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AFP National Guideline on controlled operations under Commonwealth law

1. Disclosure and compliance

This document is classified **For Official Use Only** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on information management](#).

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the conduct expected of AFP appointees. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth).

2. Guideline authority

This guideline was issued by Deputy Commissioner Capability using power under s. 37(1) of the [Australian Federal Police Act 1979](#) (Cth) as delegated by the Commissioner under s. 69C of the Act.

3. Introduction

This guideline sets out the obligations and responsibilities of AFP appointees in relation to the use of controlled operations. The procedures herein have been designed to achieve compliance with Part IAB of the Crimes Act, AFP best practice in the administration and authorisation of controlled operations and to ensure statutory reporting requirements are met.

This guideline relates to controlled operations under Commonwealth law and should be read in conjunction with the Crimes Act and relevant AFP guidelines and s 47E(d) listed in the references section of this guideline.

To assist investigators with best practice and the use of controlled operations, advice related to controlled operations, including s 47E(d) is available on the [Investigator's Toolkit](#).

4. Policy

The AFP's effective management of controlled operations ensures:

- that appropriate authorisation, conduct and monitoring of controlled operations occurs
- exemption from criminal responsibility and indemnity from civil liability for law enforcement and civilian participants who act in accordance with the controlled operation authority

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- admissible evidence in judicial proceedings in accordance with the [Evidence Act 1995](#) (Cth) and similar state and territory legislation
- compliance with the [Crimes Act 1914](#) (Cth) (Crimes Act) and reporting obligations to the Minister and Ombudsman as per Part IAB Division 4 Compliance and Monitoring requirements of the Crimes Act are met.

5. Roles and responsibilities

5.1 Administrative Appeals Tribunal

Only a nominated tribunal member may extend the period of effect of an authority beyond 3 months. Additionally, extensions to the period of effect are the only variation that a nominated tribunal member can approve. A nominated tribunal member cannot approve variations to conduct or participants.

5.2 AOCC Watchfloor

Outside business hours, the AOCC Watchfloor may provide the on-call contact numbers for the [REDACTED] s 47E(d) or relevant functional management if required.

5.3 Applicant

AFP applicants must ensure that the correct templates are used when completing controlled operation documentation and that all required information is provided to the authorising officer (AO) for consideration of the application or variation application.

Applicants must ensure that all controlled operation documentation is added to the PROMIS case as [REDACTED] s 47E(d)

5.4 Authorising officer

When granting an authority, the AO must ensure that s. 15G1(2) of the Crimes Act has been satisfied and that the commencement and duration of the authority is calculated correctly.

Only the Commissioner or a Deputy Commissioner (or a person performing the duties of Commissioner or Deputy Commissioner) may authorise or vary a major controlled operation.

A controlled operation authority may be granted by a senior executive AFP employee (see s. 25 of the AFP Act), who is an AFP member (must be an AFP sworn police officer), and is performing the duties of one of the positions listed on the the [REDACTED] s 47E(d) INFORMATION PUBLICATION SCHEME (IPS)

In the circumstances where an AFP member (must be an AFP sworn police officer) is acting in the position of commander, a 'Declaration of an AFP employee to be a senior executive AFP employee', under section 25 of the [Australian](#)

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Federal Police Act (Cth), is required **prior** to authorising, varying or cancelling controlled operations.

5.5 Commonwealth Ombudsman

The Commonwealth Ombudsman's office inspects the AFP's controlled operations records to determine compliance with the Crimes Act and identifies administrative errors and breaches of the legislation. The Commonwealth Ombudsman reports its findings and recommendations to the Minister and Parliament annually.

5.6 Controlled operations committee

The controlled operations committee must conduct a final review of controlled operation

s 47E(d)

s 47E(d)

to ensure the documents:

- meet operational requirements
- comply with legislative requirements.

