

Authorised Version No. 004
Crimes (Controlled Operations) Act 2004

No. 16 of 2004

Authorised Version incorporating amendments as at
22 June 2011

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Crimes (Controlled Operations) Act 2004

No. 16 of 2004

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22 June 2011

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to provide for the authorisation, conduct and monitoring of controlled operations (including operations conducted in this and one or more other jurisdictions) for the purpose of obtaining evidence that may lead to the prosecution of persons for offences and that involve or may involve conduct for which participants in the operation would otherwise be criminally responsible; and
- (b) to facilitate mutual recognition of things done in relation to cross-border controlled operations authorised under laws of other jurisdictions corresponding to this Act; and
- (c) to provide for the indemnification of participants in authorised operations against civil liability in respect of the conduct of the operations; and
- (d) to amend the **Fisheries Act 1995** and the **Wildlife Act 1975** regarding controlled operations under those Acts; and
- (e) to repeal certain accomplice provisions in other Acts.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Definitions

In this Act—

S. 3 def. of *Australian Crime Commission* repealed by No. 39/2008 s. 3(2).

* * * * *

authorised operation means a controlled operation for which an authority is in force;

authority means an authority in force under Part 2, and includes any variation of such an authority;

S. 3 def. of *chief officer* substituted by No. 39/2008 s. 3(1)(a).

chief officer means—

- (a) in relation to Victoria Police—the Chief Commissioner of Police;
- (b) in relation to the Office of Police Integrity—the Director;

civilian participant in an authorised operation means a participant in the operation who is not a law enforcement officer;

conduct includes any act or omission;

controlled conduct—see section 7;

controlled operation—see section 6;

corresponding authorised operation means any operation in the nature of a cross-border controlled operation that is authorised by or under the provisions of a corresponding law;

corresponding authority means an authority authorising a cross-border controlled operation (within the meaning of a corresponding law) that is in force under the corresponding law;

corresponding law means a law of another jurisdiction that is declared by the regulations to correspond to this Act;

corresponding participant means a person who is authorised by a corresponding authority to participate in a corresponding authorised operation;

criminal activity means conduct that involves the commission of an offence by one or more persons;

cross-border controlled operation—see section 9;

Director means the Director, Police Integrity under section 7 of the **Police Integrity Act 2008**;

S. 3 def. of ***Director*** inserted by No. 63/2004 s. 20(a) (as amended by No. 39/2008 s. 6(1)), amended by No. 34/2008 s. 143(Sch. 2 item 5.1(a)).

formal application—see section 12(2)(a);

formal authority—see section 18(1)(a);

formal variation application—see section 21(3)(a);

formal variation of authority—see section 23(1)(a);

function includes a power, authority or duty;

illicit goods means goods the possession of which is a contravention of the law of this jurisdiction;

S. 3 def. of
*law
enforcement
agency*
substituted by
No. 39/2008
s. 3(1)(b).

S. 3 def. of
*law
enforcement
officer*
substituted by
No. 39/2008
s. 3(1)(c).

jurisdiction means a State or Territory of the Commonwealth;

law enforcement agency means the following agencies—

- (a) Victoria Police;
- (b) the Office of Police Integrity;

law enforcement officer means—

- (a) in relation to Victoria Police—
 - (i) a member of Victoria Police; or
 - (ii) a person who is seconded to Victoria Police including (but not limited to) a member of the police force or police service (however described) of another jurisdiction;
- (b) in relation to the Office of Police Integrity—a prescribed member of staff of the Office of Police Integrity;

law enforcement participant in an authorised operation means a participant in the operation who is a law enforcement officer;

local major controlled operation—see section 10;

local minor controlled operation—see section 11;

member of Victoria Police, means a member of the force within the meaning of the **Police Regulation Act 1958**;

Office of Police Integrity means the Office of Police Integrity within the meaning of the **Police Integrity Act 2008**;

S. 3 def. of *Office of Police Integrity* inserted by No. 63/2004 s. 20(a) (as amended by No. 39/2008 s. 6(1)), amended by No. 34/2008 s. 143(Sch. 2 item 5.1(b)).

participant in an authorised operation means a person who is authorised under this Act to engage in controlled conduct for the purposes of the operation;

participating jurisdiction means a jurisdiction in which a corresponding law is in force;

prescribed member of staff of the Office of Police Integrity means—

S. 3 def. of *prescribed member of staff of the Office of Police Integrity* inserted by No. 63/2004 s. 20(a) (as amended by No. 39/2008 s. 6(1)).

- (a) the Director; or
- (b) an employee in the Office of Police Integrity who holds a position, or is a member of a class, that is prescribed by the regulations for the purposes of this definition; or
- (c) a member of Victoria Police or member of the police force or police service (however described) of another jurisdiction, who is seconded to the Office of Police Integrity;

principal law enforcement officer for an authorised operation means the law enforcement officer who is responsible for the conduct of the operation;

relevant offence means—

- (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;

S. 3 def. of *relevant Ombudsman* repealed by No. 63/2004 s. 20(f).

* * * * *

S. 3 def. of *Special Investigations Monitor* inserted by No. 63/2004 s. 20(a) (as amended by No. 39/2008 s. 6(1)).

Special Investigations Monitor means the Special Investigations Monitor appointed under the **Major Crime (Special Investigations Monitor) Act 2004**;

suspect means a person reasonably suspected of having committed or being likely to have committed, or of committing or being likely to be committing, an offence;

this jurisdiction means Victoria;

urgent application—see section 12(2)(b);

urgent authority—see section 18(1)(b);

urgent variation application—see section 21(3)(b);

urgent variation of authority—see section 23(1)(b);

Victoria Police means the force within the meaning of the **Police Regulation Act 1958**.

