



## AFP National Guideline on controlled operations under Commonwealth law

### 1. Disclosure and compliance

This document is marked **For Official Use Only** and is intended for internal AFP use.

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

#### 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>AAT</b>	Administrative Appeals Tribunal
<b>ACBPS</b>	Australian Customs and Border Protection Service
<b>AFP</b>	Australian Federal Police
<b>AO</b>	Authorising officer
<b>AOCC</b>	AFP Operations Coordination Centre
<b>CNOC</b>	Customs National Operations Centre
s37(2)(b)	
<b>HS</b>	Human source
<b>PLEO</b>	Principal law enforcement officer
s37(2)(b)	

### 3. Definitions

**AFP Act** – means the [Australian Federal Police Act 1979](#) (Cth).

**AFP appointee** – means a Deputy Commissioner, an AFP employee, special member or special protective service officer and includes a person:

- engaged overseas under s. 69A of the [Australian Federal Police Act 1979](#) (Cth) (the AFP Act) to perform duties as an AFP employee
- seconded to the AFP under s. 69D of the AFP Act
- engaged under s. 35 of the AFP Act as a consultant or contractor to perform services for the AFP and determined under s. 35(2) of the AFP Act to be an AFP appointee.

(See s. 4 of the AFP Act.)

**AFP member** – means a member of the AFP as defined in s. 4 of the AFP Act.

**Applicant** – means an Australian law enforcement officer who applies for a controlled operation authority or variation of authority.

**Authorising officer (AO)** – means the Commissioner, Deputy Commissioner or an AFP member authorised in writing by the Commissioner to whom an application may be made to authorise a controlled operation as follows:

- **major controlled operations may be authorised by:**
  - the Commissioner or a Deputy Commissioner
  - a person performing the duties of the Commissioner or Deputy Commissioner.
- **controlled operations may be authorised by:**
  - the Commissioner or a Deputy Commissioner
  - a person performing the duties of the Commissioner or Deputy Commissioner
  - a Commander of the AFP **authorised in writing** by the Commissioner for this purpose.

**Authority** – means an authority (whether formal or urgent) to conduct a controlled operation granted under s. 15GI of the Crimes Act, and includes any such authority as varied.

**Chief officer** – has the same meaning as defined in s. 15GC of the Crimes Act.

**Civilian participant** – means a participant in a controlled operation who is not a law enforcement officer, including a human source.

**Controlled conduct** – means an act or an omission to perform an act which would constitute an offence, for which a person would, without an authority, be criminally responsible.

**Controlled operation** – means an operation that:

- involves the participation of law enforcement officers
- is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious Commonwealth offence or a serious state offence that has a federal aspect
- may involve a law enforcement officer or other person in conduct that would, apart from s. 15HA of the Crimes Act, constitute a Commonwealth offence or an offence against a law

of a state or territory.

**Crimes Act** – means the [Crimes Act 1914](#) (Cth).

**Formal application** – means an application made by means of a written document signed by the applicant.

**Formal authority** – means an authority made by means of a written document signed by the authorising officer.

**Formal AAT variation application** – means a variation application, made by means of a written document signed by the applicant, to a nominated tribunal member to request an extension to the period of effect of an authority beyond three months.

**Formal AAT variation of authority** – means a variation of authority, granting an extension to the period of effect, made by means of a written document signed by an nominated tribunal member.

**Formal AFP variation application** – means a variation application, made by means of a written document signed by the applicant, requesting to add or remove participants, alter the controlled conduct authorised for existing participants, or extend the period of effect of the authority up to a maximum period of three months.

**Formal AFP variation of authority** – means a variation of authority made by means of a written document signed by the authorising officer.

**Final effectiveness report** –

s37(2)(b)

s37(2)(b)

**Human source** – is defined in the [AFP National Guideline on managing human sources](#).

**Illicit goods** – means goods, the possession of which, is a contravention of a law of the Commonwealth, a state or a territory.

**Law enforcement agency** - in relation to Part IAB of the Crimes Act means the AFP, the Australian Crime Commission, Australian Customs and Border Protection Service, Australian Commission for Law Enforcement Integrity, or a police force of a state or territory.

