



New South Wales

# Law Enforcement (Controlled Operations) Amendment Act 2006 No 14

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New South Wales

# **Law Enforcement (Controlled Operations) Amendment Act 2006 No 14**

Act No 14, 2006

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An Act to amend the *Law Enforcement (Controlled Operations) Act 1997* with respect to cross-border investigations and authorisations under the Act; to make consequential amendments to other legislation; to provide for a further review of the Act; and for other purposes. [Assented to 11 April 2006]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Law Enforcement (Controlled Operations) Amendment Act 2006*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Law Enforcement (Controlled Operations) Act 1997 No 136**

The *Law Enforcement (Controlled Operations) Act 1997* is amended as set out in Schedule 1.

**4 Amendment of Law Enforcement (Controlled Operations) Regulation 1998**

The *Law Enforcement (Controlled Operations) Regulation 1998* is amended as set out in Schedule 2.

**5 Amendment of Criminal Procedure Act 1986 No 209**

The *Criminal Procedure Act 1986* is amended as set out in Schedule 3.

**6 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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## Schedule 1      **Amendment of Law Enforcement (Controlled Operations) Act 1997**

(Section 3)

### [1]      **Section 3 Definitions**

Insert in alphabetical order:

***controlled conduct*** means conduct in respect of which, but for section 20K or 20L, a person would be criminally liable.

***corresponding authorised operation*** means any operation in the nature of a cross-border controlled operation that is authorised by or under the provisions of a corresponding law.

***corresponding authority*** means an authority authorising a cross-border controlled operation (within the meaning of a corresponding law) that is in force under a corresponding law.

***corresponding participant*** means a person who is authorised by a corresponding authority to participate in a corresponding authorised operation.

***cross-border controlled operation*** means a controlled operation that is, will be, or is likely to be, conducted in this jurisdiction and in one or more participating jurisdictions.

***participating jurisdiction*** means a jurisdiction in which a corresponding law is in force.

***sexual offence*** means:

- (a) an offence under Division 10 or 10A of Part 3 of the *Crimes Act 1900*, or
- (b) any other offence of a similar kind prescribed by the regulations for the purposes of this definition.

***this jurisdiction*** means New South Wales.

### [2]      **Section 3, definition of “principal law enforcement officer”**

Insert “, and to have responsibility for,” after “to conduct”.

### [3]      **Section 3 (2) and (3)**

Insert at the end of section 3:

- (2) For the purposes of this Act, a cross-border controlled operation is taken to be conducted in this jurisdiction (whether or not it is also conducted in another jurisdiction) if a participant in the operation is a law enforcement officer of this jurisdiction.

**Note.** Subsection (2) is intended to cover the situation where an officer of this jurisdiction is conducting an operation in another jurisdiction for

the purposes of obtaining evidence of an offence in this jurisdiction (for example, a NSW officer is investigating a conspiracy to import drugs into NSW from Victoria, and the operation is to be conducted wholly in Victoria).

(3) Notes included in this Act do not form part of this Act.

**[4] Section 3A Act not to affect certain matters**

Insert after section 3A (3):

- (3A) Despite the other provisions of this section, in determining whether evidence should be admitted or excluded in any proceedings, the fact that the evidence was obtained as a result of a person engaging in criminal activity is to be disregarded if:
- (a) the person was a participant or corresponding participant acting in the course of an authorised operation or corresponding authorised operation, and
  - (b) the criminal activity was a controlled activity within the meaning of this Act or controlled conduct within the meaning of a corresponding law.

**[5] Part 2 Authorisation of controlled operations**

Insert after the heading to the Part:

**Note.** Part 3A contains additional provisions relating to cross-border controlled operations.

**[6] Section 6 Determination of applications**

Omit section 6 (5).

**[7] Section 7 Certain matters not to be authorised**

Insert at the end of section 7 (1) (b):

, or

- (c) engaging in conduct that involves the commission of a sexual offence against any person.

**[8] Section 14**

Omit the section. Insert instead:

**14 Retrospective authority**

- (1) If a participant in an authorised operation engages in unlawful conduct (other than unlawful conduct that is a controlled activity) in the course of the operation, the principal law enforcement officer for the operation may, within 24 hours after the participant

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engages in that conduct, apply to the chief executive officer for retrospective authority for the conduct.

