

# Uncovering the use of undercover powers

**2023–24 Report to the Attorney–General on agencies’  
compliance with the *Crimes Act 1914* for:**

**Controlled Operations**

**Delayed Notification Search Warrants**

**Account Takeover Warrants**

Report by the Commonwealth Ombudsman, Iain Anderson,  
under sections 15HO of Part IAB, 3ZZGH of Part IAAA and 3ZZVX of Part IAAC of  
the *Crimes Act 1914* (Cth)

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## Our report at a glance



A **Controlled Operation** permits law enforcement and civilian participants to engage in certain conduct that would otherwise be unlawful, for the purpose of investigating a serious offence.

A **Delayed Notification Search Warrant** allows a covert search of premises to investigate certain terrorism offences, with the occupier of the premises being notified later.



An **Account Takeover Warrant** allows law enforcement to take control of an online account when investigating a serious offence.

### GOOD PRACTICES

Agencies proactively told us of instances where they had not complied with the legislation.

Effective lines of communication remained open between the agencies we oversee and our office.

### CONCERNS

Insufficient safeguards in place to use and internally oversee Controlled Operations

The conduct of one participant during a Controlled Operation was not authorised.

Delays in agency reporting to the Minister and finalising guidance documents.

# Executive summary

The *Crimes Act 1914* (the Act) provides law enforcement agencies with the framework to:

- take part in activity that would otherwise be unlawful, for the purpose of investigating a serious Commonwealth offence (Controlled Operation)
- covertly execute a search warrant and delay notifying the occupant that the search warrant has been executed (Delayed Notification Search Warrant), and
- takeover the online accounts of another person (Account Takeover Warrant).

The Act specifies the requirements that must be satisfied before those activities can be authorised and what agencies must do when undertaking those activities.

There are 3 law enforcement agencies in Australia that can use one or more of the powers under the Act.

Agency	Powers available to the agency
<b>Australian Criminal Intelligence Commission (ACIC)</b>	<ul style="list-style-type: none"><li>• Controlled Operation</li><li>• Account Takeover Warrant</li></ul>
<b>Australian Federal Police (AFP)</b>	<ul style="list-style-type: none"><li>• Controlled Operation</li><li>• Delayed Notification Search Warrant</li><li>• Account Takeover Warrant</li></ul>
<b>National Anti-Corruption Commission (NACC)</b>	<ul style="list-style-type: none"><li>• Controlled Operation</li></ul>

The powers are highly intrusive and impact the privacy of individuals. As the authorised activities are covert in nature, those whose privacy has been impacted are expected to be unaware of the actions of law enforcement agencies, thus removing the opportunity to challenge or complain about how the powers were used.

Except for delayed notification search warrants, the Ombudsman inspects and reports at least once every 12 months on agency's use of controlled operations and account take over warrants. The Ombudsman inspects and reports on the AFP's use of delayed notification search warrants every 6 months. This report presents a summary of our most significant findings from inspections conducted between 1 July 2023 and 30 June 2024 for use of controlled operations and account takeover warrants and from 1 January 2024 to 30 June 2024 for the use of delayed notification search warrants.

## Overview of Inspections

The statistics on our findings across these agencies are included in the table below. All our inspection findings are presented by agency in **Appendix A**.

Agency	Inspection Dates	No. of Findings	No. of Recommendations	No. of Suggestions
AFP <sup>1</sup>	October 2023 (Account Takeover Warrants)	0	0	0
	March 2024 (Account Takeover Warrants)	2	0	0
	June 2024 (Delayed Notification Search Warrant)	3	0	2
	June 2024 (Controlled Operations)	5	0	5
ACIC	April 2024 to May 2024 (Account Takeover Warrants)	0	0	0
		2	6	7

<sup>1</sup> We conducted 2 inspections of the AFP's use of Account Takeover Warrants during the reporting period



	(Controlled Operations)			
<b>NACC</b>	November to December 2023 (Controlled Operation)	<b>1</b>	0	0

## Room to improve

We observed 4 areas in agency practices that required attention. This report also includes 2 administrative errors that contributed to non-compliance with the legislation.

### Insufficient internal safeguards to ensure the ACIC use controlled operations within intelligence operations lawfully

We are concerned the ACIC’s planning documents and internal oversight for intelligence operations were not fully effective and that ACIC staff failed to use its policy and procedures to support the lawful use of controlled operations powers.