**Law enforcement officer** – in relation to Part IAB of the Crimes Act means any of the following:

- the Commissioner of the AFP, a Deputy Commissioner of the AFP, an AFP employee or a special member of the AFP (all within the meaning established by the AFP Act)
- a member of the police force of a state or territory or a foreign country
- a staff member of Australian Commission for Law Enforcement Integrity
- a member of the staff of the Australian Crime Commission
- an officer of the Australian Customs and Border Protection Service

**Law enforcement participant** – means a participant in the controlled operation who is a law enforcement officer.

**Major controlled operation** – is a controlled operation that is likely to:

involve the infiltration of an organised criminal group by one or more undercover law enforcement officers for a period of more than 7 days

- continue for more than 3 months
- be directed against suspected criminal activity that includes a threat to human life.

**Minister** – means the Minister for Justice.

**Nominated tribunal member** – means a person who holds one of the following appointments to the AAT and is nominated by the Minister to deal with applications to extend authorities for controlled operations:

- Deputy President
- full-time senior member
- part-time senior member
- member.

**Ombudsman** – means the Commonwealth Ombudsman.

**Participant** – means a participant in a controlled operation who is authorised to engage in controlled conduct for the purposes of the controlled operation.

**Principal law enforcement officer** – means the Australian law enforcement officer specified in the authority who is in charge of, and responsible for, the conduct of the controlled operation. This person may change depending on the circumstances of the operation.

**Serious Commonwealth offence** – means an offence that both:

- involves a matter mentioned in s. 15GE(2) of the Crimes Act
- is punishable on conviction by imprisonment for a period of 3 years or more.

**Serious state offence that has a federal aspect** – means a state offence that has a federal aspect and that would be a serious Commonwealth offence if it were a Commonwealth offence.

s37(2)(b)

**Target** – means the subject of the controlled operation, about whom evidence is being, has been, or is intended to be, obtained.

**Urgent application** – means an application that is made orally in person, or by telephone or any other means of communication, if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the controlled operation.

**Urgent authority** – means an authority that is granted orally in person, or by telephone or any other means of communication, if the authorising officer is satisfied that the delay caused by granting a formal authority may affect the success of the controlled operation. The authority has a seven day period of effect (inclusive of the day granted). No extension of time is permissible.

**Urgent AFP variation application** – means a variation application that is made orally in person, by telephone or any other means of communication, if the applicant has reason to believe that the delay caused by making a formal AFP variation application may affect the

success of the controlled operation.

**Urgent AFP variation of authority** – means a variation of authority that is granted orally in person, by telephone or any other means of communication, if the authorising officer is satisfied that the delay caused by granting a formal AFP variation of authority may affect the success of the controlled operation.

## 4. Guideline authority

This guideline was issued by the National Manager High Tech Crime Operations using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the AFP Act.

## 5. Introduction

This guideline sets out the obligations and responsibilities of AFP appointees in relation to the use of controlled operations. The procedures herein have been designed to achieve compliance with Part IAB of the Crimes Act, AFP best practice in the administration and authorisation of controlled operations and to ensure statutory reporting requirements are met.

This guideline relates to controlled operations under Commonwealth law and should be read with the Crimes Act as well as the following guidelines and procedures:

- [AFP Practical Guide on conducting controlled operations under ACT law](#)
- [REDACTED] s37(2)(b)
- [AFP National Guideline on information management](#)
- [REDACTED] s37(2)(b)
- Specialist Operations procedure manuals detailing the processes and responsibilities of Specialist Operations staff (Physical Evidence/Crime Scenes) in relation to controlled operations
- [REDACTED] s37(2)(b)

To assist investigators with best practice and the use of controlled operations, advice related to controlled operations, [REDACTED] s47E(d) is available on the [Investigator's Toolkit](#).

## 6. Policy

The AFP's effective management of controlled operations ensures:

- that appropriate authorisation, conduct and monitoring of controlled operations occurs
- exemption from criminal liability and indemnity from civil liability for law enforcement and civilian participants who act in accordance with the controlled operation authority
- admissible evidence in judicial proceedings in accordance with the [Evidence Act 1995](#) (Cth) and similar state and territory legislation
- compliance with the Crimes Act and reporting obligations to the Minister and Ombudsman as per Part IAB Division 4 Compliance and Monitoring requirements of the Crimes Act are met.

