15, 16 or 17 of the CCO Act, depending on the type of controlled operation proposed.

While the VI found that Victoria Police complied with these application requirements, we identified one file containing an application for an authority that incorrectly recorded the type of controlled operation. This error is described on page 18 of this report.

For all inspected authorities varied by Victoria Police during the period, the applications were found to have complied with sections 21 and 22 of the CCO Act.

Victoria Police made one urgent application for an authority to conduct a controlled operation during the period in accordance with sections 12 and 14 of the CCO Act.

Were authorities (including urgent authorities and variations) in proper form and cancellations properly made?

Authorities to conduct a controlled operation must be in writing and signed by the Chief Commissioner or other officer delegated by instrument under section 44 of the CCO Act (unless it is an urgent authority). They must specify the following matters in accordance with section 18 of the CCO Act:

- the principal law enforcement officer and each law enforcement officer or civilian participant who may engage in controlled conduct
- whether the application was formal or urgent
- whether it is a cross-border, local major or local minor controlled operation, and in the case of cross-border operations, the participating jurisdictions

- the identity of each person who may engage in controlled conduct
- the nature of controlled conduct law enforcement participants may engage in, and the particular controlled conduct permissible for civilian participants
- the nature of criminal activity and suspected offences targeted by the controlled conduct
- any suspect (to the extent known)
- the period of validity of the authority (in accordance with section 19) and any conditions
- the date and time the authority is granted
- the nature and quantity of any illicit goods involved in the operation, as well as the route through which they pass (to the extent known).

Although all authorities granted by Victoria Police specified these matters, the VI identified that an authority incorrectly specified the type of operation authorised.

Finding 1 – Error with the form of the authority to conduct a controlled operation.

An authority to conduct a controlled operation must state the type of operation that is authorised, in accordance with section 18(3)(d) of the CCO Act. An authorised operations will either be a cross-border, local major, or local minor controlled operation. The type of operation authorised will depend on several factors, including whether the controlled operation is in respect of an offence that is a relevant offence.⁴

From the VI’s inspection of an authority that authorised a local minor controlled operation, we queried whether the nature of the suspected offences instead constituted a local major controlled operation. During the inspection it was confirmed that the operation targeted a relevant offence, and as a result, the authority had been made in error by not authorising a local major controlled operation.

The authority was subsequently cancelled one week after it was granted by Victoria Police, and it was immediately afterwards replaced by a new authority to conduct the controlled operation. The VI notes that no controlled conduct was engaged in under the authority with the error.

In our post-inspection enquiries, the VI made a number of suggestions connected to how the COR records and discloses any potential issues/compliance concerns to the VI. Noting these suggestions relate to actions Victoria Police took in response to disclosures of unauthorised conduct (‘the unauthorised conduct issue’), please refer to pages 21-23 of this report for details.

In the case of one inspected authority signed by an authorised delegate, the same delegate endorsed it as being ‘void’ on the following day. The VI notes that no conduct was engaged in under the voided authority. In connection to this issue, the VI provided feedback to the COR on how it records any errors and we also queried what quality assurance checks it undertakes to ensure that

⁴ ‘Relevant offence’ is defined under section 3 of the CCO Act as “(a) an offence against the law of this jurisdiction punishable by a maximum term of imprisonment of 3 years or more; or (b) an offence against the law of this jurisdiction that is prescribed by the regulations”.

the form of each authority is accurate before it is presented to the delegate for approval. These matters form part of, and are subsequently included in, our broader findings connected with the unauthorised conduct issue.

The VI identified no issues with the urgent authority granted during the period.

Each variation to an authority must comply with section 24 of the CCO Act, whereby it:

- identifies the authorised operation, as well as the name and rank or position of the person varying the authority
- states the name of the applicant and whether it was a formal or urgent variation application
- states the date and time the authority was varied and describes the variation.

All variations to an authority granted by Victoria Police met these requirements.

Victoria Police cancelled an authority to conduct a controlled operation on 44 occasions. In all cases, the authority was cancelled in writing and in accordance with section 25 of the CCO Act.

