



REVIEW INTO THE AFP'S RESPONSE TO AND MANAGEMENT OF SENSITIVE INVESTIGATIONS

Mr John Lawler AM APM

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TERMS OF REFERENCE




Terms of Reference for the Independent Review of the Conduct of Sensitive Investigations in the AFP.

The Australian Federal Police, as the Australian Government's only policing agency, receives a range of referrals that have levels and/or aspects of sensitivity beyond those normally received. Such referrals typically have a political imperative, higher than normal levels of classification and media scrutiny, and require some form of senior management oversight. At present, sensitive investigations include matters relating to unauthorised disclosures; the application of Parliamentary privilege; espionage and foreign interference; and war crimes. In light of my public commitment to review the processes around the recent investigations involving News and the Australian Broadcasting Commission, I require a process review into the handling of sensitive investigations with a view to ensuring all aspects of their conduct (from point of referral through the authorisation and their ongoing management) are as efficient and effective as possible and to determine whether the existing investigative policy and guidelines are fit for purpose.

Drawing, as appropriate, on case studies and consultations this review of sensitive investigations will provide my Office with options around opportunities for interventions and strategies to ensure the AFP is best placed to address sensitive investigations in the future, including the:

- a. Baselining of what constitutes a sensitive investigation
- b. Articulation of the human resources, skills, training, technology and facilities required
- c. Reformation of governance and business processes (including alternative mechanisms for referring entities beyond the AFP)
- d. Organisational structures

In the conduct of this review I require you to draw upon a small review team that I will provide to you, to consult appropriately with relevant internal and external stakeholders within the Australian Government. I expect you to work, given time constraints with reference to the work being undertaken by Ernst and Young on the AFP's future operating model and, given the public interest aspects of this review, I require an annexure to be produced with the express intent for public release should I see fit. This review is to be completed no later than 20 January 2020 and I reserve the right to request an interim report if circumstances arise whereby the full report has not been finalised. Similarly, should you in the course of your review find an issue or issues of concern I require you to bring these to my immediate attention.


Reece P Kershaw APM
Commissioner

14 October 2019

ACKNOWLEDGMENTS

From the outset, Australian Federal Police (AFP) Commissioner Reece Kershaw APM agreed to provide a small team to support the review into the AFP's 'response to and management of sensitive investigations'. The Commissioner assembled a selection of high quality AFP staff to assist the review. They brought to the review a diverse set of skills which have allowed a high quality report to be produced and delivered within very tight timeframes. Even the most cursory examination of the report will identify the attention to detail, breadth of research and analysis that has been drawn upon to present the options as set out in the report.

I would specifically like to thank the review team, and acknowledge the hard work of: Detective Superintendent James Stokes, Coordinator Karen Schlage, Detective Sergeant Josh O'Connor, Ms Mardi Grundy, Detective Sergeant Helen Schneider, Ms Alli Foulis and Detective Sergeant Daniel Burnicle. Without their constant help and assistance it would not have been possible to conduct this detailed review and present a report of this quality, within the timeframe.

More than 100 stakeholders were consulted during the review. All saw the review as important, not only to the AFP, but the broader Australian Public Service and the Australian community at large. It is not possible to list those stakeholders individually in this acknowledgement; their details are contained at **Appendix D**. They gave of their time freely and their input has shaped the review options. I thank them for their contribution. Further, I would like to thank several stakeholders who responded to requests for information, undertook research and/or reviewed content; your assistance was invaluable.

In addition to the direct consultations with stakeholders, numerous inquiries were made of the AFP and its partner agencies, both nationally and internationally. A formidable array of documents was assembled in support of the review's work. Pleasingly, this was done in a spirit of genuine cooperation and engagement. I again thank those who have contributed in this way.

I am confident the AFP workforce will welcome the review's observations and embrace the changes that will be required.

I genuinely hope the options outlined in the report, along with the supporting narrative and analysis, are accepted and implemented. This will in my view, change the AFP for the better and in so doing benefit Australian law enforcement and all Australians, now and into the future.



John Adrian Lawler AM APM
17 January 2020

EXECUTIVE SUMMARY

Commissioner Reece Kershaw APM was appointed as the 8th Commissioner of the Australian Federal Police (AFP) on 2 October 2019 and appeared before the Legal and Constitutional Affairs Legislation Committee at Supplementary Budget Estimates (Estimates) on 21 October 2019.¹ At Estimates Commissioner Kershaw formally announced the engagement of Mr John Lawler AM APM to conduct a review into sensitive AFP investigations.²

The Commissioner specifically noted the review would not be an audit into current matters, but rather “a holistic approach to ensure that [the AFP has] in place investigative policy and guidelines that are fit-for-purpose”.³ Some of the current matters are before the courts and/or subject to parliamentary inquiries, rendering a detailed examination of the investigations inappropriate at this point.

