



New South Wales

# Law Enforcement (Controlled Operations) Amendment Regulation 2000

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 amend the *Law Enforcement (Controlled Operations) Regulation 1998* as a consequence of amendments made to the *Law Enforcement (Controlled Operations) Act 1997* (*the Act*) by the *Law Enforcement (Controlled Operations) Amendment Act 1999*. In particular, this Regulation makes provision for the following matters:

- (a) prescribing certain agencies as law enforcement agencies for the purposes of the Act,
- (b) prescribing certain positions as positions to which functions under the Act can be delegated,
- (c) the circumstances in which an urgent application for an authority to conduct a controlled operation under the Act may be made and the records that are to be kept in relation to such an application,
- (d) the forms to be used in relation to a grant of an authority and a grant of a variation of authority,

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- (e) the additional matters that are to be included in a written notice of a chief executive officer to the Ombudsman under section 21 of the Act in relation to the receipt of a report on the conduct of an authorised operation.

This Regulation is made under the *Law Enforcement (Controlled Operations) Act 1997*, including section 31 (the general power to make regulations) and various sections referred to in the Regulation.

## **Law Enforcement (Controlled Operations) Amendment Regulation 2000**

### **1 Name of Regulation**

This Regulation is the *Law Enforcement (Controlled Operations) Amendment Regulation 2000*.

### **2 Commencement**

This Regulation commences on 1 December 2000.

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

The *Law Enforcement (Controlled Operations) Regulation 1998* is amended as set out in Schedule 1.

### **4 Notes**

The explanatory note does not form part of this Regulation.

## Schedule 1 Amendments

(Clause 3)

### [1] Clause 3 Definition

Insert at the end of the clause:

- (2) In this Regulation, a reference to a Form is a reference to a Form in or to the effect of the relevant Form set out in Schedule 2.

### [2] Clause 4A

Insert after clause 4:

#### **4A Prescribed law enforcement agencies: section 3**

The following agencies are prescribed as law enforcement agencies for the purposes of the Act:  
the Australian Federal Police  
the National Crime Authority  
the Australian Customs Service

### [3] Clause 5

Omit the clause. Insert instead:

#### **5 Application for authority: section 5**

- (1) For the purposes of section 5 (2B) (a) of the Act, an urgent application may be made if the urgency of the circumstances render it impracticable to make a formal application.
- (2) For the purposes of section 5 (2B) (d) of the Act, an applicant making an urgent application 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.

**5A Grant of authority: section 8**

For the purposes of section 8 (6) (c) of the Act, the form in which a formal authority is to be granted is Form 1.

**[4] Clause 6**

Omit the clause. Insert instead:

**6 Application for variation of authority: section 10**

- (1) For the purposes of section 10 (1C) (a) of the Act, an urgent application may be made if the urgency of the circumstances render it impracticable to make a formal application.
- (2) For the purposes of section 10 (1C) (d) of the Act, an applicant making an urgent application 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.

**[5] Clause 6A**

Insert after clause 6:

**6A Grant of variation of authority: section 10**

For the purposes of section 10 (9) (c) of the Act, the form in which a formal variation of authority is to be granted is Form 2.

**[6] Clause 11**

Omit the clause.

**[7] Clause 12 Written notice to Ombudsman of receipt of report of authorised operation: section 21**

Omit “or renewals” wherever occurring in clause 12 (c) and (d).

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**[8] Clause 12 (f)**

Omit “in the operation”.

Insert instead “who engaged in controlled activities”.

**[9] Clause 12 (h)**

Insert after clause 12 (g):

- (h) the date on which the operation was completed.

**[10] Clause 13**

Insert after clause 12:

**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 may be delegated:

- (a) in respect of the Police Service of New South Wales:
  - (i) Deputy Commissioner, Field Operations,
  - (ii) Deputy Commissioner, Specialist Operations,
  - (iii) Commander, Crime Agencies,
  - (iv) Commander, Internal Affairs,
  - (v) Commander, Special Services Group,
- (b) in respect of the Independent Commission Against Corruption—an Assistant Commissioner’s position nominated by the Commissioner,
- (c) in respect of the Police Integrity Commission—Assistant Commissioner,
- (d) in respect of the New South Wales Crime Commission—Director,
- (e) 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,
- (f) in respect of the National Crime Authority—the position of the member holding the office to which

section 7 (8) of the *National Crime Authority Act 1984*  
of the Commonwealth applies,

(g) in respect of the Australian Customs Service—Regional  
Director (New South Wales).