RECORDS

Did Victoria Police keep all records connected with authorised operations?

Victoria Police is required to keep certain records in connection with authorised operations, including:

- each formal application made for an authority to be granted or varied
- each formal authority and variation granted
- all written notes made in connection with the granting of an urgent authority, as well as notes connected to varying an authority, specifically, the date and time the authority was varied and the identity of relevant law enforcement officer
- the order cancelling the authority
- the report made by the principal law enforcement officer.

Victoria Police complied with these record-keeping requirements, including keeping a formal application for an authority that was refused by a delegate of the Chief Commissioner.

Did Victoria Police keep a general register?

The VI found that a general register was kept by Victoria Police, as required by section 41 of the CCO Act.

The general register must specify, with respect to each application made for an authority or variation of an authority (formal and urgent), the following particulars:

- date of application, and whether it was formal or urgent
- whether it was made with respect to a cross-border, local major or local minor controlled operation
- whether the application was granted, refused or withdrawn, and if refused or withdrawn, the date and time that occurred.

For each authority granted, the general register must include the following details:

- date and time it was granted, and whether it was formal or urgent
- name and rank/position of person who granted the authority
- whether it was a cross-border, local major or local minor controlled operation
- each offence in respect of which the controlled conduct was engaged in
- period of validity, and if cancelled, the date and time of the cancellation
- date and time the authorised operation began, and date it was completed
- date of the principal law enforcement officer's report under section 37 of the CCO Act
- if the authorised operation involved illicit goods, the nature and quantity of such goods, as well as the route through which they passed (to the extent known)
- any loss of or serious damage to property, or personal injuries, resulting from the operation
- for each variation of authority, the date and time it was made, whether it was formal or urgent, and the name and rank/position of person who made the variation.

In our previous inspection report, the VI reported that Victoria Police did not meet these requirements on 15 occasions (across 14 different authorities), as information was either incorrectly recorded or omitted from the general register made available to the VI. The same report further noted an issue associated with the rank or position of the delegate that was recorded in the general register. For the current reporting period, however, the VI found that Victoria Police complied with all requirements connected to keeping a general register.

REPORTS

Were Principal Law Enforcement Officers' reports properly made?

The principal law enforcement officer is required, within two months after the completion of an authorised operation, to make a report to the Chief Commissioner. Each report must give the following details for the authorised operation:

- date and time it commenced, as well as its duration
- whether it was a cross-border, local major or local minor controlled operation
- the nature of the controlled conduct engaged in
- the outcome of the operation
- if the operation involved illicit goods, the nature and quantity of such goods, as well as the route through which they passed (to the extent known)
- any loss of or serious damage to property, or personal injuries, resulting from the operation.

The VI found Victoria Police complied with all prescribed reporting obligations under section 37 of the CCO Act. The COR disclosed to the VI some issues connected to these reports, the details of which are shown on page 21 of this report.

TRANSPARENCY AND COOPERATION

The VI considers an agency's transparency, its cooperation during inspections, and its responsiveness to suggestions and issues to be a measure of its compliance culture.

Victoria Police was responsive and transparent during the inspection process, particularly when the VI made enquiries about certain records. Victoria Police's COR provided additional information in response to some questions connected to compliance with the CCO Act and how it administers controlled operations.

During the reporting period, Victoria Police's PSC accepted a suggestion by the VI that it adopt a process whereby its controlled operations database includes the details of the relevant person(s) who engaged in each authorised operation. This information will assist the VI to confirm that any controlled conduct engaged in was by authorised participants only.

Did Victoria Police self-disclose compliance issues?

Victoria Police's COR made a total of five compliance-related disclosures during the reporting period. With respect to 3 disclosures, the report made under section 37 of the CCO Act was not made within the statutory requirement of 2 months after completion of the authorised operation. In our discussions with the COR, we were informed of an issue with the how the database it uses for administering controlled operations records the validity period of authorities that have been cancelled. Until a permanent IT solution can be affected, the COR has implemented interim measures to overcome a limitation associated with the reports generated from its database.

