



## AFP Practical Guide on conducting controlled operations under ACT law

s22

### 1. Disclosure and compliance

This document is classified **AFP-IN-CONFIDENCE** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on the disclosure of information](#).

## Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

## 2. Acronyms

<b>ACT</b>	Australian Capital Territory
<b>AFP</b>	Australian Federal Police
<b>CPO</b>	Chief Police Officer for the ACT
<b>DCPO</b>	Deputy Chief Police Officer
<b>PROMIS</b>	Police Real-time Online Management Information System

## 3. Definitions

**Act** – means the [Crimes \(Controlled Operations\) Act 2008](#) (ACT).

**Applicant** – is a law enforcement officer (a police officer or secondee) who makes an application to the Chief Police Officer (CPO) or Deputy Chief Police Officer (DCPO) for an authority authorising a controlled operation. Wherever possible this will be the AFP member in charge of the proposed controlled operation (i.e. the case officer).

**Application** – the Act provides for the following types of application:

- standard application (s. 9)
- urgent application (s. 9)
- standard amendment application (s. 13)
- urgent amendment application (s. 13).

**Authority** – means an authority authorising the conduct of a controlled operation. Under the Act the types available are:

- standard authority (s. 11)
- urgent authority (s. 11)
- standard amendment authority (s. 13)
- urgent amendment authority (s. 13).

**Authorised operation** – means a controlled operation for which an authority is in force.

**Authorising officer** – means the CPO or the DCPO.

**Case officer** – means the arresting member, the member in charge of an incident, the informant or the member responsible for compiling the brief of evidence.

**Chief Officer** – means the ACT Policing Chief Police Officer.

**Civilian participant** – is a person who is not a law enforcement officer, who engages in conduct for the purposes of a controlled operation pursuant to an authority to engage in that conduct.

**Controlled operation** – is an operation authorised under an authority that:

- involves the participation of law enforcement officers
- is conducted, or intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence against a law of the Australian Capital Territory (ACT)
- may involve acts or omissions by law enforcement officers or civilian participants for which, apart from s. 18 (protection from criminal responsibility for conduct during an authorised operation) of the Act, they would be criminally responsible
- is subject to a legislated maximum time limit of 3 months.

Reference to a controlled operation relates to the activity covered by the controlled operation authority and not the whole of the investigation.

**Human source** – is a person recorded on the AFP Register of Human Sources who provides information and/or assistance to the AFP and whose identity and relationship with the AFP needs to be protected.

**Member** – is defined in s. 4 of the [Australian Federal Police Act 1979](#) (Cth).

**Principal law enforcement officer** – is the law enforcement officer who is responsible for the conduct of the operation. This may not necessarily be the applicant. The principal law enforcement officer for an authorised operation is the team leader.

s37(2)(b)

s37(2)(b)

**Relevant offence** – is an offence against an ACT law punishable by imprisonment of 3 years or more.

**Rewards Committee** – for the purpose of this guide, the Rewards Committee is comprised of

s37(2)(b)

## 4. Guideline authority

This guideline was issued by the Chief Police Officer for the ACT under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

## 5. Introduction

This Practical Guide outlines procedures for conducting controlled operations under ACT

legislation. It provides a basic procedural framework for controlled operations to ensure that statutory reporting requirements are met. It should be read with the [Crimes \(Controlled Operations\) Act 2008](#) (ACT).

This guideline should be read with relevant AFP Governance, including:

- [AFP National Guideline on property and exhibits](#)
- [AFP National Guideline on undercover operations](#)
- [AFP National Guideline on assumed identities](#)
- [AFP National Guideline on managing human sources](#)

s37(2)(b), s47E(d)

## 6. Legislation

The [Crimes \(Controlled Operations\) Act 2008](#) (ACT) (the Act):

- enables the use of controlled operations for a wide range of relevant offences against laws of the ACT
- provides legal protection to members and specified civilians who are assisting police with the controlled operation.