The AFP operates in a complex, fast moving and often dangerous environment. The AFP responds to a large number of referrals each year,⁴ resulting in a demanding workload.⁵ It provides a wide range of police services, locally, nationally and internationally.

If there is a significant policing response required from the Commonwealth of Australia, the AFP will not be far away. Most of the incidents it responds to and referrals it receives are sensitive in some context. This review, however, is focused on a carefully constructed definition of a ‘sensitive investigation’; those investigations requiring special treatments.

A powerful compendium has been prepared of real life case studies to assist a reader of this report to understand the different dimensions and complexity of AFP sensitive investigations (see **Appendix A**). Many of these investigations rely on the cooperation and support of a range of Australian and international partners throughout the investigative process. The compendium provides a window on the complexities faced by the AFP, compounding the sheer volume of the AFP’s work.

The objective of the review into the ‘response to and management of sensitive investigations’ is to report on all aspects of their conduct and provide options to ensure they are as efficient and effective as possible, including providing advice as to whether the existing investigative policy and guidelines are fit for purpose.

1 Parliament of Australia. (2019). *Legal and Constitutional Affairs Legislation Committee. Estimates. Transcript* (21 October 2019) Retrieved from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22committees%2Festimate%2F48ea734a-e5f8-4bc6-813e-1f22b32a238a%2F0000%22>.

2 Ibid.

3 Such as the matters discussed at Estimates: the execution of search warrants at Australian Broadcasting Corporation premises in June 2019; the execution of a search warrant at the home of a News Corp journalist in June 2019; the provision of search warrant assistance to the Registered Organisation Commission (ROC) in October 2017, regarding the ROC’s investigation into the activities of the Australian Workers Union; and the alleged leaking of an Australian Security Intelligence Organisation document regarding the Medevac legislation in 2019; Ibid.

4 ‘Referrals’ includes any allegation of a criminal offence, complaint or inquiry received by the AFP.

5 More than 100,000 referrals each year in 2016, 2017, 2018 and more than 96,000 referrals between 1 January and 31 October 2019.

The review is a thorough examination of the processes, governance and structures, both internal and external, that underpin AFP investigative activity and particularly sensitive investigations. If the underpinning framework is sound then high quality, transparent and accountable investigational outcomes will follow.

The outcomes of this review will also have a direct, tangible and positive impact on how investigations involving journalists and media organisations are undertaken in the future.

The review commenced on 14 October 2019 and delivered its final report a relatively short time later on 17 January 2020. It examined more than 200 relevant documents, created over 150 tasks, conducted 55 meetings with both internal and external stakeholders, and engaged seven of the AFP's international law enforcement partners. The review has formulated 24 options for the Commissioner to consider.

As part of his 100-days of action, the Commissioner also announced two other reviews to be conducted simultaneously.⁶ Given the potential for synergies between the three reviews, close engagement (including the provision of key planning and draft report documents) has taken place.

Term of Reference 1 – Baseline of what constitutes a sensitive investigation

Sensibly the review's first Term of Reference was to baseline and define what constitutes a sensitive investigation. Without this definition, it is not possible to understand exactly which investigations are sensitive and why and what escalated governance and responses are needed. This was a difficult and ultimately subjective task.

The definition has three broad elements: which entities the subject investigations relates to; examples of crime types likely to be sensitive; and the overarching discretion of the Commissioner to declare a sensitive investigation.

Importantly, the definition significantly broadens the AFP's understanding of the term 'investigation' to a 'process of inquiry'. This reflects and captures sensitive responses (e.g. INTERPOL inquiries)⁷ and decision-making, that may not have been viewed within the context of a 'traditional' investigation. The review also suggests the terms 'evaluation', 'assessment' and like words no longer be used when referencing the status of AFP referrals. This will remove considerable confusion and ambiguity both for the public and within the AFP, even at senior levels, and alleviate perceptions the AFP is seen to be "tricky" with the use of such terminology.⁸ All matters will be 'under investigation' as outlined in the definition.

6 The first relates to the AFP's organisation design and process improvements to support AFP frontline operations. The second relates to the development of a State Services Centre to work closely with the AFP's State and Territory partners in order to maximise the AFP's operational impact and effect.

7 For example the Red Notice issued by INTERPOL at the request of Bahrain regarding Mr Hakeem al-Araibi; Cannane, S. & Blumer, C. (2019). *Missed emails, bureaucratic bungles: How Home Affairs and the AFP contributed to Hakeem al-Araibi's time in a Thai jail* ABC News. 4 December 2019 Retrieved from <https://www.abc.net.au/news/2019-10-11/bungles-that-led-to-hakeem-al-araibi-being-locked-up-in-thailand/11583270>.

8 Review Meetings 1 November – 20 December 2019: 3; 15; 19; 23; 32; 34. Note the review generated randomised reference numbers for Review Meetings.

