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**Australian Government**

**Australian Commission for  
Law Enforcement Integrity**

# **STANDARD OPERATING PROCEDURE**

## **CONTROLLED OPERATIONS AND INTEGRITY TESTING**

**This SOP only applies to authorities under Part IAB of the *Crimes Act* (Controlled Operations) and Part IABA of the *Crimes Act* (Integrity Testing) issued by ACLEI authorising officers. It does not apply to controlled operations or integrity testing operations authorised and conducted by other authorised agencies.**

## Relevant Legislation and Other Links

[Law Enforcement Integrity Commissioner Act 2006 \(Cth\) \('LEIC Act'\)](#)

[Crimes Act 1914 \(Cth\) \('Crimes Act'\)](#)

- Part 1AB Crimes Act 1914 – Controlled Operations
- Part 1ABA Crimes Act 1914 – Integrity Testing

This Standard Operating Procedure should be read in conjunction with the following Standard Operating Procedures:

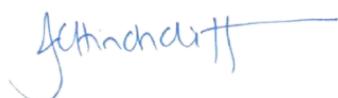
- Surveillance Device Warrants;
- Telecommunications Interception Warrants;
- Telecommunications data authorisations;
- Stored Communication Warrants;
- Covert Human Intelligence Source Management [*under development*]; and
- Assumed Identities [*under development*].

## Previous Versions

CM 16#2281DOC – March 2016

## Approval

This Standard Operating Procedure is approved.



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Jaala Hinchcliffe  
Integrity Commissioner  
13 July 2021



**Templates**

No.	Template	TRIM reference
<i>Controlled Operations</i>		
1.	Formal Application for Controlled Operation	21#10563DOC
2.	Formal Authority for Controlled Operation	21#10562DOC
3.	Application for Formal Variation to Authority	21#10561DOC
4.	Variation of Authority by Integrity Commissioner	21#10560DOC
5.	Application for Variation to Authority’s Time Period 3+ months (AAT member)	21#10559DOC
6.	Variation to Authority’s Time Period 3+ months (AAT member)	21#10558DOC
7.	Change of PLEO	21#10557DOC
8.	Cancellation of Authority (PLEO)	21#10556DOC
9.	Cancellation of Authority (Integrity Commissioner)	21#10555DOC
10.	Controlled Operation Application checklist	21#10554DOC
11.	Controlled Operation Internal Reporting Sheet	21#10553DOC
12.	Section 15J Customs Notification and Request for Exemption Form	21#10552DOC
13.	Controlled Conduct Log	21#10551DOC
<i>Integrity Testing</i>		
14.	Application for Integrity Testing Operation Authority	21#11046DOC
15.	Integrity Testing Operation Authority	21#11045DOC
16.	Application for Variation to Integrity Testing Operation Authority	21#11044DOC
17.	Variation to Integrity Testing Operation Authority (Integrity Commissioner)	21#11043DOC
18.	Cancellation of Integrity Testing Operation Authority	21#11042DOC
19.	Integrity Testing Operation Conduct Log	21#11041DOC

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## 1. INTRODUCTION

### Purpose & Background

1.1 The Integrity Commissioner (IC) and Australian Commission for Law Enforcement Integrity (ACLEI) have the authority to use sensitive, covert law enforcement powers including controlled operations and integrity testing. The use of these powers has the potential to affect privacy and other liberties of individual persons. A number of legislative safeguards exist to protect the legal rights of all parties to ensure that:

- a) integrity testing and controlled operations are conducted in strict accordance with the law;
- b) such operations are demonstrably fair; and
- c) appropriate records are kept to meet transparency and accountability requirements.

### Controlled Operations

1.2 Part IAB of the Crimes Act provides legislative authority for ACLEI to conduct controlled operations. This part of the Crimes Act sets out how and in what circumstances applications for authorities for controlled operations may be granted, varied, and cancelled, as well as the protections afforded to participants and the necessary reporting requirements.

1.3 A controlled operation is conducted under a Controlled Operation Authority (COA), and:

- a) involves the participation of law enforcement officers (which includes staff members of ACLEI);<sup>1</sup>
- b) is carried out to obtain evidence that may lead to the prosecution of a person for a serious Commonwealth offence or a serious State or Territory offence that has a federal aspect;<sup>2</sup> and
- c) may involve a law enforcement officer or other person in acts or omissions that would normally constitute a Commonwealth offence or an offence against a law of a State or Territory.

1.4 An ACLEI Controlled Operation must relate to a corruption issue as defined in section 7 of the *Law Enforcement Integrity Commissioner Act 2006* (Cth) (the LEIC Act).

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<sup>1</sup> Section 3(1) of the Crimes Act.

