



New South Wales

Law Enforcement (Controlled Operations) Amendment Bill 2006

Explanatory note

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

Overview of Bill

The principal object of this Bill is to provide, within the *Law Enforcement (Controlled Operations) Act 1997* (**the Principal Act**), a legislative scheme under which law enforcement agencies may carry out cross-border investigations in relation to criminal activities. The Bill substantially adopts the provisions of a model law for such a scheme.

This Bill also makes miscellaneous amendments to the Principal Act, including amendments that:

- (a) replace the provision of the Principal Act that provides for the granting of retrospective authority for unlawful activities, and
- (b) expand the number of police officers to whom the chief executive officer of NSW Police (that is, the Commissioner of Police) may delegate his or her functions under the Principal Act, and
- (c) provide for a further review of the Principal Act to be undertaken as soon as possible after the period of 5 years from the date of assent to the proposed Act and for a report on the outcome of the review to be tabled in each House of Parliament, and

(d) are consequential on, or ancillary to, the amendments referred to above.

Outline of provisions

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.

Clause 3 is a formal provision that gives effect to the amendments to the *Law Enforcement (Controlled Operations) Act 1997* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the *Law Enforcement (Controlled Operations) Regulation 1998* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendment to the *Criminal Procedure Act 1986* set out in Schedule 3.

Clause 6 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

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

Schedule 1 [1] inserts new definitions in section 3 (Definitions) of the Principal Act in consequence of the other amendments proposed to be made to the Principal Act. The definitions are of the terms *controlled conduct*, *corresponding authorised operation*, *corresponding authority*, *corresponding participant*, *cross-border controlled operation*, *participating jurisdiction*, *sexual offence* and *this jurisdiction*.

Schedule 1 [2] amends the definition of *principal law enforcement officer* in section 3 of the Principal Act so as to provide that that officer is to have responsibility for, as well as to conduct, the relevant *controlled operation* (within the meaning of the Principal Act)—that is, an operation involving an activity that would be illegal were it not authorised under the Principal Act (or, in the case of proposed cross-border controlled operations, involving an activity that is illegal but in respect of which protection from criminal liability is conferred on the participants in the operation).

Schedule 1 [3] inserts proposed section 3 (2) and (3) in the Principal Act. Proposed section 3 (2) sets out, for the purposes of the Principal Act, the circumstances in which a cross-border controlled operation is taken to be conducted in New South Wales. Proposed section 3 (3) makes it clear that notes included in the Principal Act do not form part of the Principal Act.

Schedule 1 [4] inserts proposed section 3A (3A) in the Principal Act. Proposed section 3A (3A) provides that the fact that particular evidence was obtained as the

result of a person engaging in criminal activity is to be disregarded in determining whether to admit or exclude the evidence in any proceedings if the person concerned was a participant acting in the course of an authorised operation or corresponding authorised operation that authorised the activity. (This provision is required because, while the Principal Act currently provides that such authorised activity does not constitute an offence, the provisions relating to cross-border controlled operations in proposed Part 3A do not. They provide, instead, that the person concerned is not criminally responsible for the offence: see proposed sections 20K and 20L.)

Schedule 1 [5] inserts a note after the heading to Part 2 (Authorisation of controlled operations) of the Principal Act to draw attention to the fact that Part 3A of the Principal Act (which is proposed to be inserted by Schedule 1 [9]) contains additional provisions relating to cross-border controlled operations.

Schedule 1 [6] repeals a provision requiring the person authorising a controlled operation to keep a written record of the reasons why the person is satisfied as to the matters about which the Principal Act requires the person to be satisfied before he or she may grant the authority.

Schedule 1 [7] inserts a new paragraph in section 7 (Certain matters not to be authorised) so as to provide that an authority to conduct a controlled operation must not be granted in relation to a proposed operation that involves any participant in the operation engaging in conduct that involves the commission of a sexual offence against any person.

Schedule 1 [8] repeals and re-enacts section 14 of the Principal Act, which is concerned with the granting of retrospective authority for unlawful activities undertaken in the course of a controlled operation and not authorised by the authority for that operation. At present, for authorisation to be granted, the unlawful activity must have been undertaken for the purpose of protecting any person (including the person who undertook the activity) from death or serious injury.