Term of Reference 2 – Articulation of the human resources, skills, training, technology and facilities required

The AFP's Offshore and Sensitive Investigations team (OSI), within the National Response Operations portfolio and the Crime Operations function, has responsibility for conducting a number of the AFP's sensitive investigations subject to public debate. However, the review notes that sensitive investigations can be undertaken by any area of the AFP.

The review considered information regarding OSI's staffing numbers and budget and received advice regarding the skills, training, technology and facilities required to undertake a sensitive investigation. Terms of Reference 3 and 4 discuss in further detail an identified structural change amalgamating OSI with the AFP's Counter Terrorism (CT) portfolio. Should the Commissioner accept this option, the amalgamation should take place before resources, skills and training needs are fully assessed.

The review also identified that cultural adjustment will be key to the successful implementation of changes regarding the way in which the AFP responds to and manages sensitive investigations.

There was agreement with the need for AFP officers to continue to conduct their duties in accordance with the Oath or Affirmation.⁹ Stakeholders are equally supportive of more scrutiny, consistency and better governance being required in relation to referrals.¹⁰ There is an appreciation the AFP's investigational context has changed, a range of treatment options are required and not every investigation can be treated in the same way.¹¹

Term of Reference 3 – Reformation of governance and business processes (including alternative mechanisms for referring entities beyond the AFP)

AFP governance

Examination by the review of 16 key and many other relevant governance documents identified that some: were out of date; did not include a review schedule; had no owner; had been overtaken by organisational changes; or referenced other documents that had been archived. Upon bringing this to the attention of the Commissioner, he directed senior managers to review their governance documents immediately to ensure they were updated. The review is aware this process has commenced. An internal audit should be conducted to ensure this has occurred throughout the AFP.

9 Oath/Affirmation for Commissioner, Deputy Commissioner, member or special member Form 2/3 Schedule 1 Australian Federal Police Regulations 2018 (Cth).

10 Review Meetings 1 November – 20 December 2019: 4; 6; 9; 11; 23; 29; 30; 31; 34; 42; 43 44; 47.

11 Review Meetings 1 November – 20 December 2019: 9; 10; 19; 22; 23; 44.

Escalation model

A key element of the review was to provide advice on how sensitive investigations should be managed once identified. The review proposes an escalation model to better manage those investigations. A key component of this model is the establishment of an AFP Senior Executive Group (SEG) to oversee sensitive investigations, chaired by a Deputy Commissioner. The SEG would draw on the principles of Joint Management Committees already widely in use in multi-agency police investigations. The escalation model will require the application of the following elements, once a matter has been determined to be a sensitive investigation:

- ▶ Advise the Chair of the SEG;
- ▶ Appoint a Senior Investigating Officer;
- ▶ Advise AFP Legal;
- ▶ Engage the Commonwealth Director of Public Prosecutions;
- ▶ Engage regularly with the referring agency or entity;
- ▶ Advise the Minister (subject to agreement on Ministerial briefing arrangements);
- ▶ If the sensitive investigation involves a journalist or news media organisation, engage them appropriately and likely through respective Chief/General Counsel;
- ▶ Enhance internal briefings to the SEG; and
- ▶ Complete investigations within compressed timeframes, triggering the allocation of additional and priority resources.

The Case Categorisation and Prioritisation Model

The Case Categorisation and Prioritisation Model (CCPM) has been the primary prioritisation tool utilised by the AFP since 1998 to assess and manage referrals coming into the AFP. A number of reviews and audits have highlighted flaws in the CCPM and associated governance, systems and supporting business structures.¹² Other agencies dealing in sensitive investigations, and some areas within the AFP, have already moved to a risk based approach, which is more reflective of current risk based management practices.¹³ The review suggests a simplified risk based framework be adopted, drawing on extensive work already undertaken by the AFP. The framework will need to draw on the settled definition of a sensitive investigation. The framework can then be used to aid in the identification of sensitive investigations, either when they are referred to the AFP or as sensitivities arise during any investigation.

¹² The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

¹³ For example: the Australian Commissioner for Law Enforcement Integrity, AFP Professional Standards and the Criminal Assets Confiscation Taskforce.

Relevant external governance

A Protocol was developed in 2017 between the AFP and the Australian Public Service (APS) Secretaries Board,¹⁴ chaired by the Secretary of Prime Minister and Cabinet. The Protocol was intended to assist secretaries, agency heads and the AFP, when considering referring allegations of unauthorised disclosure of Commonwealth information to the AFP for investigation. The current status of the Protocol is uncertain.¹⁵ Following legislative changes, a new Direction issued by the Minister for Home Affairs to the Commissioner and this review, there is an opportunity to reinvigorate and expand the Protocol.¹⁶ This will ensure matters referred from the APS are consistently formulated, with high level consideration of all the elements of the matter, including harm statements,¹⁷ before being referred to the AFP for investigation.¹⁸ It should also require relevant agencies to explore their own options (such as taking their own legal advice, instigating workplace investigations or other legal avenues) prior to referring a matter to the AFP.