<sup>2</sup> Section 15GE of the Crimes Act.



### **Integrity Testing Operations**

- 1.5 Part IABA of the Crimes Act provides the legislative authority to conduct integrity tests. This part of the Crimes Act sets out how and in what circumstances applications for authorities for integrity testing operations may be granted, varied, and cancelled, as well as the protections afforded to participants and the necessary reporting requirements.
- 1.6 An Integrity Testing Operation is conducted under an Integrity Testing Authority (ITA). As an anticorruption measure, an integrity test is an observed, covert simulation that tests an employee's adherence to the law (relating to the employee's duties) or to key agency guidelines through a 'realistic scenario' which is designed to allow the subject a clear choice to pass or fail. A subject will 'pass' an integrity test if his or her conduct was consistent with organisational and legislative requirements and a subject will 'fail' an integrity test if, for example, he or she engaged in corrupt activity or criminal behaviour, or breached the APS Code of Conduct or other agency policies and guidelines.
- 1.7 The only agencies able to use integrity testing are ACLEI, the Australian Federal Police (AFP), Australian Criminal Intelligence Commission (ACIC) and the Department of Home Affairs (including the Australian Border Force). These are also the only agencies within ACLEI's jurisdiction who can be targeted with an Integrity Testing Operation.
- 1.8 An Integrity Test does **not** allow participants to engage in acts or omissions that would normally constitute a Commonwealth offence or an offence against a law of a State or Territory. For this provision, an Integrity Testing Controlled Operation must be authorised.

### **Integrity Testing Controlled Operations (ITCO)**

- 1.9 A controlled operation and an integrity test may be conducted separately or an integrity testing operation authority may be used as the basis for a controlled operation (known as an 'integrity testing controlled operation (ITCO) authority'). They are not mutually exclusive.
- 1.10 When an integrity test authority is used as the basis of a controlled operation, it has the effect of lowering the offence threshold when applying for the controlled operation. The use of an integrity testing controlled operation will also ensure that any information obtained is able to be used in a disciplinary context, or in prosecuting a lesser offence.
- 1.11 An ITCO will automatically be cancelled when the ITA ceases to be in force.



**Significant features of Controlled Operations and Integrity Testing Operations**

1.12 There are significant features and differences between controlled operations and integrity testing operations which must be taken into account when deciding the type of operation to undertake.

Significant Feature	Controlled Operation	Integrity Testing / ITCO
<b>Offence Threshold</b>	At least 3 year penalty on conviction, Commonwealth offence, or State offence with a Commonwealth aspect	<b>ITA:</b> At least 12 month penalty on conviction, Commonwealth or State offence  <b>ITCO:</b> At least 12 month penalty on conviction, Commonwealth or State offence (requirement that a State offence must have a Commonwealth aspect <u>does not apply</u> )
<b>Permitted use of evidence</b>	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	Disciplinary or legal action in relation to the staff member concerned, and use in a prosecution
<b>Subject</b>	A person being investigated under a corruption issue as defined by sections 7 or 8 of the LEIC Act.	Staff members of AFP, ACIC, HA and ABF.
<b>Authorising officer for initial authority</b>	Integrity Commissioner	Integrity Commissioner
<b>Authorising Officer for Variation of authority</b>	Extensions to period of effect – Nominated AAT member Variation to participants or conduct – Integrity Commissioner	Integrity Commissioner
<b>Basis of operation</b>	Satisfied on reasonable grounds that a serious offence has, is, or likely to be committed, punishable by 3 year or more imprisonment penalty, and is carried out for the	Reasonable suspicion that an offence has been, is being, or is likely to be committed, punishable by 12 months imprisonment or more



	purpose of obtaining evidence that may lead to a prosecution	
<b>Indemnity</b>	Against criminal and civil liability with exceptions	Against civil liability <u>only</u>
<b>Type of application</b>	Formal or urgent application (unlikely ACLEI will need to make an urgent application)	Just an application
<b>Maximum period of effect for initial authority</b>	Formal application cannot exceed 3 months, Urgent application cannot exceed 7 days	Cannot exceed 12 months
<b>Maximum cumulative period of effect</b>	24 months (no more than 3 months at a time)	24 months (no more than 12 months at a time)
<b>Determination of applications</b>	Can grant authority unconditionally, conditionally or refuse application	Can grant authority unconditionally, conditionally or refuse application
<b>Record keeping</b>	Formal provisions for keeping of General Register <sup>3</sup>	No specific provisions except to comply with reporting requirements
<b>Reporting</b>	6 monthly and Annual reports to Ombudsman and Minister	Annual reports to Minister

**2. CONTROLLED OPERATIONS**

2.1 All documentation required for the application and granting of a controlled operation authority are available in CM folder 21/756. These templates must be used when applying for a controlled operation or integrity testing operation.