The section as it is proposed to be re-enacted dispenses with that requirement and provides, instead, that the authorisation may be granted if the person who undertook the activity believed on reasonable grounds that there was a substantial risk:

- (a) to the success of the operation, or
- (b) to the health or safety of any person, or
- (c) that evidence relating to criminal activity or corrupt conduct other than that the subject of the operation would be lost,

and that the person who undertook the unlawful activity could not avoid the risk otherwise than by undertaking the activity.

The proposed section retains other requirements of the current section 14 (for example, that the person who undertook the unlawful activity had not foreseen, and could not reasonably be expected to have foreseen, that the relevant circumstances would arise).

Schedule 1 [9] inserts proposed Part 3A (Cross-border controlled operations) in the Principal Act to give effect to the principal object of the Bill referred to in the Overview above. The proposed Part consists of proposed sections 20A–20S.

Proposed section 20A provides that the Principal Act (other than section 14) applies in respect of cross-border controlled operations (with any necessary modifications), subject to the modifications set out in the proposed Part.

Proposed section 20B inserts definitions for the purposes of the proposed Part. The definitions include a definition of *relevant offence*, which is an offence against the law of New South Wales that carries a maximum penalty of imprisonment for 3 years or more, or any other offence prescribed by the regulations.

Proposed section 20C deals with applications for authorities to conduct cross-border controlled operations. Such applications must be made to the chief executive officer of the law enforcement agency proposing to conduct the operation. The authorities may be granted only in respect of investigations of *relevant offences*.

Proposed section 20D provides that an authority to conduct a cross-border controlled operation is not to be granted unless the chief executive officer satisfies himself or herself as to the matters set out in the proposed section (as well as the matters set out in section 6 of the Principal Act in relation to authorities to conduct other controlled operations). These include being satisfied that the nature and extent of the suspected criminal activity the subject of the proposed operation are such as to justify the conduct of a controlled operation in New South Wales and in one or more *participating jurisdictions*.

Proposed section 20E sets out requirements relating to the form that an authorisation to conduct a cross-border controlled operation is to take (in addition to the requirements set out in section 8 (2) of the Principal Act in relation to authorities to conduct other controlled operations).

Proposed section 20F (effectively) provides that authorities to conduct cross-border controlled operations are not to remain in force for longer than 7 days (in the case of an *urgent authority*) or 3 months (in the case of a *formal authority*), rather than the 72 hours and 6 months provided under section 8 (2) (f) and (g) of the Principal Act in respect of authorities to conduct other controlled operations.

Proposed section 20G provides for the variation of authorities to conduct cross-border controlled operations. It provides that an application for a variation of an authority to conduct a cross-border controlled operation may be made on the ground (in addition to the grounds provided under section 10 of the Principal Act for variation of an authority to conduct other controlled operations) that the variation is for the purpose of identifying additional suspects in relation to the relevant offence. Proposed section 20G also provides that no single variation may extend the period for which an authority has effect for more than 3 months at a time, rather than the 6 months allowed under section 10 (1A) in respect of authorities to conduct other controlled operations.

Proposed section 20H provides that an authority to conduct a cross-border controlled operation authorises each *participant* in the operation to engage in the activities referred to in section 13 of the Principal Act in New South Wales and in any participating jurisdiction (subject to any corresponding law of that jurisdiction).

Proposed section 20I requires the chief executive officer of a law enforcement agency to cause the documents specified in the proposed section to be kept in relation to cross-border controlled operations.

Proposed section 20J requires the chief executive officer of a law enforcement agency to cause a register relating to cross-border controlled operations to be kept, and sets out the matters that the register must specify.

Proposed section 20K provides that section 16 (Lawfulness of controlled activities) of the Principal Act does not apply in relation to cross-border controlled operations. Section 16 effectively renders certain unlawful activities lawful. Instead, proposed section 20K protects a participant in a cross-border controlled operation from any criminal liability for engaging in unlawful conduct in the course of, and for the purpose of, the operation, in the circumstances set out in the proposed section.