For those referrals not originating from the APS, the Commissioner should exercise his redefined discretion in accepting or rejecting referrals in conjunction with any risk referral frameworks that are ultimately agreed.

Term of Reference 4 – Organisational structures

National Headquarters Command

The National headquarters investigational environment has over 400 investigators, which is equivalent to the AFP's largest Regional Command, New South Wales. Headquarters is responsible for a range of investigational activities including, but not limited to, terrorism, child exploitation, cybercrime, human trafficking, professional standards, fraud, anti-corruption and protection.

AFP functional areas are all managing their investigations in different ways and through different structures. In some instances, for example Professional Standards, some degree of separation may be necessary. Some functions have well developed structures and governance, an example being CT with its multi-agency committees; others have little to none. There are no structures that support investigational activity holistically, nor are there effective structures to manage the most sensitive of AFP investigations. A clear weakness is the lack of consistent structures at an AFP headquarters level for assessing/evaluating, allocating and monitoring investigations, including sensitive investigations. AFP headquarters also lacks a central line of management for locally based operational resources,

14 AFP. (2017). *Referral of Allegations of Unauthorised Disclosure Protocol between the Australian Public Service Secretaries Board and the Australian Federal Police* (2 August 2017) Folder 3, no 5/2/6.

15 Review Meetings 1 November – 20 December 2019: 12.

16 The Hon Peter Dutton MP. (2019). *Ministerial Direction to AFP Commissioner relating to investigative action involving a professional journalist or news media organisation in the context of an unauthorised disclosure of material made or obtained by a current or former Commonwealth Officer* (8 August 2019) Retrieved from <https://www.afp.gov.au/sites/default/files/PDF/Ministerial-Direction-signed-2019.pdf>.

17 A 'harm statement' indicates the extent to which an authorised disclosure of classified material would be expected to significantly compromise Australia's national security and forms a part of the overall consideration of the 'public interest' relating to the matter in question.

18 Review Meetings 1 November – 20 December 2019: 3; 9; 11; 13; 22; 23; 29; 30; 33; 35; 39; 41.

member welfare and development, and agility between functions. Furthermore, there is no one central point of operational contact for security risk and treatment plans.¹⁹ This scenario does not allow investigational risk to be properly recognised, understood and managed.

This is surprising and in stark contrast to the AFP Regional Commands, which have established and relatively well-functioning regional coordination centres to manage referrals. Regional Operations Capacity and Capability Committees bring together multiple functional streams to consider referred investigations, resolve resourcing, settle prioritisation and guide investigational delivery at the regional level.

Previous AFP management were aware of these structural weaknesses and the risks they posed, commissioning a 'Canberra Office Project' in an effort to understand the problem in detail and remediate this situation. The executive at the time were also concerned about the overall management of their people and the enabling support created by a fragmented environment. The 'Canberra Office Project' aims to complement the regional offices, ensuring all teams and functions are adequately managed in a streamlined process.²⁰ Unfortunately, that structure has not yet been implemented. A National Command is forming part of Commissioner Kershaw's initial considerations.

Individual managers to their credit have tried to overcome these weaknesses through the refinement of the headquarters-based Capability and Operational Priority Committee, the creation of the Canberra Staffing Committee and functional Operations Committees. These either have a limited management focus or restricted coordination authority. Since the review commenced, a Sensitive Decisions Panel has been established as an interim measure. The governance structures at a headquarters level need to be consolidated and strengthened.

Counter Terrorism/Offshore and Sensitive Investigations

At an AFP headquarters level, CT was held up as a model which has a strong risk management overlay.²¹ With the more recent inclusion of espionage and foreign interference as part of the OSI responsibilities, synergies have emerged that make combining the two areas sensible.

CT has strong practices including multi agency committees, an effective briefing regime, and developed stakeholder engagement relationships, particularly with the intelligence community and State/Territory police.²² In addition, it already has relevant physical security facilities at its disposal,²³ along with a large number of employees security cleared to the highest levels.²⁴

¹⁹ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 15 November] Folder 3, no 3/5/4.

²⁰ Ibid.

²¹ Review Meetings 1 November – 20 December 2019: 3; 5; 6; 11; 15; 19; 42; 43.

²² AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 15 November] Folder 3, no 5/14/10.

²³ Review Meetings 1 November – 20 December 2019: 51.

²⁴ This incorporates a proportion of employees who hold a Positive Vetting clearance.

International models, particularly the United Kingdom's SO15 arrangements, lend support to an amalgamation of the two areas.²⁵ Some risks would require treatment, including the need for close stakeholder engagement and ensuring countering terrorism remains the highest priority in protecting Australia and Australians.