**General**

2.2 There are two types of controlled operations – a controlled operation and a major controlled operation.<sup>4</sup>

<sup>3</sup> Section 15HQ of the Crimes Act.

<sup>4</sup> Section 15GD(1) and (2) of the Crimes Act.



2.3 A controlled operation:

- a) involves participation of law enforcement officers; and
- b) is carried out to obtain evidence that may lead to the prosecution of a person for a serious Commonwealth offence<sup>5</sup> or serious State offence that has a federal aspect;<sup>6</sup> and
- c) will involve law enforcement officers and/or other persons in conduct that would otherwise constitute a Commonwealth offence or offence against a law of a State.

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<sup>5</sup> Section 15GE of the Crimes Act.

<sup>6</sup> Sections 3AA and 15GE(4) of the Crimes Act.



- 2.4 A major controlled operation is a controlled operation which:
- involves the infiltration of an organised criminal group by one or more undercover law enforcement officers for more than seven days; or
  - continues for more than three months; or
  - is directed against suspected criminal activity that includes a threat to human life.

2.5 Major controlled operations can only be authorised by the AFP Commissioner or an AFP Deputy Commissioner, and are not subject to this SOP.

#### **Application for a Controlled Operation Authority<sup>7</sup>**

2.6 A controlled operation is an investigative strategy that must be discussed with the relevant Director Operations in the first instance. If the strategy is supported, the case officer must create a Controlled Operations CM folder within the overarching investigation CM container, and will then create a case file divider for each Controlled Operation that is conducted under that investigation.

2.7 Any staff member of ACLEI participating in a controlled operation is called a 'law enforcement participant' and the person responsible for the conduct of the controlled operation is known as the 'principal law enforcement officer' (PLEO).

- 2.8 There are two types of applications for a controlled operation:
- a formal application, which must be in writing; and
  - an urgent application, which may be verbal, in writing, or by any other means of communication.
- 2.9 In making an application, the PLEO must first obtain a reference number from the Operational Support team. This number becomes the Controlled Operation Authority number (the COA), and is applied to all documentation relating to the conduct of that Controlled Operation. The COA is recorded by the Operational Support team in the Controlled Operations General Registry.

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<sup>7</sup> Section 15GH of the Crimes Act.



- 2.10 The application must be endorsed by the relevant Director Operations and Executive Director Operations before progressing to the Integrity Commissioner for consideration and authorisation.
- 2.11 Urgent COA applications are only to be made by exception, and are unlikely to be required in an ACLEI investigation. An urgent application is only made when the applicant believes that the delay caused by making a formal application may affect the potential success of the controlled operation. Urgent applications can be made orally in person, by telephone, or by any other means of communication and must involve a discussion between the Senior Investigator, Director Operations and Executive Director Operations prior to the application being made.
- 2.12 If an urgent application is made, the applicant must make a written record of the application as soon as practicable thereafter and provide a copy to the authorising officer who determined the application.<sup>8</sup> An urgent application cannot be made if a previous urgent application for the same matter has already been made and approved by an authorising officer.<sup>9</sup>
- 2.13 When an application for a COA is being considered, the case officer and Director Operations must engage with ACLEI Legal at the earliest opportunity. ACLEI Legal should be given the opportunity to review all applications, if practicable to do so, prior to the application being made. If formal legal advice is required, the process for requesting the advice is available on the intranet.

### **Granting of a Controlled Operation Authority**

- 2.14 All controlled operations must be authorised by an authorising officer appointed under the relevant part of the Crimes Act.<sup>10</sup> Current authorisations are available on the ACLEI intranet.
- 2.15 In order to grant a Controlled Operation Authority, the authorising officer must be satisfied that the application the statutory requirements have been met. If the authorising officer is satisfied of the grounds upon which the application is based, they will sign the authority document. This document then becomes the formal authority for the controlled operation. An authorised officer may grant the authority unconditionally or conditionally, or may refuse it.<sup>11</sup>

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<sup>8</sup> Section 15GL of the Crimes Act.

<sup>9</sup> Section 15GH(3) of the Crimes Act.

<sup>10</sup> Section 15GF(4) of the Crimes Act.

<sup>11</sup> Section 15GI of the Crimes Act.



