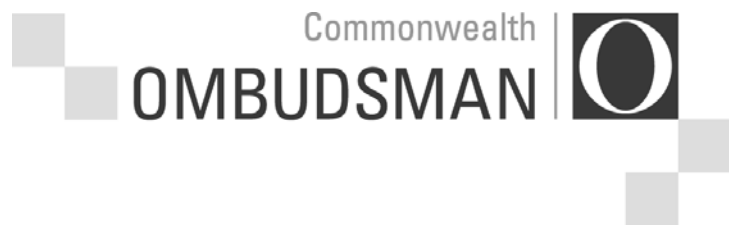


A report on the Commonwealth Ombudsman's activities in monitoring controlled operations

**CONDUCTED BY THE AUSTRALIAN CRIME COMMISSION
AND THE AUSTRALIAN FEDERAL POLICE**

Report by the Commonwealth Ombudsman
under Part 1AB of the *Crimes Act 1914*

2004–05



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INTRODUCTION

This report has been prepared by my office under section 15UC of the *Crimes Act 1914* (the Act), which requires that I provide an annual report of my work and activities in monitoring controlled operations in the period 1 August 2004 to 31 July 2005 (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 Australian Crime Commission (ACC) under section 15UB of the Act. The second provides an overview of my activities in forming an opinion about the adequacy and comprehensiveness of the reports provided to Parliament by those law enforcement agencies.

I have been pleased by the progress of both agencies in improving compliance and their administrative practices, and thank them for their cooperation during the inspections. Both agencies have continued to review their practices and procedures, at least in part because of the issues raised in my inspections, and my staff have contributed to those reviews. I am confident that this aspect of my office's activities will lead to continued improvements in the management of controlled operations.

INSPECTIONS OF CONTROLLED OPERATIONS RECORDS

The Act requires my office to inspect the records of the AFP and the ACC at least once every 12 months. Essentially, my task is of a compliance audit nature, to ascertain whether the agencies have complied with requirements specified in Part 1AB of the Act (relating to the authorisation, conduct and reporting of controlled operations).

My staff inspected records of controlled operation activities undertaken by the agencies under Part 1AB of the Act in the period 1 August 2004 to 31 July 2005 (the inspection period). Two inspections of each agency were undertaken of eligible records within the periods 1 August 2004 to 31 January 2005, and 1 February to 31 July 2005.

Inspections occurred at the ACC's Sydney office in April and August 2005. Inspections of the AFP's records occurred at AFP Headquarters in Canberra in May and August/September 2005.

The number of records inspected for each agency is shown in the table below. Records for controlled operations identified by the agencies as still ongoing at the time of the inspection are excluded, and will be inspected when the controlled operation has concluded.

Table 1: Number of records inspected

AGENCY	FIRST INSPECTION	SECOND INSPECTION
Australian Crime Commission	4	3
Australian Federal Police	12	10

Inspection methodology

Overview

My office has finalised its review of the controlled operations methodology discussed in my last report.

Change to the inspection period

As mentioned in my previous report, the methodology review has changed the inspection period to align it with an amendment of the Act in 2001.

Under the new methodology, the records of the AFP and ACC will be inspected following the 'new quarters'. The first inspection will review records generated

between 1 August and 31 January, while the second will inspect records generated between 1 February and 31 July.

Methodology

The inspection considers two elements of controlled operations:

- (a) the agencies' compliance with Part 1AB of the Act
- (b) the comprehensiveness and adequacy of quarterly reports submitted by the agencies to the Minister and the annual report presented by the Minister to the Parliament.

Compliance with Part 1AB

The agencies' compliance with Part 1AB of the Act is ascertained across all eligible records within the inspection period, utilising a checklist to review the following:

- application for a controlled operation certificate (section 15J)
- form of the application (section 15K)
- grounds for the issue of the certificate (section 15M)
- certificate authorising the operation (section 15N).