Conclusion

Even the most cursory examination of this report will identify the attention to detail, breadth of research, and analysis that has been drawn upon to present the options as outlined on pages 16–19. It is envisaged it will take some time for the Commissioner to consider the report and decide on the options he wishes to advance and any order of priority.

At the centre of the review's findings are a definition of 'sensitive investigation' and a key structural and governance change creating an escalation model for the AFP to better manage sensitive investigations. If this alone is delivered, significant improvements to the way the AFP handles sensitive investigations will result. The other suggested enhancements in the report will only further improve the way the AFP responds to its investigational risks.

Once any options are agreed, it will be critical the AFP's governance and risk management processes are applied to ensure the agreed options are delivered in a structured and timely way. In identifying the options available to the Commissioner, it was clear the AFP had already recognised some shortcomings in investigational governance and structural arrangements.

A common theme emerging from the review has been the failure of the AFP to implement a range of earlier internal and external review and audit findings. To that end, the AFP's Audit Committee has very experienced external members; this experience should be harnessed and the Audit Committee tasked to ensure that comprehensive implementation of the agreed options occurs. Experience in other Commonwealth Departments shows without robust oversight of implementation through follow-up audits, there is a high risk that crucial delivery will not happen as it should.

Community and stakeholder confidence in the AFP has been negatively impacted as a result of recent sensitive investigations. A clear objective of this review is to improve that confidence in, and support for, the AFP's actions in protecting Australians and Australia's interests. The AFP's response to this review should further embed the AFP values, particularly accountability, excellence and commitment. If the AFP implements effectively the options contained in this report then significant improvements to the conduct of investigations, including matters involving journalists and media outlets, will occur. Further, community confidence in the AFP will be enhanced.

²⁵ SO15 is the Counter Terrorism Command within the United Kingdom Metropolitan Police Service; Counter Terrorism Policing. (2018). *Our network* Retrieved from <https://www.counterterrorism.police.uk/our-network/>.

OPTIONS

Term of Reference 1 – Baselining of what constitutes a sensitive investigation

1. Note the review’s baselining analysis (pages 25–31).
2. Endorse the review’s definition of what constitutes a sensitive investigation, noting the change in definition will require revision of Australian Federal Police (AFP) and external governance, including the potential revision of the Australian Government Investigations Standards (page 32).
3. Agree to the cessation of the use of the terms ‘evaluation’, ‘assessment’ and like words when referring to the status of AFP referrals, complaints or investigations. Noting this will require: AFP cultural acceptance; changes to AFP systems and governance; and clear explanations in public forums. All matters will be ‘under investigation’, as outlined in the definition (pages 33–34).

Term of Reference 2 – Articulation of the human resources, skills, training, technology and facilities required

4. Develop strategies to ensure appropriate consistency in cultural perceptions regarding investigations within the AFP. This could be included as part of any broader cultural reform (page 37).
5. Support efforts by the AFP Chief Learning Officer to continue to develop investigator skills, knowledge and judgement which will positively impact sensitive investigation outcomes (pages 38–39).
6. Noting a decision is still to be made on the amalgamation of Counter Terrorism (CT) and Offshore and Sensitive Investigations (OSI) functions (see Option 21), if or when this occurs an assessment of relevant resource, capability and facility needs, including consideration of corporate support, should be undertaken (pages 35–42).

Term of Reference 3 – Reformation of governance and business processes (including alternative mechanisms for referring entities beyond the AFP)

7. Agree with the elements of the proposed escalation framework when a sensitive investigation is identified or declared which include:
 - ▶ Advise the Chair of the Senior Executive Group (SEG) (see Option 20 for further information regarding the SEG);
 - ▶ Appoint a Senior Investigating Officer;
 - ▶ Advise AFP Legal;
 - ▶ Engage the Commonwealth Director of Public Prosecutions;
 - ▶ Engage regularly with the referring agency or entity;
 - ▶ Advise the Minister (subject to agreement on Ministerial briefing arrangements);
 - ▶ If the sensitive investigation involves a journalist or news media organisation, engage them appropriately and likely through respective Chief/General Counsel;
 - ▶ Enhance internal briefings to the SEG; and
 - ▶ Complete investigations within compressed timeframes, triggering the allocation of additional and priority resources (pages 49–55).
8. Replace the current Case Categorisation and Prioritisation Model (CCPM) tool, and introduce a risk based approach to managing referrals/complaints into the AFP, drawing upon the CCPM reviews already undertaken. This proposed enhancement should be thoroughly trialled, particularly to ensure that the review's baselining and definition are effective in supporting the identification of sensitive investigations (pages 44 and 46).
9. Ensure the Commissioner's redefined discretion to accept or reject referrals for investigation is delegated where necessary and utilised comprehensively in conjunction with the referral risk framework (page 59).
10. Request through the Secretaries Committee on National Security, in conjunction with the Secretary of Home Affairs, the Secretaries Board produce an enhanced Protocol detailing a systematic approach to sensitive investigation referrals for all Commonwealth departments and agencies. This systematic approach should include consideration of minimum thresholds and a harm assessment for each referral (pages 57–58).