- 2.16 For an urgent application, the authority can be granted orally (in person), by telephone or by any other means of communication. This is also the case if the authorising officer is satisfied that granting a formal authority would cause a delay that may affect the success of the controlled operation. If a verbal authority is obtained in response to a formal application, the authority becomes an urgent authority (and has the conditions of such, including a maximum 7 day period of effect).<sup>12</sup>
- 2.17 The controlled operation commences at the time that the authority is granted.<sup>13</sup> If the authority is an urgent authority then it commences when the authorising officer informs the applicant that the urgent authority has been granted.
- 2.18 If the applicant believes that illicit goods involved in the conduct of the controlled operation may be dealt with by Customs, the Secretary of Home Affairs or their nominated delegate must be informed in writing as soon as practicable after the applicant develops that belief.<sup>14</sup>
- 2.19 Once a Controlled Operation has been granted, it is the responsibility of the case officer to save copies of the signed authority paperwork into the relevant CM folders, and provide the original documents to the Operational Support team.

#### **Varying a Controlled Operation Authority**

- 2.20 An ACLEI officer may make a formal or an urgent application to an authorising officer for a variation of a controlled operation authority, or an authority may be varied upon the authorising officer's own initiative.
- 2.21 Variation of an authority can:
- a) extend the period of effect of a formal authority (so long as the variation does not extend the cumulative period of effect, including any previous variations, for a period greater than 3 months), and/or
  - b) vary the participants and/or conduct involved in the controlled operation.
- 2.22 The authorising officer can only vary the authority if they are satisfied that the variation of the authority will not authorise a significant alteration of the nature of the controlled operation.<sup>15</sup> 'Significant alteration' of the nature of the controlled operation is not defined, but may include circumstances such as a change to the proposed conduct. It may also include a change

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<sup>12</sup> Section 15GI of the Crimes Act.

<sup>13</sup> Section 15GN of the Crimes Act.

<sup>14</sup> Section 15J of the Crimes Act.

<sup>15</sup> Detailed in section 15GO of the Crimes Act.



in the nature of the criminal offending forming the basis of the operation. If circumstances call for a significant alteration, application must be made for an entirely new controlled operation authority. If in doubt, guidance should be sought from ACLEI Legal.

- 2.23 A variation **cannot** be made to extend the period of effect of an urgent authority.
- 2.24 More than one variation application may be made regarding the same controlled operation authority, however, two urgent variation applications **cannot** be made consecutively.<sup>16</sup> If an urgent application is made, the next application must be a formal application.
- 2.25 Urgent variation applications are only to be made by exception, and are unlikely to be required in an ACLEI investigation. If circumstances did require such an application, this must involve a discussion between the Senior Investigator, Director Operations and Executive Director Operations prior to the application being made.
- 2.26 If an urgent variation application is granted, a written record of the application must be made and a copy given to the authorising officer before whom the application was made as soon as practicable.

#### Granting a Variation of a Controlled Operation

- 2.27 If the authorising officer is satisfied of the grounds upon which the variation application is based, they will sign the authority document. As with the original application, the variation application may either be authorised unconditionally or conditionally, or refused.

#### Varying a Controlled Operation Authority to Extend Beyond 3 Months – Applications to the AAT

- 2.28 If the controlled operation is to continue beyond the initial 3 month operative period, an application for variation of the authority to extend the period of effect **must** be made before a nominated Administrative Appeals Tribunal (AAT) member. This can be a formal application or an urgent application, however an urgent extension can only extend the timeframe by a maximum further 7 days, and successive urgent applications **cannot** be made.<sup>17</sup>
- 2.29 There are a number of matters to be aware of when making an application to the AAT:

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<sup>16</sup> Detailed in section 15GP of the Crimes Act.

<sup>17</sup> Section 15GU of the Crimes Act.

<sup>18</sup> Section 15GT of the Crimes Act.



- a) The nominated AAT member may only vary a controlled operation authority during the 2 week period immediately before the authority would otherwise end;<sup>18</sup>
  - b) The only variation an AAT member is authorised to make is in relation to the period of effect the authority is valid for. The AAT member cannot vary the participants or conduct involved in the controlled operation;
  - c) The variation cannot extend the period of effect for more than 3 months at a time (formal application) or 7 days (urgent application);<sup>18</sup>
  - d) The variation cannot result in a cumulative period of effect beyond 24 months;<sup>19</sup> and
  - e) All variation applications to the AAT must state whether or not the controlled operation has been the subject of an earlier urgent variation application and whether that variation application was granted.
- 2.30 As soon as possible after making an urgent variation application not in writing, the applicant must make a written record of the application and give a copy to the nominated AAT member to whom the application was made.
- 2.31 If the nominated AAT member is satisfied of the grounds upon which the application is based, they will sign the authority document. The specifics of what must be included in the controlled operation variation authority are detailed at section 15GX of the Crimes Act.