# Part 1: Administration

## 7. Roles and responsibilities

### 7.1 Administrative Appeals Tribunal (AAT)

Only a nominated tribunal member may extend the period of effect of an authority beyond 3 months. Additionally, extensions to the period of effect are the only variation that a nominated tribunal member can approve. A nominated tribunal member cannot approve variations to conduct or participants.

### 7.2 AOCC Watch Floor

Outside business hours, the AOCC Watch Floor may provide the on-call contact numbers for the s37(2)(b) or relevant functional management if required.

### 7.3 Applicant

AFP applicants must ensure that the correct templates are used when completing controlled operation documentation and that all required information is provided to the authorising officer for consideration of the application or variation application.

### 7.4 Authorising officer (AO)

When granting an authority, the AO must ensure that s. 15GI(2) of the Crimes Act has been satisfied and that the commencement and duration of the authority is calculated correctly.

### 7.5 Commonwealth Ombudsman

The Commonwealth Ombudsman inspects the AFP's controlled operations records to determine compliance with the Crimes Act and identifies administrative errors and breaches of the legislation. The Ombudsman reports its findings and recommendations to the Minister and Parliament annually.

### 7.6 Controlled Operations Committee

The Controlled Operations Committee must conduct a final review of controlled operation documentation s37(2)(b) to ensure the documents:

- meet operational requirements
- comply with legislative requirements.

s37(2)(b)

The table below details the primary roles of each committee member.

Member	Primary roles
Responsible functional coordinator (or team leader nominated by that coordinator)	<p>Committee Chair must ensure the:</p> <ul style="list-style-type: none"> <li>• content of the proposed application and authority meets the requirements of s. 15GK of the Crimes Act</li> <li>• correct offences are listed and the application is factually correct</li> <li>• targets, if known, are listed</li> <li>• participants are identified in the documents</li> <li>• controlled conduct identified for the participants covers the proposed activity</li> <li>• proposed conduct and risk management are aligned</li> <li>• there are sufficient resources available to conduct the controlled operation</li> <li>• requested time frame is justified for the controlled operation.</li> </ul>
Independent Coordinator (or an experienced team leader nominated by that Coordinator)	<p>Executive Member must:</p> <ul style="list-style-type: none"> <li>• assist in the review of the application and authority with the Chair &amp; Registrar in relation to the outline above and any other required operational considerations.</li> </ul>
s37(2)(b)	s37(2)(b)

INFORMATION PUBLISHED  
 PURSUANT TO ACCESS TO INFORMATION ACT (1982)  
 FREEDOM OF INFORMATION ACT  
 (COMMONWEALTH)  
 INFORMATION PUBLICATION SCHEME (1997)

s37(2)(b)

The Commissioner (via the SCT) must report both on a six-monthly and an annual basis to the Minister in relation to controlled operations that have expired. The Minister must table the annual report to Parliament.

## 7.9 Principal law enforcement officer (PLEO)

The PLEO is responsible for the conduct of the controlled operation and must ensure all participants act in accordance with the authority.

s37(2)(b)

## 8. Controlled operation documentation

### 8.1 Templates

Applicants must use the correct templates for all controlled operation documentation. The templates are located within the s37(2)(b) section of the Investigator's Toolkit.

s37(2)(b)

### 8.2 Quality assurance review of documents

The purpose of the quality assurance review is to ensure that:

- legislative reporting requirements are met
- AFP best practice procedures have been followed
- the applicant has used the correct template
- the documents are correctly formatted.

s37(2)(b)



## 8.3 Controlled Operations Committee consideration

A Controlled Operations Committee consideration must be undertaken for:

- formal applications and formal authorities
- formal AFP/AAT variation applications and authorities.

s37(2)(b)

## 8.4 Endorsement of documents by Authorising Officer (AO)

### Determination of applications

The AO must not grant an authority to conduct a controlled operation unless they are satisfied, on reasonable grounds, that the conditions listed under s. 15GI(2) of the Crimes Act have been met.

Additionally, an AO must ensure when granting a variation of authority that s. 15GQ(2) of the Crimes Act has been satisfied.

### Form of authority

The AO must ensure the period of effect of the authority is calculated correctly using the

s37(2)(b)

The AO must ensure any conditions they impose on the authority are recorded on the authority document.