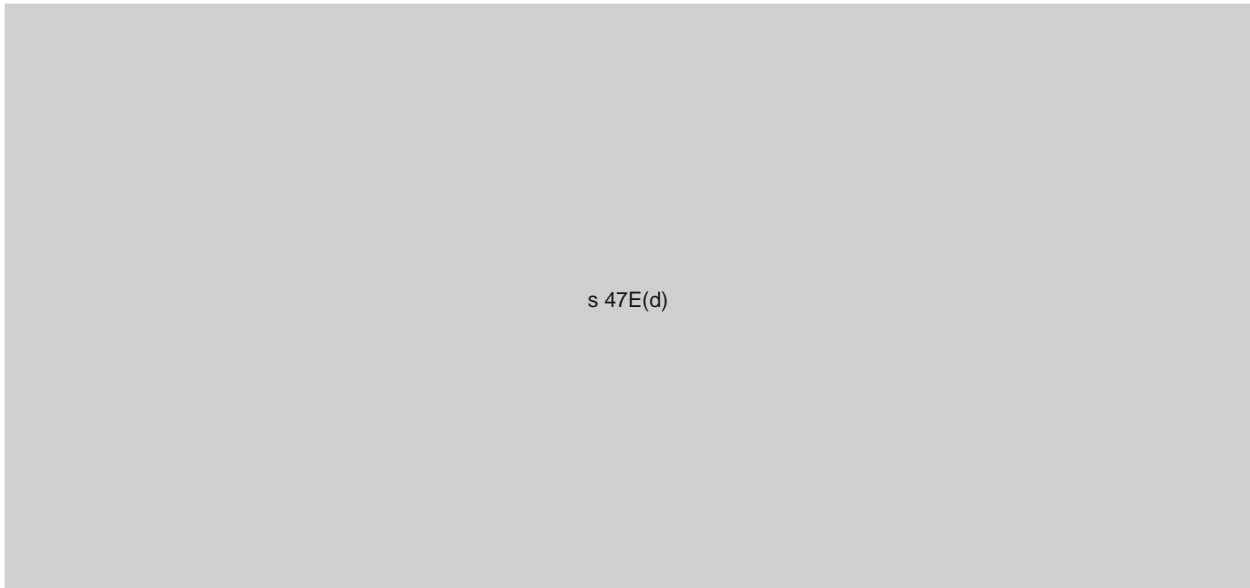
s 47E(d)

| Member | Primary roles |
|---|---|
| Responsible functional coordinator (or team leader nominated by that coordinator) | The Committee Chair must ensure the: <ul style="list-style-type: none">• content of the proposed application and authority meets the requirements of Part IAB of the Crimes Act• correct offences are listed and the application is factually correct• targets, if known, are listed• participants are identified in the documents• controlled conduct identified for the participants covers the proposed activity• proposed conduct and risk management are aligned• there are sufficient resources available to conduct the controlled operation• requested time frame is justified for the controlled operation. |
| Independent coordinator (or an experienced team leader nominated by that coordinator) | The independent committee member must: <ul style="list-style-type: none">• assist in the review of the application and authority with the Chair (Responsible functional coordinator) s 47E(d) in relation to the above and any other required operational considerations |
| s 47E(d) | s 47E(d) |

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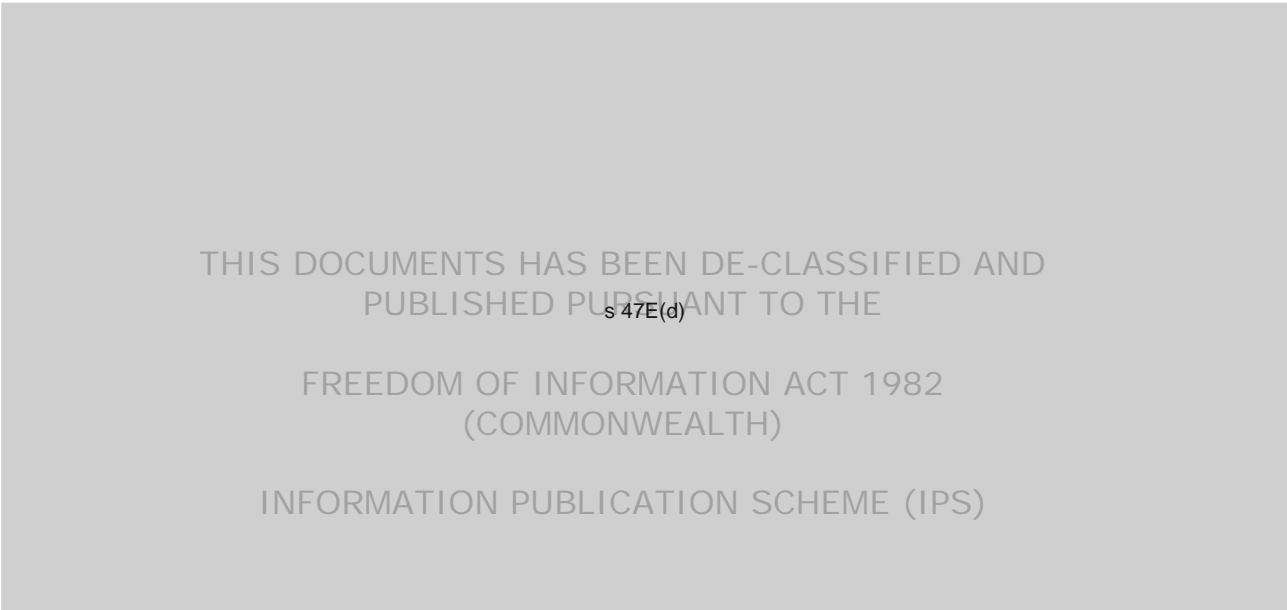


5.8 Minister for Home Affairs

The Commissioner s 47E(d) must report both on a six-monthly and an annual basis to the Minister in relation to controlled operations that have expired. The Minister must table the annual report to Parliament.