A disclosure was also made with regards to the accuracy of the information given in the general register as well as the report made under section 37 of the CCO Act for the same authority. Although the general register correctly recorded the date on which the authority was cancelled, it gave the incorrect time for the cancellation. This error was subsequently replicated in the report with respect to stating the duration of the authorised operation.

In our previous inspection report, the VI reported on a disclosure where a Victoria Police officer engaged in a controlled operation without having been authorised under the relevant authority. We further reported that due to the ongoing nature of our enquiries with Victoria Police in this matter, an update would be provided in the next report. In the current reporting period, Victoria Police made a further disclosure connected with unauthorised conduct—on this occasion, although the officer was identified as someone who may engage in controlled conduct for the purposes of the operation, the conduct they engaged in however was not authorised due to an error with the form of the authority. An update in relation to these disclosures is provided below.

Unauthorised conduct engaged in by Victoria Police officers and recommendations made by the VI

At the November 2022 inspection, Victoria Police's COR disclosed to the VI that a completed operation involved conduct by a person who was not authorised to engage in the controlled conduct. This particular law enforcement officer engaged in conduct related to the purchase of an illicit drug of dependence in the belief that they were covered by the relevant authority. Shortly after this disclosure, the VI requested additional information from Victoria Police including, but not limited to, a copy of the relevant procedures used by the COR as well as by Victoria Police's Undercover Unit for administering controlled operations.

In February 2023, the COR disclosed another case of unauthorised conduct by a Victoria Police officer. As opposed to the earlier disclosure, on this occasion the error related to a participant who engaged in conduct not consistent with the operational plan presented to the approving officer. The

relevant participant in the operation deliberately drove a motor vehicle in excess of the speed limit on 2 occasions in order to incur infringement notices.

Although the authority specified conduct that included breaking the road rules, Victoria Police confirmed that the relevant delegate provided approval for conduct that, with respect to the road rules, would be limited to failing to stop at a red light or arrow. The authority therefore did not correctly identify the nature of the controlled conduct that may be engaged in, and as a result, a Victoria Police officer engaged in unauthorised conduct.

While the VI notes that on both occasions the relevant Victoria Police officers had inadvertently engaged in unauthorised conduct, these disclosures entail a higher risk since criminal conduct was engaged in without the protection of an authority to engage in that conduct.

Following our discussions with Victoria Police and receipt of the requested procedural documents, the VI made the following 2 recommendations to Victoria Police in June 2023 to raise awareness of the nature of the controlled conduct that may be engaged in and the need to have clear lines of quality assurance:

Recommendation 1: Victoria Police undertake awareness raising that gives clear guidance to members on the need to ensure any planned conduct is consistent with an authority, and to consider how the scope of planned conduct can be better communicated to all participants. In connection with this, the current briefing process on planned conduct should be reviewed to ensure it is effective and fit for purpose.

Recommendation 2: Victoria Police should document its quality assurance measures to ensure it is consistently able to assess whether activities and participants relating to a controlled operation are covered by an authority. In addition, Victoria Police should identify in policy and guidance the unit/s responsible for these quality assurance processes.

In addition to these recommendations, the VI made some suggestions to the COR with respect to how it discloses compliance matters. These suggestions include, among others, that:

- the COR make its issues register available at each VI inspection
- for any disclosure that involves a concern about the lawfulness of an action to be notified to the VI as soon as practicable
- for all other errors, including near misses, to at least be captured in the issues register.

The VI acknowledges the COR's responsiveness to our suggestions, including making its issues register available for inspection in November 2023.

Furthermore, with regards to ensuring the form of each authority is correct prior to being given to the delegate for their consideration, the COR advised the VI that it has a documented process that requires multiple members of its staff, including the Officer in Charge, to undertake quality assurance checks on an authority. The VI will inspect this guidance at its next scheduled inspection of COR records.

