

The Auditor-General
Auditor-General Report No.43 2020–21
Performance Audit

Australian Federal Police's Use of Statutory Powers

Australian Federal Police



Audit snapshot

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Why did we do this audit?

- ▶ The Australian Federal Police (AFP) is the national and principal federal law enforcement agency of the Australian Government.
- ▶ The exercise of statutory powers should occur within an effective accountability and reporting framework.
- ▶ This audit complements a similar audit that the ANAO undertook in 2016–17 of the Australian Border Force.



Key facts

- ▶ The AFP has 6834 staff of which more than 4000 are either police officers or protective service officers.
- ▶ The AFP's 2020–21 budget was \$1.57 billion.
- ▶ 86 Commonwealth Acts confer powers on AFP officers.



What did we find?

- ▶ The AFP's framework to ensure the lawful exercise of powers in accordance with applicable legislation is largely effective.
- ▶ There are serious deficiencies in the AFP's record keeping practices and processes.



What did we recommend?

- ▶ The Auditor-General made three recommendations to the AFP around warrant review processes, record keeping and quality assurance.
- ▶ The AFP agreed to all three recommendations.

4000

approximate number of warrants issued to AFP in 2019–20.

97.8%

of *Crimes Act 1914* search warrants complied with Crimes Act requirements

Summary and recommendations

Background

1. The Australian Federal Police (AFP) is the national and principal federal law enforcement agency of the Australian Government. Its role is to enforce Commonwealth criminal law; contribute to combating complex, transnational, serious and organised crime impacting Australia's national security; and to protect Commonwealth interests from criminal activity in Australia and overseas. It also has responsibility for providing policing services to the Australian Capital Territory and Australia's territories, including Christmas Island, Cocos (Keeling) Islands, Norfolk Island and Jervis Bay.
2. The AFP's 2020–21 budget was \$1.57 billion and at 30 June 2020, it had 6834 staff, of whom 3247 were sworn police officers and 829 were Protective Service Officers.¹

Rationale for undertaking the audit

3. AFP officers are able to exercise powers under more than 80 separate Commonwealth Acts, including a range of powers pursuant to warrant. It is important that the AFP has appropriate administrative frameworks to ensure that powers are exercised lawfully and in accordance with authorised procedures; and that officers are adequately trained to exercise powers that are conferred upon them.

Audit objective and criteria

4. The objective of the audit was to assess the effectiveness of the AFP's framework to ensure the lawful exercise of powers in accordance with applicable legislation.
5. The high-level criteria were:
 - Is there an effective accountability and reporting framework for the AFP's lawful exercise of powers?
 - Do AFP officers have adequate knowledge of their powers and how to use them?

Conclusion

6. The AFP's framework to ensure the lawful exercise of powers in accordance with applicable legislation is largely effective. There are serious deficiencies in the AFP's record keeping practices and processes.
7. The AFP has a largely effective accountability and reporting framework for the lawful exercise of its powers. The AFP met statutory reporting requirements under three key Acts examined. However, internal records relating to execution of section 3E Crimes Act warrants are stored in a way whereby retrieval is unable to be achieved efficiently or with an assurance of completeness.

¹ Protective Service Officers (PSOs) — have more limited powers than fully sworn officers and protect Commonwealth interests in Australia and overseas, including counter-terrorism first response at Australia's major airports and at Parliament House in Canberra.

8. The AFP's framework relating to training and guidance is largely effective. However, it has not undertaken a training needs analysis at the whole-of-organisation level and there is limited quality assurance assessment of operational activity.

Supporting findings

Accountability and reporting

9. The AFP has an appropriate *Risk Management Policy* and *Risk Management Framework* as required by the *Commonwealth Risk Management Policy*. The potential risk presented by failure to meet statutory requirements is explicitly recognised in one of its eight enterprise risks. The AFP's approach to managing legislative compliance within the context of the risk management framework has been under consideration since August 2016.

10. The AFP Hub contains 54 instruments of delegation and authorisation which are accessible to all AFP staff and answers a number of Frequently Asked Questions. Instruments issued by the Commissioner conferring intrusive powers under the *Crimes Act 1914* were complete and current.

11. The AFP is statutorily required to submit a variety of reports about the use of certain powers to the Parliament through the relevant Minister/s (and to the Commonwealth Ombudsman). The AFP met its statutory reporting requirements under three key Acts. However, the AFP does not systematically record other uses of statutory powers and does not produce internal reports on their use.

12. The ANAO's review of a random selection of warrants under the *Crimes Act 1914*; *Telecommunications (Interception and Access) Act 1979*; and the *Surveillance Devices Act 2004* found:

- the AFP appropriately exercises TIA Act and SD Act warrants;
- six of 272 section 3E Crimes Act warrants did not meet the requirements of the Crimes Act; and
- 149 of 272 (54.8 per cent) section 3E Crimes Act warrants examined were not prepared consistently with AFP best practice.

13. The ANAO found that the AFP's compliance with internal administrative requirements was inconsistent, with weaknesses identified in:

- documentation of mandatory review of section 3E Crimes Act warrants; and
- warrants and their associated documentation being uploaded into PROMIS.

Training and guidance

14. The AFP provides appropriate training for external recruits and offers continuing training opportunities to its ongoing staff. The AFP is accredited as a Registered Training Organisation and is able to provide nationally-recognised qualifications.

15. The AFP has not undertaken a training needs analysis at the whole-of-organisation level, although there was evidence of limited analysis undertaken focussed on Operational Safety Assessment training and recruit induction training.

16. The AFP does not have an organisation-wide quality assurance framework. Although its Investigations Standards and Practices area has undertaken some operational review activity, this has been limited since its establishment in 2014.

17. The AFP maintains records of officers' completion of mandatory training requirements and monitors their completion. In terms of Operational Safety Assessment, the AFP's records demonstrate improvement since the ANAO's previous examination in Auditor-General Report No.30 2015–16 *Management of the Use of Force Regime*.

18. The AFP maintains a suite of guidance and directions for staff through its Governance Instrument Framework which is readily accessible through the Hub. Although approximately half the instruments were overdue (or possibly overdue) for review at the time of audit, the AFP is presently reviewing the framework.

Recommendations

Recommendation no. 1 Paragraph 2.63

The Australian Federal Police enforces its requirement that section 3E Crimes Act warrants be thoroughly reviewed by at least a supervisor and retain documentary evidence that the review has occurred.

Australian Federal Police response: *Agreed.*

Recommendation no. 2 Paragraph 2.92

As a matter of urgency, the Australian Federal Police should implement an Electronic Data and Records Management System (EDRMS) to allow it to store records so that they are secure and readily accessible. It should cease its reliance on network drives.

Australian Federal Police response: *Agreed.*

Recommendation no. 3 Paragraph 3.30

The Australian Federal Police implement a systematic quality assurance process for its section 3E Crimes Act warrant application, execution and documentation.

Australian Federal Police response: *Agreed.*

Australian Federal Police response

19. The Australian Federal Police's full response is at Appendix 1.

Key messages from this audit for all Australian Government entities

20. Below is a summary of key messages which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

Governance

- Where highly operational entities have an extensive suite of guidance material for staff, a balance needs to be achieved between a centrally-managed regime to ensure consistency of messaging and a decentralised model which may be more responsive to individual work area needs but risks duplication and overlap.
- Entities should avoid proliferation of guidance material which may make it challenging for staff to find the 'right' guidance document — and also creates a downstream administrative burden because such material must be periodically reviewed.

Records management

- An effective Electronic Data and Records Management System is essential for the management of digital records. The National Archives of Australia does not consider that network drives are acceptable for the storage of official records.