#### **Change of the Principal Law Enforcement Officer**

- 2.32 The Crimes Act stipulates when a controlled operation variation can be applied for, and changing the PLEO is **not** one of those situation. As such, a change to the PLEO **must not** be made via a formal variation to the controlled operation authority.
- 2.33 In order to change the PLEO, a change of PLEO form must be complete by the outgoing PLEO. This form will nominate the new PLEO and must be progressed through the relevant Director Operations and Executive Director Operations to the Integrity Commissioner for authorisation. The new PLEO is not responsible for the controlled operation until the change of PLEO form has been endorsed by the Integrity Commissioner.

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<sup>18</sup> Section 15GU of the Crimes Act.

<sup>19</sup> Section 15GT of the Crimes Act.



### Cancellation of Controlled Operation Authorities

- 2.34 The PLEO may make a written application to the authorising officer for cancellation of a controlled operation authority. The authorising officer may also cancel the controlled operation on their own initiative.<sup>20</sup> A cancellation takes effect at the time the order is made or such later time as specified in the order.<sup>21</sup>
- 2.35 If an integrity test is used as the basis for a controlled operation (ITCO), the controlled operation will automatically be cancelled when the ITA ceases to be in force.<sup>22</sup>
- 2.36 Upon cancellation of an authority (or just prior), the PLEO must ensure all participants in the operation are notified of the time and date when the cancellation takes effect. Necessary steps must be taken to ensure all participants cease all conduct being undertaken in accordance with the authority by that time and date.

### Effect and Delegation of Controlled Operation Authorities

- 2.37 A controlled operation authority authorises each identified participant to engage in the specified controlled conduct for the period the authority remains in effect, or until the authority is varied such that the person is no longer authorised.<sup>23</sup> The authority to engage in controlled conduct given to a participant **cannot** be delegated to anyone else.<sup>24</sup>

### Defect in Controlled Operation Authority

- 2.38 An application for a controlled operation authority or a variation of authority is not invalidated by any defect other than a material particular.<sup>25</sup> A material particular is a matter or point of significance, not something trivial or inconsequential.

### Protection of Participants in a Controlled Operation

- 2.39 It is essential that controlled operation authorities (and any variations) are carefully drafted to cover all activity that may occur in the course of the operation and that participants are carefully briefed to ensure they do not engage in conduct outside the scope of the authority. Immunity and indemnity

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<sup>20</sup> Section 15GY of the Crimes Act.

<sup>21</sup> Section 15GY Crimes Act.

<sup>22</sup> Section 15GN(3)(c) Crimes Act.

<sup>23</sup> Section 15GZ Crimes Act.

<sup>24</sup> Section 15GZ(3) Crimes Act.

<sup>25</sup> Section 15H Crimes Act.



protections from criminal and civil liability **only** apply to officers listed in the authority, and **only** where these officers engage in conduct of the nature identified in the authority.<sup>26</sup>

2.40 There are also specific provisions relating to protection from criminal responsibility for certain ancillary offences, such as conspiracy, aiding and abetting, incitement or being knowingly concerned.<sup>27</sup>

2.41 A participant in a controlled operation is **not protected** against criminal liability for offences involving unauthorised exercise of criminal investigation powers such as arrest, search, seizure of evidence, use of surveillance devices or interception of telecommunications.<sup>28</sup>

2.42 Indemnity protections continue to apply, regardless of whether the controlled operation authority is varied or cancelled, until such time as the participant becomes aware of the variation or cancellation. The participant cannot be reckless and must genuinely be unaware of the variation or cancellation, for the indemnity protection to apply.<sup>29</sup>

2.43 A participant is reckless about the cancellation or variation of the authority if they are aware of a substantial risk that the variation or cancellation has occurred, but continues to act in accordance with the authorisation as if it were not varied or cancelled. Recklessness means that it is unjustifiable to take the risk that the authority has not been varied or cancelled.<sup>30</sup>

#### **Compensation for Loss, Damage or Injury incurred by Controlled Operation<sup>32</sup>**

2.44 If a person suffers loss or damage to property, or personal injury, in the course of, or as a direct result of a controlled operation, the Commonwealth is liable to pay compensation. This does not apply if the loss, damage or injury was incurred by the person while they were engaging in criminal conduct (unless the criminal conduct was controlled conduct), or the person was a law enforcement participant at the time of suffering the loss, damage or injury.

2.45 The PLEO must report any loss, damage or injury incurred as part of a controlled operation to the Integrity Commissioner as soon as practicable. Once informed, the Integrity Commissioner must take all reasonable steps to notify the owner of the property of the loss or damage, or notify the person that the injury occurred because of a controlled operation. The Crimes Act also specifies some

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<sup>26</sup> Sections 15HA and 15HB of the Crimes Act.

