

Controlled police operations and activities

Chapter 5 (sections 163-197) of the 2000 Act provides proper legislative authority for police to conduct controlled operations and activities in order to identify the perpetrators of crime and to bring them before a law court.

This initiative had its genesis on 16 March 1993 when the Honourable W J Carter QC tabled an abridged version of his report of the Commission of Inquiry into Operation Trident. Commissioner Carter was critical of the management of these covert activities and recommended legislation be introduced for the purpose of regulating the approval and conduct of police operations of this nature.

Controlled operations are a necessary part of law enforcement and the fight against major and organised crime. By necessity, of course, covert operatives commit acts that would otherwise amount to offences. This is where the anomaly arises. It is accepted covert operatives undertake these tasks, but protection from criminal and civil liability for the operatives has not been provided in the past.

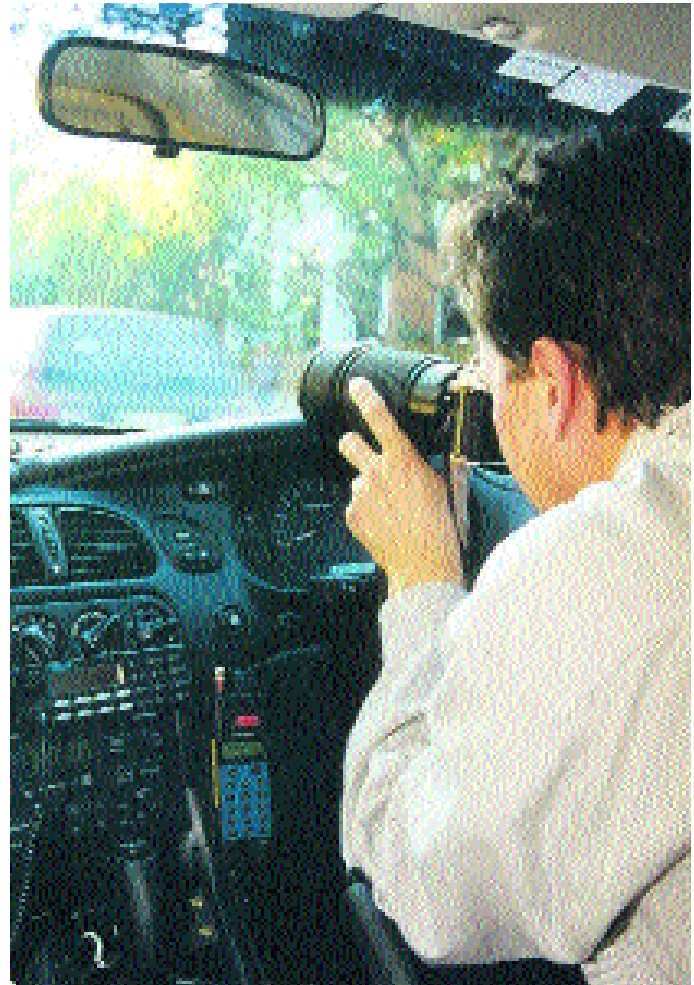
Additions to the 2000 Act rectify this anomaly by creating a scheme for the approval and conduct of controlled operations (covert) and controlled activities (one-off). Both are necessary investigative techniques of a covert nature and the level of approval and control varies. Controlled activities are investigations in which an officer will conceal his or

her identity for the purpose of witnessing an offender commit an offence. An example is a plain clothes officer posing as a buyer of drugs to arrest the seller of those drugs. The essential difference to covert operations is that the officer will not formally establish another identity as the operation is not ongoing.

The new legislation requires an officer to make an application to conduct a controlled operation. Only specially nominated and very senior officers of the agency may approve a controlled operation. As an additional safeguard, the senior officer may only approve the operation if it is recommended by an overseeing committee.

The committee is a legislatively constituted body and includes representatives from participating law enforcement agencies. To ensure accountability and independence in decisions, the committee will be chaired by a retired judge of the District or Supreme Court.

Controlled activities conducted at a lower level of intrusiveness will require approval through a scheme that recognises the day to day nature of this type of policing activity, usually



Covert snap shot...a typical covert operation in which the person is watching a suspect and recording the person's activities.

the approval of a commissioned officer. In addition, the approval must be given, and the activity undertaken, in accordance with the policy of the relevant agency. Additionally, the legislation provides protection from liability for agencies and people who, in good faith, assist in the establishment of an assumed identity.

The bottom line is protection for covert operatives against criminal or civil liability for necessary and legitimate investigative measures against criminals who might otherwise escape detection and prosecution. Evidence obtained will not be inadmissible in a court merely due to the covert nature by which it was obtained. However, nothing in the legislation interferes with the discretion of a court to admit or to exclude evidence on public interest grounds.