

# ACT POLICING CONTROLLED OPERATIONS

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Annual Report  
2016–17



**AFP**

AUSTRALIAN FEDERAL POLICE

POLICING FOR  
A SAFER AUSTRALIA



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## CONTENTS

THE LEGISLATION .....	1 -
IMMUNITY FROM CRIMINAL LIABILITY .....	1 -
PROTECTION FROM CRIMINAL RESPONSIBILITY FOR CERTAIN ANCILLARY - CONDUCT .....	2 -
SITUATIONS GIVING RISE TO THE ISSUE OF CONTROLLED OPERATION - CERTIFICATES .....	2 -
AUTHORISATION OF CONTROLLED OPERATIONS AND CONTROLLED OPERATION - CERTIFICATES .....	2 -
CANCELLATION OF AUTHORITY.....	4 -
MUTUAL RECOGNITION.....	4 -
REPORTING REQUIREMENTS .....	4 -
MONITORING BY THE OMBUDSMAN.....	5 -
MATERIAL EXCLUDED FROM REPORTING .....	5 -
OVERVIEW OF ACT POLICING CONTROLLED OPERATIONS RECORDS 2016-17 ....	6 -
CERTIFICATES ISSUED BY AUTHORISING OFFICERS OF ACT POLICING 2016-17	7 -
STANDARD CONTROLLED OPERATION NUMBER: 2016-17/01.....	7 -
STANDARD CONTROLLED OPERATION NUMBER: 2016-17/02.....	8 -
STANDARD CONTROLLED OPERATION NUMBER: 2016-17/03: NUMBER NOT - UTILISED. ....	8 -
STANDARD CONTROLLED OPERATION NUMBER: 2016-17/04.....	9 -
STANDARD CONTROLLED OPERATION NUMBER: 2016-17/05: NUMBER NOT - UTILISED. ....	9 -
STANDARD CONTROLLED OPERATION NUMBER: 2016-17/06.....	10 -
STANDARD CONTROLLED OPERATION NUMBER: 2016-17/07.....	11 -



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31 August 2017

Minister for Police and Emergency Services  
Legislative Assembly  
London Circuit Canberra  
ACT 2601

Dear Minister,

I am pleased to submit ACT Policing's Controlled Operations Annual Report for the financial year 1 July 2016 to 30 June 2017.

The report has been prepared in accordance with s. 28 of the *Crimes (Controlled Operations) Act 2008* (ACT) (the Act).

I hereby certify that the attached Annual Report is an honest and accurate account and that all controlled operations undertaken in the ACT for the period 1 July 2016 to 30 June 2017 have been included. It complies with s. 28 of the Act.

In line with s. 28 of the Act, I understand that a copy of this report will be tabled before the ACT Legislative Assembly within 15 sitting days from the day you receive this report.

Yours sincerely

A handwritten signature in blue ink, which appears to read 'Justine', is written over a horizontal line.

Justine Saunders

## **THE LEGISLATION**

In August 2008 the ACT Legislative Assembly passed the *Crimes (Controlled Operations) Act 2008* (ACT). The objectives of the Act are to provide for the authorisation, conduct and monitoring of controlled operations, including operations conducted in the ACT, and one or more other jurisdictions or in one or more participating jurisdictions.

A controlled operation is defined as one that:

- a. - involves the participation of law enforcement officers
- b. - is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence.

A controlled operation can be undertaken with respect to any relevant offence. A relevant offence, as defined by the Act means:

- a. - an offence against an ACT law punishable by imprisonment of three years or more
- b. - an offence against an ACT law prescribed by regulation.

## **IMMUNITY FROM CRIMINAL LIABILITY**

The Act provides immunity from criminal liability and indemnity from civil liability for law enforcement officers and certain other persons who take an active part in a controlled operation.

This criminal liability is only removed when:

- a. - the conduct is authorised by, and is engaged in, in accordance with the authority for the operation
- b. - the conduct does not involve the participant intentionally inducing a person to commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have committed
- 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
  - ii. involve the commission of a sexual offence against any person.
- d. - the participant, if he/she is a civilian participant, acts in accordance with the instructions of a law enforcement officer.

In circumstances similar to these, immunity from criminal liability is also provided for a person other than a law enforcement officer. A law enforcement officer means any of the following:

- a. - a police officer
- b. - a member of staff of the Australian Criminal Intelligence Commission
- c. - a person who is seconded to a law enforcement agency, including, but not limited to, a member of the police service/police officer (however described), of another jurisdiction.

## **PROTECTION FROM CRIMINAL RESPONSIBILITY FOR CERTAIN ANCILLARY CONDUCT**

This clause protects police and other people who are authorised to know and assist with a controlled operation but are not assigned as participants. Those people who are authorised would not be criminally liable for ancillary conduct, such as conspiracy, for example, scientific officers who provide technical assistance on storage or preparation of a sample drug but do not actively participate in the operation.

