

Law Enforcement (Controlled Operations) Regulation 1998

[1998-99]



New South Wales

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Law Enforcement (Controlled Operations) Regulation 1998



New South Wales

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Law Enforcement (Controlled Operations) Regulation 1998



New South Wales

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

(1) In this Regulation:

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

(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.

4 Notes

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

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

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.

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.

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.

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,
- (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 (Repealed)

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,
- (c) the serial numbers or other identifying codes for any variations 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 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 who engaged in controlled activities, 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,
- (h) the date on which the operation was completed.

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).

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 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.

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.
- 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:

Column 1
Name of participant

Column 2
Nature of controlled activities

(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)

*(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:

Column 1
Name of participant

Column 2
Controlled activities

(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:

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,
- (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:

Column 1	Column 2
Name of additional participant	Nature of controlled activities

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

Column 1

Name of additional participant

Column 2

Nature of controlled activities

(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.

Column 1

Name of replaced participant

Column 2

Name of alternative participant

(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.

Column 1 Name of replaced participant	Column 2 Name of alternative participant
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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 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:
(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:

Column 1 Name of participant	Column 2 Nature of additional controlled activities
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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:

Column 1
Name of participant

Column 2
Additional controlled activities

***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:

Column 1
Name of participant

Column 2
Nature of alternative controlled activities

***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:

Column 1
Name of participant

Column 2
Alternative controlled activities

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).

Signature:

Name of CEO or delegate:

Title of CEO or delegate:

Name of authorised agency:

*Strike through if inapplicable.