Proposed section 20L is a similar provision relating to ancillary conduct. It replaces section 18 (Lawfulness of certain ancillary activities) of the Principal Act in relation to cross-border controlled operations.

Proposed section 20M is a similar provision relating to civil liability. It replaces section 19 (Exclusion of civil liability) of the Principal Act in relation to cross-border controlled operations and provides, instead, for the indemnification of participants in the cross-border controlled operations to which the proposed section applies, in the circumstances set out in the proposed section.

Proposed section 20N is to the effect that protection from criminal liability conferred by proposed sections 20K and 20L does not apply in respect of a person's conduct in the course of a cross-border controlled operation if the unlawful conduct concerned is, or could have been, authorised under a law of New South Wales relating to the matters set out in the proposed section. Those matters include searches of individuals and premises.

Proposed section 20O deals with the effect of a participant being unaware that an authority for a controlled operation has been varied or cancelled.

Proposed section 20P provides for compensation to certain persons who suffer loss of, or serious damage to, property as a direct result of an authorised cross-border controlled operation.

Proposed section 20Q requires the principal law enforcement officer of an authorised cross-border controlled operation to report any loss or damage of the kind referred to in proposed section 20P to the chief executive officer of the agency, who must take all reasonable steps to notify the owner of the property concerned of the loss or damage.

Proposed section 20R prohibits the unauthorised disclosure of information relating to cross-border controlled operations.

Proposed section 20S provides that certain provisions of the Principal Act apply (with any necessary changes) in respect of various operations in the nature of cross-border controlled operations that are authorised by or under the provisions of a corresponding law.

Schedule 1 [10] amends section 21 (1) (a) of the Principal Act in relation to retrospective authorities in consequence of proposed section 21 (1A) and (1B) (proposed to be inserted by Schedule 1 [11]).

Schedule 1 [11] inserts proposed section 21 (1A) and (1B) in the Principal Act. Section 21 requires a chief executive officer who grants an authorisation for a controlled operation (or a variation of an authority), or receives a report on the conduct of a controlled operation, to give the Ombudsman written notice of that fact within 21 days. The proposed subsections require the chief executive officer granting a retrospective authority to provide the Ombudsman with written details of the authority and the circumstances justifying it, and to do so as soon as practicable after granting the authority (but, in any case, no later than 7 days after it is granted).

Schedule 1 [12] repeals and re-enacts section 29 (Delegations) of the Principal Act in view of the new functions conferred on chief executive officers of law enforcement agencies by proposed Part 3A of the Principal Act. Currently, section 29 provides for the regulations to prescribe the positions to which functions under the Principal Act of chief executive officers may be delegated. Section 29 as proposed to be re-enacted specifies the police officers to whom those functions of the Commissioner of Police may be delegated and provides (as at present) for the regulations to prescribe the relevant positions in respect of other law enforcement agencies.

Schedule 1 [13] amends section 30 (Proceedings for offences) of the Principal Act in consequence of proposed section 20R (2).

Schedule 1 [14] inserts proposed section 32 (6) and (7) in the Principal Act to require further review of the Principal Act to be undertaken as soon as possible after the period of 5 years from the date of assent to the proposed Act and for a report on the outcome of the review to be tabled in each House of Parliament.

Schedule 1 [15] inserts proposed section 33 in the Principal Act. The proposed section is a formal provision giving effect to the new Schedule proposed to be inserted by Schedule 1 [16].

Schedule 1 [16] inserts a new Schedule in the Principal Act to allow the making of savings and transitional regulations consequent on the enactment of the proposed Act and to preserve certain delegations existing immediately before the repeal and re-enactment of section 29.

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

Schedule 2 repeals and re-makes clause 13 (Delegations: section 29) of the *Law Enforcement (Controlled Operations) Regulation 1998* in consequence of the repeal and re-enactment of section 29 of the Principal Act.

Schedule 3 Amendment of Criminal Procedure Act 1986

Schedule 3 inserts a reference to an offence under proposed section 20R (2) of the *Law Enforcement (Controlled Operations) Act 1997* in Table 2 in Schedule 1 to the *Criminal Procedure Act 1986*. That Table specifies the indictable offences that a Local Court is required to deal with summarily unless the prosecuting authority elects otherwise.