#### Inadequate internal oversight of controlled operations

We were not satisfied the ACIC had sufficient safeguards for managing risks related to long-term controlled operations.

#### An external agency participant was not covered by the controlled operation authority

We found that an officer from an external agency engaged in conduct in an AFP controlled operation that was not authorised by the controlled operation authority or a variation to that authority.

#### Failure to adhere to statutory reporting requirements to the Minister

We noted that the AFP and ACIC did not deliver their combined AFP and ACIC 2022–23 annual report on controlled operations to the Attorney-General before 31 December 2023, as required under section 34C of the *Acts Interpretation Act 1901*.



# Scope and methodology

The legislative provisions that allow law enforcement agencies to undertake these activities are in Part IAB (controlled operations), Part IAAA (delayed notification search warrants) and Part IAAC (account takeover warrants) of the Act.

Each part of the Act sets out the requirements for the Ombudsman to inspect the use of that power and to report to the Minister (the Attorney-General) on the results from these inspections.

This report combines the results from inspections conducted under Part IAB, Part IAAA and Part of IAAC of the Act to provide transparency to the Attorney-General and the public about how agencies use these intrusive powers.

## Part IAB of the Act – Controlled Operations

A **Controlled Operation** under Part IAB of the Act permits authorised law enforcement and civilian participants to engage in certain conduct that would otherwise be unlawful, for the purpose of investigating a serious Commonwealth offence.

Section 15HS of the Act requires the Ombudsman to inspect the records at least once every 12 months of the ACIC, AFP and NACC to determine the extent of compliance with the Act.

Section 15HO(1) of the Act requires the Ombudsman to provide a report to the Attorney-General every 12 months on the results of inspections conducted during the reporting period.

## Part IAAA of the Act – Delayed Notification Search Warrants

A **Delayed Notification Search Warrant** under Part IAAA of the Act allows the AFP to conduct a covert search of a premises to investigate certain terrorism offences, without the occupier's knowledge. The occupier of the premises is later notified of the search. The AFP is the only agency authorised to exercise this power.

Section 3ZZGB of the Act requires the Ombudsman to inspect the records of the AFP every 6 months to determine compliance with the Act.





Section 3ZZGH of the Act requires the Ombudsman to provide a report to the Attorney-General at 6 monthly intervals on the results of each inspection conducted.

### Part IAAC of the Act – Account Takeover Warrants

An **Account Takeover Warrant** under Part IAAC of the Act allows an authorised agency to take control of an online account when investigating a serious offence. Online accounts include social media accounts, online banking accounts and accounts associated with online forums.

Section 3ZZVR of the Act requires the Ombudsman to inspect the records of the ACIC and AFP at least every 12 months to ensure they are exercising the use of this power compliantly.

Section 3ZZVX(1) of the Act requires the Ombudsman to provide a report to the Attorney-General every 12 months on the results of inspections conducted during the reporting period.

### How we oversee agencies

We take a risk-based approach to our inspections. We focus on areas where agencies are, or may be, at risk of not complying with legislative requirements or best practice standards, and where non-compliance would cause public harm. Our inspections may include reviewing a selection of the agency's records, having discussions with relevant agency staff, reviewing policies and processes, and assessing any remedial action the agency has taken in response to issues we have previously identified with them.

We do not comment in this report on administrative issues or instances of non-compliance where the consequences are low risk and of minimal impact to the community.

Our inspections may identify a range of issues from minor administrative errors through to serious non-compliance that affects an individual's rights (notably privacy), the validity of evidence collected, or systemic issues. If an issue is sufficiently serious or systemic, or was previously identified and not resolved, we may make formal recommendations for remedial action. Where an issue of non-compliance is less serious and was not previously identified, we generally make suggestions to the agency to address the non-compliance and to encourage agencies to identify and implement



practical solutions. We may also make suggestions or comments where we consider an agency's existing practice may expose it to compliance risks in the future.

To ensure procedural fairness, we give agencies the opportunity to respond to our inspection findings before consolidating the significant findings into this report to the Attorney-General.

We follow up on any action agencies have taken to address our recommendations and suggestions at our next inspection.

## What we found: Good practices

### Working together to improve compliance

We were pleased to see agencies generally continue to positively engage with our Office during the planning and conduct of our inspections. We provided feedback on areas for improvement, including instigating remedial actions to implement recommendations and suggestions made from our inspections.

