

Source Development Unit Intelligence and Covert Support 6/412 St Kilda Road Melbourne 3004 Victoria, Australia DX Telephone Facsimile Email

# Subject: ESD File C10-3506-2009. Operation (NSW Police Operation) - allegation of Improper Behaviour by staff at the Source Development Unit.

Background

1 Operation is a NSW Police Operation into the alleged improper behaviour of Victoria Police members from both the Crime Department and Source Development Unit (SDU), whilst these members were conducting a Cross Border Controlled Operation (Operation for the formation of the formation of the NSW part of the controlled operation was to utilise a formation of the NSW part of has previously been formation of the formation of the deployment into NSW occurred between formation 2010 and 2010.

2 The investigation focussed upon the activities of Crime Department members at Star City Casino, Sydney on 2010, when contact with selected in him being arrested after being found in selected believed to be the NSW Police investigation has identified some legal and procedural deficiencies in the manner in which SDU members handle sources and proactive witnesses whilst interstate. The lead investigator from NSW Police is Detective Chief Inspector Stuart BELL and he has raised a number of issues which are addressed in this file. (Folio 1-17)

3 SDU personnel assigned to were Anderson-DS as handler and Sandy White-O and then Richards-O Richards-O as controllers respectively.

5 It should be noted that **and** was being utilised as a **second of** at the time of his NSW arrest to gather evidence against the **second of** whilst being tasked by the SDU Handler on behalf of the Crime Department Purana Task Force. **Second** was fully aware that he was being used as a **second of** to gather evidence against the **second of** the Crime Department Purana Task Force.

Members Involved

Sandy White-O Richards-O Anderson-DS Peter Smith-O Wolf-O

# Office of Police Integrity

6 The Deputy Director, OPI, Mr Paul JEVTOVIC has been regularly briefed by Assistant Commissioner CORNELIUS and Detective Superintendent RUST – ESD on the status of the various operations.

# NSW Police position in relation to prosecution

(Attached report at Folio 18 to 21 – author Detective Superintendent RUST – ESD)

7 It is the opinion of NSW Police that there is insufficient evidence to prosecute VicPol members for alleged breaches during Operation based on a number of evidentiary criteria, including:

- Lack of continuity evidence re exhibits
- Lack of clear and concise instructions given to
- No 'mens rea' by <u>VicPol members</u>
- Inadmissibility of
- SDU members notes subject of public interest immunity
- Mitigating circumstances and not in the public interest to prosecute
- SDU members belief of protection by the Cross Border Controlled Operations Authority
- VicPol SDU standard operating procedures and practices are not compatible with NSW legislation and contributed to VicPol members committing technical breaches in NSW.

#### NSW Police Recommendations

- 8 The following are the recommendations supplied by NSW police:
  - That the OPI review the Victoria Police Controlled Operation Practice and Procedures, particularly the system of recording the documented instructions given to human sources. A written statement that is read aloud and signed by the human source would provide clarity. There would be no requirement to change SDU methodology or meetings.
  - That the OPI review the SDU Standard Operating Procedures and Practices where they take part in Cross Border Operations. Current practices breach Surveillance Devices Act provisions in other jurisdictions.
  - That the OPI review the SDU practice of deploying human sources with which is in breach of Victorian legislation.
  - That Victoria Police establish protocols or agreements between jurisdictions to mutually recognise each other regarding provision of information about cross border operations or intelligence gathering during the course of an operation.

#### Allegations

9 Below are the 12 allegations that have been put forward by Detective Chief Inspector Stuart BELL on behalf of NSW Police. As per the instructions contained on the File Cover Sheet of this file dated 17 May 2010 and Assistant Commissioner POPE's comments at Folio 22 also of 17 May 2010 I will address each allegation individually.

