



**Commonwealth
Ombudsman**

**Report under Part 1AB, Division 2A
of the *Crimes Act 1914***

A report on the Ombudsman's activities
in monitoring controlled operations conducted by the
National Crime Authority and the Australian Federal Police.

December 2002

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Introduction

This report is the first report that has been prepared by my office under Part 1AB Division 2A Section 15(UC)(1) of the *Crimes Act 1914* (the Act). It provides an overview of work and activities in monitoring controlled operations undertaken by my office since 1 July 2001 (the reporting period). It has two main parts.

The first describes my office's inspections of records held by the Australian Federal Police (AFP) and the National Crime Authority (NCA) in relation to controlled operations, as prescribed by s.15(UB) of the Act. The second provides an overview of my activities in forming an opinion about the comprehensiveness and adequacy of the reports that were provided to the Parliament by those law enforcement agencies (pursuant to s.15(UC) of the Act).

Inspections of Records Concerning Controlled Operations.

The Act requires my office to inspect the records of the Australian Federal Police and the National Crime Authority in relation to controlled operations at least once every 12 months. Essentially, my task is of a compliance audit nature and to establish whether the requirements specified in Part IAB of the Act (regarding the authorisation, conduct and reporting of controlled operations) were complied with.

Inspection Period

My staff have inspected records of controlled operations activities undertaken by the agencies in the period 12 October 2001 to 30 June 2002 (the inspection period). The limitation of the inspection period to these dates was in recognition of the assent to the *Measures to Combat Serious and Organised Crime Act 2001* (the *Serious Crime Act*). The transitional arrangements for the *Serious Crime Act* provided that the *Crimes Act* would apply to any operations commenced before the enactment of the *Serious Crime Act*, but the AFP and NCA would not be required to report on those operations.

In that regard, I formed the opinion that my Office's inspection activities would concentrate on operations undertaken following the enactment of the *Serious Crimes Act*, and would not review any operations commenced before 12 October 2001.

Inspection Methodology

The inspections ascertained the agencies' compliance with the Act's record keeping requirements for each controlled operation through an administrative review of records.

This inspection occurred at the NCA's Sydney office on Friday 26 July 2002. No regional inspections occurred at any of the NCA state offices during the inspection period. Only one controlled operation was completed within the inspection period.

Inspection activities occurred at the AFP Headquarters Canberra between 27 and 28 August 2002, and 1 and 4 October 2002. No regional inspections were undertaken at any of the AFP State offices. During the inspection period, the AFP conducted 35 controlled operations, eight of which were still ongoing at the time of the inspection and were therefore excluded from inspection (under the provisions of s.15(UB)(2) of the Act). My staff reviewed the records of 27 AFP controlled operations.

Results of Inspections

My staff noted that the documentation inspected for the NCA met all requirements in relation to the authorisation, conduct and reporting of the operation. I have made one recommendation to the NCA regarding an issue with the control of samples, and this recommendation has been accepted.

The inspection of documents for the operations conducted by the AFP showed areas where improvements in record keeping or administrative practices could be made.

The matters have been raised directly with the AFP, and nine recommendations have been made to ensure that there is no opportunity for ambiguity or uncertainty to arise about aspects of controlled operations.

These recommendations have addressed issues such as:

- More stringent record keeping around the approval and amendment processes for certificates (three recommendations);
- Consistent reporting of the management, measurement and disposal of sample of illicit goods involved in controlled operations (four recommendations);
- Clear and consistent identification of parties involved in each operation (two recommendations); and
- Maintaining consistency of reporting across formal reports about controlled operations (three recommendations).

Annex A to this report provides the text of the recommendations as I have made them to the agencies. It also provides the response of the agencies to the recommendations.

In developing my recommendations, I am mindful that the issues identified in the inspection are areas where best practice in record keeping and strict compliance with the Act has not been achieved. I have no reason to believe that there have been any instances where a controlled operation has been undertaken when it should not have.