New South Wales

Law Enforcement (Controlled Operations) Amendment Bill 2006

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New South Wales

Law Enforcement (Controlled Operations) Amendment Bill 2006

No. , 2006

A Bill for

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.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Law Enforcement (Controlled Operations) Amendment Act 2006</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Law Enforcement (Controlled Operations) Act 1997 No 136	7 8
The <i>Law Enforcement (Controlled Operations) Act 1997</i> is amended as set out in Schedule 1.	9 10
4 Amendment of Law Enforcement (Controlled Operations) Regulation 1998	11 12
The <i>Law Enforcement (Controlled Operations) Regulation 1998</i> is amended as set out in Schedule 2.	13 14
5 Amendment of Criminal Procedure Act 1986 No 209	15
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 3.	16
6 Repeal of Act	17
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	18 19
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	20 21

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).	1 2 3 4
(3) Notes included in this Act do not form part of this Act.	5
[4] Section 3A Act not to affect certain matters	6
Insert after section 3A (3):	7
(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:	8 9 10 11
(a) the person was a participant or corresponding participant acting in the course of an authorised operation or corresponding authorised operation, and	12 13 14
(b) the criminal activity was a controlled activity within the meaning of this Act or controlled conduct within the meaning of a corresponding law.	15 16 17
[5] Part 2 Authorisation of controlled operations	18
Insert after the heading to the Part:	19
Note. Part 3A contains additional provisions relating to cross-border controlled operations.	20 21
[6] Section 6 Determination of applications	22
Omit section 6 (5).	23
[7] Section 7 Certain matters not to be authorised	24
Insert at the end of section 7 (1) (b):	25
, or	26
(c) engaging in conduct that involves the commission of a sexual offence against any person.	27 28
[8] Section 14	29
Omit the section. Insert instead:	30
14 Retrospective authority	31
(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	32 33 34 35

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- engages in that conduct, apply to the chief executive officer for retrospective authority for the conduct. 1
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- (2) An application under this section may be made in such manner as the chief executive officer may permit. 3
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- (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. 5
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- (4) After considering an application under subsection (1), and any additional information furnished under subsection (3), the chief executive officer: 9
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- (a) may grant retrospective authority in accordance with the application, or 12
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- (b) may refuse the application. 14
- (5) Retrospective authority may not be granted unless the chief executive officer is satisfied: 15
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- (a) that the following circumstances existed when the relevant conduct occurred: 17
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- (i) the participant who engaged in the conduct believed on reasonable grounds: 19
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- (A) that there was a substantial risk to the success of the authorised operation, or 21
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- (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 23
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- (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, 27
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- (ii) the participant could not avoid that risk otherwise than by engaging in the relevant conduct, and 34
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- (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 36
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- (c) that the participant had not foreseen, and could not reasonably be expected to have foreseen, that those circumstances would arise, and 39
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(d)	that, had it been possible to foresee that those circumstances would arise, authority for the relevant conduct would have been sought, and	1 2 3
(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.	4 5 6
(6)	Subsection (5) does not allow retrospective authority to be granted with respect to conduct giving rise to any of the following:	7 8 9
(a)	the offence of murder,	10
(b)	any other offence for which the common law defence of duress would not be available.	11 12
[9] Part 3A		13
	Insert after Part 3:	14
	Part 3A Cross-border controlled operations	15
20A	Application of Act to cross-border controlled operations	16
(1)	This Act applies in respect of cross-border controlled operations (with any necessary modifications), subject to the modifications set out in this Part.	17 18 19
(2)	Section 14 (Retrospective authority) does not apply in respect of a cross-border controlled operation.	20 21
20B	Definitions	22
(1)	For the purposes of this Part:	23
	<i>illicit goods</i> means goods the possession of which is a contravention of a law of this jurisdiction.	24 25
	<i>relevant offence</i> means:	26
(a)	an offence against the law of this jurisdiction that carries a maximum penalty of imprisonment for 3 years or more, or	27 28
(b)	any other offence against the law of this jurisdiction that is prescribed by the regulations.	29 30
	<i>suspect</i> , 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.	31 32 33 34

