



AFP
AUSTRALIAN FEDERAL POLICE

ACT POLICING
CONTROLLED OPERATIONS
ANNUAL REPORT
2017–18



© Commonwealth of Australia, 2018

This work is copyright. It may be quoted or reproduced in part or whole for study or training purposes subject to inclusion of an acknowledgement of source. Reproduction for any other purpose requires written permission from ACT Policing.

Contact officer

Inquiries about this document should be directed to:

Coordinator Ministerial, Policy and Performance

ACT Policing
GPO Box 401
Canberra ACT 2601

Telephone: (02) 6264 9480

Email: ACT-MPP-Ministerial@afp.gov.au

For an electronic version of this annual report and previous annual reports go to police.act.gov.au/about-us/publications/annual-reports

General inquiries

Written requests for general information can be sent to:

Coordinator Ministerial, Policy and Performance
Australian Federal Police
GPO Box 401
Canberra ACT 2601

Information about ACT Policing can also be found at police.act.gov.au

For general information about the Australian Federal Police (AFP), of which ACT Policing is the community policing arm, telephone AFP National Headquarters on (02) 6131 3000. People who are hearing impaired can contact the AFP through telephone typewriter facility on (02) 6256 7700.

Freedom of information

Telephone: (02) 6131 6131

Email: foi@afp.gov.au

Website: afp.gov.au/about-us/freedom-information



**CHIEF POLICE OFFICER FOR THE ACT
JUSTINE SAUNDERS**

GPO Box 401 Canberra City ACT 2601

Telephone +61 2 6264 9610

Email CPOACT@afp.gov.au

afp.gov.au

ABN 17 864 931 143

13 September 2018

Minister for Police and Emergency Services
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Minister

I am pleased to submit ACT Policing's Controlled Operations Annual Report for the financial year 1 July 2017 to 30 June 2018.

The report has been prepared in accordance with section 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 2017 to 30 June 2018 have been included. It complies with section 28 of the Act.

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

Yours sincerely

Justine Saunders

Contents

Letter of transmittal	iii
1 The legislation	3
Immunity from criminal liability	5
Protection from criminal responsibility for certain ancillary conduct	6
Situations giving rise to the issue of controlled operation certificates	7
Authorisation of controlled operations and controlled operation certificates	8
Cancellation of authority	9
Mutual recognition	9
Reporting requirements	10
Monitoring by the Ombudsman	11
Material excluded from reporting	11
2 Controlled operations, 2017–18	13
Summary	14
Certificates issued by authorising officers of ACT Policing, 2017–18	15
Certificates issued by authorising officers of ACT Policing, 2016–17, for which operations concluded in the current reporting period	21

The legislation	1
Controlled operations, 2017–18	2



1 The legislation



The legislation

1

Immunity from criminal liability	5
Protection from criminal responsibility for certain ancillary conduct	6
Situations giving rise to the issue of controlled operation certificates	7
Authorisation of controlled operations and controlled operation certificates	8
Cancellation of authority	9
Mutual recognition	9
Reporting requirements	10
Monitoring by the Ombudsman	11
Material excluded from reporting	11

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 or police officer (however described) of another jurisdiction.

Protection from criminal responsibility for certain ancillary conduct

Section 22 protects police and other people who are authorised to know about, and assist with, a controlled operation but are not assigned as participants. Those people who are authorised — for example, scientific officers who provide technical assistance on storage or preparation of a sample drug but do not actively participate in the operation — would not be criminally liable for ancillary conduct such as conspiracy.



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 of the Act 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
- 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.

Section 25 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. It 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 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* (ACT) 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 28(5) 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.