Where other issues were identified for record keeping on the controlled operations files, they were brought to the attention of the AFP. In many cases, these issues had been resolved before the inspection of the records by my staff or because of discussions at the time of the inspection. I commend the AFP on their response, and have made no formal recommendations about those issues in my report of inspection activities for the AFP.

Access to Electronic Information Systems.

I note that the response of the AFP to my recommendations in some instances has been that information about the issues raised by my staff was available in the AFP's information management system PROMIS, either on request, or will be provided in future.

The AFP have also advised my office that they are not able to offer my staff independent access to the PROMIS system for the purposes of the inspection, as follows:

"I note that in your draft report your office has anticipated that a check of electronic records could be undertaken during the next audit period. I have been advised that as segregation and compartmentalising of only that PROMIS (AFP's corporate database) data relevant to the audit is not technically possible, access to PROMIS by the Ombudsman's office would not be supported by the National PROMIS Coordination Team. The data sought in the audit process relates to controlled operations documents and drug seizure data. Access to these records alone cannot be facilitated within PROMIS without granting overall access to all documents and every property record.

Every request made for documents within PROMIS has been readily provided by members of the Operations Monitoring Team. Likewise, should crosschecking with the relevant seizure be required this too can be provided, although I should point out that no such cross checking requests have been made. Had such requests been made then any inconsistencies identified could have been addressed."

It is clear to me that there are separate information sources that should be considered in the inspection process. It is also clear that currently, my staff are unable to gain independent access to those sources. I am therefore of the opinion this places an onus on the AFP to ensure that controlled operations files are accurately maintained in the first instance, irrespective of where the information may be stored.

Comprehensiveness and Adequacy of Reports Provided to Parliament by Each Agency

In forming an opinion about the adequacy and comprehensiveness of the reports provided to the Parliament by each agency, I have also considered the process by which each agency prepares reports for the Minister, and the relationship between those reports and the reports that the Minister must lay before the House of Parliament each year.

I have noted that each agency prepares a quarterly report for the Minister (the Quarterly report) to meet the requirements of s.15(R) and s.15(S) of the Act. These reports are compiled by each agency to form an Annual Report (the Agency Annual report) that is provided to the Minister.

My Office understands that the Agency Annual report for the NCA is then joined to the Agency Annual report for the AFP, and forwarded to the Minister for his consideration as the Ministerial Annual Report required by s.15 (T) of the Act.

Review of Agency Quarterly Reports

My Office has received each quarterly report prepared by the Agencies. These reports were compared with the information contained on each operation file (during the inspections of records discussed earlier in this report).

In all instances, the Agencies have correctly reported the number and broad details of the controlled operations undertaken in each quarter.

However, it was noted that the covering table included with each AFP quarterly report used the term 'completed' to indicate that a controlled operation had ceased. This term does not identify how the controlled operation ceased. The Act allows for three circumstances for the cessation of an operation: terminated, surrendered or expired.

I have made a recommendation to the AFP that the terminology used to describe finalised operations should be consistent with the terminology used in the Act.

Further, the review of the AFP quarterly reports identified some instances where there were minor discrepancies between the operational files and the information provided in the reports.

I am of the view that these discrepancies are an indicator of issues within some administrative practices that I have discussed earlier in this report.

The discrepancies that were identified concerned:

- Inconsistent reporting of information about participants in the controlled operations;
- Differences in the reporting of the quantity of illicit goods in operations; and
- Variation in the descriptors for the status of some operations, ascribing a status of completed that is not recognised by the Act.

These issues have been discussed with the AFP, and I will be reviewing changes to the content of the quarterly reports in the coming year. The AFP's response to these issues is included at **Annex B**.

In my review of the content of the quarterly reports prepared by the NCA, I have noted that the report met the content requirements of s.15 (S) of the Act. However, the NCA did not meet the reporting requirements of the Act for the reporting period, due to some confusion about the requirement to report an absence of controlled operations activity.