11. Promulgate the associated governance documents regarding sensitive investigations: within the Australian Public Service; within the Federal Parliament; and publicly through the AFP's website (page 58).
12. Commission an internal audit in the first half of 2020, to ensure the Commissioner's direction to senior managers to review internal governance has been adhered to, providing the Commissioner with additional assurance, as the accountable authority, the AFP's governance framework is relevant and fit for purpose (pages 43–44).
13. Assess whether risk and audit functions should be amalgamated within the AFP, to ensure sufficient capacity and connectivity and the establishment of a focussed assurance/compliance capability (page 45).
14. Require the Chair of the AFP's Audit Committee to commence a process of regular monitoring to ensure the options agreed by the Commissioner are fully implemented (page 45).
15. Re-establish a centralised oversight of the AFP governance framework to ensure the governance framework is current, maintained and fit-for-purpose (page 45).
16. Replace existing key AFP operational governance to reflect the accepted options from this review, to ensure consistency in language and application (page 45).
17. Create governance documents on AFP briefing, to cover matters including Ministerial briefing requirements and an Executive Dashboard on sensitive investigations (pages 54–55 and 56–57).
18. Reinvigorate the use of Police Real-time Online Management Information System generated management significant case note entries, with strict adherence to their use mandated, preferably through a clear direction from the Commissioner (pages 56–57).
19. Retain the recent guideline and arrangements in managing death penalty issues and the existing CT Joint Management Committee (JMC) processes, noting it is not necessary to make any organisational structure changes to the Joint Counter Terrorism Team operating model (page 56).

Term of Reference 4 – Organisational structures

20. Establish a SEG, within an escalation framework for the oversight and management of the full range of AFP sensitive investigations. The Terms of Reference for the SEG should reflect the narrative and intent of this report. The SEG should not unnecessarily duplicate existing JMC arrangements, e.g. CT, but should ensure they have sufficient visibility of other investigations involving the AFP (page 65).
21. Amalgamate the headquarters CT and OSI portfolios, noting the benefits of engaging key partners from the intelligence community and State/Territory police forces on this change (pages 64–65).
22. Establish a National Headquarters Command, drawing on aspects of the ‘Proposed Canberra Office Project’ and replicating what is working well by way of the management and governance structures in operation within the AFP Regional Commands (pages 62–63).
23. Reinvigorate the AFP Operations Coordination Centre (AOCC) as part of the National Headquarters Command, monitoring all referrals and applying an agreed risk framework, including assessing whether any referral should be treated as a sensitive investigation upon its receipt (pages 63–64).
24. Staff the AOCC 24 hours a day, 365 days a year with appropriately trained and experienced senior employees, including consideration of members from AFP Legal (pages 63–64).

BACKGROUND

On 28 December 2018, Part 5.6 (Secrecy of information) of the *Criminal Code Act 1995* (Cth) (Criminal Code) commenced. The below listed long standing *Crimes Act 1914* (Cth) (Crimes Act) provisions were repealed:

- ▶ s70 (unauthorised disclosure of Commonwealth information); and
- ▶ s79 (official secrets).

These changes were amongst broader legislative reforms designed to “modernise and strengthen” Australia’s espionage, foreign interference, secrecy and related laws.²⁶

For a significant period of time, Australian Federal Police (AFP) investigations of unauthorised disclosures of Commonwealth information under s70 Crimes Act and offences regarding official secrets under s79 Crimes Act were problematic. The investigations were invariably characterised with evidentiary challenges. These included the extent to which the questioned documents had been circulated, often exposing many hundreds of persons as potential suspects,²⁷ along with a lack of assessment of how harmful the disclosed material was to the national interest.²⁸ Additionally, issues concerning the involvement of politicians, senior public servants, media organisations, journalists and journalists’ sources, the application of Parliamentary Privilege and at times the politicisation of such matters, meant investigations of this nature were inherently sensitive.²⁹

Typically, investigations of this type took a long time to undertake,³⁰ with often mixed support from the referring agency past the point of referral.³¹ Very few led to the submission of a brief of evidence to the Commonwealth Director of Public Prosecutions (CDPP) for consideration of prosecution and even less resulted in a successful prosecution.³²

Two investigations came to prominent public attention in June 2019, when two search warrants were sworn and executed.

26 The Parliament of the Commonwealth of Australia. (2017). *National Security Legislation Amendment (Espionage and foreign interference) Bill 2017 – Explanatory Memorandum* Retrieved from https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6022_ems_e4d3fac9-e684-40c4-b573-c000e7a32b03/upload.pdf/655771.pdf;fileType=application%2Fpdf.

27 Parliament of Australia. (2019). *Legal and Constitutional Affairs Legislation Committee*. Estimates (21 October 2019). Op. Cit.