As a result of the actions Victoria Police has taken to address the recommendations, the VI has inspected records that show Victoria Police has documented sufficient quality assurance measures to enable **Recommendation 2** to be closed. These actions include updated procedures at Victoria Police's Undercover Unit, additional instructions given to all officers who may be involved in the

controlled operation, and post operation work instructions followed by the COR to confirm all aspects of the controlled operation align with the relevant authority.

While Victoria Police has taken actions to deal with **Recommendation 1**, including updated guidance to the principal law enforcement officer for the operation as well as to the relevant investigators and Undercover Unit controllers, the VI will continue to liaise with Victoria Police to track its progress in establishing additional processes to fulfil the requirements of this recommendation.

Were issues identified at previous inspections addressed?

The VI re-inspected the general register in connection to 14 authorities—the inspection of which formed part of our findings for the previous reporting period. The VI confirmed that the general register was amended to correct the earlier identified errors and to also include all information that is required by section 41 of the CCO Act. Additionally, the VI confirmed that the COR made 4 supplementary reports under section 37 of the CCO Act to correct previously identified errors.

COMPREHENSIVENESS AND ADEQUACY OF THE CHIEF OFFICER'S REPORTS

Section 38(1) of the CCO Act requires Victoria Police to report to the VI, as soon as practicable after 30 June and 31 December and no more than two months after each date, on the details of its authorised operations conducted during the preceding six months. This section also specifies the details that must be included in the reports.

Victoria Police submitted these reports to the VI, one for the 1 July to 31 December 2022 period and the other for 1 January to 30 June 2023, in accordance with the statutory timeframes. The VI however identified some errors given in the biannual controlled operations report that Victoria Police made for the 1 January to 30 June 2022 period. These errors relate to the reported number of authorities that were cancelled or expired during the period. In response, the COR provided the VI with a revised excerpt of the report which corrected the earlier reporting discrepancies. The COR stated that it will conduct greater quality assurance checks for the statistics given in future reports to the VI.

WORK AND ACTIVITIES OF VICTORIA POLICE

To report on the work and activities of Victoria Police for the 1 July 2022 to 30 June 2023 period, the VI largely relied on the information supplied by Victoria Police in its six-monthly reports made under section 38 of the CCO Act. The information the VI obtains from its inspections is limited to files for authorities that have ceased and for which the reporting requirements have been completed during the period. Therefore, not all records for authorised operations granted by Victoria Police within a reporting period will be eligible for inspection.

Applications for an authority to conduct a controlled operation at Victoria Police are made to an Assistant Commissioner (who has delegated authority in accordance with s 44 of the CCO Act).

Victoria Police granted a total of 61 authorities during 2022-23; this number being significantly below the average for the preceding three years.

Table 1: Comparison of number of authorities granted over the past four years

Year	2019-20	2020-21	2021-22	2022-23
Number of authorities granted	83	95	85	61

Note: These are the figures reported by Victoria Police in its Chief Officer Reports made under s 38 of the CCO Act as the number of authorities granted each financial year. They are not the same as the number of completed authorities inspected by the VI during these periods.

Victoria Police may, in limited circumstances, make an application for an urgent authority by means of communication other than a signed written document. One such authority was granted on the basis of an urgent application during 2022-23.

An authority may be varied for a number of different purposes such as to extend the period of its validity, to authorise additional persons to engage in controlled conduct, or to identify additional suspects. A total number of 18⁵ authorities to conduct a controlled operation were varied on at least one occasion by Victoria Police during the reporting period. Of this number, 12 authorities were varied once, 4 were varied twice, and 2 were varied on three occasions.

One application for granting an authority was refused by a delegate of the Chief Commissioner during the period. This application was refused because the target had already been identified as a suspect in another operation.

The total number of Victoria Police authorities that were active at any time during 2022-23 (i.e., including authorities commenced prior to the relevant reporting period) is significantly lower than for any other period over the past four years. This partially reflects the reduced number of authorities granted over this period, as shown in Table 1.