In February 2002, my office received the second required quarterly report from the NCA. It became apparent that no report had been prepared for the first quarter, and no subsequent third and fourth quarter reports were received.

In October, the NCA advised my office that because no controlled operations were undertaken in those quarters, these reporting requirements had been overlooked. On 18 October 2002 my office received a copy of the report provided to the Minister advising that for the 1st, 3rd and 4th quarters of the 2001- 2002 reporting year:

- Law enforcement officers working for the NCA made no applications for the issue of controlled operation certificates;
- Nominated members of the Administrative Appeals Tribunal were not required to review any such certificates;
- No variations were made to any such certificates; and
- No certificates were terminated by, or surrendered to, an authorising officer.

While the reports prepared by the NCA were not provided within the timeframes specified in the Act, I am satisfied that the accountability requirements intended to be met by such reporting have been complied with.

Review of Agency and Ministerial Annual Reports

Reporting of NCA controlled operations in the Minister's Report to Parliament titled '*Crimes Act 1914 Part 1AB Controlled Operations Sixth Annual report under Section 15T 2001-2002*', was reviewed by my office. The details reported complied with 15UC(2) of the Act and I consider them comprehensive and adequate for the single operation conducted.

Reporting of AFP controlled operations in the Minister's Report to Parliament titled '*Crimes Act 1914 Part 1AB Controlled Operations Sixth Annual report under Section 15T 2001-2002*', was reviewed by my office. The details reported complied with 15UC(2) of the Act and I consider them comprehensive and adequate.

R N McLeod
Commonwealth Ombudsman

Annex A: Recommendations and Agency Responses

Australian Federal Police

Recommendation 1:

Issue: On several occasions an illicit substance was sent to the Australian Government Analytical Laboratory (AGAL) for analysis, however this was not reported until the annual report. It is acknowledged that at the time of reporting to the Minister within the quarterly report this activity may not have taken place.

Recommendation: *On occasions where there is still activity occurring in relation to the samples of illicit goods, this information should be reflected within the next relevant quarterly report.*

Agency Response: This recommendation will be complied with in future reports.

Recommendation 2:

Issue: My inspecting officers noted that on one occasion there was an inconsistency in relation to the reported measurement of illicit goods. Several controlled operation reports referred to the approximate weight instead of the exact weight of illicit goods that had been seized by law enforcement officers. This does not ensure accurate record keeping or accountability for the illicit goods.

When this issue was raised with the AFP they advised that this discrepancy in the differing weights is most likely due to the AFP weighing the narcotic goods prior to impurities being removed by the AGAL.

Recommendation: *In all instances records of illicit goods should reflect the precise weight both prior to and after analysis by AGAL, to prevent any ambiguity or question arising about the management of the quantity of illicit goods.*

Agency Response: Seizures of illicit substances require analysis to confirm both weights and the presence of an illegal substance after seizure. Drug weights and type vary as an investigation progresses.

At no stage of the inspection did officers from the Ombudsman's office request to view AFP property and seizure records maintained within the AFP corporate database (PROMIS) that is updated according to the status of the property/seizure items. Should such a request be made, members from the Operations Monitoring Team will comply with the request and immediately address any discrepancies of this nature.

In future, the AFP is willing to facilitate a check of PROMIS records to provide the most up to date information.

Recommendation 3:

Issue: In some cases, my inspecting officers were unable to determine the accuracy of the reported destruction of illicit goods, as there was no supporting documentation from the AFP Drug Registries.

Recommendation: *The relevant Drug Registrar provide a certificate of each destruction of illicit goods to be held on the files at the Operations Monitoring Unit.*

Agency Response: In future, the AFP is willing to facilitate a check of PROMIS records to provide destruction details where available.