5.9 Principal law enforcement officer (PLEO)

The PLEO is responsible for the controlled operation and must ensure all participants act in accordance with the authority.



6. Controlled operation documentation

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The risks associated with an absence of, or defects in, controlled operation documentation may be that:

- evidence relied upon in a prosecution of an individual is ruled as inadmissible
- the Commonwealth Ombudsman may review controlled operations authorities issued by the AFP and may make adverse findings against the AFP in regards to authorities being invalid
- the criminal and civil liability of participants is not indemnified under Part IAB of the Crimes Act.

6.1 Templates

Applicants must use the correct templates for all controlled operation documentation. The templates are located within the s 47E(d) section of the Investigator's Toolkit.

s 47E(d)

6.2 Quality assurance review of documents

The purpose of the quality assurance review is to ensure that:

- legislative reporting requirements are met
- AFP best practice procedures have been followed
- the applicant has used the correct template
- the documents are correctly formatted.

s 47E(d)

6.3 Controlled operations committee consideration

A controlled operations committee consideration must be undertaken for formal:

- applications and authorities
- AFP/AAT variation applications and authorities.

s 47E(d)
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6.4 Endorsement of documents by authorising officer

Determination of applications

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The AO must not grant an authority to conduct a controlled operation unless they are satisfied, on reasonable grounds, that the conditions listed under s. 15GI(2) of the Crimes Act have been met.

Additionally, an AO must ensure when granting a variation of authority that s. 15GQ(2) of the Crimes Act has been satisfied.

Form of authority

The AO must ensure the period of effect of the authority is calculated correctly using the s 47E(d)

The AO must ensure any conditions they impose on the authority are recorded on the authority document.

For further information on the approval of controlled operations refer to s 47E(d) section of the Investigator's Toolkit.

7. Record keeping

The following documentation must be appropriately retained by the SCT in relation to all controlled operations:

- controlled operation application and authority
- AFP/AAT variation application and authority
- change of PLEO
- cancellation by AO or PLEO
- s 47E(d)
- notification and/or requests for exemption from scrutiny from Australian Border Force
- any file notes which relate to the controlled operation.

7.1 PROMIS

Applicants must ensure that all controlled operation documentation is added to the PROMIS case as s 47E(d)

7.2 Original documents

Applicants must provide all original documents to the s 47E(d) who must retain documents in accordance with the applicable AFP and Commonwealth policies and having regard to the security classification.

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s 47E(d)
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8. Legislative requirements

8.1 Basis on which an authority may be issued

Section 15GI of the Crimes Act sets out the basis on which a controlled operation authority may be issued.

The controlled operations committee must consider the merits of the controlled operation against the provisions of s. 15GI and record their views on the committee consideration form.

8.2 Exemptions to immunity and indemnity

The protection provided by a controlled operation authority only applies if the participant engages in the controlled conduct in accordance with the authority and that conduct does not involve:

- intentionally inducing a person to commit an offence that the person would not otherwise have intended to commit
- engaging in any conduct that is likely to:
 - cause the death of, or serious injury to, any person
 - involve a sexual offence against any person.

If the participant is a civilian participant there is also a requirement that they act in accordance with the instructions of a law enforcement officer when undertaking controlled conduct.

The protection does not apply to a person believed to have been involved, other than for law enforcement purposes, in previous criminal activity relating to the controlled operation.

The Crimes Act provides equivalent protection from criminal liability for participants in controlled operations authorised under a corresponding state controlled operations law.

8.3 Other laws relating to criminal investigation

The protection provided by a controlled operation authority does not apply to a person's conduct where it could have been authorised under Commonwealth law or a law of a state or territory relating to the following:

- arrest or detention of individuals
- searches of individuals
- entry onto, or searches or inspection of, premises
- searches, inspections or seizures of other property
- forensic procedure
- electronic surveillance devices or telecommunications interception

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- identification procedures
- the acquisition or use of assumed identities
- any other matter concerning powers of criminal investigation.

s 47E(d)

8.4 Mandatory notification to Australian Border Force

If the applicant believes illicit goods involved in the controlled operation may be dealt with by ABF, the applicant must, as soon as practicable after being notified that the authority has been granted, inform ABF in writing of:

- the applicant's name and contact details
- the date on which the authority was given
- to the extent known:
 - the place(s) at which the illicit goods will pass into the control of ABF
 - the time(s) when, and the day(s) on which, the illicit goods are expected to pass into the control of ABF.