(2)	For the purposes of this Part, references in this Act:	1
(a)	to a <i>controlled activity</i> are to be construed (with any necessary modifications) as references to <i>controlled conduct</i> , and	2 3 4
(b)	to <i>criminal activity or corrupt conduct</i> as a single phrase (but not to <i>criminal activity</i> on its own) are to be construed (with any necessary modifications) as references to a <i>relevant offence</i> .	5 6 7 8
20C	Applications for authorities to conduct cross-border controlled operations	9 10
(1)	An application under section 5 for an authority to conduct a proposed cross-border controlled operation:	11 12
(a)	must be made to the chief executive officer of the law enforcement agency concerned, and	13 14
(b)	must state that the proposed controlled operation is a cross-border controlled operation, and	15 16
(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.	17 18 19
(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.	20 21 22 23 24
(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.	25 26 27 28
(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.	29 30 31 32
20D	Determination of applications for authorities to conduct cross-border controlled operations—additional criteria to be met	33 34
(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).	35 36 37 38

- (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

periods of 72 hours and 6 months specified in those paragraphs
were periods of 7 days and 3 months, respectively. 1
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20G Variation of authorities 3

- (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). 4
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- (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). 8
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- (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. 13
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- (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. 17
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- (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. 20
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**20H Effect of authorities to conduct cross-border controlled
operations 25
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- (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). 27
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- (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. 32
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20I Documents relating to cross-border controlled operations 35

The chief executive officer of a law enforcement agency must
cause the following to be kept in relation to cross-border
controlled operations: 36
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(a)	each formal application made by a law enforcement officer of the agency,	1 2
(b)	each formal application granted to a law enforcement officer of the agency,	3 4
(c)	each formal variation application made by a law enforcement officer of the agency,	5 6
(d)	each formal variation of application granted to a law enforcement officer of the agency,	7 8
(e)	each order cancelling an authority granted to a law enforcement officer of the agency,	9 10
(f)	each report of a principal law enforcement officer of the agency under section 15 or 20Q (1).	11 12
20J	Register relating to cross-border controlled operations	13
(1)	The chief executive officer of a law enforcement agency must cause a register relating to cross-border controlled operations to be kept.	14 15 16
(2)	The register is to specify the following:	17
(a)	for each application (including an application for a variation of authority) made under this Act in respect of a cross-border controlled operation:	18 19 20
(i)	the date of the application, and	21
(ii)	whether the application was formal or urgent, and	22
(iii)	whether the application was granted, refused or withdrawn, and	23 24
(iv)	if the application was refused or withdrawn—the date and time of the refusal or withdrawal,	25 26
(b)	for each authority granted to a law enforcement officer of the agency in respect of a cross-border controlled operation:	27 28 29
(i)	the date and time the authority was granted, and	30
(ii)	whether the authority was formal or urgent, and	31
(iii)	the name and rank or position of the chief executive officer, and	32 33
(iv)	each relevant offence in respect of which controlled conduct under the authority was to be engaged in, and	34 35 36
(v)	the period of validity of the authority, and	37
(vi)	if the authority was cancelled, the date and time of the cancellation, and	38 39

(vii)	the date and time the authorised operation began and the date of completion of the operation, and	1 2
(viii)	the date on which the principal law enforcement officer for the operation made a report under section 15, and	3 4 5
(ix)	if the authorised operation involved illicit goods, to the extent known:	6 7
(A)	the nature and quantity of the illicit goods, and	8 9
(B)	the route through which the illicit goods passed in the course of the operation, and	10 11
(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,	12 13 14
(c)	for each variation of authority:	15
(i)	the date and time the variation was made, and	16
(ii)	whether the variation was formal or urgent, and	17
(iii)	the name and rank or position of the chief executive officer who made the variation.	18 19
20K	Protection from criminal responsibility for controlled conduct during authorised operations	20 21
(1)	Section 16 (Lawfulness of controlled activities) does not apply in relation to an authorised operation that is a cross-border controlled operation.	22 23 24
(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:	25 26 27 28 29 30
(a)	the conduct is authorised by, and is engaged in in accordance with, the authority for the operation, and	31 32
(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	33 34 35 36
(c)	the conduct does not involve the participant's engaging in any conduct that is likely:	37 38
(i)	to cause the death of, or serious injury to, any person, or	39 40