2 Controlled operations, 2017-18



Controlled operations, 2017-18

2

Summary	14
Certificates issued by authorising officers of ACT Policing, 2017-18	15
Certificates issued by authorising officers of ACT Policing, 2016-17, for which operations concluded in the current reporting period	21

Summary

Overview of ACT Policing controlled operations records, 2017–18:

Number of applications for standard authorities granted	7
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	3
Number of controlled operations conducted in the ACT and one or more other jurisdictions	3
Number of controlled operations conducted in the ACT and one or more participating jurisdictions	0
Number of applications for standard authorities granted in a previous reporting period for which operations concluded in the current reporting period	1
Number of applications for standard authorities granted for which operations have not concluded	1

Certificates issued by authorising officers of ACT Policing, 2017–18

Standard Controlled Operation Number: 2017–18/01

Date of application	1 August 2017
Application authorised or refused	On 1 August 2017 Superintendent John Cartwright, Acting Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of Part 2 section 9 of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a controlled operation to be undertaken.
Relevant offence being investigated	<p>Trafficking in a controlled drug other than cannabis contrary to section 603(7) of the <i>Criminal Code 2002</i> (ACT), an offence punishable by 10 years imprisonment, 1000 penalty units or both.</p> <p>Trafficking in cannabis contrary to section 603(8) of the <i>Criminal Code 2002</i> (ACT), an offence punishable by 3 years imprisonment, 300 penalty units or both.</p> <p>Sale or supply of a drug of dependence or prohibited substance contrary to section 164 of the <i>Drugs of Dependence Act 1989</i> (ACT), an offence punishable by 5 years imprisonment, 500 penalty units or both.</p>
Amendment of controlled operation authority	Nil
Revocation or expiry date of controlled operation authority	Controlled operation cancelled on 28 August 2017, 9.40am.
Period the authority was in force	One month
Nature of activities	The certificate authorised the controlled purchase of drugs within the ACT.
Involvement of illicit goods	Nil
Involvement of other jurisdictions	Nil
Damage or injuries occurred	Nil
Outcome	The operation is ongoing utilising a separate controlled operation authority.

Standard Controlled Operation Number: 2017–18/02

Date of application	15 November 2017
Application authorised or refused	On 15 November 2017 Commander Mark Walters, Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of Part 2 section 9 of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a controlled operation to be undertaken.
Relevant offence being investigated	Unauthorised possession or use of firearms other than prohibited firearms contrary to section 43(1)(a)(ii) of the <i>Firearms Act 1996</i> (ACT), an offence punishable by 7 years imprisonment.
Amendment of controlled operation authority	Nil
Revocation or expiry date of controlled operation authority	Controlled operation authority was cancelled on 17 November 2017, 11.30am.
Period the authority was in force	One month
Nature of activities	The certificate authorised the controlled purchase of firearms within the ACT and one or more other jurisdictions.
Involvement of illicit goods	Six firearms and ammunition
Involvement of other jurisdictions	Nil
Damage or injuries occurred	Nil
Outcome	The firearms and ammunition were seized and submitted for analysis. Analysis confirmed the firearms to be stolen. No charges were laid as a result of this controlled operation.

Standard Controlled Operation Number: 2017–18/03

Date of application	7 December 2017
Application authorised or refused	On 7 December 2017 Commander Mark Walters, Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of Part 2 section 9 of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a controlled operation to be undertaken.
Relevant offence being investigated	Unauthorised possession or use of prohibited firearms contrary to section 42(a)(iii) of the <i>Firearms Act 1996</i> (ACT), an offence punishable by 10 years imprisonment.
Amendment of controlled operation authority	Nil
Revocation or expiry date of controlled operation authority	Controlled operation authority expired on 7 January 2018.
Period the authority was in force	One month
Nature of activities	The certificate authorised the controlled purchase of firearms within the ACT and one or more other jurisdictions.
Involvement of illicit goods	Nil
Involvement of other jurisdictions	Nil
Damage or injuries occurred	Nil
Outcome	Police were unable to purchase any firearms or arrest any persons. No charges were laid as a result of this controlled operation.