# **Allegation 1**

10 Contrary to section 6(2)(a) of the Surveillance Devices Act 1999 (Victoria) at Melbourne on 2010, SDU member Sandy White-O deployed dep

#### **Response to Allegation 1**

11 The Surveillance Devices Act 1999 (Victoria) at Section 6 states

# PART 2—REGULATION OF INSTALLATION, USE AND MAINTENANCE OF SURVEILLANCE DEVICES

6 Regulation of installation, use and maintenance of listening devices

s. 6 S. 6(1) amended by No. 26/2004 s. 7(a).

(1) Subject to subsection (2), a person must not knowingly install, use or maintain a listening device to overhear, record, monitor or listen to a private conversation to which the person is not a party, without the express or implied consent of each party to the conversation.

12 In <u>Victoria</u> any person can record a private conversation <u>that they are a party to</u> and that person does not need to be a Law Enforcement Officer.

13Sandy White-Ohas acted lawfully when in Victoria he gavewith targets of Operation

14 There is no legislative or Victoria Police policy that states members of Victoria Police are required to store recorded conversations when they have utilised a recording device to record a private conversation to which they are a party to.

Allegation 2

 15
 Contrary to section 7 of the NSW Surveillance Devices Act 2007 at Sydney on

 2010 SDU memberAnderson-DS
 The

 NSW Act
 like

Victorian legislation.

# **Response to Allegation 2**

16 This is accepted. A lack of procedural and legislative knowledge in relation to the NSW Surveillances Devices Act by members of the Victoria Police SDU caused this breach of the Act.

17 The member in question Anderson-DS was acting according to the then Victoria Police SDU SOP's at the time and believed that he was acting lawfully and in good faith at the time.

18 The Victoria Police SDU SOP's have been amended to reflect the experiences in NSW in relation to In respect to NSW Surveillance Devices Act states:

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# NSW Surveillance Devices Act – Recording Private Conversations

- Use of a recording device to record a private conversation without warrant must be with warrant only.
- Use of a recording device to record a private conversation as a police officer / authorised officer without warrant exemption for MOPF in controlled operation using assumed identity only, otherwise warrant required for all police to record private conversation except interrogations i.e. TRIM type scenario.
- Giving a Human Source a recording device to record a private conversation without warrant must be with warrant only.
- Any reporting lines that have to be followed in the particular state / territory no provision to record private conversation without warrant, with warrant there is a requirement to complete effectiveness report similar to telephone intercept legislation in Victoria.

19 In furtherance to this all states and territories equivalent Surveillance Devices Act has been researched and is reflected in the amended Victoria Police SDU SOP's.

An additional Risk Assessment process has been put in place by Intelligence and Covert Support Department, Covert Services Division to address the differing surveillances acts across Australia when consideration is being given to deploy staff and human sources interstate for a specified operation. This risk assessment is attached at Folio 23 - 25.

# **Allegation 3**

21 at Sydney on 2010 was in possession of Plane of the drug Plane contrary to the protection provisions of section 28 of the Crimes (Controlled Operations) Act 2004 where agreement was made not to breach the law.

# **Response to Allegation 3**

22 This is accepted. We was acting contrary to the protection provisions of Section 28 of the Crimes (Controlled Operations) Act 2004 when he was in possession of **Controlled Operations** gave these drugs to his handler which was not part of his tasking.

23 Since this investigation the SDU have now a liaison officer in NSW Police, Detective Superintendent Deb WALLACE – Middle Eastern Organised Crime Squad who will be informed on each occasion that SDU members are deployed into NSW. She has agreed to be the point of contact for any exhibits that come into possession of SDU members. The exhibit will then be recorded and stored in an appropriate NSW Police Property Store and if the exhibits are needed by Victoria Police the Extra Territorial Search Warrant process will be put in place for the transfer of the exhibit.

24 Since this incident unless exceptional circumstances exist, SDU members will not be deployed interstate unless Victoria Police investigators have briefed their counterparts in the state of the deployment and an interstate investigators liaison has been established.