Where the applicant does not know details of the nature of the illicit goods, the applicant must notify ABF of this. After the notification has occurred, the applicant is not obliged to update ABF; however, they may choose to do so.

Form of notification

The applicant must use a s 47E(d) to notify ABF and also provide a copy of the authority to ABF. The form can be found in the s 47E(d) section of the Investigator's Toolkit.

Subject to the security classification of the information provided, the applicant must:

- email, fax or hand-deliver the documents to the Australian Border Operations Centre (ABOC)
- phone the ABOC to ensure the documents have been received.

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s 47E(d)

8.5 ABF participation in controlled operations

ABF officers, as law enforcement officers, when listed as participants on the controlled operation documents receive the same protections from prosecution and civil liability as AFP members.

Generally, ABF intercept, inspect and seize packages or cargo in accordance with its standard procedures. s 47E(d)

s 47E(d)

9. Reporting and scrutiny

9.1 Biannual reports

In accordance with s. 15HM of the Crimes Act, the Commissioner must report to the Minister and Commonwealth Ombudsman as soon as practicable after 30 June and 31 December each year.

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9.2 Commonwealth Ombudsman

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Under s. 15HM(5) of the Crimes Act, when a report is given to the Minister, a copy of that report must be provided to the Commonwealth Ombudsman simultaneously. s 47E(d)

s 47E(d)

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9.3 Inspection of records

Section 15HS of the Crimes Act requires the Commonwealth Ombudsman to inspect AFP records in relation to controlled operations, at least once every 12 months to ascertain that the AFP are complying with the requirements of the Crimes Act.

The Commonwealth Ombudsman is not required to inspect records of controlled operations that have not been completed.

s 47E(d)

9.4 Annual report

In accordance with s. 15HN of the Crimes Act, the Commissioner must report to the Minister as soon as practicable after 30 June each year.

The s 47E(d) prepares the report on behalf of the Commissioner using the held controlled operations documents and information received from case officers.

The Minister must provide this annual report to each House of the Parliament within 15 sitting days of that House after the Minister receives it.

10. Controlled operation process

10.1 Application and authority

When applying for a controlled operation authority, the applicant must use the prescribed templates. The templates are located in s 47E(d) in the AFP Investigator's Toolkit.

An AO can only grant a formal authority for a controlled operation that has been the subject of a previous authority.

The templates must be completed with all required information to enable the AO to properly consider whether or not to grant an authority.

s 47E(d)

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10.2 Formal applications

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A formal application must be made by means of a written document using the prescribed templates. Templates are located in s 47E(d) in the AFP Investigator's Toolkit.

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A formal controlled operation authority may only be issued for a period of 3 months.

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The process for applying for a formal authority can be found in s 47E(d) s 47E(d) in the AFP Investigator's Toolkit.

10.3 Urgent applications

If an applicant believes that the delay caused by making a formal application may affect the success of the controlled operation, there is power under the Crimes Act to make an urgent application to the AO for a controlled operation. Urgent applications are able to be made orally in person, or by telephone, or by any other means of communication.

s 47E(d)

An urgent controlled operation authority **may only be issued for a period of 7 days**.

When an applicant requests an urgent application for a controlled operation, a written urgent application and authority must be completed by the applicant, and signed by the AO within 7 days.

Applicants must use the prescribed templates when completing the written record of an urgent application of a controlled operation. The templates are located in s 47E(d) in the AFP Investigator's Toolkit.

If an operation that was authorised under an urgent authority needs to be continued, a new formal application must be made, with a formal authority granted.

The process for applying for an urgent authority can be found in s 47E(d) s 47E(d) in the AFP Investigator's Toolkit.

10.4 Integrity testing authority

Part IABA of the Crimes Act provides a regime for the authorisation of integrity testing operations that are designed to test the integrity of staff using controlled or simulated situations. These operations can be authorised only if there is a reasonable suspicion that a staff member has committed, is committing, or is likely to commit, an offence punishable on conviction by imprisonment for 12 months or more.

If an integrity testing authority is in effect, an AO may issue a controlled operation in relation to the integrity testing authority. The controlled operation authority document must identify the integrity testing authority and the application should include a copy of the integrity testing authority.

s 47E(d)

10.5 AFP variation

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An Australian law enforcement officer may apply to an AO for a variation to the controlled operation authority. An AFP variation may only be requested to:

- extend the period of effect of the authority up to a total period of 3 months from the date the authority was issued
- authorise additional participants to engage in controlled conduct
- authorise existing participants to engage in additional or alternative controlled conduct
- provide that specified persons are no longer authorised to engage in controlled conduct for the purposes of the controlled operation.