Where applicable, the inspection also reviewed:

- urgent applications (section 15L)
- applications to vary certificates (section 15NA)
- the surrender of a certificate (section 15O)
- the termination of a certificate (section 15OA)
- applications to a nominated Tribunal member for the review of a certificate (section 15OB)
- the period that the certificate was in force (section 15P)
- notifications to the Chief Executive Officer (CEO) of the Australian Customs Service (section 15Q).

This aspect of the inspection also reviews whether the agencies are implementing best practice in their processes and procedures.

Comprehensiveness and adequacy of reports

The comprehensiveness and adequacy of **quarterly reports** is inspected by:

- (a) checking that the requisite information is included in the reports (sections 15R and 15S)
- (b) comparing the information contained in the reports against the information contained in the files to determine accuracy and comprehensiveness.¹

The comprehensiveness and adequacy of the **annual report** is inspected by:

- (a) checking that the requisite information is included in the report (section 15T)
- (b) comparing the information contained in the report against the information contained in the quarterly reports and files for accuracy and comprehensiveness.²

INSPECTION RESULTS

These results reflect the overall assessment of each agency's compliance with relevant sections of the Act for the inspection year, based on the results of the two inspections conducted. **Annex A** of this report provides the recommendations that I have made to each agency, together with the agencies' responses to the recommendations.

The inspections noted a very high degree of compliance with the Act by the Australian Crime Commission and a high degree of compliance by the Australian Federal Police.

Issues identified in the inspections were areas where best practice in record keeping and strict compliance with the Act had not been achieved.

Australian Federal Police

Two reports were provided to the AFP based on the inspections carried out in the inspection period.

The AFP was assessed in both reports as:

- (a) complying with the requirements of Part 1AB of the Act

¹ This is a reference to the files prepared by the agencies for inspection by this office.

² See footnote 1.

- (b) providing comprehensive and adequate information in the quarterly and annual reports.

My inspections this year have seen a noticeable improvement in the quality of the AFP's documentation and its compliance with the Act, in part due to its ongoing introduction and review of quality assurance processes.

The full impact of the AFP's recently introduced quality assurance measures will be visible in the next round of inspections in 2006. However, there is a need for continued scrutiny of the information contained in the controlled operations concerning:

1. more comprehensive records for :
 - the application and approval of controlled operations
 - notices to the CEO of Customs under section 15Q of the Act
2. ensuring that:
 - entries in the annual report comply with subsection 15T(2)
 - exclusions of information from the annual report are clear and unambiguous and comply with subsection 15T(3) or paragraph 15T(4)(b)
 - where sensitive controlled operations documentation is lost or misplaced that the AFP undertakes a thorough assessment of the risks associated with the loss.

I commend the AFP on its demonstrated initiative and willingness to develop strategies to improve compliance and achieve administrative best practice.

Australian Crime Commission

Two inspections were carried out during the inspection period. The ACC was assessed following both inspections as:

- (a) complying with the requirements of Part 1AB of the Act
- (b) providing comprehensive and adequate information in quarterly and annual reports.

In most instances, inconsistencies identified in controlled operations documentation were of a minor administrative nature and did not affect the validity of the certificates or compliance with the Act. The main issues identified by my office over the year were the continued need for:

1. applications for a certificate authorising a controlled operation to state, in unqualified terms, whether any previous application had been made in relation to the operation and the outcome of any such application
2. the quarterly reports to identify, as a matter of good administrative practice, all persons of interest listed in the application and/or certificate.

In both inspections the ACC was assessed as achieving a very high degree of compliance with the Act.

I am very pleased with the improvements made by the ACC in the last twelve months and have commended it on its demonstrated initiative and willingness to develop strategies to improve compliance and achieve administrative best practice.