<sup>27</sup> Section 15HE of the Crimes Act.

<sup>28</sup> Section 15HC of the Crimes Act.

<sup>29</sup> Section 15HD of the Crimes Act.

<sup>30</sup> Section 15HD of the Crimes Act.

<sup>32</sup> Section 15HG of the Crimes Act.

<sup>33</sup> Section 15HP of the Crimes Act.



particular circumstances in which the Integrity Commissioner may delay, or not provide these notifications.

### **Unauthorised Disclosure of Controlled Operation Information**

2.46 Unauthorised disclosure of any information relating to a controlled operation is an offence carrying a maximum penalty of between 2 years and 10 years imprisonment. The circumstances of aggravation and the statutory exceptions to this offence are detailed in sections 15HK of the Crimes Act.

### **Record Keeping and Reporting for Controlled Operations<sup>33</sup>**

2.47 Documents must be retained and maintained in relation to all controlled operations, including the original records of all of the applications for authorities and variations as well as any urgent applications and cancellations (whether or not the applications were granted).

2.48 In addition to the original records, the information must be recorded in the Controlled Operations General Register. The General Register is maintained by the Operational Support team. The PLEO must ensure that all the required information is recorded and provided to the Operational Support team to be updated on the Register.

2.49 A person may be recorded on the General Register using a codename, a code number or the name of an assumed identity where applicable, if the Integrity Commissioner is satisfied that recording the name of the person in the Register might endanger the person or prejudice the operation.

2.50 The PLEO must ensure the Controlled Conduct Log is maintained. The purpose of the Controlled Conduct Log is to record the conduct undertaken by all participants (including those from other agencies) during the controlled operation.

### **Internal Reporting Requirements for Controlled Operations**

2.51 The PLEO must provide regular briefings to the relevant Director Operations on the current status of the operation. The Director Operations is responsible for briefing the Executive Director Operations who will liaise with the Integrity Commissioner throughout the period of the controlled operation.

2.52 In addition to regular briefings, there may be times when emergency updates are required and these should be provided verbally as soon as practicable. Such circumstances may include, but are not limited to:

- a) death of, or serious injury to a person arising from the operation;



- b) threats of death or serious injury to a person within the scope of the operation;
- c) significant damage to, or loss of, Commonwealth or private property, or threat of the same;
- d) any concern the scope of the operation has changed to a degree that it cannot be handled sufficiently by ACLEI staff alone;
- e) the arrest, incarceration or other removal of any person within the scope of the operation;
- f) the need for an emergency change to the finances required for the successful running of the operation; and
- g) any breaches of Commonwealth, State or Territory law committed by staff involved in the operation not covered by the authority.

2.53 At the conclusion of the Controlled Operation, it is the responsibility of the PLEO to complete an Internal Report on the conduct of the controlled operation. This is a requirement to ensure record keeping obligations under section 15HM of the Crimes Act. Once complete, this form must be saved into the appropriate CM file.

#### **Six Monthly and Annual Reports on Controlled Operations to Ombudsman and Minister<sup>31</sup>**

2.54 As soon as practicable after 30 June and 31 December each year, the Integrity Commissioner must provide a 6-monthly report to the Minister and the Ombudsman. The report must specify details regarding controlled operations completed during the preceding 6 months for which ACLEI was the authorising agency.

2.55 In addition, as soon as practicable after 30 June each year, the Integrity Commissioner must submit an Annual Report to the Minister and the Ombudsman. The report must provide the same detail regarding controlled operations completed during the preceding 12 months for which ACLEI was the authorising agency.

2.56 Reports must not include information that would allow any person involved in an operation to be identified. In addition, the Integrity Commissioner must advise the Minister of any information in a report that, for public interest reasons, should not be published when the Minister tables the report in Parliament.

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<sup>31</sup> Section 15HM of the Crimes Act.



2.57 The Director Assessments and Operational Support, through the Executive Director Operations Northern is responsible to the Integrity Commissioner for preparation of reports to the Ombudsman and to the Minister.

### **Ombudsman Oversight of Controlled Operations<sup>32</sup>**

2.58 At least once every 12 months, the Ombudsman will inspect records of ACLEI controlled operations during that period. For this purpose the Ombudsman, acting through an inspecting officer:

- a) after notifying the Integrity Commissioner, may enter ACLEI premises at any reasonable time;
- b) is entitled to full and free access, at all reasonable times, to all ACLEI records that are relevant to the inspection;
- c) may make copies of, or take extracts from, relevant records;
- d) despite any secrecy law, may require an ACLEI staff member to provide any relevant information that is in their possession, or to which they have access, if the Ombudsman considers it necessary; and
- e) in order to obtain such necessary information, may give a written direction requiring an ACLEI staff member to provide a signed statement, or to answer questions relevant to the inspection, at a specified time and place.