# Allegation 4

25 On 2010 SDU members Sandy White-O and Anderson-DS without lawful authority conveyed drugs (subject of allegation #3) out of the State of NSW and into Victoria via commercial aircraft in their personal carry-on baggage.

# **Response to Allegation 4**

26 This is accepted. Sandy White-O and Anderson-DS did convey the drugs referred to in allegation 3 via commercial aircraft to Melbourne. Sandy White-O and Anderson-DS were both acting in good faith and at the time believed they were acting lawfully. In the was being utilised as a second on this occasion to gather against the second Group whilst being tasked by the SDU Handler on behalf of the Crime Department Purana Task Force under an approved Cross Border Controlled Operation.

Sandy White-O At the time of receiving the drugs from 27 made contact with D/Sgt ROBERTSON of the Purana Task Force who inturn obtained advice D/Sgt ROBERTSON informedSandy White-O from D/Insp JONES. that the SDU members were required to bring the drugs back to Victoria. Sandy White-O advised D/Sgt ROBERTSON that staff from the Purana Taskforce were in NSW working with the and requested that the SDU members give the drugs to these investigators. Again this was declined on the advice from D/Insp JONES. Sandy White-O made some further enquires and after seeking advice from his then manager D/Insp GLOW the SDU members brought the drugs back to Victoria.

28 Once back in Victoria, Purana Task Force accepted the drugs from the members of the SDU.

29 Changes to practices at the SDU have since occurred and are reflected in the SDU SOP's. Management at Covert Services Division and the SDU have put in place a number of proactive measures as stated in paragraph 20 (Interstate Risk Assessment), paragraph 23 (NSW Police SDU Liaison – D/Supt WALLACE) and paragraph 24 (Interstate Investigator Liaison) to reduce the risk of an incident such as this occurring again. The Detective Inspector SDU will travel interstate with the SDU members when a proactive witness is to be deployed to ensure that a continual risk assessment is being conducted and appropriate liaisons at senior management level are occurring.

#### Allegation 5

30 Contrary to section 7 of the NSW Surveillance Devices Act 2007 at Sydney on 2010 SDU member Anderson-DS

	to	The
Act does		like Victorian
legislation.	X	

#### **Response to Allegation 5**

This is accepted. As per the response to Allegation 2, at paragraph 16 through to paragraph 20.

#### Allegation 6

32 and a Sydney on 2010 was in possession of a of the drug and cash contrary to the protection provisions of section 28 of the Crimes (Controlled Operations) Act 2004 where agreement was made not to breach the law.

#### **Response to Allegation 6**

33 on 2010, was acting in accordance of Cross Border Controlled Operation Authority number 2010, acting a conditioned of the Cross Border Controlled Operation Authority was:

> "...may engage in particular controlled conduct namely between (date ...) participate in trafficking and possessing drugs of dependence including Ecstasy, Cocaine, Heroin and Amphetamines or conspiracies to do same by the nominated suspects as detailed in the authority (and subsequent variation/s), and any other person or persons involved in or likely to be involved in, the commission of the said offences, by: 1. negotiating, arranging or facilitating the purchase or obtaining of drugs of dependence for sale; 2. negotiating, arranging or facilitating the introduction of undercover police to do the above; 3. participate in dealing with proceeds of crime (monies) in furtherance of such drug related activity with the nominated

*suspects*; and any other person or persons involved in or likely to be involved in the commission of the said offences; 4. including participation in the above particular controlled conduct in ...(State)...; whilst acting in accordance with the documented instructions of the nominated human source controller."

34 It is a subjective test as to state of mind at the time as he could use the defence that he was acting pursuant to the conditions of the Cross Border Controlled Operation Authority. In these circumstances it would be reasonable to suspect that had this money and drugs in his possession for personal use, however this can not be established conclusively.

# Allegation 7

35 At Sydney on 2010 SDU member Anderson-DS without lawful authority conveyed the drugs and cash (subject of allegation #6) out of the State of NSW and into Victoria via motor vehicle.