We held discussions with the AFP and the NACC who provided us with a good understanding of the controls and processes in place relating to the use of Account Takeover Warrants which enhanced our awareness of how the powers were applied and new technologies were being used.

Agencies were generally open and frank in their conversations with our Office. Where non-compliance was identified by the agency, we found agencies were proactive in disclosing these instances and had commenced remedial measures to manage the non-compliance risks, including improvements to their processes and practices. We consider proactive disclosure of non-compliance and self-initiation of remedial actions to be indicators of a good compliance culture.

### Continuous review and updating of governance and procedures

We acknowledge the progress the AFP and the ACIC have made to review and update their governance, procedures and templates in response to our feedback and instigate processes for internal continuous improvement for Controlled Operations and Delayed Notification Search Warrants. For example, the AFP has ongoing internal review in relation to Controlled Operations and the implementation of digitised systems. We consider the

ongoing review of policies and procedures is an integral part of continuous improvement. However, we note delays by the AFP updating their Account Takeover Warrants guidance material.

## Comprehensiveness and adequacy of reports to our Office

Under section 15 HO(4) of the Act the Ombudsman's annual report must include comments on the comprehensiveness and adequacy of 6 monthly reports about the use of controlled operations powers provided to the Ombudsman by the chief officer of the authorising agency as required under sections 15HM and 15HN Act.

All agencies submitted 6-monthly reports under section 15HM of the Act for the periods 1 July 2022 to 31 December 2022 and 1 January 2023 to 30 June 2023, and section 15HN of the Act 2022-23 annual report to our Office in accordance with the Act. After inspecting the records at each agency, we were satisfied the reports provided to our office were comprehensive and adequate.

## What can agencies improve on?

We observed 6 areas in some agency practices requiring attention.

### Controlled operations

#### Improving internal safeguards to ensure the ACIC use controlled operations powers within intelligence operations lawfully

A law enforcement agency can internally authorise the use of controlled operations powers if they are to be carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence<sup>2</sup>.

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<sup>2</sup> Section 15GD(1) of the Act states a controlled operation is an operation that:

- (a) involves the participation of law enforcement officers; and
- (b) 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; and
- (c) may involve a law enforcement officer or other person in conduct that would constitute a Commonwealth offence or an offence against a law of a State or Territory.



The ACIC primarily exists to perform an intelligence function, providing a range of both focussed and high-level intelligence products to its law enforcement partners. The ACIC generally relies on arrangements with its partners to investigate relevant offences or commence proceedings before a court. It is the nature of intelligence that it may or may not, lead to, or result in, a law enforcement outcome. However, we consider there still needs to be a demonstrated link with the threshold for being able to use controlled operations powers. We recognise the unique role of the ACIC which encompasses the strategic direction of an intelligence agency whilst having a legal framework that is premised on a law enforcement agency.

At past inspections, we were satisfied that the information contained in the applications specified that the controlled operations would be used for an investigative purpose. This inspection was the first time we compared the applications with the decisions and plans made by investigators and requesting officers for their intended use of controlled operations powers.

We found the ACIC had a robust governance and policy framework in place to allow officers to use these powers in connection with investigating a serious Commonwealth offence. This framework reinforced the need for the use of controlled operations powers, to enable evidence to be obtained of a serious offence, or the identity or location of the offenders.

However, in practice, we found planning documents and internal oversight were not fully effective.

An internal operations committee considers submissions for the commencement, prioritisation, extension, review, change or cessation of ACIC projects, and approves the intention to use any covert powers (including the use of controlled operations) when it endorses the project proposal prior to commencing an intelligence operation. The project proposal must specify the powers that are intended to be used and the purposes (being project objectives and outputs) for which the powers will be applied. The project proposal that is endorsed by the committee does not authorise the particular use of controlled operations. That is done through a separate authorisation process.

We reviewed endorsed planning project proposals and project extensions across 4 intelligence operations that used controlled operations. We thought there needed to be a better linkage between the use of controlled operations, to obtain evidence that may

lead to a prosecution for a serious offence, with the intended deliverables set out in these proposals.