2.59 ACLEI staff members must give the Ombudsman any assistance the Ombudsman reasonably requires to perform these functions; however, the Ombudsman is not entitled to inspect records of operations that have not yet been completed.

## **3. INTEGRITY TESTING**

### **General**

3.1 An integrity testing operation is conducted under an integrity testing authority (ITA). All documentation required for the application and granting of an ITA is available in CM folder 21/756. These templates must be used when applying for an ITA.

3.2 An integrity test uses controlled or simulated situations to test the integrity of a staff member of the target agency. It offers the target staff member an opportunity to engage in conduct (lawful or

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<sup>32</sup> Sections 15HS, 15HT and 15HU of the Crimes Act



unlawful) which contravenes principles of behaviour required (by law or otherwise) of those occupying the staff member's position.

3.3 ACLEI may only conduct an integrity testing operation for the investigation of a corruption issue, and only in relation to a staff member of a target agency. The only 'target agencies' for integrity testing operations are the ACIC, the AFP, and Home Affairs (including ABF).<sup>33</sup>

3.4 The ACLEI staff member responsible for the conduct of the integrity testing operation is referred to as the 'responsible staff member'.

#### **Application for an Integrity Test Authority<sup>37</sup>**

3.5 An integrity testing operation is an investigative strategy that must be discussed with the relevant Director Operations in the first instance. If the strategy is supported, the case officer must create an integrity testing operation CM folder within the overarching investigation CM container, and will then create a case file divider for each integrity testing operation that is conducted under that investigation.

3.6 ACLEI integrity testing operations must be authorised by an authorising officer appointed under section 15JE of the Crimes Act. Current authorisations are available on the ACLEI intranet. The application for an integrity testing operation must be approved by the relevant Director Operations and Executive Director Operations, before progressing to the Integrity Commissioner for consideration and authorisation.

3.7 When an application for an ITA is being considered, the case officer and Director Operations must engage with ACLEI Legal at the earliest opportunity. ACLEI Legal should be given the opportunity to review all applications, if practicable to do so, prior to the application being made. If formal legal advice is required, the process for requesting the advice is available on the intranet.

#### **Granting an Integrity Test Authority<sup>34</sup>**

3.8 To grant an ITA, the authorising officer must be satisfied that the requisite statutory tests have been met. If the authorising officer is satisfied of the grounds upon which the application is based, they will sign the ITA. This document then becomes the formal authority for the integrity test. An authorising officer may grant the authority unconditionally or conditionally, or refuse it. The authorising officer may also

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<sup>33</sup> Section 15JC of the Crimes Act.

<sup>37</sup> Section 15JF of the Crimes Act.

<sup>34</sup> Section 15JG of the Crimes Act.



grant an ITA authorising the continuation or resumption of a test authorised by a previous authority. Statutory requirements stipulate what is to be contained in the ITA.<sup>35</sup>

3.9 Upon granting an application for an ITA, the authorising officer must give a copy to the responsible officer.<sup>36</sup> The ITA takes effect when the authority is granted. The initial authority cannot have a period of effect greater than 12 months.

3.10 Once an ITA has been granted, it is the responsibility of the case officer ensure copies of the signed authority paperwork are saved into the relevant CM folders, and provide the original documents to the Operational Support team.

#### **Variation to Integrity Test Authorities<sup>37</sup>**

3.11 The responsible staff member of the integrity testing operation may apply to an authorising officer for a variation of an ITA, or an authority may be varied upon the authorising officer's own initiative.

3.12 The variation of authority can extend the period of effect of the authority for up to a further 12 months (but not so the period of effect ends more than 24 months after the authority was granted) and/or vary the participants and/or conduct involved in the integrity test.

#### **Cancellation of Integrity Test Authority<sup>38</sup>**

3.13 The authorising officer for an integrity testing operation may cancel the authority at any time and for any reason, including at the request of the responsible staff member. A written copy of the cancellation must be provided to the responsible staff member by the authorising officer. A cancellation takes effect at the time the order is made or such later time as specified in the order.

3.14 If an integrity test is used as the basis for a controlled operation (ITCO), the ITCO will automatically be cancelled when the ITA ceases to be in force.<sup>39</sup>

3.15 Upon cancellation of an authority (or just prior), the responsible staff member must notify all participants in the operation of the time and date when the cancellation takes effect. Necessary steps

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<sup>35</sup> Section 15JH of the Crimes Act.

<sup>36</sup> Section 15JI of the Crimes Act.