- (2) An application under this section may be made in such manner as the chief executive officer may permit.
- (3) The chief executive officer may require the principal law enforcement officer to furnish such information concerning the relevant conduct as is necessary for the chief executive officer's proper consideration of the application.
- (4) After considering an application under subsection (1), and any additional information furnished under subsection (3), the chief executive officer:
  - (a) may grant retrospective authority in accordance with the application, or
  - (b) may refuse the application.
- (5) Retrospective authority may not be granted unless the chief executive officer is satisfied:
  - (a) that the following circumstances existed when the relevant conduct occurred:
    - (i) the participant who engaged in the conduct believed on reasonable grounds:
      - (A) that there was a substantial risk to the success of the authorised operation, or
      - (B) that there was a substantial risk to the health or safety of a participant in the operation, or any other person, as a direct result of the conduct of the authorised operation, or
      - (C) that criminal activity or corrupt conduct other than the criminal activity or corrupt conduct in respect of which the authorised operation is being conducted had occurred, or was likely to occur, and that there was a substantial risk that evidence relating to that criminal activity or corrupt conduct would be lost,
    - (ii) the participant could not avoid that risk otherwise than by engaging in the relevant conduct, and
  - (b) that, at all times prior to those circumstances arising, the participant had been acting in good faith and in accordance with the relevant code of conduct, and
  - (c) that the participant had not foreseen, and could not reasonably be expected to have foreseen, that those circumstances would arise, and

- (d) that, had it been possible to foresee that those circumstances would arise, authority for the relevant conduct would have been sought, and
  - (e) it was not reasonably possible in those circumstances for the participant to seek a variation of the authority for the operation to authorise the relevant conduct.
- (6) Subsection (5) does not allow retrospective authority to be granted with respect to conduct giving rise to any of the following:
- (a) the offence of murder,
  - (b) any other offence for which the common law defence of duress would not be available.

**[9] Part 3A**

Insert after Part 3:

**Part 3A Cross-border controlled operations**

**20A Application of Act to cross-border controlled operations**

- (1) This Act applies in respect of cross-border controlled operations (with any necessary modifications), subject to the modifications set out in this Part.
- (2) Section 14 (Retrospective authority) does not apply in respect of a cross-border controlled operation.

**20B Definitions**

- (1) For the purposes of this Part:
  - illicit goods* means goods the possession of which is a contravention of a law of this jurisdiction.
  - relevant offence* means:
    - (a) an offence against the law of this jurisdiction that carries a maximum penalty of imprisonment for 3 years or more, or
    - (b) any other offence against the law of this jurisdiction that is prescribed by the regulations.
  - suspect*, when used as a noun, means a person reasonably suspected of having committed or being likely to have committed, or of committing or being likely to be committing, a relevant offence.

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- (2) For the purposes of this Part, references in this Act:
- (a) to a ***controlled activity*** are to be construed (with any necessary modifications) as references to ***controlled conduct***, and
  - (b) to ***criminal activity or corrupt conduct*** as a single phrase (but not to ***criminal activity*** on its own) are to be construed (with any necessary modifications) as references to a ***relevant offence***.

**20C Applications for authorities to conduct cross-border controlled operations**

- (1) An application under section 5 for an authority to conduct a proposed cross-border controlled operation:
  - (a) must be made to the chief executive officer of the law enforcement agency concerned, and
  - (b) must state that the proposed controlled operation is a cross-border controlled operation, and
  - (c) must specify (in place of the particulars required by section 5 (2A) (b)) the relevant offence in respect of which the proposed operation is to be conducted.
- (2) Without limiting any regulations made under section 5 (2B), an urgent application for an authority to conduct a proposed cross-border controlled operation may be made only if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the operation.
- (3) Nothing in this Act prevents an application for an authority being made in respect of a cross-border controlled operation that has been the subject of a previous application, but in that case the subsequent application must be a formal application.
- (4) As soon as practicable after making an urgent application for an authority to conduct a cross-border controlled operation, the applicant must make a record in writing of the application and give a copy of it to the chief executive officer.

**20D Determination of applications for authorities to conduct cross-border controlled operations—additional criteria to be met**

- (1) An authority to conduct a cross-border controlled operation may not be granted unless the chief executive officer is satisfied as to the matters set out in this section (in addition to the matters specified in section 6, as modified by this section).



- (2) The chief executive officer must be satisfied on reasonable grounds:
- (a) that a relevant offence has been, is being, or is likely to be, committed, and
  - (b) that the controlled operation will be, or is likely to be, conducted in this jurisdiction and in one or more participating jurisdictions, and
  - (c) that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation in this jurisdiction and in one or more participating jurisdictions, and
  - (d) that the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons (other than law enforcement officers) at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation.