#### **Response to Allegation 7**

36 This is accepted. As per the response to Allegation 4, Anderson-DS and Peter Peter did convey the drugs and cash referred to in allegation 6 via motor vehicle from NSW to Victoria. Anderson-DS and Peter Smith-O were acting in good faith and at the time believed they were acting lawfully.

37 As a result of the situation SDU staff were placed in, per allegations 3 and 4 a meeting had been held on 2010 at the Crime Department which was attended by the Officer In Charge and Senior Management of Purana Task Force as well as Sandy Sandy White and Anderson-DS of the SDU. At the meeting discussions were held where it was agreed to what exhibits/money would be accepted offered and that SDU staff would take possession of those exhibits/money for transporting back to Victoria.

<u>Comment</u> - In hindsight a decision should have been made at this meeting to brief investigators in NSW Police to act as a liaison and all exhibits/monies lodged with these investigators. Then utilised the Extra Territorial Provisions of New South Wales and Victoria to have the exhibits/monies transferred to Victoria as they were or were possibly going to be utilised as an exhibit.

As stated in the response to allegation 4, at the time of receiving the drugs and cash from SDU members were of the belief from the meeting held on 2010 that they were acting lawfully in retaining and transporting the drugs and money back to Victoria.

39 Changes to practices at the SDU have since occurred and are reflected in the SDU SOP's. Management at Covert Services Division and the SDU have put in place a number of proactive measures as stated in paragraph 20 (Interstate Risk Assessment), paragraph 23 (NSW Police SDU Liaison – D/Supt WALLACE) and paragraph 24 (Interstate Investigator Liaison) to reduce the risk of an incident such as this occurring again. The Detective Inspector SDU will travel interstate with the SDU members when a proactive witness is to be deployed to ensure that a continual risk assessment is being conducted and appropriate liaisons at senior management level are occurring.

#### Allegation 8

40	Contrary to section 7 of the NSW 2010 SDU memberAnderson-DS	Surveillance	Devices	Act 2	2007 at	Sydney	on
							The
Act						like Vict	orian

# legislation.

#### **Response to Allegation 8**

41 This is accepted. As per response to allegations 2 and 5, at paragraph 16 through to paragraph 20.

# **Allegation 9**

42 at Sydney on 2010 was in possession of 2010 cash contrary to the protection provisions of section 28 of the Crimes (Controlled Operations) Act 2004 where agreement was made not to breach the law.

# **Response to Allegation 9**

43 **Controlled** Operation Authority number **Controlled** Operation Authority number **Controlled** Operation Authority number **Controlled** Operation Authority was:

"...may engage in particular controlled conduct namely between (date ...) participate in trafficking and possessing drugs of dependence including Ecstasy, Cocaine, Heroin and Amphetamines or conspiracies to do same by the nominated suspects as detailed in the authority (and subsequent variation/s), and any other person or persons involved in or likely to be involved in, the commission of the said offences, by: 1. negotiating, arranging or facilitating the purchase or obtaining of drugs of dependence for sale; 2. negotiating, arranging or facilitating the introduction of undercover police to do the above; **3. participate in dealing with proceeds of crime (monies)** 

*in furtherance of such drug related activity with the nominated suspects*; and any other person or persons involved in or likely to be involved in the commission of the said offences; 4. including participation in the above particular controlled conduct in ...(State)...; whilst acting in accordance with the documented instructions of the nominated human source controller."

44 **Control and a set of the set** 

45 Amendments to the SDU SOP's as stated in paragraph 20 (Interstate Risk Assessment), paragraph 23 (NSW Police SDU Liaison – D/Supt WALLACE) and paragraph 24 (Interstate Investigator Liaison) would see this exhibit handed to a NSW Police investigator acting as a liaison to the Victoria Police investigators. On the rare occasion this does not occur D/Supt WALLACE from the NSW Police Middle Eastern Organised Crime Unit would take possession of the exhibit. Normal Extra Territorial Search Warrant provisions would then occur to facilitate the transfer of the exhibit interstate.