The AFP variation application does not have to be submitted to the same AO who issued the authority, but this should occur where it is practicable and beneficial to do so.

10.6 Formal variations

The PLEO, or any other Australian law enforcement officer acting on behalf of the PLEO, may apply to an appropriate AO for a variation of an authority in respect of the matters listed above.

A formal AFP variation application must be made by means of a written document using the prescribed templates. Templates are located in s 47E(d) s 47E(d) in the AFP Investigator's Toolkit.

10.7 Urgent variations

If an applicant believes the delay caused by making a formal application may affect the success of the controlled operation, there is power under the Crimes Act to make an urgent variation. Urgent variation applications will only be able to be made orally in person, or by telephone, or by any other means of communication.

If the urgent variation application is seeking a variation of the period of effect of an authority it will be required to state the proposed period of the extension, which must not exceed the lesser of seven days or the period that would result in the total duration of the controlled operation exceeding three months.

When an applicant applies for an urgent AFP variation, a written record of the variation application and authority should be completed and signed by the AO within 7 days of the verbal authority being granted. s 47E(d)

s 47E(d)

Applicants must use the prescribed templates when completing the written record of an urgent AFP variation application and authority.

After an urgent variation is applied for, the next variation must be a formal variation application.

For further information and templates refer to s 47E(d) in the AFP Investigator's Toolkit.

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10.8 Material change

A variation must not be used:

- to effect a material change to the authority
- where it would materially change the risks involved.

The Crimes Act prevents an authority being varied if the variation authorises a significant alteration to the nature of the controlled operation, including an alteration that would change the nature of the criminal offence(s). It does not prevent the authority being varied if the variation authorises a significant alteration to the controlled conduct within that controlled operation. For example, a controlled operation which authorised dealing with controlled substances should not be varied to authorise negotiations about terrorist activities. A new authority should be sought for conduct relating to the terrorism investigation, keeping the original controlled operation active in relation to the investigation involving controlled substances.

Guidance can be taken from s. 15GE(2) of the Crimes Act. If the purpose of the investigation changes from one matter in that subsection to another, and the second matter is not covered by the existing authority, then, in all likelihood, there will have been a significant variation to the controlled operation, and it would be prudent to seek to obtain a new authority.

10.9 Purpose for variation

An AFP variation may only be issued if the AO is reasonably satisfied that the variation is necessary for one or more of the following purposes:

- the success of the controlled operation
- the protection of the health or safety of any person
- the protection of property from loss or damage
- ensuring that those involved have appropriate exemption and indemnity
- does not result in a significant alteration.

An AFP variation **must not** extend the period of effect of the authority beyond 3 months from the date of issue. Additionally, an AFP variation **must not** extend the period of effect of an urgent authority beyond 7 days.

10.10 Change to contents of an application

There is no power in the Crimes Act to vary the contents of a controlled operation application.

There is no explicit legislative obligation to notify the AO who issued the authority if the circumstances of a controlled operation change from those detailed in the application if both:

- the authority continues to provide sufficient coverage for the operation

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- all of the matters in s. 15GI continue to be satisfied.

Nevertheless, AFP appointees should consider:

- notifying the AO that the circumstances have changed
- seeking the AO's continued support to proceed with the controlled operation.

This may be done via an executive brief to the AO.

For further information on the process of applying for a formal AFP variation or an urgent AFP variation refer to s 47E(d) in the AFP Investigator's Toolkit.

10.11 Administrative Appeals Tribunal variation

In certain circumstances, a controlled operation that was issued for a period of 3 months, even which was not likely to extend beyond 3 months, may be extended by a nominated tribunal member.

Where a controlled operation authority has been issued and does not conclude within 3 months of issue, the authority must be varied by a nominated tribunal member.

A single variation must not extend the period of effect of an authority for:

- more than 3 months at a time
- in such a way that the period of effect of the authority will exceed 24 months.

Variations may only be requested from nominated tribunal members during the last 2 weeks of the period of effect. Where a variation does not take place, the controlled operations authority ceases to be in effect at the end of the period of effect.

Should an urgent variation be applied for, this may be done in person, by telephone, or by any other means of communication and must not:

- extend the period of effect by more than 7 days
- in such a way that the period of effect of the authority will exceed 24 months.

After an urgent variation is applied for, the next variation must be a formal variation application.

Where a controlled operation has reached the maximum duration (24 months), the Crimes Act provides that a new formal authority may be granted to continue the operation. This provides the AFP with the flexibility to reopen or continue long and complex investigations.

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For further information on applying for an AAT variation refer to s 47E(d) in the AFP Investigator's Toolkit.

10.12 Change of principal law enforcement officer

If during the course of a controlled operation the PLEO ceases to have responsibility for the controlled operation, s 47E(d) must be completed and submitted to an AO for signature.