<sup>37</sup> Section 15JK of the Crimes Act.

<sup>38</sup> Section 15JL of the Crimes Act.

<sup>39</sup> Section 15GN(3)(c) of the Crimes Act.



must be taken to ensure all participants cease their activity under the authority by that time and date.

#### **Effect of Integrity Testing Authorities<sup>40</sup>**

- 3.16 An ITA authorises each person identified in the authority to take part in the integrity test for the period specified unless the authority specifies a shorter period of authorisation for specific participants, or the authority is varied such that the person is no longer authorised or the authority has been cancelled.
- 3.17 A person identified in an ITA **cannot** delegate authority to another person. A variation to the authority must be sought to include other participants.
- 3.18 The responsible staff member must ensure a conduct log is maintained to record the authorised conduct undertaken during the integrity testing operation.

#### **Defects contained in an Integrity Testing Authority**

- 3.19 An application for an ITA or a variation of an ITA is not invalidated by any defect other than a material particular. A material particular is a matter or point of significance, not something trivial or inconsequential.<sup>41</sup>

#### **Protection of Participants in an Integrity Test**

- 3.20 It is essential that integrity testing authorities (and any variations) are carefully drafted to cover all activity that may occur in the course of the test and that participants are carefully briefed to ensure they do not engage in conduct outside the scope of the authority. Immunity and indemnity protections from civil liability **only** apply to officers listed in the authority, and only where those officers engage in conduct of the nature identified in the authority.<sup>42</sup>
- 3.21 Certain conditions must be met in order for civil indemnity protections (including reasonable costs) to apply for participants of an integrity testing operation<sup>43</sup>. Participants in integrity testing operations are only indemnified against civil liability in relation to the conduct performed in accordance with the authority.

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<sup>40</sup> Section 15JN of the Crimes Act.

<sup>41</sup> Section 15JM of the Crimes Act.

<sup>42</sup> Section 15JN of the Crimes Act.

<sup>43</sup> Section 15JO of the Crimes Act.

<sup>48</sup> Section 15JP of the Crimes Act.



3.22 There are no indemnities or protections for criminal liability under an ITA. For indemnity protections against criminal liability to apply, an ITCO authority must be in force.

#### **Participants Unaware of Variation or Cancellation of an Integrity Testing Authority**

3.23 Indemnity will continue to apply to a participant in an integrity testing operation despite a variation to, or cancellation of, the authority, for such time (if any) as the participant remains genuinely unaware, and is not reckless about the existence of, the variation or cancellation.

3.24 A participant is reckless about the cancellation or variation of the authorisation if the person is aware of a substantial risk that the variation or cancellation has happened, but, having regard to the particular circumstances known to the person, it is unjustifiable to take the risk that the authority has not been varied or cancelled, and yet the participant continues to act in accordance with the authorisation as if it were not varied or cancelled.<sup>48</sup>

#### **Unauthorised Disclosure of Information relating to an Integrity Test**

3.25 Unauthorised disclosure of any information relating to an integrity test is an offence carrying a maximum penalty of between 2 years and 10 years imprisonment.<sup>44</sup>

#### **Record Keeping and Reporting for Integrity Testing**

3.26 The Crimes Act does not impose equivalent record keeping obligations for integrity testing operations as it does for controlled operations. However, normal record keeping obligations under the Archives Act, and good administrative practice, require that equivalent records be kept in a form in which they are readily accessible.

3.27 As soon as practicable after 30 June each year the Integrity Commissioner must submit an annual report to the Minister detailing integrity testing operations authorised during the preceding twelve months.<sup>45</sup> The Director Assessments and Operational Support, through the Executive Director Operations Northern is responsible to the Integrity Commissioner for preparation of reports.

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<sup>44</sup> Section 15JQ of the Crimes Act.

<sup>45</sup> Section 15JS of the Crimes Act.



**Integrity Commissioner Oversight of Integrity Testing Conducted by Target Agencies<sup>46</sup>**

- 3.28 Each ‘target agency’ for integrity testing operations may conduct integrity testing operations targeting its own staff. To authorise such operations each target agency has its own authorising officers who may grant integrity testing authorities to staff members of that agency.
- 3.29 Each authorising officer of a target agency who grants an ITA, or a variation of such an authority, must provide a copy of the authority or variation to the Integrity Commissioner.
- 3.30 The Director Assessments and Operational Support through the Executive Director Operations (Northern) is responsible to the Integrity Commissioner for keeping the copies of authorities and variations received from target agencies – and for arranging any analysis of these records that the Integrity Commissioner may require.

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<sup>46</sup> Sections 15JI and 15JK of the Crimes Act.