### 6.1 Jurisdiction

The Act provides for the authorisation, conduct and monitoring of controlled operations, including operations conducted in:

- the ACT
- the ACT and 1 or more other jurisdictions, or
- 1 or more participating jurisdictions (see s. 6 of the Act).

A controlled operation in relation to a relevant offence is taken to be conducted in the ACT, whether or not it is also conducted in another jurisdiction, if a participant in the operation is a law enforcement officer of the ACT.

## 7. Exemptions to indemnity

The protection provided by ss. 18 and 19 of the [Crimes \(Controlled Operations\) Act 2008](#) (ACT) does not apply if the:

- member has used a controlled operation to intentionally induce a person to commit an offence, or
- conduct is likely to involve the commission of a sexual offence against a person, or an offence involving the death of, or serious injury to a person.

## 8. Roles

### 8.1 Controlled Operations Committee

The Controlled Operations Committee (the Committee) should:

- consider documentation requesting the conduct of controlled operations
- ensure that applications for a standard authority or a standard amendment authority have been prepared to a high standard and comply with legislative requirements
- ensure that a copy of the written record of the application for an urgent authority or an urgent amendment authority is received.

The Committee is comprised of the:

s37(2)(b)

## 8.2 Chief Police Officer

The Chief Police Officer (CPO):

- may authorise the controlled operation by granting an authority unconditionally or subject to conditions
- considers the matters specified in s. 10(2) of the [Crimes \(Controlled Operations\) Act 2008](#) (ACT) (the Act) in determining whether or not to grant an authority
- may require an applicant to provide additional information about an application
- may refuse the application
- may delegate his powers in relation to authorisation of controlled operations (including the amendment and cancellation of controlled operations and the notification of lost or seriously damaged property).

## 8.3 Ministerial & Operational Support

Ministerial & Operational Support are responsible for coordinating ACT Policing reporting requirements to the ACT Minister for Police and Emergency Services and the Ombudsman on behalf of the CPO.

s37(2)(b)

s37(2)(b)

## 10. Applications

Applications for the conduct of a controlled operation may be either a standard application or an urgent application.

Conducting a controlled operation under the [Crimes \(Controlled Operations\) Act 2008](#) (ACT) must be authorised by either the:

- Chief Executive Officer of the Australian Crime Commission (ACC)
- Chief Police Officer for the ACT
- Deputy Chief Police Officer.

Authorities **must not** be given for a period longer than 3 months.

## 11. Procedure: standard application

### 11.1 Considerations

In determining whether an application for a controlled operation will be made, members should consider all relevant factors, such as those contained in

s37(2)(b)

s37(2)(b) can also be contacted for general advice.

### 11.2 Drafting

The member must complete an s37(2)(b) and submit it to the s37(2)(b)

The application must provide sufficient information to enable:

- the committee to recommend whether the application should be granted
- the authorising officer to make a decision whether the operation is authorised.

An application may be made, and an authority granted, for a controlled operation, even if it has been the subject of a previous application or authority.

If this is the case, the application must include information on whether the proposed controlled operation has been the subject of an earlier application, or application for amendment, and if so, whether the authority or amendment was granted.

## 11.3 Committee consideration

Once an application is made by a member, [s37\(2\)\(b\)](#) must convene the committee to consider it.

The committee (and later the authorising officer) may require the member to provide additional information where it is necessary to assist the decision as to whether the operation should be authorised.

The committee should only make a recommendation to the authorising officer on the application for a controlled operation when the committee has considered the factors detailed in s. 10(2) of the [Crimes \(Controlled Operations\) Act 2008](#) (ACT) (the Act).

## 11.4 Controlled operations number

Once the committee has considered the draft application, [s37\(2\)\(b\)](#) will allocate a controlled operations number.

The controlled operations number must be a sequential number in the form of 'YYYY-YY/number' issued by [s37\(2\)\(b\)](#) per s. 29 of the Act.

## 11.5 Authorising officer consideration

The authorising officer should consider the recommendation of the committee and either:

- authorise the operation by granting the authority (either unconditionally or subject to conditions) if satisfied that the matters in s. 10(2) have been addressed
- refuse the application.