R I Brent
Acting Commonwealth Ombudsman

ANNEX A: RECOMMENDATIONS AND AGENCY RESPONSES

Australian Federal Police—First Inspection

Recommendation 1: The Australian Federal Police should ensure that sufficient information is provided to decision makers to enable the decision maker to reach a decision that he or she is reasonably satisfied of the matters set out in paragraphs 15M(b), (d), (e), (h) and subparagraphs 15M(f)(i) and (iv) of the *Crimes Act 1914* in approving an application for a certificate or request for review.

AFP Response: The Australian Federal Police accepts this recommendation and will continue to monitor compliance with the requirements of section 15M.

Recommendation 2: The Australian Federal Police should ensure that exclusions from the annual report under subsection 15T(3) or paragraph 15T(4)(b) of the *Crimes Act 1914* are appropriate, and in particular, the correct exclusionary provision is used.

AFP Response: The Australian Federal Police agrees with, and has already implemented, this recommendation in the 2004-2005 annual report.

Recommendation 3: The Australian Federal Police should ensure that annual report entries comply with subsection 15T(2) of the *Crimes Act 1914*, and in particular, contain all information previously included in the quarterly report.

AFP Response: The Australian Federal Police notes this recommendation was made primarily in respect of updated information generally correcting the earlier information as was known at the time of the section 15R quarterly report.

The AFP has been interpreting its obligations in respect of sub-paragraph 15T(2) (b) to provide Parliament with the type of information required to be given to the Minister in the section 15R report. Where the details have changed over time, it was updated information that was given to the Parliament. Any such information has been annotated in the 2004-2005 annual report to show that details have been updated. The AFP proposes to discuss its obligations in this regard with the Attorney General's Department.

Australian Federal Police—Second Inspection

Recommendation 1: The Australian Federal Police should, as a matter of good administrative practice, proactively notify the Minister of all significant matters arising in relation to controlled operations that may risk the personal safety of an undercover operative or compromise the controlled operation.

AFP Response: The AFP notes this recommendation, and will notify the Minister of all significant matters in relation to controlled operations, where there may be risk to the personal safety of an undercover operative or compromise to the controlled operation.

Recommendation 2: Where sensitive controlled operations documentation is lost, the Australian Federal Police should conduct a comprehensive assessment of the risks associated with such a loss. An assessment of risks is particularly important in circumstances where undercover operatives are involved in the controlled operation and the documents lost contain information specific enough to enable the undercover operative's true identity to be revealed or there is a real risk that the undercover operative could be identified.

AFP Response: The AFP will give consideration to undertaking a further revision of the controlled operations guidelines to address this issue.

Recommendation 3: The Australian Federal Police should assess its current controlled operations guidelines and procedures to ensure that its members are aware of the correct document handling and recording protocols for controlled operations and related documentation.

AFP Response: As this recommendation pre-dated the delivery of training to the region concerned, the AFP considers that current guidelines and procedures address this issue. Since this incident, members of the TCCC-OPMS team have delivered training to the region concerned on controlled operations, specifically covering documentation processes. The National Registrars proactively inform applicants of their responsibilities during the draft phases of submitting applications for consideration, and have ensured processes are covered during the on-line training for controlled operations. Further, each of the regional Special Project Registrars have been advised of their responsibilities in relation to housekeeping for original controlled operations documentation.

Australian Crime Commission—First Inspection

Recommendation 1: The Australian Crime Commission should ensure that applications for a certificate authorising a controlled operation state in unqualified terms whether any previous application has been made in relation to the operation, and the outcome of such an application.

ACC Response: The ACC will undertake a further revision of the controlled operations chapter of the ACC Policy and Procedures Manual to address this matter.

Recommendation 2: The Australian Crime Commission should, as a matter of good administrative practice, identify in the quarterly report all persons of interest listed in the application and/or certificate. Where some or all of those persons of interest are assessed as no longer being a person of interest subsequent to the application and/or certificate, the Australian Crime Commission should note this in the quarterly report.

ACC Response: The ACC will undertake a further revision of the controlled operations chapter of the ACC Policy and Procedures Manual to address this matter.

Australian Crime Commission—Second Inspection

No recommendations were made.