4 Relationship to other laws and matters

- (1) This Act is not intended to affect any other law of this jurisdiction that authorises, controls or monitors the conduct of operations wholly within this jurisdiction for the purpose of obtaining evidence that may lead to the prosecution of a person for an offence and that involve, or may involve, conduct for which participants in the operation would otherwise be criminally responsible.
- (2) Subject to subsection (3), this Act is not intended to limit a discretion that a court has—
 - (a) to admit or exclude evidence in any proceedings; or
 - (b) to stay criminal proceedings in the interests of justice.
- (3) In determining whether evidence should be admitted or excluded in any proceedings, the fact that the evidence was obtained as a result of a person engaging in criminal activity is to be disregarded if—
 - (a) the person was a participant or corresponding participant acting in the course of an authorised operation or corresponding authorised operation; and
 - (b) the criminal activity was controlled conduct within the meaning of this Act or controlled conduct within the meaning of a corresponding law.

5 Binding the Crown

- (1) This Act binds the Crown in right of Victoria and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

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s. 5

(2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

PART 2—AUTHORISATION OF CONTROLLED OPERATIONS

Division 1—Types of controlled operations

6 What is a controlled operation?

A *controlled operation* is an operation that—

- (a) is conducted, or intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for an offence; and
- (b) involves, or may involve, controlled conduct.

7 What is controlled conduct?

In this Act, *controlled conduct* means conduct for which a person would, but for section 28 or 35, be criminally responsible.

8 What types of controlled operations may be authorised under this Act?

The following types of controlled operations may be authorised under this Act—

- (a) a cross-border controlled operation;
- (b) a local major controlled operation;
- (c) a local minor controlled operation.

9 What is a cross-border controlled operation?

(1) A *cross-border controlled operation* is a controlled operation—

- (a) in respect of an offence that is a relevant offence; and
- (b) that is, will be, or is likely to be, conducted in this jurisdiction and in one or more participating jurisdictions.

- (2) For the purposes of this Act, a cross-border controlled operation in respect of a relevant offence is taken to be conducted in this jurisdiction (whether or not it is also conducted in another jurisdiction) if a participant in the operation is a law enforcement officer of this jurisdiction.

Note

Subsection (2) is intended to cover the situation where an officer of this jurisdiction is conducting an operation in another jurisdiction for the purposes of investigating a relevant offence of this jurisdiction (eg: a Victorian officer is investigating a conspiracy to import drugs into Victoria from NSW, and the operation is to be conducted wholly in NSW).

10 What is a local major controlled operation?

A *local major controlled operation* is a controlled operation—

- (a) in respect of an offence that is a relevant offence; and
- (b) that is or will be conducted wholly in this jurisdiction.

11 What is a local minor controlled operation?

A *local minor controlled operation* is a controlled operation—

- (a) in respect of an offence against the law of this jurisdiction punishable by a maximum term of imprisonment of less than 3 years, or by a fine but not imprisonment; and
- (b) that is or will be conducted wholly in this jurisdiction.

Division 2—Procedure for authorising controlled operations

12 Applications for authorities to conduct controlled operations

- (1) A law enforcement officer of a law enforcement agency may apply to the chief officer of the agency for authority to conduct a controlled operation on behalf of the agency.
- (2) An application for authority may be made—
 - (a) by means of a written document signed by the applicant (a *formal application*); or
 - (b) if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the operation— orally in person or by telephone, fax, e-mail or any other means of communication (an *urgent application*).
- (3) Nothing in this Part prevents an application for authority being made in respect of a controlled operation that has been the subject of a previous application, but in that case the subsequent application must be a formal application.
- (4) In any application, whether formal or urgent, the applicant must—
 - (a) provide sufficient information to enable the chief officer to decide whether or not to grant the application; and
 - (b) state whether the proposed operation is a cross-border controlled operation, a local major controlled operation or a local minor controlled operation; and
 - (c) state whether or not the proposed operation, or any other controlled operation with respect to the same criminal activity, has been the subject of an earlier application for an authority or variation of an authority and,

if so, whether or not the authority was given or variation granted and, if so, the type of controlled operation authorised.

- (5) The chief officer may require the applicant to furnish any additional information concerning the proposed controlled operation that is necessary for the chief officer's proper consideration of the application.
- (6) As soon as practicable after making an urgent application, the applicant must make a record in writing of the application and give a copy of it to the chief officer.

Note to s. 12
amended by
No. 63/2004
s. 21.

Note

In some circumstances, the chief officer may delegate functions under this section—see Division 1 of Part 5.

13 Determination of applications

After considering an application for authority to conduct a controlled operation, and any additional information furnished under section 12(5), the chief officer—

- (a) may authorise the operation by granting the authority, either unconditionally or subject to conditions; or
- (b) may refuse the application.

Note to s. 13
amended by
No. 63/2004
s. 21.

Note

In some circumstances, the chief officer may delegate functions under this section—see Division 1 of Part 5.