If the PLEO is to be changed at the same time as a variation the s 47E(d) must be signed before the variation.

For further information on the change of PLEO process, refer to s 47E(d) in the AFP Investigator's Toolkit.

10.13 Cancellation or expiration

A controlled operation authority ceases to be in force where the authority:

- is cancelled by:
 - an AO
 - the PLEO
- expires in accordance with the date specified on the authority where a variation is:
 - not sought from the nominated tribunal member
 - sought from the AAT, but refused.

10.14 Ceasing an authority

AFP appointees must cancel an authority if it is no longer required, particularly when there are more than 7 days remaining on the authority.

When ceasing an authority, the applicant must consider the following:

- Cancellation of an authority should be by an AO to allow operational oversight and control by management (cancellation may be effected by any AO).
- The PLEO must cancel an authority if it is materially deficient and cannot be varied to rectify the deficiency (e.g. it was issued in the wrong format).
- An authority must not be left to expire if the authority is not required and the expiry date is more than 7 days into the future.

For further information on the cancellation process, refer to s 47E(d) in the AFP Investigator's Toolkit.

Date and time at which an authority ceases

The table below explains when an authority ceases:

| Cessation mechanism | Cessation date and time |
|---------------------|-------------------------|
|---------------------|-------------------------|

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|---|---|
| Cancelled by an AO or PLEO | As per the time and date stated on the cancellation document. |
| Expiry in accordance with the authority or variation of authority | Midnight on the date of expiry. |
| Expiry where a nominated tribunal member decides the authority should not be extended beyond three months | Midnight on the date of expiry. |

s 47E(d)

10.16 Rejected applications or variations

If an AO refuses an application for an authority or variation to an authority, the reasons for this decision must be reported by the s 47E(d) to the Minister in the six-monthly s. 15HM report.

Upon receiving notification that an application has been refused, the applicant must immediately request the AO to make a written record of their reasons for the decision. The AO must provide a written record of their decision to the applicant. The AO may choose any written format (e.g. a diary record, write the reasons on the application, etc.).

Similarly, the reasons for a decision by the nominated tribunal member that an authority should not continue to be in force for more than 3 months must be reported to the Minister. The applicant must request the nominated tribunal member to provide written reasons for the decision.

11. Participants

In order to be covered by the immunity and indemnity provisions, the controlled operation authority must identify the individual:

- law enforcement officers and the agency for which they work, and the nature of the controlled conduct they may engage in
- persons and either their employment role or further identifying details (such as, date of birth), and the particulars of the controlled conduct they may engage in.

11.1 Undercover operatives and human sources

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Where a controlled operation involves the use of undercover operatives or human sources, the applicant must consult with the [REDACTED] s 47E(d)

[REDACTED] s 47E(d) If human sources or undercover operatives are to be used in a controlled operation, the applicant must also refer to the:

[REDACTED] s 47E(d)

[REDACTED] s 47E(d)

11.2 Civilian participants

Civilian participants must only be used where the role to be performed by that person could not adequately be performed by a law enforcement officer. The two most common examples are where the participant:

- is known to the targets and could not be substituted with a law enforcement officer
- has a unique skill or knowledge (such as, foreign language skills, or access to a commercial courier's tracking system).

Human sources are classified as civilian participants for the purposes of a controlled operation.

11.3 Identifying civilians in the authority

The authority must:

- explain why the role of the civilian could not be performed by a law enforcement officer
- identify the civilian participant, including their employment role.

For example, "an Australia Post employee" is insufficient. "Joe Citizen, Branch Manager, Australia Post" is more appropriate. False names or codes may only be used per s. 11.6 below.

11.4 Conditions for immunity

Civilian participants receive the same immunities and indemnities as law enforcement officers provided the:

- civilian participant acts in accordance with the instructions of law enforcement officers

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- authority:
 - states the particular controlled conduct that each participant may engage in
 - identifies each participant as a person authorised to engage in the controlled conduct for the purposes of the controlled operation
 - does not involve conduct as outlined in s. 8.2 above.

Where a civilian participant breaches the activities identified by the authority, such actions are not indemnified.

11.5 Information and undertaking

Prior to undertaking conduct covered by the authority, the PLEO must ensure that the civilian participant is clearly informed of:

- their role under the authority (particularly the boundaries they must operate within)
- the extent to which the immunity and indemnity provided by the authority will apply
- the consequences of operating outside the boundaries of the authority.

The PLEO must ensure that the civilian participant's understanding is documented.

Where a civilian participant breaches the activities identified by the authority:

- their overall participation in the controlled operation should be reviewed by the PLEO
- advice must be sought from AFP Legal where appropriate.