# Allegation 10

46 At Sydney on 2010 SDU member<sup>Wolf-O</sup> without lawful authority conveyed the cash (subject of allegation #9) out of the State of NSW and into QLD via commercial aircraft.

# **Response to Allegation 10**

47 This is accepted. Wolf-O did convey the cash referred to in allegation 9 via commercial aircraft to QLD and then subsequently back to Victoria. He did this on the instructions of D/Insp GLOW. The reason that he first flew to QLD was that part of Operation required him to travel to QLD. He maintained possession of the money throughout this time, before returning to Victoria.

48 As stated in the response to allegation 7, at paragraph 38, at the time of receiving the cash from SDU members were of the belief from the meeting held at the Crime Department Purana Task Force on 2010 that they were acting lawfully in retaining and transporting the money back to Victoria.

49 Changes to practices at the SDU have since occurred and are reflected in the SDU SOP's. Management at Covert Services Division and the SDU have put in place a number of proactive measures as stated in paragraph 20 (Interstate Risk Assessment) and paragraph 24 (Interstate Investigator Liaison) to reduce the risk of an incident such as this occurring again. The Detective Inspector SDU will travel interstate with the SDU members when a state of the deployed to ensure that a continual risk assessment is being

conducted and appropriate liaisons at senior management level are occurring.

# Allegation 11

50 At Sydney on 2010 SDU member Wolf-O attempted to board a commercial aircraft flight from Sydney to Brisbane while in possession of  $2 \times 40$  calibre rounds of ammunition. These rounds were seized by the AFP.

# **Response to Allegation 11**

51 This is accepted. I have interviewed Wolf-O he has stated the following.

of the SDU and

- *He admits being in possession of two live 40 calibre operational rounds on* 2010 at Sydney Airport.
- These rounds are from the SDU.
- The rounds had been in the bottom of the bag he uses on a daily basis.
- He recalls that when he was undergoing OSTT training some months before hand at training facility that he removed the operational rounds from his firearm and placed them in his bag.
- This was done so that training rounds could be used in his firearm whilst undergoing OSTT training.
- At the completion of the training he returned to the SDU office and took out of his bag the operational rounds and placed them in the firearms safe. He inadvertently left two operational rounds in his bag.
- Due to the size of the rounds and other equipment and papers in his bag he did not see the two rounds in there until it was brought to his attention by Sydney Airport Security.
- He apologised for this.

# **Comment**

There is recent precedent not to take any formal action for inadvertent breaches such as this. Unless the Australian Federal Police wish to take this matter any further I see no point pursuing this. The explanation given by Wolf-O is plausible and I have no reason not to believe his account of the matter.

52 Staff at the SDU have been instructed that they are to account for all operational ammunition when attending OSTT training. I have issued office instructions that all baggage is to be thoroughly checked prior to travelling interstate to ensure only necessary items are taken by staff. In addition ammunition is to be either stored in the ammunition safe or in the firearm that is being carried by the member.

# **Allegation 12**

53 Contrary to section 7 of the NSW Surveillance Devices Act 2007 at the Sydney City Central Police Station on 2010 SDU memberAnderson-DS

> The Act Victorian legislation.

#### **Response to Allegation 12**

54 This is accepted. As per responses to allegations 2, 5 and 8, at paragraph 16 through to paragraph 20.

#### **Review of the Victoria Police SDU Standard Operating Procedures**

55 Prior to my arrival at this unit, D/Insp GLOW had reviewed the Victoria Police SDU SOP's. In particular, effective as of 9 February 2010, the following has been included in relation to proposed interstate travel.

All proposed SDU operations requiring travel interstate must have approval from the Superintendent Covert Services. Prior to travel the following is to occur;

• Controller is to provide justification to the SDU Inspector who shall brief the Superintendent Covert Services.

• Briefing to include proposed duration of operation and the members participating.