If the standard application is approved, [s37\(2\)\(b\)](#) should provide the applicant with a copy of the standard authority [s37\(2\)\(b\)](#) signed by the authorising officer.

## 12. Procedure: urgent application

If a member believes that a delay associated with making a standard application may affect the success of an operation, the member may make an urgent application for authority to conduct a controlled operation.

Urgent applications should be made to the authorising officer either:

- in person
- by telephone, fax or email
- by any other means of communication.

The member must provide sufficient information to enable the authorising officer to make a decision whether or not to grant the application.

The authorising officer, if satisfied that the matters specified in s. 10(2) of the [Crimes \(Controlled Operations\) Act 2008](#) (ACT) (the Act) have been addressed, may approve the

urgent application either:

- in person
- by telephone, fax or email
- by any other means of communication.

In this case, s37(2)(b) should provide the member with a copy of the urgent authority s37(2)(b) signed by the authorising officer as soon as practicable after the urgent application is approved.

This authority **must not** be issued for more than 7 days.

The authorising officer should ensure that the urgent authority states the date and time when the authority is granted. The authority may be post dated, so that it takes effect at a future date in order to allow members to prepare for the operation without commencing controlled conduct.

Where practicable after making an urgent application, the member must make a written record of the application and give a copy of that application to s37(2)(b)

s37(2)(b) should provide a copy of the application to the committee and to the authorising officer who made the decision whether or not to grant the application.

If an urgent authority is granted, the authorising officer should ensure that written notes are kept of the detail of the authority.

## 13. Amendment of authority

Amendments to a standard or urgent authority must only be made by the authorising officer at any time on their own initiative or on application by the principal law enforcement officer.

The amendment may be required to:

- extend the period of the authority (provided it does not extend the period of validity beyond 3 months for a standard authority or 7 days for an urgent authority)
- authorise additional or alternative people to engage in the operation
- authorise people involved in the operation to engage in additional or alternative conduct.

The committee or authorising officer may require the member to provide additional information on the amendment application where that information is necessary to allow a decision to be made as to whether the amendment should be granted.

More than one amendment may be made to the same authority.

Applications for the amendment of an authority may be either a standard amendment application or an urgent amendment application.

### 13.1 Significant amendment

Significant amendments to the nature of the controlled operation must not be granted. In this case the principal law enforcement officer must submit a new application for the conduct of a controlled operation.

## 14. Application to amend authority (standard)

### 14.1 Application

The principal law enforcement officer seeking a standard amendment must present an s37(2)(b) to s37(2)(b)

### 14.2 Consideration and decision

The s37(2)(b) should convene a meeting of the committee to consider the s37(2)(b). The committee should only make a recommendation to the authorising officer on the application when the committee has considered the factors as detailed in section s. 10(2) of the [Crimes \(Controlled Operations\) Act 2008](#) (ACT).

The authorising officer should consider the recommendation of the committee, and if satisfied that the above matters have been addressed, may approve the application. In this case, the Registrar should provide the member with a copy of the authority s37(2)(b) signed by the authorising officer as soon as practicable after it is approved.

### 14.3 Informing participants

The applicant must take all reasonable steps to inform participants in a controlled operation about the grant of an amendment of authority **no later than 48 hours** after the day the standard amendment of authority is granted.

## 15. Application to amend authority (urgent)

The principal law enforcement officer may make an urgent application by completing an s37(2)(b) if they believe that the delay involved in submitting a standard amendment application may affect the success of the operation. The urgent amendment application may relate to a standard authority or an urgent authority.

More than one application for amendment may be made in relation to the same authority.

An urgent amendment authority:

- must not extend the period of validity of an original urgent authority
- may seek to extend the period of validity of a standard authority, provided it is not extended beyond 3 months from the date the standard authority was granted.

### 15.1 Application

The principal law enforcement officer should make an urgent application to the authorising officer by submitting an s37(2)(b) either:

- in person
- by telephone, fax or email
- by any other means of communication.