11.6 Referring to civilians by false names or codes

Under the Crimes Act, a civilian participant may be identified on an authority by a false name or code. This should only occur where disclosing the identity of a person may either endanger the safety of any person or prejudice an investigation.

False names and codes must be issued by one of the following:

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11.7 Identifying documents

The document identifying an individual by a false name or code must be retained by either the:

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- Commissioner of the AFP
- the Chief Officer of the Australian Commission for Law Enforcement Integrity or the Australian Criminal Intelligence Commission.

Where a human source will be covered by an authority and their identity is only known by another agency, the applicant must request that the agency confirm in writing that it is able to identify the human source.

s 47E(d)

11.9 Payments received by civilian participants or human sources

During a controlled operation, a civilian participant or human source may be paid money or provided goods for their services by persons involved in the commission of an offence. The safety of the civilian participant or human source may depend on their retention of such payment.

Prior to their involvement in a controlled operation, civilian participants and human sources must be advised that if they come into the possession of any money or tangible benefit(s) as a result of their involvement, they must advise the PLEO or human source handler at the earliest opportunity.

Subject to the continuing operational requirement for the participant to retain the monies or benefit, the PLEO or human source handler must, as soon as practicable:

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PERSONS SHOULD BE ALERT TO THE
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- record the person's receipt of the money or benefit(s) (refer to the s 47E(d))
 - seize any money or benefit not used or expended as a result of taking part in the controlled operation
 - lodge any money or benefit seized from the participant as an independent seizure in the controlled operation, using the participant's code number (if applicable).

Any such seized items should be considered for forfeiture to the Commonwealth by the PLEO.

12. Illicit goods and other property

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12.1 Recording illicit goods

Details of illicit goods must be:

- to the extent known, listed on the controlled operation authority
- reported to the Minister in the six monthly report at the conclusion of the operation
- provided in s 47E(d)

12.2 Classifying goods as 'illicit'

Illicit goods include drugs, child exploitation material and counterfeit currency, however some goods may be harder to classify. For example, money itself is not an illicit good; however, it is an illicit good if it is the proceeds of crime or an instrument of crime. Where there is any doubt about the classification of illicit goods, the applicant must seek advice from AFP Legal.

s 47E(d), s 37(2)(b)

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s 47E(d), s 37(2)(b)

13.4 Loss, destruction or compromise

If a person suffers loss of or serious damage to property, or personal injury, in the course, or as a direct result, of an authorised controlled operation (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation), the PLEO must report this to the Commissioner as soon as practicable in an executive brief.

The Commissioner must take reasonable steps to notify the injured person or the owner of the property. Notification is not required if the controlled operation could be compromised. Where possible, this information must be reflected in s 47E(d) s 47E(d)

Where a controlled operation is compromised or there is a loss or destruction of the illicit goods that are subjects of the controlled operation, the PLEO should immediately report the circumstances to the relevant manager in an executive brief. Where the manager is not the AO for the controlled operation, the AO should also be notified.

s 47E(d)

Appropriate security and property procedures should also be completed.

13.5 Handling of currency proceeds

Where a controlled operation results in the AFP or an AFP appointee taking into possession net amounts of bankable currency, that currency must initially be classified as an exhibit and paid into s 47E(d)

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16. Shortened forms

| | |
|-------------|-------------------------------------|
| AAT | Administrative Appeals Tribunal |
| ABF | Australian Border Force |
| AFP | Australian Federal Police |
| ABOC | Australian Border Operations Centre |
| AO | Authorising officer |
| AOCC | AFP Operations Coordination Centre |
| | s 47E(d) |
| PLEO | Principal law enforcement officer |
| | s 47E(d) |

17. Definitions

AFP appointee means a Deputy Commissioner, an AFP employee, special member or special protective service officer and includes a person:

- engaged overseas under s. 69A of the [Australian Federal Police Act 1979](#) (Cth) (AFP Act) to perform duties as an AFP employee
- seconded to the AFP under s. 69D of the AFP Act
- engaged under s. 35 of the AFP Act as a consultant or contractor to perform services for the AFP and determined under s. 35(2) of the AFP Act to be an AFP appointee.

(See s. 4 of the AFP Act.)

AFP member means an AFP employee in respect of whom a declaration under s. 40B of the [AFP Act](#) is in force (sworn police officer).

Applicant means an Australian law enforcement officer who applies for a controlled operation authority or variation of authority.