28 Review Meetings 1 November – 20 December 2019: 6; 12; 23.

29 Review Meetings 1 November – 20 December 2019: 6; 9; 10; 23; 34; 40; 43; 44; 47.

30 As at 12 December 2019, on average, relevant finalised investigations took: 151 days in 2016; 363 days in 2017; 173 days in 2018; and 74 days up to 12 November 2019: AFP. (2019). Review into the AFP’s Response to and Management of Sensitive Investigations [Email 12 December] Folder 3, no 2/9; Review Meetings 1 November – 20 December 2019: 12; 13; 15; 26; 29; 33; 38.

31 Review Meetings 1 November – 20 December 2019: 3; 9; 11; 15; 44.

32 In the period 1 January 2016 to 12 November 2019, the AFP received 41 referrals regarding s70 or s79 *Crimes Act 1914* (Cth). Investigations were commenced in relation to 29 of those referrals. Ultimately, a brief was submitted to the Commonwealth Director of Public Prosecutions in relation to less than 15 investigations. Ten investigations are currently still on-going. AFP. (2019). Review into the AFP’s Response to and Management of Sensitive Investigations [Email 13 December] Folder 3, no 2/9.

One was a referral from the Department of Defence (DoD) to the AFP relating to the alleged unlawful disclosure of Top Secret information concerning the Australian Signals Directorate. This resulted in the execution of a search warrant at the home of News Corp journalist, Ms Annika Smethurst.³³

The other, also a referral from the DoD, related to the alleged theft, unauthorised disclosure and receipt of Secret Australian Eyes Only material concerning allegations of war crimes having been committed by Australian soldiers in Afghanistan. This resulted in the execution of a search warrant at the business premises of the Australian Broadcasting Corporation (ABC) in Sydney.³⁴

Although both are unrelated, the search warrants were executed by AFP investigators on consecutive days. The proximate timing of the search warrants was perceived by the media and sections in the community as a deliberate attempt by the AFP to silence the media and attack press freedoms.³⁵ While the AFP strenuously denies this accusation, negative public perceptions remain.³⁶

On 4 July 2019, the Parliamentary Joint Committee on Intelligence and Security (PJICIS) commenced an inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press. In referring this issue for inquiry and report, the Attorney-General, the Hon Christian Porter MP, noted the Government would consider proposals from media organisations and other interested entities.³⁷

A total of 61 submissions have been presented to the inquiry.³⁸ The themes from those submissions relevant to this review include:

- ▶ Overt activity involving journalists undermines the public's trust in the AFP;
- ▶ The erosion of trust has called into question the manner in which the AFP obtains information, including the perceived overuse of warrants in investigations and whether additional oversight is necessary to obtain warrants involving journalists;
- ▶ The AFP is not independent and investigations are politically motivated;
- ▶ It is insufficient for the AFP to justify its actions by a strict adherence to the law in circumstances where actions can be viewed as being politically motivated; and

33 Smethurst, A. (2018). *Spying shock: Shades of Big Brother as cyber-security vision comes to light* The Daily Telegraph. 29 April 2018 Retrieved from <https://www.dailytelegraph.com.au/news/nsw/spying-shock-shades-of-big-brother-as-cybersecurity-vision-comes-to-light/news-story/bc02f35f23fa104b139160906f2ae709>; AFP. (2019). AFP statement on search warrant in Kingston, ACT. AFP Media Release. 4 June 2019 Retrieved from <https://www.afp.gov.au/news-media/media-releases/afp-statement-search-warrant-kingston-act>.

34 Oakes, D. & Clark, S. (2017). *The Afghan Files: Defence leak exposes deadly secrets of Australia's special forces* ABC News. 11 July 2017 ABC Retrieved from <https://www.abc.net.au/news/2017-07-11/killings-of-unarmed-afghans-by-australian-special-forces/8466642?pfmredir=sm>; AFP. (2019). *AFP statement on search warrant in Sydney*. AFP Media Release. 5 June 2019 Retrieved from <https://www.afp.gov.au/news-media/media-releases/afp-statement-search-warrant-sydney>.

35 Such as Remeikis, A. (2019). *ABC vows to continue reporting 'without fear' after police raid Sydney offices* The Guardian. 5 June 2019 Retrieved from <https://www.theguardian.com/media/2019/jun/05/abc-offices-raided-by-australian-federal-police>.

36 Australian Broadcasting Corporation. (2019). *AFP chief insists raids on media were not initiated by Federal Government* ABC News. Retrieved from <https://www.youtube.com/watch?v=KaSnGjoVA-4>; Australian Broadcasting Corporation 7:30 Report. (2019). *AFP were not trying to intimidate journalists, Commissioner Andrew Colvin says*. [Transcript] ABC News. 16 July 2019 Retrieved from <https://www.abc.net.au/7:30/afp-were-not-trying-to-intimidate-journalists.11315406>.