	(ii) to involve the commission of a sexual offence against any person, and	1 2
	(d) the participant is a civilian participant—he or she acts in accordance with the instructions of a law enforcement officer.	3 4 5
20L	Protection from criminal responsibility for certain ancillary conduct	6 7
	(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.	8 9 10
	(2) This section applies to conduct such as aiding and abetting the commission of an offence or of conspiring to commit an offence (<i>ancillary conduct</i>) 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 <i>related controlled conduct</i>).	11 12 13 14 15 16 17
	(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.	18 19 20 21 22 23 24
20M	Indemnification of participants against civil liability	25
	(1) Section 19 (Exclusion of civil liability) does not apply in relation to an authorised operation that is an authorised cross-border controlled operation.	26 27 28
	(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.	29 30 31
	(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:	32 33 34 35
	(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	36 37 38
	(b) the conduct does not involve the participant’s intentionally inducing a person to commit an offence under a law of any	39 40

	jurisdiction or the Commonwealth that the person would not otherwise have intended to commit, and	1
		2
(c)	the conduct does not involve the participant's engaging in any conduct that is likely:	3
		4
	(i) to cause the death of, or serious injury to, any person, or	5
		6
	(ii) to involve the commission of a sexual offence against any person, and	7
		8
(d)	the participant is a civilian participant—he or she acts in accordance with the instructions of a law enforcement officer, and	9
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(e)	the relevant requirements (if any) of the regulations have been met.	12
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20N	Effect of sections 20K and 20L on other laws relating to criminal investigation	14
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	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:	16
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	(a) the arrest or detention of individuals,	20
	(b) searches of individuals,	21
	(c) entry onto, or searches or inspections of, premises,	22
	(d) searches, inspections or seizures of other property,	23
	(e) forensic procedures,	24
	(f) electronic surveillance devices or telecommunications interception,	25
		26
	(g) identification procedures,	27
	(h) the use or acquisition of assumed identities,	28
	(i) any other matter concerning powers of criminal investigation.	29
		30
20O	Effect of being unaware of variation or cancellation of authority	31
(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:	32
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	(a) is unaware of the variation, and	36
	(b) is not reckless about the existence of the variation.	37

- (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.

(2)	The chief executive officer must take all reasonable steps to notify the owner of the property of the loss or damage.	1 2
(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:	3 4 5
(a)	compromise or hinder the authorised operation, or	6
(b)	compromise the identity of a participant in the authorised operation, or	7 8
(c)	endanger the life or safety of any person, or	9
(d)	prejudice any legal proceeding, or	10
(e)	otherwise be contrary to the public interest.	11
20R	Unauthorised disclosure of information	12
(1)	A person is guilty of an offence if:	13
(a)	the person intentionally, knowingly or recklessly discloses any information, and	14 15
(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	16 17 18
(c)	the person knows that, or is reckless as to whether, the disclosure is not made:	19
(i)	in connection with the administration or execution of this Part or a corresponding law, or	20 21 22
(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	23 24 25 26
(iii)	in accordance with any requirement imposed by law.	27 28
	Maximum penalty: Imprisonment for 2 years.	29
(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:	30 31 32
(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	33 34 35 36
(b)	knows that, or is reckless as to whether, the disclosure of the information:	37 38