**[11] Schedule 1 Code of conduct**

Omit “or renewal” from clause 1 (1) of Schedule 1.

**[12] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Forms**

(Clause 3)

**Form 1 Authority to conduct controlled operation**

(Clause 5A)

(Law Enforcement (Controlled Operations) Act 1997, section 8)

Authority No. . . . . .

I, (name), \*chief executive officer/delegate of the chief executive officer of  
(name of authorised agency) (the **Agency**), state the following matters:

- 1 I acknowledge that a code of conduct in relation to the Agency has  
been prescribed pursuant to section 20 of the Act as set out in  
Schedule 1 to the *Law Enforcement (Controlled Operations)*  
*Regulation 1998*.
- 2 An application (the **Application**) has been made to me by (name of  
applicant), a law enforcement officer of the Agency, for authority to  
conduct a controlled operation.

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- 3 Having considered the Application, and any additional information furnished under section 5 (3) of the Act, I am satisfied as to the following:
- (a) there are reasonable grounds for suspecting that criminal activity or corrupt conduct has been, is being or is about to be conducted in relation to matters within the administrative responsibility of the Agency,
  - (b) the nature and extent of the suspected criminal activity or corrupt conduct are such as to justify the conduct of a controlled operation,
  - (c) the nature and extent of the controlled activities are appropriate to the suspected criminal activity or corrupt conduct,
  - (d) the controlled activities will be capable of being accounted for in sufficient detail to enable the reporting requirements of the Act to be fully complied with.
- 4 In considering the matters referred to at item 3 above, I have had regard to the following:
- (a) the reliability of information as to the nature and extent of the suspected criminal activity or corrupt conduct,
  - (b) the likelihood of success of the controlled operation compared with the likelihood of success of any other law enforcement operation that it would be reasonably practicable to conduct for the same purposes,
  - (c) the duration of the controlled operation.
- 5 I am also satisfied as to the following:
- (a) no participant will induce or encourage 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,
  - (b) no participant will engage 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,
  - (c) a participant authorised to participate in the controlled operation has the appropriate skills to participate in the controlled operation,



- \* (d) it is wholly impracticable for a law enforcement participant to participate in that aspect of the controlled operation in relation to which a civilian participant identified below is authorised to participate,
- \* (e) it is wholly impracticable for a civilian participant to participate in the aspect of the controlled operation in relation to which a civilian participant identified below is authorised to participate without the civilian participant engaging in the particular controlled activities authorised.

6 Pursuant to sections 6 and 8 of the Act, I authorise the following:

- (a) (Name), a law enforcement officer within the meaning of the Act (the *principal law enforcement officer*), may conduct the controlled operation in accordance with the plan of the proposed operation accompanying the Application.
- \* (b) A law enforcement officer identified in Column 1 of the Table below (an *authorised law enforcement participant*) may engage in controlled activities of the nature specified opposite that participant in Column 2 of the Table for the purposes of the controlled operation:

<b>Column 1</b> <b>Name of participant</b>	<b>Column 2</b> <b>Nature of controlled activities</b>
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(List by reference to the participant's real name, an assumed name, a code name or a code number. Where 2 or more participants are authorised to engage in the same controlled activities, those participants may be grouped together in Column 1 with respect to those activities.)

In so doing:

- \* (i) the following authorised law enforcement participants may operate under an assumed name:  
(List by reference to the participant's real name, an assumed name, a code name or a code number)

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\*(ii) the following authorised law enforcement participants may not operate under an assumed name:

(List by reference to the participant's real name, a code name or a code number)

\*(c) A civilian identified in Column 1 of the Table below (an *authorised civilian participant*) may engage in the particular controlled activities specified opposite that participant in Column 2 of the Table for the purposes of the controlled operation:

<b>Column 1</b> <b>Name of participant</b>	<b>Column 2</b> <b>Controlled activities</b>
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(List by reference to the participant's real name, an assumed name, a code name or a code number. Where 2 or more participants are authorised to engage in the same controlled activities, those participants may be grouped together in Column 1 with respect to those activities.)

In so doing:

\*(i) the following authorised civilian participants may operate under an assumed name:

(List by reference to the participant's real name, an assumed name, a code name or a code number)

\*(ii) the following authorised civilian participants may not operate under an assumed name:

(List by reference to the participant's real name, a code name or a code number)

7 This Authority is in force for a period ending at .....(time) on .....(date).

8 This Authority is subject to the following conditions:

(Insert conditions, if any. If no conditions, insert 'nil'.)

This Authority is granted at ..... (time) on ..... (date).