Table 2: Comparison of number of authorities reported on over the past four years⁶

Year	2019-20	2020-21	2021-22	2022-23
Number of active authorities	107	119	138	91

Authorised operations undertaken by Victoria Police are categorised as either local minor, local major, or cross-border controlled operations. Local minor and local major controlled operations are

⁵ This figure shows the number of authorities that were varied at any stage during the six-monthly period they were either cancelled or expired—according to the reports made under section 38 of the CCO Act, and therefore, it does not include any variations that may have been made to an authority prior to the six-monthly period during which it ceased. This also applies to the reported number of occasions that each authority was varied.

⁶ The number of active authorities represents the combined total number of authorities reported on in the six-monthly reports made under section 38 of the CCO Act for the relevant financial year. Since an authority reported as commenced (but not yet concluded) during the period of one report will subsequently be reported on as concluded in a later report, the number authorities shown in Table 2 is greater than the number of individual authorities that were administered by Victoria Police for the financial year.

conducted wholly within Victoria. The former targets offending punishable by less than three years' imprisonment whereas the latter relates to offending that may result in three or more years' imprisonment. A cross-border controlled operation targets offending punishable by three or more years' imprisonment and is also likely to be partially conducted in at least one jurisdiction outside Victoria that has a corresponding law in force.

In total, Victoria Police had 67 authorised operations that ceased during the 2022-23 period. Of this number, 65 were local major controlled operations, and one each for a cross-border operation as well as a local minor controlled operation (noting the local minor operation was incorrectly authorised). The high proportion of local major controlled operations undertaken by Victoria Police is historically consistent, as shown in Table 3.

Table 3: Number of controlled operations by operation type over the past four years

Year	2019-20	2020-21	2021-22	2022-23
Local Major	83	74	92	65
Local Minor	1	1	2	1
Cross-Border	1	1	2	1

Note: These figures are based on authorities that ceased during the period.

In addition to authorising law enforcement participants to engage in controlled conduct, authorities may also authorise civilian participants to engage in controlled conduct. The involvement of civilian participants in an operation is limited to circumstances where their role cannot be adequately performed by a law enforcement officer. Victoria Police infrequently involves civilian participants in its controlled operations. In 2022-23, no civilian participated in a controlled operation conducted by Victoria Police.

Table 4: Controlled conduct engaged in by participant type over the past four years

Year	2019-20	2020-21	2021-22	2022-23
Law Enforcement only	61	65	62	44
Civilian only	3	0	0	0
Law Enforcement and Civilian	2	0	1	0

Note: These figures are based on authorities that ceased during the period. The tally for the numbers for each period is lower than the total number of ceased authorities shown at Table 3 since controlled conduct is not engaged in under all authorities.

In some situations, controlled conduct is not engaged in at all during the life of an authority. The absence of any controlled conduct can occur for various reasons, such as where evidence has been obtained by other means or operational priorities change. While the number of authorities under which no controlled conduct was engaged in relative to the number of authorities granted by Victoria Police was similar to the last reporting period, it is significantly higher than what was recorded for the years previous to that.

Table 5: Number of authorities with/without controlled conduct over the past four years

Year	2019-20	2020-21	2021-22	2022-23
With controlled conduct	66	65	63	44
Without controlled conduct	18	11	33	23

Note: These figures are based on authorities that ceased during the period.

Similar to the previous reporting period, Victoria Police cancelled a high proportion of the total number of authorities it granted during 2022-23. This demonstrates the control measures implemented by the COR in response to a suggestion by the VI that it regularly reviews the need to keep each authority active, and to cause its cancellation once determined it is no longer required, are working effectively. The VI made this better practice suggestion following a Victoria Police notification that it would increase the standard validity period for the authorities it grants.

Table 6: Number of authorities expired or cancelled over the past four years

Year	2019-20	2020-21	2021-22	2022-23
Expired	78	73	67	44
Cancelled	7	3	29	23

Note: These figures are based on authorities that ceased during the period.

Victoria Police must consider a number of matters before granting an authority to conduct a controlled operation, such as ensuring any conduct under the authority will not endanger the safety of any person or cause serious damage to property. Of the 44 completed authorities during the period that involved controlled conduct, Victoria Police reported a loss of cash (less than \$4000) in the case of one authorised operation.