For further information on the approval of controlled operations refer to section of the Investigator's Toolkit.

s37(2)(b)

## 9. Record keeping

The following documentation must be appropriately retained by the

s37(2)(b)

- controlled operation application and authority
- AFP/AAT variation application and authority
- cancellation by authorising officer or principal law enforcement officer
- change of principal law enforcement officer
- final effectiveness report
- notification and/or requests for exemption from scrutiny from Australian Customs and Border Protection Service.

### 9.1 PROMIS

Applicants must ensure that all controlled operation documentation is added to the PROMIS case as

s37(2)(b)

## 9.2 Original documents

Applicants must provide all original documents to the s37(2)(b) who must retain documents in accordance with the applicable AFP and Commonwealth policies and having regard to the security classification.

s37(2)(b)

## Part 2: Legislative Requirements

### 10. Basis on which an authority may be issued

Section 15GI of the Crimes Act sets out the basis on which a controlled operation authority may be issued.

The Controlled Operations Committee must consider the merits of the controlled operation against the provisions of s. 15GI and record their views on the committee consideration form.

### 11. Exemptions to immunity and indemnity

The protection provided by a controlled operation authority only applies if the conduct does not involve:

- intentionally inducing a person to commit an offence that the person would not otherwise have intended to commit
- an offence involving:
  - the death of or serious injury to any person
  - a sexual offence against any person.

The protection does not apply to a person believed to have been involved, other than for law enforcement purposes, in the criminal activity in respect of which the controlled operation was authorised.

### 12. Mandatory notification to Australian Customs and Border Protection Service (ACBPS)

If the applicant believes illicit goods involved in the conduct of the controlled operation may be

dealt with by ACBPS the applicant must, within 2 business days of being notified that the authority has been authorised, inform ACBPS in writing of:

- the applicant's name and contact details
- the date on which the authority was given
- to the extent known:
  - the place(s) at which the illicit goods will pass into the control of ACBPS
  - the time(s) when, and the day(s) on which, the illicit goods are expected to pass into the control of ACBPS.

Where the applicant does not know details of the nature of the illicit goods, the applicant must notify ACBPS of this. After the notification has occurred, the applicant is not obliged to update ACBPS, however they may choose to do so.

## 12.1 Form of notification

The applicant must use a [redacted] to notify ACBPS and also provide a copy of the authority to ACBPS. The form can be found in the [redacted] s37(2)(b) of the Investigator's Toolkit.

Subject to the security classification of the information provided, the applicant must:

- fax or hand-deliver the documents to the Customs National Operations Centre (CNO) and
- phone the CNO to ensure the documents have been received.

[redacted] s37(2)(b)

## 12.2 ACBPS participation in controlled operations

ACBPS officers, as law enforcement officers, receive the same protections from prosecution and civil liability as AFP members.

Generally, ACBPS intercept, inspect and seize packages or cargo in accordance with its standard procedures. [redacted] s37(2)(b)

[redacted] s37(2)(b)

Subject to the security classification of the information provided, the applicant should fax or hand-deliver the documents to the CNOC and should phone the CNOC to ensure the documents have been received (contact details above).

## 13. Reporting and scrutiny

### 13.1 Biannual reports

In accordance with s. 15HM of the Crimes Act, the Commissioner must report to the Minister as soon as practicable after 30 June and 31 December each year.

s37(2)(b)

### 13.2 Commonwealth Ombudsman

Under s. 15HM(5) of the Crimes Act, when a report is given to the Minister, a copy of that report must be provided to the Commonwealth Ombudsman simultaneously.

s37(2)(b)

s37(2)(b)

### 13.3 Inspection of records

Section 15HS of the Crimes Act requires the Ombudsman to inspect AFP records in relation to controlled operations, at least once every 12 months to ascertain that the AFP are complying with the requirements of the Crimes Act.

The Ombudsman is not required to inspect records of controlled operations that have not been completed.

s37(2)(b)

## 14. Minister's annual report

The Minister must report annually to Parliament on controlled operations after the 1st sitting day in October each year.

s37(2)(b)

s37(2)(b)

## Part 3: Controlled operation process

### 15. Application and authority

When applying for a controlled operation authority the applicant must use the prescribed templates (see below). The templates must be completed with all required information to enable the authorising officer (AO) to properly consider whether or not to grant an authority.