Authorising officer means the Commissioner, Deputy Commissioner or a senior executive AFP employee who is an AFP member and authorised in writing by the Commissioner to whom an application may be made to authorise a controlled operation as follows:

- **Major controlled operations may be authorised by:**
 - the Commissioner or a Deputy Commissioner

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- a person performing the duties of the Commissioner or Deputy Commissioner.
- **Controlled operations may be authorised by:**
 - the Commissioner or a Deputy Commissioner
 - a person performing the duties of the Commissioner or Deputy Commissioner
 - a senior executive AFP employee who is an AFP member and is **authorised in writing** by the Commissioner for this purpose. s 47E(d)

Authority means an authority (whether formal or urgent) to conduct a controlled operation granted under [s. 15GI of the Crimes Act](#), and includes any such authority as varied.

Civilian participant means a participant in a controlled operation who is not a law enforcement officer, including a human source.

Controlled conduct means an act, or an omission to perform an act, under an authority, which would normally constitute an offence and for which the person would, without the authority, be criminally responsible.

Controlled operation means an operation that:

- involves the participation of law enforcement officers
- is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious Commonwealth offence or a serious state offence that has a federal aspect
- may involve a law enforcement officer or other person in conduct that would, apart from s. 15HA of the Crimes Act, constitute a Commonwealth offence or an offence against a law of a state or territory.

Formal application means an application made in a written document signed by the applicant.

Formal authority means an authority made in a written document signed by the authorising officer.

Formal AAT variation application means a variation application, made in a written document signed by the applicant, to a nominated tribunal member to request an extension to the period of effect of an authority beyond three months.

Formal AAT variation of authority means a variation of authority granting an extension to the period of effect made in a written document signed by a nominated tribunal member.

Formal AFP variation application means a variation application, made in a written document signed by the applicant, requesting to add or remove

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participants, alter the controlled conduct authorised for existing participants, or extend the period of effect of the authority up to a maximum period of three months.

Formal AFP variation of authority means a variation of authority made in a written document signed by the authorising officer.

s 47E(d)

Human source is defined in

s 47E(d)

s 47E(d)

Illicit goods mean goods the possession of which is a contravention of a law of the Commonwealth, a state or a territory.

Law enforcement agency means, in relation to Part IAB of the Crimes Act, the AFP, the Australian Criminal Intelligence Commission, Australian Border Force, Australian Commission for Law Enforcement Integrity, or a police force of a state or territory.

Law enforcement officer means, in relation to Part IAB of the Crimes Act, any of the following:

- the Commissioner of the AFP, a Deputy Commissioner of the AFP, an AFP employee or a special member of the AFP (all within the meaning established by the AFP Act)
- a member of a police force of a state or territory or a foreign country
- a staff member of Australian Commission for Law Enforcement Integrity
- a member of the staff of the Australian Criminal Intelligence Commission
- an officer of the Australian Border Force.

Law enforcement participant means a participant in the controlled operation who is a law enforcement officer.

Major controlled operation is a controlled operation that is likely to:

- involve the infiltration of an organised criminal group by one or more undercover law enforcement officers for a period of more than 7 days
- continue for more than 3 months
- be directed against (suspected criminal) activity that includes a threat to human life.

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Minister means the Minister for Home Affairs.

Nominated tribunal member means a person who holds one of the following appointments to the AAT and is nominated by the Minister to deal with applications to extend authorities for controlled operations:

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- Deputy President
- full-time senior member
- part-time senior member
- member.

Ombudsman means the Commonwealth Ombudsman.

Participant means a participant in a controlled operation who is authorised to engage in controlled conduct for the purposes of the controlled operation.

Principal law enforcement officer means the Australian law enforcement officer specified in the authority who is in charge of, and responsible for, the conduct of the controlled operation. This person may change depending on the circumstances of the operation.

Senior executive AFP employee means an AFP employee in respect of whom a declaration under s. 25 of the AFP Act is in force.

Serious Commonwealth offence means an offence that both:

- involves a matter mentioned in s. 15GE(2) of the Crimes Act
- is punishable by imprisonment for a period of 3 years or more.

Serious state offence that has a federal aspect means a state offence that has a federal aspect and that would be a serious Commonwealth offence if it were a Commonwealth offence.

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Target means the subject of the controlled operation, about whom evidence is being, has been, or is intended to be, obtained.

Urgent application means an application that is made orally in person, or by telephone or any other means of communication, if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the controlled operation.

Urgent authority means an authority that is granted orally in person, or by telephone or any other means of communication, if the authorising officer is satisfied that the delay caused by granting a formal authority may affect the success of the controlled operation. The authority has a seven day period of effect (inclusive of the day granted). No extension of time is permissible.

Urgent AFP variation application means a variation application that is made orally in person, by telephone or any other means of communication, if the applicant has reason to believe that the delay caused by making a formal AFP variation application may affect the success of the controlled operation.

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Urgent AFP variation of authority means a variation of authority that is granted orally in person, by telephone or any other means of communication, if the authorising officer is satisfied that the delay caused by granting a formal AFP variation of authority may affect the success of the controlled operation.

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