14 Matters to be taken into account—all controlled operations

An authority to conduct a controlled operation may not be granted unless the chief officer is satisfied on reasonable grounds—

-
- (a) that any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and
 - (b) that the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons (other than law enforcement officers) at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation; and
 - (c) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of Part 4 to be complied with; and
 - (d) that the operation will not be conducted in such a way that a person is likely to be induced to commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and
 - (e) that any conduct involved in the operation will not—
 - (i) seriously endanger the health or safety of any person; or
 - (ii) cause the death of, or serious injury to, any person; or
 - (iii) involve the commission of a sexual offence against any person; or
 - (iv) result in unlawful loss of or serious damage to property (other than illicit goods); and

- (f) that any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

Note

Sections 15, 16 and 17 set out further matters to be taken into account for the different types of controlled operation.

15 Further matters to be taken into account—cross-border controlled operations

- (1) An authority to conduct a cross-border controlled operation may not be granted unless the chief officer is satisfied on reasonable grounds—
- (a) that a relevant offence has been, is being or is likely to be, committed; and
 - (b) that the controlled operation will be, or is likely to be, conducted in this jurisdiction and in one or more participating jurisdictions; and
 - (c) that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation in this jurisdiction and in one or more participating jurisdictions.
- (2) For the avoidance of doubt, the matters referred to in subsection (1) are in addition to the matters referred to in section 14.

16 Further matters to be taken into account—local major controlled operations

- (1) An authority to conduct a local major controlled operation may not be granted unless the chief officer is satisfied on reasonable grounds—
- (a) that a relevant offence has been, is being or is likely to be, committed; and

- (b) that the controlled operation will be conducted wholly in this jurisdiction; and
 - (c) that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation in this jurisdiction.
- (2) For the avoidance of doubt, the matters referred to in subsection (1) are in addition to the matters referred to in section 14.

17 Further matters to be taken into account—local minor controlled operations

- (1) An authority to conduct a local minor controlled operation may not be granted unless the chief officer is satisfied on reasonable grounds—
- (a) that an offence against the law of this jurisdiction punishable by a maximum term of imprisonment of less than 3 years, or by a fine but not imprisonment, has been, is being or is likely to be, committed; and
 - (b) that the controlled operation will be conducted wholly in this jurisdiction; and
 - (c) that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation in this jurisdiction.
- (2) For the avoidance of doubt, the matters referred to in subsection (1) are in addition to the matters referred to in section 14.
- (3) An authority to conduct a local minor controlled operation cannot authorise a participant to engage in controlled conduct that constitutes an offence punishable by a maximum term of imprisonment of 3 years or more.

18 Form of authority

- (1) An authority to conduct a controlled operation may be granted—
 - (a) by means of a written document, signed by the chief officer (a *formal authority*); or
 - (b) if the chief officer is satisfied that the delay caused by granting a formal authority may affect the success of the operation—orally in person or by telephone, fax, e-mail or any other means of communication (an *urgent authority*).
- (2) Nothing in this Part prevents an authority being granted in respect of a controlled operation that has been the subject of a previous authority, but if the previous authority was an urgent authority, the subsequent authority must be a formal authority.
- (3) An authority, whether formal or urgent, must—
 - (a) state the name and rank or position of the person granting the authority; and
 - (b) identify the principal law enforcement officer and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant; and
 - (c) state whether the application is a formal application or an urgent application; and
 - (d) state whether the operation authorised by the authority is a cross-border controlled operation, a local major controlled operation or a local minor controlled operation; and
 - (e) identify each person who may engage in controlled conduct for the purposes of the operation; and

-
- (f) in the case of a cross-border controlled operation, state the participating jurisdictions in which the controlled conduct is, or is likely, to be engaged in; and
 - (g) identify the nature of the criminal activity (including the suspected offences) in respect of which the controlled conduct is to be engaged in; and
 - (h) identify—
 - (i) with respect to the law enforcement participants, the nature of the controlled conduct that those participants may engage in; and
 - (ii) with respect to the civilian participants (if any), the particular controlled conduct that each of those participants may engage in; and
 - (i) identify (to the extent known) any suspect; and
 - (j) specify the period of validity of the authority in accordance with section 19; and
 - (k) specify any conditions to which the conduct of the operation is subject; and
 - (l) state the date and time when the authority is granted; and
 - (m) identify (to the extent known)—
 - (i) the nature and quantity of any illicit goods that will be involved in the operation; and
 - (ii) the route through which those goods will pass in the course of the operation.

- (4) A person is sufficiently identified for the purposes of subsection (3)(e) if the person is identified—
- (a) by an assumed name under which the person is operating; or
 - (b) by a code name or code number—
- so long as the assumed name, code name or code number can be matched to the person's identity by the law enforcement agency.
- (5) The chief officer must ensure that written notes are kept of the particulars referred to in subsection (3) for each urgent authority.

Note to s. 18 amended by No. 63/2004 s. 21.

Note

In some circumstances, the chief officer may delegate functions under this section—see Division 1 of Part 5.

19 Duration of authorities

- (1) Unless it is sooner cancelled, an authority has effect for the period of validity specified in it under section 18(3)(j).
- (2) The period of validity specified in an authority for a controlled operation cannot exceed the relevant period set out in the following table.

TABLE

<i>Type of operation</i>	<i>Urgent authority</i>	<i>Formal authority</i>
cross-border	7 days	3 months
local major	7 days	3 months
local minor	7 days	7 days

Division 3—Variation and cancellation of authorities

20 When can an authority be varied?

- (1) The chief officer may vary an authority—
 - (a) at any time on the chief officer's own initiative; or
 - (b) on application under section 21.
- (2) However, an authority cannot be varied so as to extend its period of validity if the authority is—
 - (a) an authority for a local minor controlled operation (whether formal or urgent); or
 - (b) an urgent authority for a cross-border controlled operation or local major controlled operation.
- (3) Also, an authority cannot be varied unless the chief officer is satisfied on reasonable grounds that the variation will not authorise a significant alteration of the nature of the authorised operation concerned.