**20E Form of authority to conduct cross-border controlled operation**

An authority to conduct a cross-border controlled operation must (in addition to the requirements of section 8 (2)):

- (a) state the name and rank or position of the chief executive officer, and
- (b) state that it authorises the conduct of a cross-border controlled operation, and
- (c) state whether it is a formal authority or an urgent authority, and
- (d) state the participating jurisdictions in which the controlled conduct is, or is likely, to be engaged in, and
- (e) identify (to the extent known) any suspect, and
- (f) state the date and time when the authority is granted, and
- (g) identify (to the extent known):
  - (i) the nature and quantity of any illicit goods that will be involved in the operation, and
  - (ii) the route through which those goods will pass in the course of the operation.

**20F Duration of authorities for cross-border controlled operations**

Section 8 (2) (f) and (g) are to be construed, in respect of an authority to conduct a cross-border controlled operation, as if the

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periods of 72 hours and 6 months specified in those paragraphs were periods of 7 days and 3 months, respectively.

**20G Variation of authorities**

- (1) An authority to conduct a cross-border controlled operation may be varied under section 10 by the chief executive officer at any time on the chief executive officer's own initiative (as well as on application under that section).
- (2) An application for a variation of an authority to conduct a cross-border controlled operation may be made (and an application may be granted) for the purpose (in addition to the purposes specified in section 10 (1)) of identifying additional suspects (to the extent known).
- (3) Section 10 (1A) is to be construed, in respect of a variation of an authority to conduct a cross-border controlled operation, as if the period of 6 months specified in that subsection were a period of 3 months.
- (4) A variation cannot be made that has the effect of extending the period of validity of an urgent authority in respect of a cross-border controlled operation.
- (5) An urgent application for a variation of an authority to conduct a proposed cross-border controlled operation may be made only if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the operation.

**20H Effect of authorities to conduct cross-border controlled operations**

- (1) An authority to conduct a cross-border controlled operation authorises each participant to engage in the activities referred to in section 13 in this jurisdiction and in any participating jurisdiction (subject to any corresponding law of the participating jurisdiction).
- (2) The authority to engage in controlled conduct given to a participant in a cross-border controlled operation cannot be delegated to any other person.

**20I Documents relating to cross-border controlled operations**

The chief executive officer of a law enforcement agency must cause the following to be kept in relation to cross-border controlled operations:

- (a) each formal application made by a law enforcement officer of the agency,
- (b) each formal application granted to a law enforcement officer of the agency,
- (c) each formal variation application made by a law enforcement officer of the agency,
- (d) each formal variation of application granted to a law enforcement officer of the agency,
- (e) each order cancelling an authority granted to a law enforcement officer of the agency,
- (f) each report of a principal law enforcement officer of the agency under section 15 or 20Q (1).

**20J Register relating to cross-border controlled operations**

- (1) The chief executive officer of a law enforcement agency must cause a register relating to cross-border controlled operations to be kept.
- (2) The register is to specify the following:
  - (a) for each application (including an application for a variation of authority) made under this Act in respect of a cross-border controlled operation:
    - (i) the date of the application, and
    - (ii) whether the application was formal or urgent, and
    - (iii) whether the application was granted, refused or withdrawn, and
    - (iv) if the application was refused or withdrawn—the date and time of the refusal or withdrawal,
  - (b) for each authority granted to a law enforcement officer of the agency in respect of a cross-border controlled operation:
    - (i) the date and time the authority was granted, and
    - (ii) whether the authority was formal or urgent, and
    - (iii) the name and rank or position of the chief executive officer, and
    - (iv) each relevant offence in respect of which controlled conduct under the authority was to be engaged in, and
    - (v) the period of validity of the authority, and
    - (vi) if the authority was cancelled, the date and time of the cancellation, and

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- (vii) the date and time the authorised operation began and the date of completion of the operation, and
  - (viii) the date on which the principal law enforcement officer for the operation made a report under section 15, and
  - (ix) if the authorised operation involved illicit goods, to the extent known:
    - (A) the nature and quantity of the illicit goods, and
    - (B) the route through which the illicit goods passed in the course of the operation, and
  - (x) details of any loss of, or serious damage to, property or any personal injuries, occurring in the course of, or as a direct result of, the operation,
- (c) for each variation of authority:
- (i) the date and time the variation was made, and
  - (ii) whether the variation was formal or urgent, and
  - (iii) the name and rank or position of the chief executive officer who made the variation.