## **SITUATIONS GIVING RISE TO THE ISSUE OF CONTROLLED OPERATION CERTIFICATES**

An authority to conduct a controlled operation may not be granted unless the authorising officer, as per the Act, the Chief Police Officer or a delegate, is satisfied on reasonable grounds that:

- a. - a relevant offence has been, is being or is likely to be committed
- b. - the controlled operation will be, or is likely to be, conducted in the ACT, in the ACT and one or more other jurisdictions or in one or more participating jurisdictions
- c. - the nature and extent of the suspected criminal activity justifies the conduct of a controlled operation in the ACT, in the ACT and one or more other jurisdictions or in one or more participating jurisdictions
- d. - any unlawful conduct involved in conducting the operation will be limited to the minimum necessary to conduct an effective controlled operation
- e. - the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of people, 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
- f. - the proposed controlled conduct will be able to be accounted for in a way that will enable the reporting requirements of part 4 to be complied with
- g. - the operation will not be conducted in a way that induces a person to commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have committed
- h. - any conduct involved in the operation will:
  - i. - not endanger the health or safety of any person
  - ii. not cause the death of, or injury to, any person
  - iii. - not involve the commission of a sexual offence against any person
  - iv. - not result in unlawful loss of or serious damage to property (other than illicit goods)
- i. - any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

## **AUTHORISATION OF CONTROLLED OPERATIONS AND CONTROLLED OPERATION CERTIFICATES**

An authority to conduct a controlled operation may be granted in writing, signed by the chief officer, or in the matter of an urgent application, if the chief officer is satisfied that the delay caused by granting a standard authority may affect the

success of the operation, the authorisation can be given orally in person or by telephone, fax, email or any other means of communication.

An authority, whether standard or urgent, must:

- a. - state the name and rank or position of the person granting the authority
- 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
- c. - state whether the application is a standard application or an urgent - application -
- d. - identify each person who may engage in controlled conduct for the - purposes of the controlled operation -
- e. - state the participating jurisdictions in which the controlled conduct is, or is likely, to be engaged in
- f. - identify the nature of the criminal activity (including the suspected relevant offences) in relation to which the controlled conduct is to be engaged in
- g. - identify:
  - i. - (in relation to the law enforcement participants) the nature of the controlled conduct that the participants may engage in
  - ii. - (in relation to the civilian participants) the particular controlled conduct (if any) that each participant may engage in
- h. - identify (to the extent known) any suspect
- i. - state the period (not longer than three months for a standard authority or seven days for an urgent authority) of validity of the authority
- j. - state any conditions to which the conduct of the operation is subject; and
- k. - state the date and time when the authority is granted
- l. - identify (to the extent known):
  - i. - the nature and quantity of any illicit goods that will be involved in the operation
  - ii. - the route through which those goods will pass in the course of the operation.

A chief officer may delegate to a senior officer of the law enforcement agency any of the chief officer's functions under the Act relating to the authorisation of controlled operations (including the amendment and cancellation of controlled operations and notifications).

As defined by the legislation, a senior officer means a person for the time being holding office as:

- a. - In relation to the Australian Federal Police – a Deputy Chief Police Officer.
- b. - In relation to the Australian Criminal Intelligence Commission, any of the following:
  - i. - the Director National Operations
  - ii. - a Director
  - iii. - an office of the Australian Criminal Intelligence Commission that is prescribed by regulation.

## **CANCELLATION OF AUTHORITY**

The chief officer may, by written order given to the principal law enforcement officer for an authorised operation, cancel the authority at any time and for any reason.

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.

Cancellation of an authority for a controlled operation takes effect when the order is made, or if the order states a later time of effect, at the later time.

## **MUTUAL RECOGNITION**

The Act allows for the recognition of controlled operation authorities issued under a corresponding law.

The clause enables a controlled operation that is authorised by a corresponding law to operate in the ACT as if the operation was authorised by ACT law. The clause identifies the critical sections that hold relevant powers and protections for controlled operations.

## **REPORTING REQUIREMENTS**

The Chief Police Officer, as soon as practicable after 30 July each year, must give to the Minister a report setting out the details in relation to controlled operations conducted on behalf of the agency during the previous financial year.

