



New South Wales

# Law Enforcement (Controlled Operations) Regulation 1998

under the

Law Enforcement (Controlled Operations) Act 1997

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Law Enforcement (Controlled Operations) Act 1997*.

PAUL WHELAN, M.P.,

Minister for Police

## Explanatory note

The object of this Regulation is to prescribe matters relevant to the administration of the *Law Enforcement (Controlled Operations) Act 1997* in connection with the granting of authorities to conduct controlled operations and the reports to be made with respect to controlled operations. These matters include the following:

- (a) the manner and form in which applications for variations of authorities should be made and the manner and form in which variations of authorities should be granted (clauses 5 and 6).
- (b) the information to be included in reports on the conduct of controlled operations (clause 7).
- (c) a code of conduct for all law enforcement agencies (clause 8 and Schedule 1).
- (d) the information to be included in the written notices given to the Ombudsman under section 21 of the Act in relation to the granting, variation and renewal of authorities and in relation to the reporting on controlled operations (clauses 9, 10, 11 and 12).

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### Law Enforcement (Controlled Operations) Regulation 1998

#### Explanatory note

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This Regulation is made under the *Law Enforcement (Controlled Operations) Act 1997*, including section 31 (the general regulation making power) and sections 10, 15 and 21. In accordance with the requirements of section 20 (4) of that Act, the provisions of the Regulation that prescribe a code of conduct for law enforcement agencies are made on the recommendation of the Inspector of the Police Integrity Commission.

This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Law Enforcement (Controlled Operations) Regulation 1998

### 1 Name of Regulation

This Regulation is the *Law Enforcement (Controlled Operations) Regulation 1998*.

### 2 Commencement

This Regulation commences on 1 March 1998.

### 3 Definition

In this Regulation:

*the Act* means the *Law Enforcement (Controlled Operations) Act 1997*.

### 4 Notes

The explanatory note and table of contents do not form part of this Regulation.

### 5 Applications for variations of authority: section 10

- (1) An application for variation of an authority is to be made:
  - (a) in writing, signed by the applicant, or
  - (b) by facsimile transmission of a written application, signed by the applicant, or
  - (c) by such other means as are available, including (but not limited to) orally in person, by electronic mail, by telephone or by 2-way radio.
- (2) An application:
  - (a) should not be made as referred to in subclause (1) (b) unless the urgency of the circumstances render it impracticable for it to be made as referred to in subclause (1) (a), and
  - (b) should not be made as referred to in subclause (1) (c) unless the urgency of the circumstances render it impracticable for it to be made as referred to in subclause (1) (a) and (b).

- (3) If the application is made as referred to in subclause (1) (c), the applicant is to ensure that written notes are kept of the following information:
- (a) the date and time when the application was made,
  - (b) the identity of the applicant,
  - (c) the information given to the chief executive officer in support of the application.

**6 Variations of authority: section 10**

- (1) A variation of authority is to be granted:
- (a) in writing, signed by the chief executive officer, or
  - (b) if that is not practicable, by such other means as are available, including (but not limited to) orally in person, by electronic mail, by telephone or by 2-way radio.
- (2) A Variation of authority should not be granted as referred to in subclause (1) (b) unless the urgency of the circumstances render it impracticable for it to be granted as referred to in subclause (1) (a).
- (3) If the variation of authority is granted as referred to in subclause (1) (b), the chief executive officer and the law enforcement officer to whom the variation of authority is granted are each to ensure that written notes are kept of the following information:
- (a) the date and time when the variation of authority was granted.
  - (b) the identity of the law enforcement officer to whom the variation of authority was granted,
  - (c) the grounds on which the chief executive officer was satisfied as to each of the matters referred to in section 10 (4) of the Act.
  - (d) the terms in which the variation of authority was granted.

**7 Matters to be included in report: section 15**

A report referred to in section 15 of the Act with respect to a controlled operation must include such matters relevant to the operation as the chief executive officer may require.

**8 Code of conduct: section 20**

The code of conduct prescribed by Schedule 1 applies to all law enforcement agencies.

**9 Written notice to Ombudsman of granting of authority: section 21**

Without limiting section 21 of the Act, a written notice given to the Ombudsman with respect to the granting of an authority for a controlled operation must include the following details:

- (a) the date on which the authority was granted,
- (b) the serial number or other identifying code for the authority,
- (c) the nature of the suspected criminal activity or corrupt conduct in respect of which the authority was granted,
- (d) the period for which the authority is to remain in force,
- (e) the nature of the controlled activities authorised by the authority.
- (f) the number of participants in the operation, specifying:
  - (i) how many of them are law enforcement participants, and
  - (ii) how many of them are civilian participants.

**10 Written notice to Ombudsman of variation of authority: section 21**

Without limiting section 21 of the Act, a written notice given to the Ombudsman with respect to the variation of an authority for a controlled operation must include the following details:

- (a) the date on which the variation was granted.
- (b) the serial number or other identifying code for the authority to which the variation relates.
- (c) if the variation extends the period for which the authority has effect, the period for which the authority is to remain in force as a consequence of its extension.

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- (d) if the variation authorises an alternative principal law enforcement officer for the operation, the fact that it does so,
- (e) if the variation authorises additional or alternative persons to engage in controlled activities for the purposes of the operation, the number of persons so authorised, specifying:
  - (i) how many of them are law enforcement participants, and
  - (ii) how many of them are civilian participants,
- (f) if the variation authorises participants in the operation to engage in additional or alternative controlled activities, the nature of the controlled activities so authorised.