**20K Protection from criminal responsibility for controlled conduct during authorised operations**

- (1) Section 16 (Lawfulness of controlled activities) does not apply in relation to an authorised operation that is a cross-border controlled operation.
- (2) However, despite any other Act or law of this jurisdiction, a participant who engages in conduct (whether in this jurisdiction or elsewhere) in an authorised operation that is a cross-border controlled operation in the course of, and for the purposes of, the operation, is not, if engaging in that conduct is an offence, criminally responsible for the offence, if:
  - (a) the conduct is authorised by, and is engaged in in accordance with, the authority for the operation, and
  - (b) the conduct does not involve the participant's intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit, and
  - (c) the conduct does not involve the participant's engaging in any conduct that is likely:
    - (i) to cause the death of, or serious injury to, any person, or

- (ii) to involve the commission of a sexual offence against any person, and
- (d) the participant is a civilian participant—he or she acts in accordance with the instructions of a law enforcement officer.

**20L Protection from criminal responsibility for certain ancillary conduct**

- (1) Section 18 (Lawfulness of certain ancillary activities) does not apply in relation to an authorised operation that is an authorised cross-border controlled operation.
- (2) This section applies to conduct such as aiding and abetting the commission of an offence or of conspiring to commit an offence (*ancillary conduct*) for which a person may be criminally responsible because it involves conduct engaged in by another person that is controlled conduct for which the other person would (but for section 20K) be criminally responsible (the *related controlled conduct*).
- (3) Despite any other Act or law of this jurisdiction, a person who engages in ancillary conduct that is an offence (whether or not the person is a participant in a controlled operation) is not criminally responsible for the offence if at the time the person engaged in the ancillary conduct he or she believed that the related controlled conduct was being engaged in, or would be engaged in, by a participant in an authorised operation.

**20M Indemnification of participants against civil liability**

- (1) Section 19 (Exclusion of civil liability) does not apply in relation to an authorised operation that is an authorised cross-border controlled operation.
- (2) However, this section applies to a law enforcement agency if a cross-border controlled operation has been authorised by the chief executive officer of the agency under section 6.
- (3) The State must indemnify a participant in the authorised operation against any civil liability (including reasonable costs) the participant incurs because of conduct the participant engages in if:
  - (a) the participant engages in the conduct in the course of, and for the purposes of, the operation in accordance with the authority for the operation, and
  - (b) the conduct does not involve the participant's intentionally inducing a person to commit an offence under a law of any

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jurisdiction or the Commonwealth that the person would not otherwise have intended to commit, and

- (c) the conduct does not involve the participant's engaging in any conduct that is likely:
  - (i) to cause the death of, or serious injury to, any person, or
  - (ii) to involve the commission of a sexual offence against any person, and
- (d) the participant is a civilian participant—he or she acts in accordance with the instructions of a law enforcement officer, and
- (e) the relevant requirements (if any) of the regulations have been met.

**20N Effect of sections 20K and 20L on other laws relating to criminal investigation**

Sections 20K and 20L do not apply to a person's conduct in the course of a cross-border controlled operation that is, or could have been, authorised under a law of this jurisdiction relating to the following:

- (a) the arrest or detention of individuals,
- (b) searches of individuals,
- (c) entry onto, or searches or inspections of, premises,
- (d) searches, inspections or seizures of other property,
- (e) forensic procedures,
- (f) electronic surveillance devices or telecommunications interception,
- (g) identification procedures,
- (h) the use or acquisition of assumed identities,
- (i) any other matter concerning powers of criminal investigation.

**20O Effect of being unaware of variation or cancellation of authority**

- (1) If an authority for a cross-border controlled operation is varied in any way that limits its scope, this Part continues to apply to a participant in the operation as if the authority had not been varied in that way, for so long as the participant:
  - (a) is unaware of the variation, and
  - (b) is not reckless about the existence of the variation.

- (2) If an authority for a cross-border controlled operation is cancelled, this Part continues to apply to a participant in the operation as if the authority had not been cancelled, for so long as the participant:
  - (a) is unaware of the cancellation, and
  - (b) is not reckless about the existence of the cancellation.
- (3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority if:
  - (a) the person is aware of a substantial risk that there has been a variation or cancellation, and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to continue to engage in conduct that was authorised by the authority but which, because of the possible variation or cancellation, may be no longer authorised.
- (4) Section 12 (3) does not apply in respect of a cross-border controlled operation.