Signature:

Name of CEO or delegate:

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Title of CEO or delegate:

Name of authorised agency:

\*Strike through if inapplicable.

## Form 2 Variation of authority to conduct controlled operation

(Clause 6A)

(Law Enforcement (Controlled Operations) Act 1997, section 10)

I, (name), \*chief executive officer/delegate of the chief executive officer of (name of authorised agency) (the **Agency**), state the following matters:

- 1 An application (the **Application**) has been made to me by (name), \*the principal law enforcement officer for the controlled operation/a law enforcement officer on behalf of the principal law enforcement officer, to vary the Authority to Conduct a Controlled Operation (the **Authority**), Authority No. . . . . . granted by (name of issuing officer) on (date).
- 2 Having considered the Application, and any additional information furnished under section 10 (2) of the Act, I am satisfied as to the following:
  - (a) the success of the controlled operation, or the protection of the health and safety of a participant in the controlled operation or any other person, or the protection of property from loss or damage can reasonably be expected to require the variation sought by the Application,
  - (b) no participant in the controlled operation will induce or encourage 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,
  - (c) no participant will engage 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,

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- (d) a participant authorised to participate in the controlled operation has the appropriate skills to participate in the controlled operation,
  - \* (e) it is wholly impracticable for a law enforcement participant to participate in that aspect of the controlled operation in relation to which the civilian participants identified below are authorised to participate,
  - \* (f) it is wholly impracticable for a civilian participant identified below to participate in the aspect of the controlled operation in relation to which the civilian participants identified below are authorised to participate without the civilian participant engaging in the particular additional or alternative controlled activities authorised.
- 3 Pursuant to section 10 of the Act, I authorise the variation of authority:
- \* (a) to extend the period for which the Authority has effect until (date).
  - \* (b) to authorise (name) as the alternative principal law enforcement officer for the controlled operation.
  - \* (c) to authorise the additional persons identified at item 4 below to engage in controlled activities for the purposes of the controlled operation.
  - \* (d) to authorise the additional persons identified at item 5 below to engage in controlled activities for the purposes of the controlled operation.
  - \* (e) to authorise the alternative persons identified at item 6 below to engage in controlled activities for the purposes of the controlled operation.
  - \* (f) to authorise the alternative persons identified at item 7 below to engage in controlled activities for the purposes of the controlled operation.
  - \* (g) to authorise participants in the operation to engage in additional controlled activities as specified at item 8 below.
  - \* (h) to authorise participants in the operation to engage in additional controlled activities as specified at item 9 below.
  - \* (i) to authorise participants in the operation to engage in alternative controlled activities as specified at item 10 below.

- \***(j)** to authorise participants in the operation to engage in alternative controlled activities as specified at item 11 below.

**\*Additional law enforcement participants**

- 4 A law enforcement officer identified in Column 1 of the Table below (an ***additional law enforcement participant***) may engage in controlled activities as authorised by Authority No. . . . . (include any relevant Variation of Authority No) with respect to law enforcement participants and of the nature specified opposite that participant in Column 2 of the Table, for the purposes of the controlled operation:

<b>Column 1</b>	<b>Column 2</b>
<b>Name of additional participant</b>	<b>Nature of controlled activities</b>

(List by reference to the participant's real name, an assumed name, a code name or a code number. Where 2 or more additional participants are authorised to engage in the same controlled activities, the names of those participants may be grouped together with respect to those activities.)

In so doing:

- \***(a)** the following additional law enforcement participants may operate under an assumed name:

(List by reference to the participant's real name, an assumed name, a code name or a code number)

- \***(b)** the following additional law enforcement participants may not operate under an assumed name:

(List by reference to the participant's real name, a code name or a code number)

**\*Additional civilian participants**

- 5 A civilian identified in Column 1 of the Table below (an ***additional civilian participant***) may engage in particular controlled activities, as authorised by Authority No. . . . . (include any relevant Variation of Authority No) with respect to civilian participants and as specified opposite that

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participant in Column 2 of the Table, for the purposes of the controlled operation:

<b>Column 1</b> <b>Name of additional participant</b>	<b>Column 2</b> <b>Nature of controlled activities</b>
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(List by reference to the participant's real name, an assumed name, a code name or a code number. Where 2 or more additional participants are authorised to engage in the same controlled activities, the names of those participants may be grouped together with respect to those activities.)