## 15.1 Formal applications

A formal application must be made by means of a written document using the prescribed templates. Templates are located in s37(2)(b) in the AFP Investigator's Toolkit.

## 15.2 Urgent applications

If an applicant believes that the delay caused by making a formal application may affect the success of the controlled operation, there is power under the Crimes Act to orally make an urgent application to the AO for a controlled operation.

s37(2)(b)

s37(2)(b) For further information on making urgent applications refer to s37(2)(b) in the AFP Investigator's Toolkit.

An 'urgent' controlled operation authority **may only be issued for a period of 7 days**.

When an applicant requests an urgent application for a controlled operation, a written urgent application document and authority must be completed by the applicant, and signed by the AO within 7 days.

Applicants must use the prescribed templates when completing the written record of an urgent application of a controlled operation. The templates are located in s37(2)(b) in the AFP Investigator's Toolkit.

The process for applying for a formal authority and/or an urgent authority can be found in s37(2)(b) in the AFP Investigator's Toolkit.

## 16. AFP variation

An Australian law enforcement officer may apply to an authorising officer (AO) for a variation to the controlled operation authority. An AFP variation may only be requested for the following reasons:

- to extend the period of effect of the authority up to a total period of 3 months from the date the authority was issued
- to authorise additional participants to engage in controlled conduct
- to authorise existing participants to engage in additional or alternative controlled conduct
- to provide that specified persons are no longer authorised to engage in controlled conduct for the purposes of the controlled operation.

The AFP variation application does not have to be submitted to the same AO who issued the authority, but this should occur where it is practicable and beneficial to do so.

### 16.1 Formal variations

The principal law enforcement officer (PLEO), or any other Australian law enforcement officer acting on behalf of the PLEO, may apply to an appropriate AO for a variation of an authority in respect of the matters listed above.

A formal AFP variation application must be made by means of a written document using the prescribed templates. Templates are located in s37(2)(b) in the AFP Investigator's Toolkit.

## 16.2 Urgent variations

If an applicant believes the delay caused by making a formal application may affect the success of the controlled operation, there is power under the Crimes Act to effect an oral variation.

This type of application is an urgent AFP variation. When an applicant applies for an urgent AFP variation, a written record of the variation application and authority must be completed and signed by the AO within 7 days of the verbal authority being granted.

s37(2)(b)

Applicants must use the prescribed templates when completing the written record of an urgent AFP variation application and authority.

For further information and templates refer to s37(2)(b) in the AFP Investigator's Toolkit.

## 16.3 Material change

A variation must not be used:

- to effect a material change to the authority
- where it would materially change the risks involved.

For example, a controlled operation which authorised dealing with child pornography should not be varied to authorise negotiations about terrorist activities. A new authority should be sought in such cases.

## 16.4 Purpose for variation

An AFP variation may only be issued if the AO is reasonably satisfied that the variation is necessary for one or more of the following purposes:

- the success of the controlled operation
- the protection of the health or safety of any person
- the protection of property from loss or damage
- ensuring that those involved have appropriate exemption and indemnity.

An AFP variation **must not** extend the period of effect of the authority beyond 3 months from the date of issue. Additionally, an AFP variation **must not** extend the period of effect of an urgent authority beyond 7 days.

## 16.5 Change to contents of an application

There is no power in the Crimes Act to vary the contents of a controlled operation application.

There is no explicit legislative obligation to notify the AO who issued the authority if the circumstances of a controlled operation change from those detailed in the application if both:

- the authority continues to provide sufficient coverage for the operation
- all of the matters in s. 15GI continue to be satisfied.

Nevertheless, AFP appointees should consider:

- notifying the AO that the circumstances have changed
- seeking the AO's continued support to proceed with the controlled operation.

This may be done via an executive brief to the AO.

For further information on the process of applying for a formal AFP variation or an urgent AFP variation refer to s37(2)(b) in the AFP Investigator's Toolkit.

## 17. AAT variation

In certain circumstances, a controlled operation that was issued for a period of 3 months, which was not likely to extend beyond 3 months, may be extended by a nominated tribunal member.