ACIC staff did not use the ACIC's operations management policy and procedures to support the lawful use of controlled operations powers. This policy and related procedures provide a framework that supports using the powers for investigative purposes, including by ensuring that those managing an operation demonstrate that any use of the powers and disclosure of material is connected with the investigative purpose. None of the operations that we reviewed consistently applied the process described in the policy and procedures. We observed a general lack of awareness of the framework across compliance and intelligence teams.

During our inspection, we made some general observations which indicated the link with the threshold for being able to use controlled operations was not always clear. We also appreciate that the distinction between intelligence activities and the investigation of offences is not necessarily clear. Accordingly, we have not yet concluded our view on whether the ACIC has been able to adequately demonstrate a connection between the use of controlled operations, and the thresholds under the Act. We will explore this further at our next inspection.

We made **6 recommendations** and **7 suggestions** to improve the ACIC's internal safeguards to ensure controlled operations powers are used lawfully within intelligence operations.

In response, the ACIC accepted or accepted in part, all of our recommendations and suggestions. The ACIC commenced activities to strengthen the internal safeguards supporting the use of relevant powers.

## Inadequate internal oversight of controlled operations

### Inadequate internal oversight of risks with long-term controlled operations

A 'major controlled operation' is a controlled operation that involves the infiltration of an organised criminal group by undercover law enforcement officers for a period of



more than 7 days, continues for more than 3 months or is directed against a suspected criminal activity that includes a threat to human life<sup>3</sup>.

Some Controlled Operations we reviewed at the ACIC met the definition of a Major Controlled Operation, in that they extended beyond 3 months (most being more than 12 months) or involved possible infiltration of a criminal group by a law enforcement officer for more than 7 days or involved crimes or criminal groups that likely posed a threat to life.

Although the distinction between major controlled operations and other controlled operations only applies to the AFP,<sup>4</sup> we were concerned that the level of oversight of controlled operations within the ACIC was not commensurate with the risks and conduct undertaken. The span and nature of the conduct under the controlled operations presented substantial risks which required close oversight by the ACIC's senior executive.

We **recommended** that the ACIC review its framework and delegations for authorising controlled operations, ensuring that appropriate safeguards are in place to appropriately manage the risk that long-term controlled operations presented.

The ACIC accepted this recommendation and acknowledged the need for appropriate governance and oversight of long-term Controlled Operations.

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<sup>3</sup> Section 15GD(2) of the Act, which states a major controlled operation is a controlled operation that is likely to:  
(a) involve the infiltration of an organised criminal group by one or more undercover law enforcement officers for a period of more than 7 days; or  
(b) continue for more than 3 months; or  
(c) be directed against suspected criminal activity that includes a threat to human life.

<sup>4</sup> Authorities for major controlled operations conducted by the AFP can only be authorised by the Commissioner or Deputy Commissioner of the AFP. The explanatory memorandum that accompanies the controlled operations provisions under the Act notes that because the AFP authorises the majority of controlled operations, this will ensure that only the most senior officers in the AFP authorise long operations, or operations directed against activity involving threat to life": page 55 *Crimes Legislation Amendment (Serious and Organised Crime) Bill 2009*.

## Failure to provide sufficient information to inform the authorising officer

Section 15GT(3) of the Act allows a major controlled operation to be extended beyond 3 months, but must not exceed 24-months. At the AFP, we identified one major controlled operation was authorised on the same set of circumstances as a major controlled operation that had recently expired once it reached the 24-months threshold. The initial authority also exceeded the 24-months threshold by 2 days.

We found the records did not demonstrate the circumstances of the investigation, criminal activity or controlled operation authority had significantly changed after the 24 month threshold, and, that the application for the new authority satisfied all of the conditions under sections 15GI(2) of the Act. In particular, we saw no recorded information that, after the 24 months had expired, demonstrated that an offence had been, was being, or was likely to be committed.

We suggested the AFP ensure all applications for controlled operations authorities issued, renewed or varied contains sufficient details to enable a authorising officer to consider all of the requirements under section 15GI(2) of the Act. This includes ensuring the application adequately demonstrate that a serious offence has been, is being, or is likely to be committed.

We also suggested the AFP review and amend its procedures to ensure all major controlled operations are completed within the legislated timeframes. The AFP accepted both of our suggestions.

## External agency participant not covered by the controlled operation authority

The Act exempts from criminal liability and indemnifies against civil proceedings law enforcement officers and civilian participants who undertake activities under a Controlled Operations authority. The Act requires each law enforcement officer or civilian participant to be identified in the authority and to specify the controlled conduct that has been authorised to be undertaken by those persons.