In so doing:

\*(a) the following additional civilian participants may operate under an assumed name:

(List by reference to the participant's real name, an assumed name, a code name or a code number)

\*(b) the following additional civilian participants may not operate under an assumed name:

(List by reference to the participant's real name, a code name or a code number)

**\*Alternative law enforcement participants**

6 A law enforcement participant identified in Column 1 of the Table below is to be replaced by a law enforcement officer (an *alternative law enforcement participant*) identified opposite that participant in Column 2 of the Table for the purposes of the controlled operation.

<b>Column 1</b> <b>Name of replaced participant</b>	<b>Column 2</b> <b>Name of alternative participant</b>
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(List by reference to the participant's real name, an assumed name, a code name or a code number)

In so doing:

- \* (a) the following alternative law enforcement participants may operate under an assumed name:  
(List by reference to the participant's real name, an assumed name, a code name or a code number)
- \* (b) the following alternative law enforcement participants may not operate under an assumed name:  
(List by reference to the participant's real name, a code name or a code number)
- \* (c) an alternative law enforcement participant identified in Column 2 of the Table may engage in the controlled activities that a law enforcement participant identified opposite that alternative law enforcement participant in Column 1 of the Table was authorised to engage in by Authority No. . . . . .for the purposes of the controlled operation.

**\*Alternative civilian participants**

- 7 A civilian participant identified in Column 1 of the Table below is to be replaced by a civilian (an *alternative civilian participant*) identified opposite that civilian participant in Column 2 of the Table for the purposes of the controlled operation.

<b>Column 1</b>	<b>Column 2</b>
<b>Name of replaced participant</b>	<b>Name of alternative participant</b>

(List by reference to the participant's real name, an assumed name, a code name or a code number)

In so doing:

- \* (a) the following alternative civilian participants may operate under an assumed name:  
(List by reference to the participant's real name, an assumed name, a code name or a code number)
- \* (b) the following alternative civilian participants may not operate under an assumed name:

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(List by reference to the participant's real name, a code name or a code number):

- \*(c) an alternative civilian participant identified in Column 2 of the Table may engage in the controlled activities that a civilian participant identified opposite that alternative civilian participant in Column 1 of the Table was authorised to engage in by Authority No. . . . . . for the purposes of the controlled operation.

**\*Additional controlled activities—law enforcement participants**

- 8 A law enforcement participant authorised to engage in controlled activities by \*this Variation of Authority/Authority No. . . . . . for the purposes of the controlled operation and identified in Column 1 of the Table below may engage in the additional controlled activities of the nature specified opposite that participant in Column 2 of the Table:

<b>Column 1</b> <b>Name of participant</b>	<b>Column 2</b> <b>Nature of additional controlled activities</b>
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**\*Additional controlled activities—civilian participants**

- 9 A civilian participant authorised to engage in controlled activities by \*this Variation of Authority/Authority No. . . . . . for the purposes of the controlled operation and identified in Column 1 of the Table below may engage in the additional controlled activities specified opposite that participant in Column 2 of the Table:

<b>Column 1</b> <b>Name of participant</b>	<b>Column 2</b> <b>Additional controlled activities</b>
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**\*Alternative controlled activities—law enforcement participants**

- 10 A law enforcement participant authorised to engage in controlled activities by \*this Variation of Authority/Authority No. . . . . . for the purposes of the controlled operation and identified in Column 1 of the Table below may engage in the alternative controlled activities



of the nature specified opposite that participant in Column 2 of the Table:

<b>Column 1</b>	<b>Column 2</b>
<b>Name of participant</b>	<b>Nature of alternative controlled activities</b>

**\*Alternative controlled activities—civilian enforcement participants**

11 A civilian participant authorised to engage in controlled activities by \*this Variation of Authority/Authority No. . . . . for the purposes of the controlled operation and identified in Column 1 of the Table below may engage in the alternative controlled activities specified opposite that participant in Column 2 of the Table:

<b>Column 1</b>	<b>Column 2</b>
<b>Name of participant</b>	<b>Alternative controlled activities</b>

**Duration of Variation**

\*12 This Variation of Authority is in force from . . . . .(time) on . . . . .(date) to . . . . .(date).

(For variations to extend the period of an Authority)

\*13 This Variation of Authority is in force from . . . . .(time) on . . . . .(date).

(For all other variations of an Authority)

**Conditions**

14 This Variation of Authority is subject to the following conditions:

(Insert conditions, if any. If no conditions, insert 'nil'.)

This Variation of Authority is granted at . . . . .(time) on . . . . .(date).

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Signature:

Name of CEO or delegate:

Title of CEO or delegate:

Name of authorised agency:

\*Strike through if inapplicable.

BY AUTHORITY

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