Ombudsman's Comment: I note that the response of the AFP to my recommendations in some instances has been that information about the issues raised by my staff was available in the AFP's information management system PROMIS, either on request, or will be provided in future. The AFP have also advised my office that they are not able to offer my staff independent access to the PROMIS system for the purposes of the inspection.

It is clear to me that there are separate information sources that should be considered in the inspection process. It is also clear that currently, my staff are unable to gain independent access to those sources. I am therefore of the opinion this places an onus on the AFP to ensure that controlled operations files are accurately maintained in the first instance, irrespective of where the information may be stored.

Recommendation 4:

Issue: It was noted that there were differences in the storage locations within operations. For one operation the annual report recorded the location of illicit goods as the AFP's Brisbane office while the 2nd quarterly report recorded the location of "a representative sample of the seized heroin" at the AFP Sydney Drug Registry with the remainder of the seized heroin held at the AFP Brisbane Drug Registry.

Recommendation: *Drug Registrars provide relevant extracts from the drug registers relating to the movement of illicit substances involved in controlled operations.*

Agency Response: An audit trail is available through the relevant PROMIS case and can be provided upon request.

Ombudsman's Comment: I refer to my previous comments made in relation to access to electronic information.

Recommendation 5:

Issue: My officers raised the concern for one operation that records at the Operations Monitoring Unit indicated an overseas police force had replaced the narcotic goods with an inert substance. My staff were concerned that this information was not accurately reflected in the quarterly and annual reports. The AFP advised that the relevant overseas police force would most likely have given a sample to enable a prosecution to continue.

Recommendation: *Documentation of the actions of other police forces regarding illicit substances used in AFP controlled operations should be held on the files at the Operations Monitoring Unit.*

Agency Response: Where available, this information will be provided in future reports.

Recommendation 6:

Issue: An authorising officer advises in the certificate that they have read the application prepared by the applicant. However, as the applicant may prepare several applications, to clearly identify the information referred to when approving the application I have made the following recommendation.

Recommendation: *Authorising officers sign each application.*

Agency Response: From a headquarters perspective, monitoring of documentation relating to controlled operations has increased over recent months. The recommendations made in relation to Operation Issues will be communicated to all members involved in controlled operations and it is anticipated there will be an improvement in the inclusion of this type of detail.

Recommendation 7:

Issue: One controlled operation number was corrected in handwriting on the certificate, however no identifying details were recorded next to the amendment. To ensure accountability and accurate record keeping I have made the following recommendation.

Recommendation: *Any amendments to certificates be initialled and referenced appropriately by the amending officer.*

Agency Response: From a headquarters perspective, monitoring of documentation relating to controlled operations has increased over recent months. The recommendations made in relation to Operation Issues will be communicated to all members involved in controlled operations and it is anticipated there will be an improvement in the inclusion of this type of detail.

Recommendation 8:

Issue: In ten instances there was no civilian participant involved, but this was not noted on the application. To clearly demonstrate to the authorising officer and to my office that there is no civilian participation and to proactively remove any suggestion of an oversight in completing the application I have made the following recommendation.

Recommendation: *Where no civilian participant is involved this be recorded.*

Agency Response: From a headquarters perspective, monitoring of documentation relating to controlled operations has increased over recent months. The recommendations made in relation to Operation Issues will be communicated to all members involved in controlled operations and it is anticipated there will be an improvement in the inclusion of this type of detail.

Recommendation 9:

Issue: My staff noted that 17 documents on the controlled operations files did not record any security classification status.

Recommendation: *Security classifications should be recorded on each document relating to controlled operations.*

Agency Response: From a headquarters perspective, monitoring of documentation relating to controlled operations has increased over recent months. The recommendations made in relation to Operation Issues will be communicated to all members involved in controlled operations and it is anticipated there will be an improvement in the inclusion of this type of detail.

