

[Act 1997 No 136]



# Law Enforcement (Controlled Operations) Bill 1997

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to provide for the authorisation, conduct and monitoring of certain operations (specifically, operations involving what might otherwise be unlawful activities) by the Police Service, the Independent Commission Against Corruption, the New South Wales Crime Commission and the Police Integrity Commission so as to remove any doubt as to the status of evidence obtained in the course of such operations and as to the liability of participants in such operations.

### Outline of provisions

#### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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**Clause 3** defines certain words and expressions used in the proposed Act (including, in particular, *authorised operation, civilian participant, controlled operation, law enforcement agency, law enforcement participant* and *principal law enforcement officer*).

**Clause 4** provides for the amendment by regulation of Schedule 1 (a Schedule that recognises laws of the Commonwealth, and of other States and Territories, as corresponding laws for the purposes of the proposed Act).

## **Part 2 Authorisation of controlled operations**

**Clause 5** enables a law enforcement officer to apply to the chief executive officer of the agency in which he or she is employed for authority to conduct a controlled operation and prescribes the manner in which such an application is to be made.

**Clause 6** provides for the determination of such an application by the chief executive officer. In particular, it requires there to be a code of conduct in force in relation to the agency before an authority can be granted and it specifies various matters of which the chief executive officer must be satisfied before granting an authority.

**Clause 7** specifies certain matters that an authority may not authorise. In particular, an authority may not authorise a participant to be an “agent provocateur” or to engage in conduct that threatens serious personal or property damage, may not authorise participation by persons who do not have the skills required by the proposed controlled operation and may not authorise civilian participants to engage in controlled activities unless it is wholly impracticable for law enforcement officers to engage in those activities.

**Clause 8** specifies the form in which an authority must be granted. In particular, it must specify what controlled activities may be engaged in for the purposes of the proposed controlled operation and whether any participant is to be allowed to operate under an assumed name.

**Clause 9** specifies the period for which an authority has effect, being such period (not exceeding 3 months) as is specified in the authority.

**Clause 10** enables the principal law enforcement officer for a controlled operation to apply to the chief executive officer for a variation of an authority so as to extend its term, to provide for a new principal law enforcement

officer for the operation, to provide for additional or alternative participants in the operation or to authorise additional or alternative controlled activities in the operation. It provides for the determination of the application and, in particular, specifies various matters of which the chief executive officer must be satisfied before granting a variation of the authority. It allows the regulations to prescribe the manner in which applications are to be made, the form in which variations are to be granted and the procedures which are to be followed in certain circumstances.

**Clause 11** enables the principal law enforcement officer for a controlled operation to apply to the chief executive officer for a renewal of an authority. The clause applies to any such application under the provisions of the proposed Part that relate to applications for authorities.

**Clause 12** enables a chief executive officer to cancel an authority for a controlled operation at any time and for any reason. Cancellation of an authority does not expose a participant in the operation to any criminal or disciplinary liability until after such time as the participant becomes aware, or ought reasonably to become aware, of the cancellation.

**Clause 13** provides that an authority for a controlled operation authorises the participants in the operation to engage in the controlled activities specified in the authority.

### **Part 3 Conduct of controlled operations**

**Clause 14** provides for the granting of retrospective authority for unlawful conduct engaged in for the purpose of dealing with life threatening situations. An application for such authority may be made within 24 hours by any participant who has engaged in unlawful conduct for the purpose of saving that or any other participant, or any other person, from death or serious injury. The clause imposes strict guidelines as to the circumstances in which such authority may be granted.

**Clause 15** requires the principal law enforcement officer for an authorised operation to report to the chief executive officer on the conduct of the operation within 28 days after its completion, and allows the details to be included in such a report to be prescribed by regulations under the proposed Act.

**Clause 16** makes lawful certain activities that are engaged in by participants in an authorised operation in the course of, and for the purposes of, the operation. The clause applies despite any other Act or law to the contrary.

**Clause 17** makes lawful certain activities concerning the preparation and use of false documentation for the purpose of enabling a participant in an authorised operation to operate under an assumed name. The proposed clause applies despite any other Act or law to the contrary.

**Clause 18** makes lawful certain activities that are incidental to activities made lawful by clauses 16 and 17. The clause applies despite any other Act or law to the contrary.

**Clause 19** protects certain persons, including participants in an authorised operation, from any personal liability for conduct they engage in for the purposes of an authorised operation. Liability for that conduct will instead lie with the agencies in which they are employed and, through them, the State.

**Clause 20** provides for the establishment, by regulations under the proposed Act, of codes of conduct that will apply to the conduct of authorised operations by law enforcement agencies. It is proposed that such a regulation will not be able to be made except on the recommendation of the Inspector of the Police Integrity Commission.

#### **Part 4 Monitoring of controlled operations**

**Clause 21** requires the Ombudsman to be notified within 21 days after an authority is granted, varied or renewed and within 21 days after a report on the conduct of an authorised operation is furnished under clause 15. The clause allows the Ombudsman to seek further information with respect to any such authority,, variation, renewal or report.

Clause 22 allows the Ombudsman to inspect each law enforcement agency's records at any time (and requires the Ombudsman to do so at least once a year) for the purpose of ascertaining whether or not the requirements of the proposed Act are being complied with. The clause also empowers the Ombudsman to report to Parliament on the results of any such inspection.

**Clause 23** requires the Ombudsman to furnish annual reports to Parliament on the Ombudsman's work and activities under the proposed Act. The clause prescribes certain details to be included in any such report with respect to controlled operations conducted or proposed during the year to which the report relates.

**Clause 24** prohibits a report under clause 22 or 23 from containing prejudicial information, applies to any such report certain provisions of the *Ombudsman Act 1974* relating to reports under that Act and requires the Ombudsman to give a copy of any such report to the chief executive officer of the agency concerned and to the Minister responsible for that agency.

## **Part 5      Miscellaneous**

**Clause 25** provides that the proposed Act binds the Crown.

**Clause 26** requires the Director of Public Prosecutions to be notified of evidence obtained in the course of an authorised operation and to be given a copy of the authority for the operation.

**Clause 27** enables the chief executive officer of a law enforcement agency to issue a certificate to the effect that he or she was satisfied of specified matters when granting, varying or renewing an authority, and gives evidentiary status to a certificate so issued.

**Clause 28** facilitates the protection of the true identities of participants in an authorised operation, both during and after court proceedings, by allowing participants to give evidence under their assumed names and by allowing the judicial body in which the evidence is given to prohibit disclosure of information that might tend to lead to their identification.

**Clause 29** restricts the power of chief executive officers and the Ombudsman to delegate the functions conferred or imposed on them by the proposed Act.

**Clause 30** enables proceedings for offences against the proposed Act to be dealt with summarily by a Local Court.

**Clause 31** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 32** requires the proposed Act to be reviewed at the end of 12 months after its commencement.

## **Schedule 1      Corresponding laws**

This Schedule specifies the laws that are proposed to be recognised as corresponding laws for the purposes of the proposed Act. Initially, the *Crimes Act 1914* of the *Commonwealth and the Criminal Law (Undercover Operations) Act 1995* of South Australia are proposed to be corresponding laws.