### **11 Written notice to Ombudsman of renewal of authority: section 21**

Without limiting section 21 of the Act, a written notice given to the Ombudsman with respect to the renewal of an authority for a controlled operation must include the following details:

- (a) the date on which the renewal was granted,
- (b) the serial number or other identifying code for the authority to which the renewal relates.
- (c) the period for which the authority is to remain in force as a consequence of its renewal.

### **12 Written notice to Ombudsman of receipt of report of authorised operation: section 21**

Without limiting section 21 of the Act, a written notice given to the Ombudsman with respect to the receipt of a report on the conduct of an authorised operation must include the following details:

- (a) the date on which the report was received from the principal law enforcement officer for the operation,
- (b) the serial number or other identifying code for the authority for the operation.

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- (c) the serial numbers or other identifying codes for any variations or renewals that have been granted with respect to the authority for the operation,
  - (d) the serial numbers or other identifying codes for any authorities, and any variations or renewals of authority, that have been granted for previous controlled operations with respect to the same criminal activity or corrupt conduct,
  - (e) the nature of the controlled activities engaged in for the purposes of the operation,
  - (f) the number of participants in the operation, specifying:
    - (i) how many of them were law enforcement participants, and
    - (ii) how many of them were civilian participants,
  - (g) a statement as to whether the operation was conducted in accordance with the authority for the operation and, in particular, as to:
    - (i) whether any unlawful conduct was engaged in by any participant in the operation, and
    - (ii) if so, whether that unlawful conduct was the subject of an application for retrospective authority under section 14 of the Act, and
    - (iii) if so, whether retrospective authority under section 14 of the Act was granted.

## **Schedule 1 Code of conduct**

(Clause 8)

### **1 Applicants for authorities to act in good faith**

- (1) In making an application for an authority, or for a variation or renewal of an authority, the applicant must at all times act in good faith.
- (2) In particular, the applicant must ensure that the application:
  - (a) discloses all information of which the applicant is aware as to the circumstances giving rise to the application, especially those that could affect the way in which the application will be determined, and
  - (b) does not contain anything that is incorrect or misleading in a material particular.
- (3) If the applicant subsequently becomes aware of information that, had it been known to the chief executive officer when the application was determined, could have affected the way in which the application would have been determined, the applicant must ensure that the information is given to the chief executive officer as soon as practicable.

### **2 Disclosure of changed circumstances**

If the principal law enforcement officer for an authorised operation becomes aware of circumstances that are likely to require a variation of the authority for the operation. the officer must ensure that:

- (a) information as to those circumstances is given to the chief executive officer as soon as practicable, and
- (b) a written application for such a variation is made to the chief executive officer before it becomes impracticable to do so.



### **3 Participants to be properly briefed**

Before conducting an authorised operation, the principal law enforcement officer for the operation:

- (a) must ensure that each law enforcement participant and each civilian participant:
  - (i) has a thorough understanding of the nature and extent of any controlled activities in which the participant may be directed to engage in for the purposes of the operation, and
  - (ii) is made aware of the terms of the authority to the extent to which it authorises the participant to engage in those activities, and
- (b) must ensure that each civilian participant undertakes not to engage in any controlled activities other than those referred to in paragraph (a), and
- (c) must make a written record of each undertaking given by a civilian participant as referred to in paragraph (b).

### **4 Obligations of law enforcement participants with respect to their own actions**

At all times during the conduct of an authorised operation, each law enforcement participant:

- (a) must act in good faith, and
- (b) must comply with any lawful directions given to the participant by the principal law enforcement officer for the operation.

### **5 Obligations of law enforcement participants with respect to the actions of others**

Each law enforcement participant in an authorised operation must take all reasonable steps to ensure that the conduct of the operation does not involve any participant in the operation:

- (a) inducing or encouraging another person to engage in criminal activity or corrupt conduct of a kind that the other person could not reasonably be expected to engage in unless so induced or encouraged, or

- (b) engaging in conduct that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or to result in serious loss or damage to property, or
- (c) engaging in any activity that, not being a controlled activity, is unlawful.

## **6 Reports to be made in good faith**

- (1) In preparing a report on the conduct of an authorised operation, the reporting officer must at all times act in good faith.
- (2) In particular, the reporting officer must ensure that the report:
  - (a) discloses all information of which the officer is aware as to matters required to be included in the report, and
  - (b) does not contain anything that is incorrect or misleading in a material particular.
- (3) If the reporting officer subsequently becomes aware of:
  - (a) information that, had it been known to the officer when the report was prepared, should have been included in the report, or
  - (b) information that indicates that anything contained in the report is incorrect or misleading in a material particular,the officer must ensure that the information is given to the chief executive officer as soon as practicable.

## **7 Breaches of code to be reported**

- (1) If a law enforcement participant in an authorised operation becomes aware that a breach of this code has occurred in relation to the operation, the participant must ensure that notice of the breach is given to the chief executive officer as soon as practicable.
- (2) It is sufficient compliance with this clause if notice of the breach is reported in accordance with the internal reporting procedures applicable to the law, enforcement agency to which the law enforcement participant belongs.

## **8 Relationship to other codes of conduct**

In its application to a law enforcement agency, the provisions of this code are in addition to, and do not derogate from, the provisions of any other code of conduct that applies to that agency.