The AFP disclosed one instance where a different officer from those named in a Controlled Operations authority had engaged in controlled conduct. The conduct was administrative in nature and did not involve significant risk or danger to the officer.

We suggested the AFP remind applicants for authorities to include all potential participants in the application and authority to conduct Controlled Operations. Although this was a repeat suggestion from our last report on this issue, we note the AFP is engaged in ongoing training for staff in the use of Controlled Operations, including the need to identify and document all persons in the application and authority that would potentially be involved in the Controlled Operation.

The AFP accepted our suggestion.

## Delays in reports to the Minister

Section 15HN(1) of the Act requires the chief officer of each authorising agency to submit a report to the Minister setting out details of Controlled Operations authorised by that agency during the previous 12 months. This report must be given to the Minister as soon as practicable after 30 June in each year.

Section 34C(2) of the *Acts Interpretation Act 1901* defines providing a report as soon as practicable to the Minister as being within 6 months. In this case, by 31 December of the same year.

The ACIC and AFP provided a combined report to the Attorney-General on 4 May 2024. This was past the 31 December 2023 deadline imposed by section 34C(2) of the *Acts Interpretation Act 1901*.

We suggested to both the ACIC and AFP that they ensure future annual reporting is within legislated timeframes. Both agencies accepted the suggestion and are taking steps to ensure reporting occurs within the legislated timeframes.

## Account Takeover Warrants

### Delay in the review, approval and dissemination of guidance materials for the use of Account Takeover Warrants

An important part of ensuring compliance is for agencies to support staff with guidance materials on how to use covert and intrusive powers.

Following our March 2023 inspection, the AFP committed to updating their Better Practice Guide and Standard Operating Procedures for Digital Surveillance, which





included the use of Account Takeover Warrants. At our March 2024 inspection we noted the Better Practice Guide and Standard Operating Procedures remained in draft and were not finalised.

As the AFP's use of Digital Surveillance powers, including Account Takeover Warrants, is low, investigators rely on guidance material to ensure compliance with the relevant legislation. Delays in the review, approval and dissemination of the Better Practice Guide and Standard Operating Procedures have a direct impact on investigators' knowledge and compliance. Outdated guidance documentation poses a risk of repeating incidents of previously identified non-compliance.

We made a comment that the AFP prioritise and progress finalising the updated guidance material. We will return to this issue at our next inspection.

## Delayed Notification Search Warrants

### Occupier of premises not notified within required time period

The occupant of the premises subject to a Delayed Notification Search Warrant must be notified of the search within 6 months of the warrant being issued<sup>5</sup>. The Commissioner of the AFP can apply to an eligible officer to extend the time in which to notify the occupant of the warrant having been issued.

The AFP proactively disclosed to us that they did not notify the occupant of a premises that their premises was searched under a Delayed Notification Search Warrant within 6 months from the date of issue of the warrant. There was no extension granted to withhold notification to the occupant of the warrant's execution.

We suggested the AFP continue to make administrative improvements to ensure notifications to occupiers are provided within 6 months, or any extension to the notification period is authorised prior to the expiry of the notice date. The AFP accepted this suggestion and undertook to remedy the issue by implementing a warrant date calculator and updating their practices to include the timeframes to manage any future risk of reoccurrence.

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<sup>5</sup> See section 3ZZBE(1)(i) of the Act which states the time by which notice of entry of premises under the warrant is to be given (expressed as a time on a specified day that is not more than 6 months after the day on which the warrant is issued)

## Continuity of compliance responsibility

Our inspection also noted there had been turnover of staff who were responsible internally for overseeing the use of this power.

We suggested the AFP ensure there is a comprehensive handover to those officers responsible for ensuring compliance with the Delayed Notification Search Warrant regime as soon as practicable. The AFP accepted this suggestion.



## Appendix A

### Table of reported inspection findings by agencies for the period 1 July 2023 to 30 June 2024

The 3 tables below, outline significant findings from our inspections for the AFP, the ACIC and the NACC between 1 July 2023 and 30 June 2024, with the exclusion of findings for Delayed Notification Search Warrants inspection from 1 July 2023 to 31 December 2023 which have been reported to the Attorney-General separately.<sup>6</sup>

A recommendation reflects a serious compliance issue. A suggestion reflects less serious and/or isolated issues where we consider an agency should take action to improve, or where agencies may refine its practices to demonstrate compliance in the future. We also make suggestions or comments where we consider an agency's existing practice may expose it to compliance risks in the future.