21 Application for variation of authority

- (1) The principal law enforcement officer for an authorised operation, or any other law enforcement officer on behalf of the principal law enforcement officer, may apply to the chief officer for a variation of authority for any one or more of the following purposes—
 - (a) to extend the period of validity of the authority (except as provided by section 20(2));
 - (b) to authorise additional or alternative persons to engage in controlled conduct for the purposes of the operation;

- (c) to authorise participants in the operation to engage in additional or alternative controlled conduct;
 - (d) to identify additional suspects (to the extent known).
- (2) More than one application for a variation may be made in respect of the same authority, but no single variation may extend the period of validity of an authority for more than 3 months at a time.
- (3) An application for a variation of authority may be made—
- (a) by means of a written document that is signed by the applicant (a *formal variation application*); or
 - (b) if the applicant has reason to believe that the delay caused by making a formal application for variation may affect the success of the operation—orally in person or by telephone, fax, e-mail or any other means of communication (an *urgent variation application*).
- (4) The chief officer may require the applicant to furnish such information concerning the proposed variation as is necessary for the chief officer's proper consideration of the application.

Note to s. 21
amended by
No. 63/2004
s. 21.

Note

In some circumstances, the chief officer may delegate functions under this section—see Division 1 of Part 5.

22 Determination of application to vary authority

- (1) After considering an application for a variation of authority, and any additional information furnished under section 21(4), the chief officer—

-
- (a) may vary the authority in accordance with the application, either unconditionally or subject to conditions; or
 - (b) may refuse the application.
- (2) Sections 14, 15, 16 and 17 (as the case requires) apply to an application for a variation of authority under this section in the same way as they apply to an application for authority under section 12.

23 Manner of varying authority

- (1) An authority may be varied (on application or otherwise) only—
- (a) by means of a written document signed by the chief officer (a *formal variation of authority*); or
 - (b) if the chief officer is satisfied that the delay caused by making a formal variation of authority may affect the success of the operation—orally in person or by telephone, fax, e-mail or any other means of communication (an *urgent variation of authority*).
- (2) The chief officer—
- (a) must ensure that written notes are kept of the following matters—
 - (i) the date and time when the authority was varied; and
 - (ii) the identity of the law enforcement officer to whom the variation of authority was granted; and

- (b) must, as soon as practicable, prepare and give to the applicant a written document that complies with section 24.

**Note to s. 23
amended by
No. 63/2004
s. 21.**

Note

In some circumstances, the chief officer may delegate functions under this section—see Division 1 of Part 5.

24 Form of variation of authority

A variation of authority must—

- (a) identify the authorised operation for which the authority is in force; and
- (b) state the name and rank or position of the person varying the authority; and
- (c) state the date and time when the authority was varied; and
- (d) if the authority was varied on an application under section 21—
 - (i) state the name of the applicant; and
 - (ii) state whether the application was a formal variation application or an urgent variation application; and
- (e) describe the variation having regard, if an application for variation was made, to the purposes referred to in section 21(1) in respect of which the application was made.

25 Cancellation of authorities

- (1) The chief officer may, by order in writing given to the principal law enforcement officer for an authorised operation, cancel the authority at any time and for any reason.
- (2) Without limiting subsection (1), the chief officer may cancel an authority for an authorised operation at any time at the request of the

principal law enforcement officer for the operation.

- (3) Cancellation of an authority for a controlled operation takes effect at the time the order is made or at the later time specified in the order.

Note

In some circumstances, the chief officer may delegate functions under this section—see Division 1 of Part 5.

**Note to s. 25
amended by
No. 63/2004
s. 21.**

Division 4—Effect of authorities

26 Effect of authorities

- (1) While it has effect, an authority for a controlled operation—
 - (a) authorises each law enforcement participant to engage in the controlled conduct specified in the authority in respect of the law enforcement participants; and
 - (b) authorises each civilian participant (if any) to engage in the particular controlled conduct specified in the authority in respect of that participant.
- (2) In the case of a local major or local minor controlled operation, the authority authorises each participant to engage in the conduct referred to in subsection (1) in this jurisdiction.
- (3) In the case of a cross-border controlled operation, the authority authorises each participant to engage in the conduct referred to in subsection (1) in this jurisdiction or in any participating jurisdiction (subject to any corresponding law of that participating jurisdiction).
- (4) The authority to engage in controlled conduct given to a participant cannot be delegated to any other person.

27 Defect in authority

An application for authority or variation of authority, and any authority or variation of authority granted on the basis of such an application, is not invalidated by any defect, other than a defect that affects the application, authority or variation in a material particular.

PART 3—CONDUCT OF CONTROLLED OPERATIONS

Division 1—Controlled conduct engaged in for purposes of controlled operations authorised by Part 2

28 Protection from criminal responsibility for controlled conduct during authorised operations

- (1) Despite any other Act or law of this jurisdiction, a participant who engages in conduct in an authorised operation in the course of, and for the purposes of, the operation, is not, if engaging in that conduct is an offence, criminally responsible for the offence, if—
- (a) the conduct is authorised by, and is engaged in in accordance with, the authority for the operation; and
 - (b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and
 - (c) the conduct does not involve the participant engaging in any conduct that is likely to—
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
 - (d) if the participant is a civilian participant—he or she acts in accordance with the instructions of a law enforcement officer.
- (2) Subsection (1) applies in relation to a participant—
- (a) in a local major or local minor controlled operation—to conduct engaged in by a participant in this jurisdiction;

- (b) in a cross-border controlled operation—to conduct engaged in by a participant in this jurisdiction or in a participating jurisdiction.
- (3) Subsection (1) does not apply to a participant in a local minor controlled operation if the conduct engaged in is an offence punishable by a maximum term of imprisonment of 3 years or more.