Standard Controlled Operation Number: 2017–18/04

Date of application	9 February 2018
Application authorised or refused	On 9 February 2018 Acting Commander Stephen Turnbull, Acting Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of Part 2 section 9 of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a controlled operation to be undertaken.
Relevant offence being investigated	Unauthorised possession or use of firearms, other than prohibited firearms contrary to section 43(1)(a)(ii) of the <i>Firearms Act 1996</i> (ACT), an offence punishable by 7 years imprisonment.
Amendment of controlled operation authority	Nil
Revocation or expiry date of controlled operation authority	Controlled operation authority expired on 8 March 2018.
Period the authority was in force	One month
Nature of activities	The certificate authorised the controlled purchase of firearms within the ACT and one or more other jurisdictions.
Involvement of illicit goods	One firearm and ammunition
Involvement of other jurisdictions	Nil
Damage or injuries occurred	Nil
Outcome	The firearm and ammunition were seized and submitted for analysis. No charges were laid as a result of this controlled operation.

Standard Controlled Operation Number: 2017-18/05

Date of application	16 March 2018
Application authorised or refused	On 16 March 2018 Commander Mark Walters, Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of Part 2 section 9 of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a controlled operation to be undertaken.
Relevant offence being investigated	Unauthorised possession or use of firearms other than prohibited firearms contrary to section 43(1)(a)(ii) of the <i>Firearms Act 1996</i> (ACT), an offence punishable by 7 years imprisonment.
Amendment of controlled operation authority	Nil
Revocation or expiry date of controlled operation authority	Controlled operation authority expired on 30 March 2018.
Period the authority was in force	14 days
Nature of activities	The certificate authorised the controlled purchase of firearms within the ACT.
Involvement of illicit goods	Nil
Involvement of other jurisdictions	Nil
Damage or injuries occurred	Nil
Outcome	The operation did not proceed. No charges were laid as a result of this controlled operation.

Standard Controlled Operation Number: 2017–18/07

Date of application	26 June 2018
Application authorised or refused	On 26 June 2018 Commander Mark Walters, Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of Part 2 section 9 of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a controlled operation to be undertaken.
Relevant offence being investigated	Unauthorised possession or use of firearms other than prohibited firearms contrary to section 42(a) (iii) of the <i>Firearms Act 1996</i> (ACT), an offence punishable by 10 years imprisonment.
Amendment of controlled operation authority	Nil
Revocation or expiry date of controlled operation authority	Controlled operation authority was cancelled 27 June 2018, 12.22pm.
Period the authority was in force	7 days
Nature of activities	The certificate authorised the controlled purchase of firearms within the ACT.
Involvement of illicit goods	One firearm and ammunition
Involvement of other jurisdictions	Nil
Damage or injuries occurred	Nil
Outcome	The firearm and ammunition were seized and submitted for analysis. No charges were laid as a result of this controlled operation.

Certificates issued by authorising officers of ACT Policing, 2016–17, for which operations concluded in the current reporting period

Standard Controlled Operation Number: 2017–17/07

Date of application	7 June 2017
Application authorised or refused	On 7 June 2017 Commander Mark Walters, Deputy Chief Police Officer of ACT Policing, an authorised officer within the meaning of Part 2 section 9 of the <i>Crimes (Controlled Operations) Act 2008</i> (ACT), issued a certificate authorising a controlled operation to be undertaken.
Relevant offence being investigated	<p>Trafficking in a controlled drug other than cannabis contrary to section 603(7) of the <i>Criminal Code 2002</i> (ACT), an offence punishable by 10 years imprisonment, 1000 penalty units or both.</p> <p>Unauthorised possession or use of prohibited firearms contrary to section 42 of the <i>Firearms Act 1996</i> (ACT), an offence punishable by 10 years imprisonment.</p>
Amendment of controlled operation authority	Nil
Revocation or expiry date of controlled operation authority	Controlled operation authority expired 6 September 2017.
Period the authority was in force	Three months
Nature of activities	The certificate authorised the controlled purchase of drugs and firearms within the ACT and one or more other jurisdictions.
Involvement of illicit goods	Nil
Involvement of other jurisdictions	Nil
Damage or injuries occurred	Nil
Outcome	No seizures and no charges were laid as a result of this controlled operation.

This page has been left intentionally blank





AFP

AUSTRALIAN FEDERAL POLICE

POLICING FOR
A SAFER AUSTRALIA