The following findings do not include administrative issues or instances of non-compliance where the consequences are low risk and of minimal impact to the community.

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<sup>6</sup> See [https://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0019/304831/Commonwealth-Ombudsman-Report-to-the-Attorney-General-on-agencies-compliance-Part-IA-2.pdf](https://www.ombudsman.gov.au/_data/assets/pdf_file/0019/304831/Commonwealth-Ombudsman-Report-to-the-Attorney-General-on-agencies-compliance-Part-IA-2.pdf)



**Table 1: Findings at the AFP – significant findings only**

Findings		Agency Response
<b>Controlled Operations</b>		
<b>1</b>	<p><b>A new Major Controlled Operation (MCO) authority was issued on the same set of recorded circumstances for a MCO that had expired after the 24 month legislated threshold.</b></p> <p><b>Suggestion 1:</b> The AFP ensure considerations of s 15GI of the Crimes Act are met and appropriately recorded each time an authority is issued, renewed or varied. This includes ensuring the application and authority adequately demonstrate that a serious offence has been, is being, or is likely to be committed.</p> <p><b>Suggestion 2:</b> The AFP review and amend its procedures to ensure all MCOs are completed within the legislated timeframes.</p>	<p>The AFP accepted this finding and suggestions.</p>
<b>2</b>	<p><b>Repeat finding – Participants from an external agency engaged in conduct who were not covered by one controlled operation authority</b></p> <p><b>Suggestion 3:</b> The AFP remind applicants for authorities to include all potential participants in the application and authority to conduct controlled operations in accordance with ss 15HA(2) and 15HB of the Act.</p>	<p>The AFP accepted this finding and the suggestions.</p>



	<p><b>Suggestion 4:</b> The AFP seek advice on the implications of the conduct by officers not covered by one controlled operation authority.</p>	
3	<p><b>The AFP's submission of its Annual Report failed to meet the strict statutory requirements of s34C of the Acts Interpretation Act 1901.</b></p> <p><b>Suggestion 5:</b> AFP ensure future annual reporting is within legislated timeframes.</p>	The AFP accepted this finding and suggestion.
<p><b>Delayed Notification Search Warrants</b></p>		
4	<p><b>Continuity of internal compliance oversight of the Delayed Notification Search Warrant regime not being maintained.</b></p> <p><b>Suggestion 1:</b> The AFP ensure a comprehensive compliance handover of the DNSW regime occurs as soon as practicable.</p>	The AFP accepted this finding and suggestion.
5	<p><b>Disclosure by the AFP of a breach of the statutory timeframe to notify an occupant a Delayed Notification Search Warrant had been executed.</b></p> <p><b>Suggestion 2:</b> The AFP continue to make administrative improvements to ensure notifications to occupiers are provided within 6 months in compliance with the Act or any extension to the notification period is authorised prior to the expiry of the notice date under section 3ZZBE (1)(i) of the Act.</p>	The AFP accepted this finding and suggestion.



## Account Takeover Warrants

- 6 We made 2 findings related to Account Takeover Warrants:
- a general administrative finding relating to the accuracy of pre-inspection data of digital surveillance powers used provided to inspections, and
  - the delay in clearance and dissemination of the better practice guide and standard operating procedure for the use of digital surveillance including the use of Account Takeover Warrants.
- We did not make any recommendations or suggestions in response to these findings.

N/A



**Table 2: Findings at the ACIC – significant findings only**

Findings	Agency Response
<b>Controlled Operations</b>	
<p><b>1 Internal safeguards should be improved to ensure the ACIC use covert powers within Special Operations lawfully</b></p> <p><b>Recommendation 1:</b> The ACIC review its framework of governance, policies and procedures to ensure that staff do not use covert powers for intelligence purposes that would not meet legislative thresholds.</p> <p><b>Recommendation 2:</b> If an intelligence operation uses the powers, the ACIC ensure that it can demonstrate that the deliverables from the operation include an investigative purpose.</p> <p><b>Recommendation 3:</b> The ACIC Operations Strategy Forum must ensure any extensions to an Intelligence Operation expressly include the approval to continue using the powers.</p> <p><b>Recommendation 4:</b> ACIC should review and, where necessary, update its training to ensure staff are aware of and understand the boundaries of the lawful purposes for which the powers can be used.</p>	<p>The ACIC accepted our recommendation.</p> <p>The ACIC accepted our recommendation in part.</p> <p>The ACIC accepted our recommendation.</p> <p>The ACIC accepted our recommendation.</p>