The report must include the following details:

- a. - the number of standard authorities that were granted or amended by the chief officer, and the number of standard applications for the granting or amendment of authorities that were refused by the chief officer, during the period to which the report relates
- b. - the number of urgent authorities or urgent amendments of authorities that were granted by the chief officer, and the number of urgent applications for authorities or urgent amendments of authorities that were refused by the chief officer, during the period to which the report relates
- c. - the nature of the criminal activities against which the authorised - operations were directed -
- d. - the nature of the controlled conduct engaged in for the purposes of the authorised operations
- 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.
  - ii. - The route through which the illicit goods passed in the course of the operations.
- 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 operation
- g. - the number of authorities cancelled by the chief officer or that expired during the period to which the report relates
- h. - any seizure, arrest and prosecution arising from the authorised operations.

The report must not disclose any information that identifies any suspect or a participant in an authorised operation or that is likely to lead to a suspect or participant being identified.

The Minister must present a copy of the report to the Legislative Assembly within 15 sitting days from the day on which the report is received by the Minister.

### **MONITORING BY THE OMBUDSMAN**

The Ombudsman must, from time to time and at least once every 12 months, inspect the records of a law enforcement agency to determine the extent of compliance with this Act by the agency and law enforcement officers of the agency.

For the purpose of an inspection the Ombudsman may, after notifying the chief officer of the law enforcement agency, enter at any reasonable time premises occupied by the agency; and is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection.

The Ombudsman may require a member of staff of the agency to give him or her any information that the he or she 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.

The Ombudsman must give a written report prepared under the *Annual Reports (Government Agencies) Act 2004*, on the results of each inspection under this section in the preceding financial year. The report must include a report on the comprehensiveness and adequacy of the records of the agency and the cooperation given by the agency in facilitating the inspection by the Ombudsman of those records.

### **MATERIAL EXCLUDED FROM REPORTING**

Subsection 5, s. 28 of the *Crimes (Controlled Operations) Act 2008 (ACT)* clearly states that the report must not disclose any information that identifies any suspect or a participant in an authorised operation or that is likely to lead to a suspect or participant being identified.

## OVERVIEW OF ACT POLICING CONTROLLED OPERATIONS RECORDS 2016-17

Number of applications for standard authorities granted	5
Number of applications for standard authorities refused	0
Number of applications for standard amendments to authorities granted	0
Number of applications for standard amendments to authorities refused	0
Number of applications for urgent authorities granted	0
Number of applications for urgent authorities refused	0
Number of applications for urgent amendments to authorities granted	0
Number of applications for urgent amendments to authorities refused	0
Number of controlled operations conducted in the ACT	5
Number of controlled operations conducted in the ACT and one or more other jurisdictions	0
Number of controlled operations conducted in the ACT and one more participating jurisdictions	0

**CERTIFICATES ISSUED BY AUTHORISING OFFICERS OF ACT POLICING  
2016-17**

**STANDARD CONTROLLED OPERATION NUMBER: 2016-17/01**

<b>Date of application</b>	
22 July 2016	
<b>Application authorised or refused</b>	
On 22 July 2016, Superintendent Rob Wilson, Acting Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of part 2, s.9 of the <i>Crimes (Controlled Operations) Act 2008 (ACT)</i> , issued a certificate authorising a Controlled Operation to be undertaken.	
<b>Relevant offence being investigated</b>	
Trafficking in a controlled drug other than cannabis contrary to s. 603(7) of the <i>Criminal Code 2002 (ACT)</i> an offence punishable on conviction by a maximum penalty of 1000 penalty units, imprisonment for 10 years or both.	
<b>Amendment of controlled operation authority</b>	
Nil	
<b>Revocation or expiry date of controlled operation authority</b>	
Controlled operation cancelled on 9 August 2016, 2.27pm	
<b>Period authorised</b>	
Three months	
<b>Nature of activities</b>	
The certificate authorised the controlled purchase of drugs within the ACT	
<b>Involvement of illicit goods</b>	
Methylamphetamine	56 grams
<b>Involvement of other jurisdictions</b>	
Nil	
<b>Damage or injuries occurred</b>	
Nil	
<b>Outcome</b>	
The operation continued utilising a separate controlled operation authority.	