**20P Compensation for property loss or serious damage**

- (1) If a person suffers loss of, or serious damage to, property as a direct result of an authorised cross-border controlled operation, the State is liable to pay to the person such compensation as is agreed between the State and the person or, in default of agreement, compensation of an amount determined in proceedings against the State, in a court of competent jurisdiction, for a debt of the amount claimed by the person.
- (2) Subsection (1) does not apply if:
  - (a) the person suffered the loss or damage in the course of, or as a direct result of, engaging in any criminal activity (other than criminal activity that is controlled conduct), or
  - (b) the person was a law enforcement officer at the time of suffering the loss or damage.

**20Q Notification requirements**

- (1) If any loss of, or serious damage to, property occurs in the course of or as a direct result of an authorised cross-border controlled operation (other than property of the law enforcement agency on behalf of which the operation is conducted or of a participant in the operation), the principal law enforcement officer for the operation must report the loss or damage to the chief executive officer of the law enforcement agency as soon as practicable.

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- (2) The chief executive officer must take all reasonable steps to notify the owner of the property of the loss or damage.
  - (3) However, the chief executive officer is not required to notify the owner of the property until the chief executive officer is satisfied that the notification would not:
    - (a) compromise or hinder the authorised operation, or
    - (b) compromise the identity of a participant in the authorised operation, or
    - (c) endanger the life or safety of any person, or
    - (d) prejudice any legal proceeding, or
    - (e) otherwise be contrary to the public interest.

**20R Unauthorised disclosure of information**

- (1) A person is guilty of an offence if:
  - (a) the person intentionally, knowingly or recklessly discloses any information, and
  - (b) the person knows that, or is reckless as to whether, the information relates to a cross-border controlled operation, or a corresponding authorised operation, and
  - (c) the person knows that, or is reckless as to whether, the disclosure is not made:
    - (i) in connection with the administration or execution of this Part or a corresponding law, or
    - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this Part or a corresponding law or of any report of any such proceedings, or
    - (iii) in accordance with any requirement imposed by law.

Maximum penalty: Imprisonment for 2 years.

- (2) A person is guilty of an offence against this subsection if the person commits an offence against subsection (1) in circumstances in which the person:
  - (a) intends to endanger the health or safety of any person or prejudice the effective conduct of a cross-border controlled operation or corresponding authorised operation, or
  - (b) knows that, or is reckless as to whether, the disclosure of the information:



- (i) endangers, or will endanger, the health or safety of any person, or
- (ii) prejudices, or will prejudice, the effective conduct of a cross-border controlled operation or corresponding authorised operation.

Maximum penalty: Imprisonment for 10 years.

- (3) An offence against subsection (2) is to be prosecuted on indictment. However, Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of any such offence.

#### **20S Mutual recognition of corresponding authorities**

The following provisions apply, with any necessary changes, to a corresponding authority under a corresponding law, and to a corresponding authorised operation under that law, as if the corresponding authority were an authority given under section 6 (1) to conduct a cross-border controlled operation:

- (a) section 13 (Effect of authorities),
- (b) section 13A (Defect in authority),
- (c) section 20H (Effect of authorities to conduct cross-border controlled operations),
- (d) section 20K (Protection from criminal responsibility for controlled conduct during authorised operations),
- (e) section 20L (Protection from criminal responsibility for certain ancillary conduct),
- (f) section 20M (Indemnification of participants against civil liability),
- (g) section 20N (Effect of sections 20K and 20L on other laws relating to criminal investigation).

#### **[10] Section 21 Ombudsman to be notified of certain matters**

Insert “(other than a retrospective authority)” after “an authority” in section 21 (1) (a).

#### **[11] Section 21 (1A) and (1B)**

Insert after section 21 (1):

- (1A) A chief executive officer who grants a retrospective authority must provide the Ombudsman with written details of the retrospective authority and the circumstances justifying that authority.

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- (1B) The details are to be provided as soon as practicable after the retrospective authority is granted but, in any case, no later than 7 days after it is granted.