• In jurisdictions where there is a SDU or equivalent the SDU will liaise with the OIC of that Unit and provide an overview. That jurisdictional SDU will, at their discretion advise upwards as required.

• If the operation is considered high risk the Superintendent Covert Service will brief the Assistant Commissioner Intelligence and Covert Support Department.

In jurisdictions that do not operate a SDU or equivalent the following is to occur:

• The investigations group requesting SDU deployment interstate will brief their Assistant Commissioner. The Assistant Commissioner will liaise with Assistant Commissioner (I&CS) who will consider the following:

- *Nature of the request*
- Proposed duration of deployment
- Members participating
- The risk to the Human Source
- *Risk to SDU handlers and Controllers*
- Operational risk assessments
- Risk to State of Victoria and other jurisdiction
- *Risk to reputation of Victoria Police*
- The legislation required to support the SDU operational deployment

• In consultation the Assistant Commissioners will decide if there is an operational necessity to brief or not to brief their interstate counterparts.

• The reasons to be documented and recorded by the Superintendent Covert Services in the respective Human Source Management File in Interpose.

• If unable to agree the Deputy Commissioner (Crime) will be consulted.

56 In furtherance to this an additional Risk Assessment process and check list has been develop and addresses the following points (Folio 23 - 25)

- A Risk Assessment is to be produced of the task/operation to occur interstate and in part will address
- Legal considerations -

Cross Border Controlled Operations (number and duration)

- Special Constables status of SDU members in that state
- Interstate Investigator Liaison

- Consideration for the Detective Inspector SDU to travel interstate with the members deployed from the SDU depending on the perceived risk of the deployment
- Interstate SDU or equivalent
- Risk to Victoria Police
- *Risk to State Policing body SDU and HS to be deployed in*
- Risk to Human Source
- This Risk Assessment will then be checked by the SDU Detective Inspector who inturn will make comment on the deployment and forward it to the Detective Superintendent Covert Services Division for approval and notification to the Assistant Commissioner Intelligence and Covert Support Division as part of the Interstate Travel Request for approval.

# **Operation Debrief surround this incident.**

57 A debrief for this incident was conducted at the Source Development Unit Workshop on 2010 where all staff and the Detective Superintendent Covert Services Division was in attendance. A debrief report is being produced.

# The Way Forward

- 58 The following changes have and are occurring at the SDU:
  - The Victoria Police SDU SOP's have been amended and reflect the learning's from this deployment interstate.
  - A full debrief of the circumstances surrounding this interstate deployment took place on 2010 and this brought out the learning's that have come from this investigation conducted by NSW and Victoria Police.
  - Staff at the SDU have now been made fully aware of the provisions of each particular state in relation to their equivalent Surveillance Devices Act.
  - A more thorough risk assessment process has now been put around all interstate travel requests where staff and Human Sources are deployed as part of an operation.
  - Interstate police liaisons at the appropriate level of management are being established in all states and federally as points of contacts when staff and human sources are being deployed or used interstate. The NSW Police liaison is within their Crime Department at Detective Superintendent level.

- Compliance with Extra Territorial procedures have been reinforced with staff at the SDU and with the establishment of Interstate Liaison point this will reduce the risk. A training session will be delivered by the Crime Department / Detective Training School in August to update the SDU staff of any recent changes to Extra Territorial Warrant process or legislation.
- In consultation with the Detective Superintendent Covert Services Division, the Detective Inspector SDU will travel interstate with the other members from the SDU who are deployed. This will be on a case by case basis taking into consideration the perceived risk of the operation/deployment.
- The learning's from this interstate deployment and subsequent internal investigation have been discussed with all current members of the SDU at a recent workshop in June 2010. The SDU members are fully aware of their obligations when travelling interstate from a legislative and management position. The members have embraced the interstate risk assessment process implemented by management.
- The learning's will also form part of all future Human Source Courses conducted by the SDU and in all orientation lectures for newly appointed members to this unit.

For your consideration

John O'Connor Detective Inspector 24870