## 15.2 Consideration and decision

The authorising officer should consider the urgent amendment application, and if satisfied that the matters outlined in s. 10(2) of the [Crimes \(Controlled Operations\) Act 2008](#) (ACT) have been addressed, should authorise the urgent amendment application:

- in person
- by telephone, fax or email
- by any other means of communication.

In this case, [s37\(2\)\(b\)](#) should provide the applicant with a copy of the urgent amendment authority using the [s37\(2\)\(b\)](#) signed by the authorising officer as soon as practicable after it is approved.

## 15.3 Written records

As soon as practicable after making an urgent amendment application, the member must make a written record of the application and give a copy of that application to [s37\(2\)\(b\)](#). The [s37\(2\)\(b\)](#) should provide a copy of the application to the committee and to the authorising officer who made the amendment decision.

If an urgent amendment application is granted, the authorising officer should record written details of the amendment.

## 16. Cancellation of authority

The authorising officer may cancel an authority at any time and for any reason.

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

[s37\(2\)\(b\)](#) should notify the principal law enforcement officer of the cancellation in writing by submitting the [s37\(2\)\(b\)](#). The notification must be signed by the authorising officer and must include the time and date when the notice takes effect. The date and time **must not be backdated** to when the controlled operation was completed.

The principal law enforcement officer must endorse receipt of the cancellation authority.

## 17. Surrender/cancellation of authority

The principal law enforcement officer may also surrender an authority for cancellation by completing the [s37\(2\)\(b\)](#)

The principal law enforcement officer must sign the notification and include the time and date the request for cancellation was made.

The notification must be signed by the authorising officer.

## 18. Retention of records

The Chief Police Officer must ensure documents connected with controlled operations be kept in accordance with s. 29 of the [Crimes \(Controlled Operations\) Act 2008](#) (ACT) (the Act).

[s37\(2\)\(b\)](#) must retain the original documentation authorising the controlled operation by maintaining a General register (per s.30 of the Act).

### 18.1 Brief of evidence

The case officer must submit a copy of the Controlled Operation authority (appropriately redacted) with the brief of evidence to show evidence of authorisation.

## 19. PROMIS reporting

[s37\(2\)\(b\)](#)

## 20. External reporting and scrutiny

### 20.1 Effectiveness reports

Within 2 months after the completion of a controlled operation (including where an authority is cancelled or surrendered) a '[Report to Chief Officer](#)' on the effectiveness of the controlled operation must be prepared by the principal law enforcement officer in accordance with s. 27 of the [Crimes \(Controlled Operations\) Act 2008](#) (ACT) (the Act). This information will be utilised to comply with controlled operation reporting to the Minister.

### 20.2 Reports to the Minister

In accordance with s. 28 of the Act, the Chief Police Officer for the ACT must report to the Minister on the conduct of controlled operations. This report must be submitted to the Minister as soon as practicable after 30 July each year and cover controlled operations conducted in the previous financial year. This report must include information required by s. 28(2) of the Act.

Ministerial and Operational Support should ensure that all reporting requirements are met. The principal law enforcement officers for each controlled operation should ensure all relevant information is uploaded into PROMIS, including ACT Government Analytical Laboratory certificates relating to final drug analysis. ([s37\(2\)\(b\)](#) provides all details for inclusion in the Annual report from the controlled operations register).

## 21. Civilian participants

The principal law enforcement officer should only use civilian participants where the role to be performed by that person could not adequately be performed by a member of the AFP or other law enforcement officer.

### 21.1 Indemnity

The Act provides protection for civilian participants in controlled operations from prosecution or civil liability if the civilian participant engages in conduct that comprises the physical elements of a criminal offence or civil liability.

The protection only applies if the civilian's conduct:

- falls within the authority provided for the controlled operation
- does not amount to inducing a person to commit an offence
- does not involve the risk of causing death or serious injury, or the commission of offences against the person of a sexual nature and
- accords with the instructions of the case officer managing the participant's conduct.