**[12] Section 29**

Omit the section. Insert instead:

**29 Delegations**

- (1) Except as provided by this section (and despite any other Act or law to the contrary):
- (a) the functions of a chief executive officer under this Act may not be delegated to any other person, and
  - (b) the functions of the Ombudsman under this Act with respect to the inspection of documentation referred to in section 8 (3) may not be delegated to any other person.
- (2) A chief executive officer may delegate any of the chief executive officer's functions under this Act (except this power of delegation) as follows:
- (a) in the case of NSW Police:
    - (i) to a police officer for the time being holding office as a Deputy Commissioner or an Assistant Commissioner, and
    - (ii) except for functions under Part 3A—to a police officer for the time being holding office as a Superintendent who is nominated from time to time by the Commissioner of Police for the purposes of this subsection (not more than two nominations being in force at any one time),
  - (b) in the case of any other law enforcement agency—to a person for the time being holding a position prescribed by the regulations as a position to which functions under this Act may be delegated.
- (3) A position cannot be prescribed as a position to which functions under this Act may be delegated unless it is a position within the law enforcement agency concerned.
- (4) No more than one delegation may be in force under subsection (2) (b) at any one time, and no more than one position may be prescribed at any one time as a position to which functions under this Act may be delegated.

- (5) Subsection (4) does not apply in respect of the delegation of the functions of the chief executive officer of the Australian Crime Commission.
- (6) The functions of the Ombudsman under this Act with respect to the inspection of documentation referred to in section 8 (3) may be delegated to an Assistant Ombudsman.

**[13] Section 30 Proceedings for offences**

Insert “(other than an offence under section 20R (2))” after “this Act”.

**[14] Section 32 Review of Act**

Insert after section 32 (5):

- (6) A further review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the *Law Enforcement (Controlled Operations) Amendment Act 2006*.
- (7) A report on the outcome of the review undertaken in accordance with subsection (6) is to be tabled in each House of Parliament within 3 months after the end of the period of 5 years referred to in subsection (6).

**[15] Section 33**

Insert after section 32:

**33 Savings and transitional provisions**

Schedule 2 has effect.

**[16] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Savings and transitional provisions**

(Section 33)

**Part 1 Preliminary**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
*Law Enforcement (Controlled Operations) Amendment Act 2006*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provision consequent on enactment of Law Enforcement (Controlled Operations) Amendment Act 2006**

### **2 Existing delegations**

- (1) This clause applies to a delegation in force under section 29 immediately before the repeal and re-enactment of that section by the amending Act.
- (2) If a delegation to which this clause applies could be made under section 29 as re-enacted by the amending Act, the delegation is not affected by the amending Act and continues in force until it is revoked.
- (3) Subclause (2) does not apply to a delegation under clause 13 (a) (ii) of the *Law Enforcement (Controlled Operations) Regulation 1998* as in force immediately before the repeal and remake of that clause by the amending Act.

**Note.** Clause 13 (a) (ii) permitted delegation to 3 police officers of or above the rank of Superintendent. Section 29 as re-enacted permits no more than 2 delegations to police officers of the rank of Superintendent to be in force at any one time.
- (4) In this clause, *the amending Act* means the *Law Enforcement (Controlled Operations) Amendment Act 2006*.

## **Schedule 2 Amendment of Law Enforcement (Controlled Operations) Regulation 1998**

(Section 4)

### **Clause 13**

Omit the clause. Insert instead:

#### **13 Delegations: section 29**

Each of the following positions is prescribed for the purposes of section 29 of the Act as a position to which functions under the Act (including functions under Part 3A) may be delegated:

- (a) in respect of the Independent Commission Against Corruption—the position of Assistant Commissioner,
- (b) in respect of the Police Integrity Commission—the position of Assistant Commissioner,
- (c) in respect of the New South Wales Crime Commission—the position of Director,
- (d) in respect of the Australian Federal Police—the position of the member of the Australian Federal Police responsible for the day to day operations of the Australian Federal Police in New South Wales,
- (e) in respect of the Australian Crime Commission:
  - (i) the position of Director National Operations,
  - (ii) the position of General Manager National Operations,
  - (iii) the position of an SES employee or acting SES employee (within the meaning of the *Australian Crime Commission Act 2002* of the Commonwealth) of the Commission,
- (f) in respect of the Australian Customs Service—the position of Regional Director (New South Wales).

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**Schedule 3      Amendment of Criminal Procedure  
Act 1986**

(Section 5)

**Schedule 1 Indictable offences triable summarily**

Insert after clause 10A in Table 2:

**10B      Unauthorised disclosure of information**

An offence under section 20R (2) of the *Law Enforcement  
(Controlled Operations) Act 1997*.

[Second reading speech made in—

Legislative Assembly on 8 March 2006

Legislative Council on 5 April 2006]

BY AUTHORITY