Recommendation 10:

Issue: During their inspection of records my officers noted comments on some operation records that the disclosure of certain information might prejudice a prosecution. However, that information was included in the quarterly report to the Minister without comment about the risks involved in disclosure of that information.

Recommendation: *Any caveats relating to the effect of disclosing any information should be included in the quarterly reports so that my officers and other persons who may have access to the quarterly reports are aware of those concerns*

Agency Response: No response to this recommendation was received from the AFP.

Recommendation 11:

Issue: It was noted that in the covering report to the Minister the term 'completed' was used on several occasions to indicate a controlled operation had ceased. This term does not identify how the controlled operation ceased. The Act allows for three circumstances for the cessation of an operation: terminated, surrendered or expired.

Recommendation: *Future reports to the Minister accurately reflect how the controlled operation ceased in accordance with the legislation.*

Agency Response: Noted. This issue was identified by the AFP in April 2002 and consequently an education program to operational staff and Authorising officers in May 2002. There have been no breaches since that education program.

Recommendation 12:

Issue: Controlled operation numbers are not recorded sequentially in the annual report, as ongoing controlled operations have been reported on within the first part of the annual report.

Recommendation: *Controlled operations should be recorded in a sequential manner in the annual report to prevent any ambiguity or confusion, with a notation of the appropriate exemptions.*

Agency Response: The numbering system is merely an internal administrative process and does not have any effect on the certificate.

National Crime Authority

Recommendation 1:

Issue: One significant issue relating to the conduct of the operation was identified. This concerned the loss of control over a quantity of the illicit substance involved (ecstasy tablets). The legislation requires that “the operation will be conducted in a way that ensures to the maximum extent possible, any illicit goods involved in the operation will be under the control of an Australian law enforcement officer at the end of the operation.”

My staff interviewed the Operation Team Leader about this issue and were satisfied that an appropriate balance appeared to have been struck during the operation between the need to obtain control of all illegal substance and the risk to the operation of implementing control measures that may have been detected by the offenders. My staff did not investigate the issue any further.

Recommendation: *Where the whole amount of illicit goods has not been recovered at the end of the operation, the case officer should provide a written report, outlining the measures taken to minimise the risk that control of the illegal substance would be lost; and reasons why those measures were not sufficient to prevent a loss of the substance in the particular operation. I have also suggested that a senior NCA officer, not previously involved in the operation, should review such reports.*

Agency Response: The NCA have accepted this recommendation.

Recommendation 2:

Issue: I noted that the controlled operation report referred to the approximate weight instead of the exact weight of illicit goods that had been seized by law enforcement officers. This does not ensure accurate record keeping or accountability for the illicit goods.

Recommendation: *I recommend that the precise quantity of illicit goods be recorded in future reports.*

Agency Response: The NCA have accepted this recommendation.

Annex B: AFP Response to issues raised in the management of Operational Files.

Description	AFP Comment
Participants in controlled operation not identified in certificate	This decision is made on a case-by-case basis, taking into consideration the requirements of Section 15S(5) of the Act. In future, where possible, codes will be provided and reasons provided.
Security classification not recorded on each document	The AFP operates under the Commonwealth Protective Security manual. Best practice is for appropriate security classifications to be included on all pages of relevant documents. The need for such classification, and the appropriate level is a case-by-case decision that is determined by the case officer in consultation with local operational management. Where considered necessary, documents are security classified.
No signature blocks present on controlled operation documents	The AFP has since updated the proforma documents located on AFP databases with a provision on all documents for the signature block. The ombudsman's delegates were provided with a copy of the updated documents for comment and input from their office.
Provision for time on the Termination Certificate.	The AFP has since updated the proforma documents located on AFP databases with a provision on all documents for the time. The ombudsman' delegates were provided with a copy of the updated documents for comment and input from their office.
Numbering system/noted by the Ombudsman that they are not recorded sequentially in the annual report.	The numbering system is merely an internal administrative process and does not have any effect on the certificate.