Where a major controlled operation authority has been issued and does not conclude within 3 months of issue, the authority must be varied by a nominated tribunal member.

A single variation must not extend the period of effect of an authority for:

- more than 3 months at a time
- in such a way that the period of effect of the authority will exceed 24 months.

Variations may only be requested from nominated tribunal members during the last 2 weeks of the 3 month period. Where a variation does not take place, the major controlled operations authority ceases to be in effect at the end of 3 months.

Should an urgent variation be applied for, this may be done in person, by telephone, or by any other means of communication and must not exceed 7 days.

After an urgent variation is applied for, the next variation must be a formal variation application.

For further information on applying for an AAT variation refer to s37(2)(b) in the AFP Investigator's Toolkit.

## 18. Change of principal law enforcement officer (PLEO)

If during the course of a controlled operation the PLEO ceases to have responsibility for the controlled operation, a s37(2)(b) must be completed and submitted to an authorising officer for signature.

For further information on the change of PLEO process, refer to s37(2)(b) in the AFP Investigator's Toolkit.

## 19. Cancellation or expiration

A controlled operation authority ceases to be in force where the authority:

- is cancelled by:
  - an authorising officer
  - the principal law enforcement officer
  - the applicant
- expires in accordance with the date specified on the authority where a variation:
  - is not sought from the Administrative Appeals Tribunal (AAT)
  - is sought from the AAT but refused.

### 19.1 Ceasing an authority

AFP appointees must cancel an authority if it is no longer required, particularly when there are more than 7 days remaining on the authority.

When ceasing an authority, the applicant must consider the following:

- Cancellation of an authority should be by an authorising officer to allow operational oversight and control by management (cancellation may be effected by any authorising officer).
- The principal law enforcement officer must cancel an authority if it is materially deficient and cannot be varied to rectify the deficiency (e.g. it was issued in the wrong format).
- An authority must not be left to expire if the authority is not required and the expiry date is more than 7 days into the future.

For further information on the cancellation process, refer to s37(2)(b) in the AFP Investigator's Toolkit.

### 19.2 Date and time at which an authority ceases

The table below explains when an authority ceases:

Cessation mechanism	Cessation date and time
Cancelled by an authorising officer, principal law enforcement officer or applicant	As per the time and date stated on the cancellation document.
Expiry in accordance with the authority	Midnight
Expiry where an AAT review is not sought	3 months after the date of approval.
Expiry where a nominated tribunal member decides the authority should not be extended beyond three months	3 months after the date of approval.

## 20. Final effectiveness report (FER)



s37(2)(b)

## 21. Rejected applications or variations

If an authorising officer refuses an application for an authority or variation to an authority, the reasons for this decision must be reported by the s37(2)(b) to the Minister in the six-monthly s. 15HM report.

Upon receiving notification that an application has been refused, the applicant must immediately ask the authorising officer (AO) to make a written record of their reasons for the decision. The AO must provide a written record of their decision to the applicant. The AO may choose any written format (e.g. a diary record, write the reasons on the application, etc.).

Similarly, the reasons for a decision by the Administrative Appeals Tribunal that an authority should not continue to be in force for more than 3 months must be reported to the Minister. The applicant must request the nominated tribunal member to provide written reasons for the decision.

## Part 4: Participants

In order to be covered by the immunity and indemnity provisions, the controlled operation authority must identify the:

- individual law enforcement officers and agency for which they work
- nature of the controlled conduct they may engage in.

## 22. Undercover operatives and human sources

Where a controlled operation involves the use of undercover operatives or human sources, the applicant must consult with s37(2)(b)

s37(2)(b) If human sources or undercover operatives are to be used in a controlled operation, the applicant must also refer to the:

s37(2)(b)

## 23. Civilian participants

Civilian participants must only be used where the role to be performed by that person could not adequately be performed by a law enforcement officer. The two most common examples are where the participant:

- is known to the targets and could not be substituted with a law enforcement officer
- has a unique skill or knowledge (e.g. foreign language skills, or access to a commercial courier's tracking system).

Human sources may be classified as civilian participants for the purposes of a controlled operation. They may be listed on the authority and the particulars of their conduct included.

### 23.1 Identifying civilians in the authority

The authority must:

- explain why the role of the civilian could not be performed by a law enforcement officer
- identify the civilian participant, including their employment role.