(i)	endangers, or will endanger, the health or safety of any person, or	1 2
(ii)	prejudices, or will prejudice, the effective conduct of a cross-border controlled operation or corresponding authorised operation.	3 4 5
	Maximum penalty: Imprisonment for 10 years.	6
(3)	An offence against subsection (2) is to be prosecuted on indictment. However, Chapter 5 of the <i>Criminal Procedure Act 1986</i> (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.	7 8 9 10 11
20S	Mutual recognition of corresponding authorities	12
	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:	13 14 15 16 17
(a)	section 13 (Effect of authorities),	18
(b)	section 13A (Defect in authority),	19
(c)	section 20H (Effect of authorities to conduct cross-border controlled operations),	20 21
(d)	section 20K (Protection from criminal responsibility for controlled conduct during authorised operations),	22 23
(e)	section 20L (Protection from criminal responsibility for certain ancillary conduct),	24 25
(f)	section 20M (Indemnification of participants against civil liability),	26 27
(g)	section 20N (Effect of sections 20K and 20L on other laws relating to criminal investigation).	28 29
[10]	Section 21 Ombudsman to be notified of certain matters	30
	Insert “(other than a retrospective authority)” after “an authority” in section 21 (1) (a).	31 32
[11]	Section 21 (1A) and (1B)	33
	Insert after section 21 (1):	34
(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.	35 36 37 38

(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.	1 2 3
[12] Section 29		4
	Omit the section. Insert instead:	5
29 Delegations		6
(1)	Except as provided by this section (and despite any other Act or law to the contrary):	7 8
(a)	the functions of a chief executive officer under this Act may not be delegated to any other person, and	9 10
(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.	11 12 13
(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:	14 15 16
(a)	in the case of NSW Police:	17
(i)	to a police officer for the time being holding office as a Deputy Commissioner or an Assistant Commissioner, and	18 19 20
(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),	21 22 23 24 25 26
(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.	27 28 29 30
(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.	31 32 33
(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.	34 35 36 37

(5)	Subsection (4) does not apply in respect of the delegation of the functions of the chief executive officer of the Australian Crime Commission.	1 2 3
(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.	4 5 6
[13]	Section 30 Proceedings for offences	7
	Insert “(other than an offence under section 20R (2))” after “this Act”.	8
[14]	Section 32 Review of Act	9
	Insert after section 32 (5):	10
(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 <i>Law Enforcement (Controlled Operations) Amendment Act 2006</i> .	11 12 13
(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).	14 15 16 17
[15]	Section 33	18
	Insert after section 32:	19
	33 Savings and transitional provisions	20
	Schedule 2 has effect.	21
[16]	Schedule 2	22
	Insert after Schedule 1:	23
	Schedule 2 Savings and transitional provisions	24
	(Section 33)	25
	Part 1 Preliminary	26
	1 Regulations	27
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	28 29 30
	<i>Law Enforcement (Controlled Operations) Amendment Act 2006</i>	31

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- (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. 1
2
- (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: 3
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- (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 6
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- (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. 9
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Part 2 Provision consequent on enactment of Law Enforcement (Controlled Operations) Amendment Act 2006 12 13 14

2 Existing delegations 15

- (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. 16
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- (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. 19
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- (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. 23
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- 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. 27
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- (4) In this clause, *the amending Act* means the *Law Enforcement (Controlled Operations) Amendment Act 2006*. 31
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Schedule 2	Amendment of Law Enforcement (Controlled Operations) Regulation 1998	1
		2
	(Section 4)	3
Clause 13		4
Omit the clause. Insert instead:		5
13 Delegations: section 29		6
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:		7 8 9
(a) in respect of the Independent Commission Against Corruption—the position of Assistant Commissioner,		10 11
(b) in respect of the Police Integrity Commission—the position of Assistant Commissioner,		12 13
(c) in respect of the New South Wales Crime Commission—the position of Director,		14 15
(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,		16 17 18 19
(e) in respect of the Australian Crime Commission:		20
(i) the position of Director National Operations,		21
(ii) the position of General Manager National Operations,		22 23
(iii) the position of an SES employee or acting SES employee (within the meaning of the <i>Australian Crime Commission Act 2002</i> of the Commonwealth) of the Commission,		24 25 26 27
(f) in respect of the Australian Customs Service—the position of Regional Director (New South Wales).		28 29

Schedule 3	Amendment of Criminal Procedure Act 1986	1
		2
	(Section 5)	3
Schedule 1	Indictable offences triable summarily	4
	Insert after clause 10A in Table 2:	5
10B	Unauthorised disclosure of information	6
	An offence under section 20R (2) of the <i>Law Enforcement (Controlled Operations) Act 1997</i> .	7
		8