29 Indemnification of participants against civil liability

- (1) This section applies to a law enforcement agency if a controlled operation has been authorised by the chief officer of the agency under section 13.
- (2) The law enforcement agency must indemnify a participant in the authorised operation against any civil liability (including reasonable costs) the participant incurs because of conduct the participant engages in if—
 - (a) the participant engages in the conduct in the course of, and for the purposes of, the operation in accordance with the authority for the operation; and
 - (b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and
 - (c) the conduct does not involve the participant engaging in any conduct that is likely to—
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and

- (d) if the participant is a civilian participant—he or she acts in accordance with the instructions of a law enforcement officer; and
- (e) the requirements (if any) specified in the regulations have been met.

30 Effect of sections 28 and 29 on other laws relating to criminal investigation

Sections 28 and 29 do not apply to a person's conduct that is, or could have been authorised, under a law of this jurisdiction relating to the following—

- (a) arrest or detention of individuals;
- (b) searches of individuals;
- (c) entry onto, or searches or inspection of, premises;
- (d) searches, inspections or seizures of other property;
- (e) forensic procedure;
- (f) electronic surveillance devices or telecommunications interception;
- (g) identification procedures;
- (h) the acquisition or use of assumed identities;
- (i) any other matter concerning powers of criminal investigation.

31 Effect of being unaware of variation or cancellation of authority

- (1) If an authority for a controlled operation is varied in a way that limits its scope, this Part continues to apply to a participant in the operation as if the authority had not been varied in that way, for so long as the participant—

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- (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the variation.
- (2) If an authority for a controlled operation is cancelled, this Part continues to apply to a participant in the operation as if the authority had not been cancelled in that way, for so long as the participant—
- (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.
- (3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority if—
- (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

32 Protection from criminal responsibility for certain ancillary conduct

- (1) This section applies to conduct such as aiding and abetting the commission of an offence or of conspiring to commit an offence (*ancillary conduct*) for which a person may be criminally responsible because it involves conduct engaged in by another person that is controlled conduct for which the other person would (but for section 28) be criminally responsible (the *related controlled conduct*).
- (2) Despite any other Act or law of this jurisdiction, a person who engages in ancillary conduct that is an offence (whether or not the person is a participant in a controlled operation) is not criminally responsible for the offence if at the time the

person engaged in the ancillary conduct he or she believed the related controlled conduct was being engaged in, or would be engaged in, by a participant in an authorised operation.

Division 2—Compensation and notification of third parties

33 Compensation for property loss or serious damage

- (1) If a person suffers loss of or serious damage to property as a direct result of an authorised operation, the State is liable to pay to the person compensation as agreed between the State and the person or, in default of agreement, as determined by action against the State in a court of competent jurisdiction.
- (2) Subsection (1) does not apply if—
 - (a) the person suffered the loss or damage in the course of, or as a direct result of, engaging in any criminal activity (other than criminal activity that is controlled conduct); or
 - (b) the person was a law enforcement officer at the time of suffering the loss or damage.

34 Notification requirements

- (1) If any loss of or serious damage to property occurs in the course of or as a direct result of an authorised operation (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation), the principal law enforcement officer for the operation must report the loss or damage to the chief officer of the law enforcement agency as soon as practicable.
- (2) The chief officer must take all reasonable steps to notify the owner of the property of the loss or damage.

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- (3) The chief officer is not required to notify the owner of property under this section until the chief officer is satisfied that notification would not—
- (a) compromise or hinder the authorised operation; or
 - (b) compromise the identity of a participant in the authorised operation; or
 - (c) endanger the life or safety of any person; or
 - (d) prejudice any legal proceeding; or
 - (e) otherwise be contrary to the public interest.
- (4) If any personal injury occurs in the course of or as a direct result of an authorised operation, the principal law enforcement officer for the operation must report the injury to the chief officer of the law enforcement agency as soon as practicable.

Note

The chief officer may delegate functions under this section—see Division 1 of Part 5.

Division 3—Mutual recognition

35 Mutual recognition of corresponding authorities

The following provisions apply, with any necessary changes, to a corresponding authority under a corresponding law, and to a corresponding authorised operation under that law, as if the corresponding authority were an authority given under section 13 for a cross-border controlled operation—

- (a) section 26 (Effect of authorities);
- (b) section 27 (Defect in authority);

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- (c) section 28 (Protection from criminal responsibility for controlled conduct during authorised operations);
 - (d) section 29 (Indemnification of participants against civil liability);
 - (e) section 30 (Effect of sections 28 and 29 on other laws relating to criminal investigation);
 - (f) section 31 (Effect of being unaware of variation or cancellation of authority);
 - (g) section 32 (Protection from criminal responsibility for certain ancillary conduct).
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PART 4—COMPLIANCE AND MONITORING

Division 1—Restrictions on use, communication and publication of information

36 Unauthorised disclosure of information

- (1) A person is guilty of an offence if—
- (a) the person intentionally, knowingly or recklessly discloses any information; and
 - (b) the person knows that, or is reckless as to whether, the information relates to an authorised operation or a corresponding authorised operation; and
 - (c) the person knows that, or is reckless as to whether, the disclosure is not made—
 - (i) in connection with the administration or execution of this Act or a corresponding law; or
 - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this Act or a corresponding law or of any report of any such proceedings; or
 - (iii) in accordance with any requirement imposed by law; or
 - (iv) in accordance with Part IVA of the **Police Regulation Act 1958**, the **Police Integrity Act 2008** or Part 5 or 6 of the **Information Privacy Act 2000**.