### 21.2 Recorded information

Members should clearly inform the civilian participant of the:

- boundaries in which they can operate under the authority
- extent that the indemnity provided by the authority applies and
- consequences of operating outside of those boundaries.

Members must record these instructions and an acknowledgement by the civilian participant that they understand the instructions via a signed acknowledgement, which must form part of the working file.

### 21.3 Misconduct

Where the civilian participant's conduct is not in accordance with the instructions of members, the civilian participant's overall participation in the controlled operation must be reviewed and, if necessary, excluded via an amendment to the Authority. The case officer must advise the civilian participant of the amendments as a matter of priority and record the advice.

### 21.4 Safety and protection of identity

Where there is concern for the safety of a civilian participant that requires their identity to be protected, they may be referred to within the authority using a code number per s. 11(4) of [Crimes \(Controlled Operations\) Act 2008](#) (ACT). This number will be in the form of 'CPYY/XX' and issued by the s37(2)(b). Members should use this code number in all references to the person for that operation. s37(2)(b) must maintain a record of the identity of all persons referred to in this way.

The case officer should obtain the numbers for these civilian participants from [s37\(2\)\(b\)](#) during the application/preparation phase to ensure that the code number is used in the application as well as all subsequent documentation.

## 21.5 Registered human sources

Registered human sources can be used as civilian participants in a controlled operation provided that the following have been consulted and agree to such use, with or without specific conditions:

- the handler of the registered human source and

[s37\(2\)\(b\)](#)

Where a registered human source is to be used as a civilian participant, the applicant must include this information in any application, including any specific conditions as per the [AFP National Guideline on managing human sources](#).

## 22. Loss, destruction or compromise during a controlled operation

Where a controlled operation is compromised or there is a loss or destruction of the illicit goods that are subject of the controlled operation, the principal law enforcement officer should immediately report the circumstances to [s37\(2\)\(b\)](#)

As soon as practicable, [s37\(2\)\(b\)](#) will provide a written report outlining the circumstances to the Chief Police Officer for the ACT (CPO), in accordance with s. 24 of the [Crimes \(Controlled Operations\) Act 2008](#) (ACT) (the Act).

Once the CPO has been advised, [s37\(2\)\(b\)](#) will prepare documentation on behalf of the CPO to make appropriate notifications.

### 22.1 Compensation

If a person suffers loss or serious damage to property as a direct result of an authorised operation, the Territory is liable to pay compensation to the person, on agreement or by direction of a court, subject to conditions specified in s. 23 of the Act.

The principal law enforcement officer in conjunction with the case officer should:

- reflect this information in the [‘Report to Chief Officer’](#) under s. 27, where possible
- initiate professional standards procedures per the [AFP Commissioner’s Order on Professional Standards \(CO2\)](#), where appropriate.

## 23. Payments to couriers, informants or civilian participants

s37(2)(b)

## 24. Operation names

All investigations wanting to utilise a controlled operation must obtain an operation name.

## 25. Operational review

All controlled operations may be subject to an investigative review. At the completion of a controlled operation, s37(2)(b) and/or Criminal Investigations management may request feedback from the principal law enforcement officer and case officer on the quality and efficiency of the controlled operation.

s37(2)(b)

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## 26. Controlled operations manual and forms

The s37(2)(b) is available to assist members when conducting controlled operations under the ACT legislation. It includes templates for all of the relevant forms referenced in this guideline.

## 27. Further advice

Queries about the content of this guideline should be referred to

s37(2)(b)

s37(2)(b)

## 28. References

### Legislation

- [Australian Federal Police Act 1979](#) (Cth)
- [Crimes \(Controlled Operations\) Act 2008](#) (ACT).

### AFP guidelines

- [AFP National Guideline on assumed identities](#)
- [AFP National Guideline on managing human sources](#)
- [AFP National Guideline on property and exhibits](#)
- [AFP National Guideline on undercover operations](#)

s37(2)(b)

s37(2)(b)

## 29. Attachments

s37(2)(b)

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