For example, 'an Australia Post employee' is insufficient. 'Joe Citizen, Branch Manager' is more appropriate. False names or codes may only be used per s. 25 below.

### 23.2 Conditions for immunity

Civilian participants receive the same immunities and indemnities as law enforcement officers provided:

- the civilian participant acts in accordance with the instructions of law enforcement officers
- the authority:
  - states the particular controlled conduct that each participant may engage in
  - identifies each participant as a person authorised to engage in the controlled conduct for the purposes of the controlled operation
  - does not involve conduct as outlined in s. 11 above.

### 23.3 Information and undertaking

Prior to undertaking conduct covered by the authority, the civilian participant must be clearly informed of:

- their role under the authority (particularly the boundaries they must operate within)
- the extent to which the immunity and indemnity provided by the authority will apply
- the consequences of operating outside the boundaries of the authority.

The principal law enforcement officer must ensure that the civilian participant's understanding is documented.

Where a civilian participant breaches the activities identified by the authority:

- their overall participation in the controlled operation should be reviewed by the principal law enforcement officer.
- advice must be sought from AFP Legal where appropriate.

## 24. Referring to civilians by false names or codes

Under the Crimes Act, a civilian participant may be identified on an authority by a false name or code. This should only occur where disclosing the identity of a person may either endanger the safety of any person or prejudice an investigation.

False names and codes must be issued by one of the following:

- 
- s37(2)(b)
- 

### 24.1 Identifying documents

The document identifying an individual by a false name or code must be retained by either the:

- Commissioner of the AFP
- the Chief Officer of the Australian Commission for Law Enforcement Integrity or the Australian Crime Commission.

Where a human source will be covered by an authority and their identity is only known by another agency, the applicant must request that the agency confirm in writing that it is able to identify the human source.

### 24.2 Allocation of code numbers

s37(2)(b)

## 25. Payments received by civilian participants or human sources

During a controlled operation, a civilian participant or human source may be paid money or provided goods for their services by persons involved in the commission of an offence. The safety of the civilian participant or human source may depend on their retention of such payment.

Prior to their involvement in a controlled operation, civilian participants and human sources must be advised that if they come into the possession of any money or tangible benefit(s) as a result of their involvement, they must advise the principal law enforcement officer (PLEO) or Human Source (HS) handler at the earliest opportunity.

Subject to the continuing operational requirement for the participant to retain the monies or benefit, the PLEO or HS handler must, as soon as practicable:

- record the person's receipt of the money or benefit(s)
- seize any money or benefit not used or expended as a result of taking part in the controlled operation
- lodge any money or benefit seized from the participant as an independent seizure in the controlled operation, using the participant's code number (if applicable).

Any such seized items should be considered for forfeiture to the Commonwealth by the PLEO.

## Part 5: Illicit goods and other property

### 26. Recording illicit goods

Details of illicit goods must be:

- listed on the controlled operation authority
- reported to the Minister in the six monthly report at the conclusion of the operation
- provided in the final effectiveness report.

#### 26.1 Classifying goods as 'illicit'

Illicit goods include drugs, child pornography and counterfeit currency, however some good may be harder to classify. For example, money itself is not an illicit good, however it is an illicit good if it is the proceeds of crime or an instrument of crime. Where there is any doubt about the classification of illicit goods, the applicant must seek advice from AFP Legal.

s37(2)(b)

## 28. Loss, destruction or compromise

Where a controlled operation is compromised, or there is a loss or destruction of the illicit goods subject of the controlled operation, the principal law enforcement officer must report this to the Commissioner as soon as practicable.

In relation to serious damage to property, the Commissioner must take reasonable steps to notify the owner of the property. Notification is not required if the controlled operation could be compromised. Where possible, this information must be reflected in the final effectiveness report.

## 29. Further advice

s37(2)(b)

## 30. References

### Legislation

- [Australian Federal Police Act 1979](#) (Cth)
- [Crimes Act 1914](#) (Cth)
- [Evidence Act 1995](#) (Cth).

### AFP governance instruments

s37(2)(b)

- [AFP National Guideline on information management](#)

- s37(2)(b)

- [AFP Practical Guide on conducting controlled operations under ACT law.](#)

## Other

- s37(2)(b)

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