Penalty: Imprisonment for 2 years.

- (2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) in circumstances in which the person—

S. 36(1)(c)(iv) amended by No. 34/2008 s. 143(Sch. 2 item 5.2).

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- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an authorised operation or a corresponding authorised operation; or
 - (b) knows that, or is reckless as to whether, the disclosure of the information—
 - (i) endangers or will endanger the health or safety of any person; or
 - (ii) prejudices or will prejudice the effective conduct of an authorised operation or a corresponding authorised operation.

Penalty: Imprisonment for 10 years.

- (3) An offence against subsection (2) is an indictable offence.

Division 2—Reporting and record-keeping

37 Principal law enforcement officers' reports

- (1) Within 2 months after the completion of an authorised operation, the principal law enforcement officer for the operation must make a report in accordance with this section to the chief officer of the law enforcement agency.
- (2) The report must include the following details—
 - (a) the date and time when the authorised operation began and its duration; and
 - (b) whether the operation was a cross-border controlled operation, a local major controlled operation or a local minor controlled operation; and
 - (c) the nature of the controlled conduct engaged in for the purposes of the operation; and

- (d) details of the outcome of the operation; and
- (e) if the operation involved illicit goods, a statement (to the extent known) of—
 - (i) the nature and quantity of the illicit goods; and
 - (ii) the route through which the illicit goods passed in the course of the operation; and
- (f) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the operation.

38 Chief officers' reports

S. 38(1)
amended by
Nos 39/2008
s. 4, 7/2010
s. 4.

- (1) As soon as practicable, after 30 June and 31 December but no more than 2 months after each date in each year, the chief officer of each law enforcement agency must submit a report to the Special Investigations Monitor in relation to the agency setting out the details required by subsection (2) in relation to authorised operations conducted on behalf of the agency during the previous 6 months.
- (2) The report must include the following details—
 - (a) the number of formal authorities that have been granted or varied by the chief officer, and the number of formal applications for the granting or variation of authorities that have been refused by the chief officer, during the period to which the report relates; and
 - (b) the number of urgent authorities or urgent variations of authorities that have been granted by the chief officer, and the number of urgent applications for authorities or urgent variations of authorities that have

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- been refused by the chief officer, during the period to which the report relates; and
- (c) the nature of the criminal activities against which the authorised operations were directed; and
 - (d) the nature of the controlled conduct engaged in for the purposes of the authorised operations; and
 - (e) if any of the authorised operations involved illicit goods, a statement (to the extent known) of—
 - (i) the nature and quantity of the illicit goods; and
 - (ii) the route through which the illicit goods passed in the course of the operations; and
 - (f) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the authorised operations; and
 - (g) the number of authorities cancelled by the chief officer or that have expired during the period to which the report relates.
- (3) The details referred to in subsection (2) must be classified into cross-border controlled operations, local major controlled operations and local minor controlled operations.
- (4) The Special Investigations Monitor may require the chief officer to furnish additional information covering any authorised operation to which a report relates.
- (5) Nothing in subsection (2)(d) or (e) requires particulars of an authorised operation to be included in a report for a period of 6 months if the operation had not been completed during that

S. 38(4)
amended by
No. 39/2008
s. 4.

period, but the particulars must instead be included in the report for the period of 6 months in which the operation is completed.

39 Annual report by Special Investigations Monitor

S. 39
(Heading)
amended by
No. 39/2008
s. 4.

S. 39(1)
amended by
Nos 39/2008
s. 4, 7/2010
s. 5.

(1) The Special Investigations Monitor must, as soon as practicable after receipt of the report of 30 June in each year of the Chief Officer of a law enforcement agency, prepare a report of the work and activities of the agency under this Act for the preceding 12 months and give a copy of the report to the Minister and to the chief officer of the agency.

(2) The report—

S. 39(2)(a)
amended by
No. 39/2008
s. 4.

(a) must include, for each law enforcement agency concerned, comments on the comprehensiveness and adequacy of the reports which were provided to the Special Investigations Monitor by the chief officer of the law enforcement agency under section 38; and

(b) must not disclose any information that identifies any suspect or a participant in an operation or that is likely to lead to such a person or participant being identified.

S. 39(3)
amended by
No. 39/2008
s. 4.

(3) The chief officer must advise the Special Investigations Monitor of any information in the report that, in the chief officer's opinion, should be excluded from the report before the report is laid before Parliament because the information, if made public, could reasonably be expected to—

(a) endanger a person's safety; or

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- (b) prejudice an investigation or prosecution; or
- (c) compromise any law enforcement agency's operational activities or methodologies.
- (4) The Special Investigations Monitor must exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (3). S. 39(4)
amended by
No. 39/2008
s. 4.
- (5) The Special Investigations Monitor must transmit the report to each House of Parliament as soon as practicable after the earlier of— S. 39(5)
amended by
No. 39/2008
s. 4.
- (a) the day on which the Special Investigations Monitor received the chief officer's advice under subsection (3); S. 39(5)(a)
amended by
No. 39/2008
s. 4.
- (b) 14 days after the day the Special Investigations Monitor gave the report to the chief officer. S. 39(5)(b)
amended by
No. 39/2008
s. 4.
- (6) Nothing in this section requires particulars of an authorised operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.