<p><b>Recommendation 5:</b> The ACIC implement measures to ensure that it can demonstrate that the powers (except access to historical TD) are used within a continuum of investigating and prosecuting a serious offence. This should include reviewing how the ACIC records its use of the powers, and supports partner agencies enforcement, investigative and criminal or civil proceedings.</p>	<p>The ACIC accepted our recommendation in part.</p>
<p><b>Recommendation 6:</b> ACIC review its framework and delegations for authorising controlled operations, ensuring that appropriate safeguards are in place to appropriately manage the risk that long-term controlled operations present.</p>	<p>The ACIC accepted our recommendation.</p>
<p><b>Suggestion 1:</b> The ACIC obtain legal advice specifically upon the actual use of covert powers in the operations we inspected and whether those uses had in practice a sufficient connection to the legislative thresholds.</p>	<p>The ACIC accepted our suggestion in part.</p>
<p><b>Suggestion 2:</b> The ACIC engage with the Attorney-General’s Department to assess options for legislative reform to reduce the risk of non-deliberate unlawful use of covert powers associated with the gathering and reporting of intelligence.</p>	<p>The ACIC accepted our suggestion.</p>
<p><b>Suggestion 3:</b> In support of <b>Recommendation 2</b>, the intended outputs in project proposals and extensions for Intelligence Operations should include deliverables that at a non-theoretical level enable enforcement of the criminal law and/or an investigative purpose.</p>	<p>The ACIC accepted our suggestion in part.</p>
<p><b>Suggestion 4:</b> ACIC should ensure all staff receive training on the application of the ACIC Intelligence Operations Management Model and related policy and procedures.</p>	<p>The ACIC accepted our suggestion</p>





<p><b>Suggestion 5:</b> Senior Responsible Officers (SRO) should record decisions and outcomes on the Intelligence Operations Management System (IOMS) from meetings relating to the use, monitoring and review of more intrusive powers, including telecommunication intercepts, surveillance devices, digital surveillance, computer access warrants, industry assistance and controlled operations.</p> <p><b>Suggestion 6:</b> The ACIC compliance staff should be included in SRO and intelligence team planning and management meetings for Intelligence Operations. Compliance staff should provide advice to the SRO and intelligence team on matters impacting the lawful use of powers within the Intelligence Operation.</p> <p><b>Suggestion 7:</b> The ACIC work with the AFP to ensure that its report to the AGD on controlled operations is submitted by 31 December each year.</p>	<p>The ACIC accepted our suggestion in part.</p> <p>The ACIC accepted our suggestion.</p> <p>The ACIC accepted our suggestion.</p>
<p><b>Account Takeover Warrants</b></p>	
<p><b>2</b> We made no findings during our inspection of ACIC's use of Account Takeover Warrants. No recommendations or suggestions were made</p>	<p>N/A</p>

**Table 3: Findings at the National Anti-Corruption Commission (NACC) – significant findings only**

Findings	Agency Response
<b>Controlled Operations</b>	
<p><b>1 Lack of updated controlled operations standard operating procedure and training resources.</b></p> <p>We made one finding relating to ensuring guidance materials and training are delivered to NACC staff intending to use the power, with nil suggestions or recommendations.</p>	<p>N/A</p>



## Appendix B:

**Table 1 – Summary of records inspected on site**

Agency	Records available	Records inspected
<b>Australian Federal Police (AFP)</b>	83 x CO 6 x ATW 0 x DNSW	8 x CO 6 x ATW 0 x DNSW
<b>Australian Criminal Intelligence Commission (ACIC)</b>	143 x CO 0 x ATW	10 x CO 0 x ATW
<b>National Anti-Corruption Commission (NACC)</b>	0 x CO	0 x CO

**Key** CO      Controlled Operation  
ATW      Account Takeover Warrant  
DNSW      Delayed Notification Search Warrant