**STANDARD CONTROLLED OPERATION NUMBER: 2016-17/02**

<b>Date of application</b>	
9 August 2016	
<b>Application authorised or refused</b>	
On 9 August 2016, Commander Andrea Quinn, Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of part 2, s.9 of the <i>Crimes (Controlled Operations) Act 2008 (ACT)</i> , issued a certificate authorising a Controlled Operation to be undertaken.	
<b>Relevant offence being investigated</b>	
Trafficking in a controlled drug other than cannabis contrary to s. 603(7) of the <i>Criminal Code 2002 (ACT)</i> an offence punishable on conviction by a maximum penalty of 1000 penalty units, imprisonment for 10 years or both.	
<b>Amendment of controlled operation authority</b>	
Nil	
<b>Revocation or expiry date of controlled operation authority</b>	
Controlled operation authority was cancelled on 21 October 2016, 2pm	
<b>Period authorised</b>	
Three months	
<b>Nature of activities</b>	
The certificate authorised the controlled purchase of drugs within the ACT	
<b>Involvement of illicit goods</b>	
6 x 28 grams of Methylamphetamine 1 x 84 grams of Methylamphetamine 1 x 450 grams of Methylamphetamine 1 x 28 grams of MDMA 1 x sample of cocaine.	Total of 702 grams of Methylamphetamine, 28 grams of MDMA, 0.1 grams of cocaine.
<b>Involvement of other jurisdictions</b>	
Nil	
<b>Damage or injuries occurred</b>	
Nil	
<b>Outcome</b>	
The subjects were arrested and charged with trafficking in a controlled drug other than cannabis, namely 3,4-Methylenedioxymethylamphetamine (MDMA), methylamphetamine and cocaine. The controlled drugs were seized by ACT Policing during controlled purchases from the subject, and were subsequently submitted for analysis.	

**STANDARD CONTROLLED OPERATION NUMBER: 2016-17/03: NUMBER NOT UTILISED.**

**STANDARD CONTROLLED OPERATION NUMBER: 2016-17/04**

<b>Date of application</b>	2 December 2016
<b>Application authorised or refused</b>	On 2 December 2016, Commander Mark Walters, Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of part 2, s.9 of the <i>Crimes (Controlled Operations) Act 2008 (ACT)</i> , issued a certificate authorising a Controlled Operation to be undertaken.
<b>Relevant offence being investigated</b>	Trafficking in a controlled drug other than cannabis s. 603(7) of the <i>Criminal Code 2002 (ACT)</i> an offence punishable on conviction by a maximum penalty of 1000 penalty units, imprisonment for 10 years or both.
<b>Amendment of controlled operation authority</b>	Nil
<b>Revocation or expiry date of controlled operation authority</b>	Controlled operation authority was cancelled on 31 December, 2016
<b>Period authorised</b>	29 Days
<b>Nature of activities</b>	The certificate authorised the controlled purchase of drugs within the ACT
<b>Involvement of illicit goods</b>	Nil
<b>Involvement of other jurisdictions</b>	Nil
<b>Damage or injuries occurred</b>	Nil
<b>Outcome</b>	Police were unable to seize any illicit substances or arrest any persons. Intelligence gathered during the controlled operation will be used in further investigations into the target.

**STANDARD CONTROLLED OPERATION NUMBER: 2016-17/05: NUMBER NOT UTILISED.**

**STANDARD CONTROLLED OPERATION NUMBER: 2016-17/06**

<b>Date of application</b>	
14 December 2016	
<b>Application authorised or refused</b>	
On 14 December 2016, Commander Mark Walters, Acting Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of part 2, s.9 of the <i>Crimes (Controlled Operations) Act 2008 (ACT)</i> , issued a certificate authorising a Controlled Operation to be undertaken.	
<b>Relevant offence being investigated</b>	
Traffic in Controlled Drug other than cannabis, contrary to section 603(7) Criminal Code 2002 (ACT) and Blackmail section 342 Of the Criminal Code 2002	
<b>Amendment of controlled operation authority</b>	
Nil	
<b>Revocation or expiry date of controlled operation authority</b>	
27 December 2016	
<b>Period authorised</b>	
14 days	
<b>Nature of activities</b>	
The certificate authorised the controlled purchase of drugs within the ACT	
<b>Involvement of illicit goods</b>	
MDMA	28 grams of MDMA
<b>Involvement of other jurisdictions</b>	
Nil	
<b>Damage or injuries occurred</b>	
Nil	
<b>Outcome</b>	
The target was arrested and charged following the supply of drugs.	

**STANDARD CONTROLLED OPERATION NUMBER: 2016-17/07**

<b>Date of application</b>
6 June 2017
<b>Application authorised or refused</b>
On 7 June 2017, Commander Mark Walters, Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of part 2, s.9 of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a Controlled Operation to be undertaken.
<b>Relevant offence being investigated</b>
Traffic in Controlled drug, s603(7) Criminal Code 2002 ACT; and Unauthorised possession or use of prohibited firearms under s42, Firearms Act 1996.
<b>Amendment of controlled operation authority</b>
<b>Revocation or expiry date of controlled operation authority</b>
6 September 2017
<b>Period the authority was in force</b>
Three months
<b>Nature of activities</b>
The certificate authorised the controlled purchase of drugs within the ACT
<b>Involvement of illicit goods</b>
Nil
<b>Involvement of other jurisdictions</b>
Nil
<b>Damage or injuries occurred</b>
Nil
<b>Outcome</b>
Continuing.





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