40 Keeping documents connected with authorised operations

The chief officer of a law enforcement agency must cause the following to be kept—

- (a) each formal application made by a law enforcement officer of the agency; and
- (b) each formal authority granted to a law enforcement officer of the agency; and
- (c) all written notes made under section 18(5); and
- (d) each formal variation application made by a law enforcement officer of the agency; and

- (e) each formal variation of authority granted to a law enforcement officer of the agency; and
- (f) all written notes made under section 23(2)(a); and
- (g) each order cancelling an authority granted to a law enforcement officer of the agency; and
- (h) each report of a principal law enforcement officer of the agency under section 34 or 37.

41 General register

- (1) The chief officer of a law enforcement agency must cause a general register to be kept.
- (2) The general register is to specify—
 - (a) for each application under this Act made by a law enforcement officer of the agency (including an application for variation of authority)—
 - (i) the date of the application; and
 - (ii) whether the application was formal or urgent; and
 - (iii) whether the application was made in respect of a cross-border controlled operation, a local major controlled operation or a local minor controlled operation; and
 - (iv) whether the application was granted, refused or withdrawn; and
 - (v) if the application was refused or withdrawn—the date and time of the refusal or withdrawal; and
 - (b) for each authority under this Act granted to a law enforcement officer of the agency—
 - (i) the date and time the authority was granted; and

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- (ii) whether the authority was formal or urgent; and
 - (iii) the name and rank or position of the person who granted the authority; and
 - (iv) whether the operation authorised was a cross-border controlled operation, a local major controlled operation or a local minor controlled operation; and
 - (v) each offence in respect of which controlled conduct under the authority was to be engaged in; and
 - (vi) the period of validity of the authority; and
 - (vii) if the authority was cancelled, the date and time of cancellation; and
 - (viii) the date and time the authorised operation began and the date of completion of the operation; and
 - (ix) the date on which the principal law enforcement officer for the operation made a report on the operation under section 37; and
 - (x) if the authorised operation involved illicit goods, to the extent known—
 - (A) the nature and quantity of the illicit goods; and
 - (B) the route through which the illicit goods passed in the course of the operation; and
 - (xi) details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the operation; and

- (c) for each variation of authority under this Act—
- (i) the date and time the variation was made; and
 - (ii) whether the variation was formal or urgent; and
 - (iii) the name and rank or position of the person who made the variation.

Division 3—Inspections

42 Inspection of records by Special Investigations Monitor

S. 42
(Heading)
amended by
No. 39/2008
s. 4.

S. 42(1)
amended by
No. 39/2008
s. 4.

S. 42(2)
amended by
No. 39/2008
s. 4.

S. 42(2)(c)
amended by
No. 39/2008
s. 4.

- (1) The Special Investigations Monitor in relation to a law enforcement agency must, from time to time and at least once every 12 months, inspect the records of the agency to determine the extent of compliance with this Act by the agency and law enforcement officers of the agency.
- (2) For the purpose of an inspection under this section, the Special Investigations Monitor—
- (a) after notifying the chief officer of the agency, may enter at any reasonable time premises occupied by the agency; and
 - (b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and
 - (c) may require a member of staff of the agency to give the Special Investigations Monitor any information that the Special Investigations Monitor considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.

Crimes (Controlled Operations) Act 2004
No. 16 of 2004
Part 4—Compliance and Monitoring

s. 42

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- (3) The chief officer must ensure that members of staff of the agency give the Special Investigations Monitor any assistance the Special Investigations Monitor reasonably requires to enable the Special Investigations Monitor to perform functions under this section.
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S. 42(3)
amended by
No. 39/2008
s. 4.

PART 5—GENERAL

Division 1—Delegation

43 Introduction

- (1) Except as provided by this Division (and despite any other Act or law to the contrary) the functions of a chief officer under this Act may not be delegated to any other person.
- (2) For the avoidance of doubt, subsection (1) prevails over section 6A or 102F of the **Police Regulation Act 1958**.

S. 43(2)
amended by
No. 63/2004
s. 23.

44 Delegations within Victoria Police

The chief officer of Victoria Police may delegate, by instrument—

- (a) to a Deputy Commissioner or an Assistant Commissioner any of the chief officer's functions under this Act relating to the authorisation of controlled operations (including the variation and cancellation of authorities for controlled operations and notifications under section 34(2));
- (b) to a member of Victoria Police of the rank of commander, chief superintendent or superintendent any of the chief officer's functions under this Act relating to—
 - (i) the authorisation of local minor controlled operations (including the variation and cancellation of authorities for those operations);
 - (ii) notifications under section 34(2).

45 Delegations within the Office of Police Integrity

- (1) The chief officer of the Office of Police Integrity may delegate to a senior officer of the Office of Police Integrity the chief officer's function of making notifications under section 34(2).

S. 45
substituted by
No. 63/2004
s. 24 (as
amended by
No. 39/2008
s. 8).

- (2) In this section—

senior officer of the Office of Police Integrity means a prescribed member of staff of the Office of Police Integrity who holds a position, or is a member of a class, that is prescribed by the regulations for the purposes of this definition.

Division 2—General

46 Evidence of authorities

- (1) A document purporting to be an authority granted under section 13—
- (a) is admissible in any legal proceedings; and
 - (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person granting the authority was satisfied of the facts he or she was required to be satisfied of to grant the authority.
- (2) A document purporting to be an authority within the meaning of a corresponding law granted under a provision of the corresponding law that corresponds to section 13—
- (a) is admissible in any legal proceedings in this jurisdiction; and

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- (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person who granted the authority was satisfied of the facts he or she was required to be satisfied of under the corresponding law to grant the authority.

47 Regulations

- (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations—
- (a) may be of general or limited application;
 - (b) may differ according to differences in time, place or circumstances.
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Crimes (Controlled Operations) Act 2004
No. 16 of 2004
Part 6—Fisheries Act 1995

s. 48

PART 6—FISHERIES ACT 1995

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S. 48
repealed by
No. 29/2011
s. 3(Sch. 1
item 22).

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S. 49
amended by
Nos 69/2004
s. 60, 87/2005
s. 6,
repealed by
No. 29/2011
s. 3(Sch. 1
item 22).

Crimes (Controlled Operations) Act 2004
No. 16 of 2004
Part 7—Wildlife Act 1975

s. 50

PART 7—WILDLIFE ACT 1975

S. 50
repealed by
No. 29/2011
s. 3(Sch. 1
item 22).

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S. 51
amended by
Nos 87/2005
s. 7, 45/2008
s. 35,
repealed by
No. 29/2011
s. 3(Sch. 1
item 22).

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PART 8—CONSEQUENTIAL AND TRANSITIONAL

52 Crimes Act 1958

Sections 68(2), 194(5) and 195A(5) of the **Crimes Act 1958** are **repealed**.

See:
Act No.
6231.
Reprint No. 17
as at
17 June 2003
and
amending
Act Nos
63/2003,
80/2003,
104/2003 and
105/2003.
LawToday:
www.
legislation.
vic.gov.au

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Ss 53–56
repealed by
No. 29/2011
s. 3(Sch. 1
item 22).

S. 57
repealed by
No. 39/2008
s. 5.

58 Transitional provision

An authority may be given under this Act for a controlled operation in relation to criminal activity occurring before, on or after the commencement of this section.

59 Transitional provision—Crimes Legislation Amendment Act 2010

The first report submitted by the Chief Officer under section 38(1) after the commencement of section 4 of the **Crimes Legislation Amendment Act 2010** must include the information required by section 38(1) for any period in the 9 months immediately preceding that commencement, that has not previously been reported on.

S. 59
inserted by
No. 7/2010
s. 6.

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 1 April 2004

Legislative Council: 11 May 2004

The long title for the Bill for this Act was "to provide for the lawful conduct of controlled operations for law enforcement purposes, including operations conducted in Victoria and interstate, to provide for mutual recognition of controlled operations authorised in other jurisdictions, to amend the **Fisheries Act 1995**, the **Wildlife Act 1975** and other Acts and for other purposes."

The **Crimes (Controlled Operations) Act 2004** was assented to on 18 May 2004 and came into operation as follows:

Sections 1–51, 53–56, 58 on 2 November 2008: Government Gazette 30 October 2008 page 2530; section 57 was never proclaimed, repealed by No. 39/2008 section 5; section 52 is not yet proclaimed.

2. Table of Amendments

This Version incorporates amendments made to the **Crimes (Controlled Operations) Act 2004** by Acts and subordinate instruments.

Major Crime Legislation (Office of Police Integrity) Act 2004, No. 63/2004 (as amended by No. 39/2008)

Assent Date: 12.10.04
Commencement Date: Ss 20(a)(f), 21, 23, 24 on 30.10.08: Government Gazette 30.10.08 p. 2530
Current State: This information relates only to the provision/s amending the **Crimes (Controlled Operations) Act 2004**

Primary Industries Legislation (Further Miscellaneous Amendments) Act 2004, No. 69/2004

Assent Date: 19.10.04
Commencement Date: S. 60 on 20.10.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes (Controlled Operations) Act 2004**

Investigative, Enforcement and Police Powers Acts (Amendment) Act 2005, No. 87/2005

Assent Date: 29.11.05
Commencement Date: Ss 6, 7 on 30.11.05: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes (Controlled Operations) Act 2004**

Police Integrity Act 2008, No. 34/2008

Assent Date: 1.7.08
Commencement Date: S. 143(Sch. 2 item 5) on 5.12.08: Special Gazette (No. 340) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Crimes (Controlled Operations) Act 2004**

Crimes (Controlled Operations) Amendment Act 2008, No. 39/2008

Assent Date: 26.8.08
Commencement Date: Ss 3–5 on 30.10.08: Government Gazette 30.10.08 p. 2530
Current State: This information relates only to the provision/s amending the **Crimes (Controlled Operations) Act 2004**

Wildlife Amendment (Marine Mammals) Act 2008, No. 45/2008

Assent Date: 26.8.08
Commencement Date: S. 35 on 27.8.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Crimes (Controlled Operations) Act 2004**

Crimes (Controlled Operations) Act 2004
No. 16 of 2004

Endnotes

Crimes Legislation Amendment Act 2010, No. 7/2010

Assent Date: 16.3.10

Commencement Date: Ss 4–6 on 17.3.10: s. 2

Current State: This information relates only to the provision/s amending the **Crimes (Controlled Operations) Act 2004**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11

Commencement Date: S. 3(Sch. 1 item 22) on 22.6.11: s. 2(1)

Current State: This information relates only to the provision/s amending the **Crimes (Controlled Operations) Act 2004**

3. Explanatory Details

No entries at date of publication.