37 Parliament of Australia. (2019). *Parliamentary Joint Committee on Intelligence and Security inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press* Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/joint/Intelligence_and_Security/FreedomofthePress.

38 As at 5 December 2019.

- ▶ The AFP, as an independent agency, has not given proper consideration to applying public interest tests or using its discretion when conducting investigations involving journalists.³⁹

On 23 July 2019, the Senate referred an inquiry into press freedom to the Environment and Communications References Committee. A total of 46 submissions were presented to the inquiry.⁴⁰ The themes from those submissions relevant to this review include:

- ▶ The mechanisms which the AFP has in place to prioritise referrals does not appear to be free of political interference; and
- ▶ Overt activity involving journalists undermines the public's trust in the AFP.⁴¹

At the same time, media organisations and journalists were lobbying at a national level through the '#RightToKnow' campaign.⁴² While the Right to Know coalition has been in effect since 2007, it launched a public awareness campaign for the first time in 2019 in relation to media freedoms.⁴³ In addition to broader calls for change regarding information access and whistleblower protections, the campaign is also calling for a suite of reforms relating to, amongst other things, changes to the laws regarding search warrants for journalists and media organisations.⁴⁴

It must be recognised and acknowledged the AFP receives a large number of complex referrals, resulting in a demanding workload. The vast majority are responded to in a manner which attracts little or no public concerns.

Table 1 provides a snapshot of the number of AFP referrals from 2016 to 2019.

Table 1: AFP – number of referrals⁴⁵

	2016	2017	2018	2019
TOTAL	119,262	116,544	109,896	96,724

Against this background the Commissioner established this review.

39 Parliament of Australia. (2019). *Parliamentary Joint Committee on Intelligence and Security inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press*. Op. Cit. Submissions 8, 9, 12, 13, 38, 41 and 54.

40 As at 5 December 2019.

41 Parliament of Australia. (2019). *Senate Standing Committees on Environment and Communications: Press Freedom: Submission 1 & 13* Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/PressFreedom/Submissions.

42 Your Right to Know. (2019). *When government keeps the truth from you, what are they covering up?* Retrieved from <https://yourrighttoknow.com.au/media-freedom/>.

43 Your Right to Know. (2019). *Who's involved* Retrieved from <https://yourrighttoknow.com.au/who-is-involved/>.

44 Ibid.

45 Data is current to 12 December 2019. The 2019 data covers 1 January to 31 October 2019. All data is from the AFP's Police Real-time Online Management Information System: AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 12 December] Folder 3, no 2/9.

ESTABLISHMENT

On 24 July 2019, the recommendation for appointment of Northern Territory Police Commissioner Reece Kershaw APM as the 8th Commissioner of the AFP was announced. At a press conference with the Minister for Home Affairs, the Hon Peter Dutton MP, Commissioner Kershaw indicated his intention to closely consider investigations such as those into unauthorised disclosures of Commonwealth information and the execution of search warrants with regards to journalists.⁴⁶

The Commissioner was appointed on 2 October 2019, and appeared before the Legal and Constitutional Affairs Legislation Committee at Supplementary Budget Estimates (Estimates) on 21 October 2019. At Estimates, the Commissioner formally announced my engagement to conduct a review into sensitive investigations. The Commissioner also tabled the Terms of Reference for the review.⁴⁷

The Commissioner specifically noted the review would not be an audit into current matters, but rather “a holistic approach to ensure that [the AFP has] in place investigative policy and guidelines that are fit-for-purpose”.⁴⁸

Following Estimates, the Commissioner wrote to the Chair of the PJCS and the Chair of the Senate Standing Committees on Environment and Communications,⁴⁹ advising of the establishment of the review and my appointment to conduct the review. The Commissioner also provided a copy of the Terms of Reference to each Committee Chair.

Review methodology

The review aims to address four key criteria set out in the Terms of Reference, namely:

1. Baselining of what constitutes a sensitive investigation;
2. Articulation of the human resources, skills, training, technology and facilities required;
3. Reformation of governance and business processes (including alternative mechanisms for referring entities beyond the AFP); and
4. Organisational structures.

⁴⁶ The Hon Peter Dutton MP. (2019). *Joint press conference with Mr Reece Kershaw APM, Parliament House, Canberra* (24 July 2019) Retrieved from <https://minister.homeaffairs.gov.au/peterdutton/Pages/press-conference-canberra-25072019.aspx>.

⁴⁷ Parliament of Australia. (2019). *Legal and Constitutional Affairs Legislation Committee. Estimates* (21 October 2019). Op. Cit.

⁴⁸ Ibid.

⁴⁹ AFP. (2019). *Letter from the Commissioner to Mr Andrew Hastie MP* 21 October 2019 Folder 3, no 7/15; AFP. (2019). *Letter from the Commissioner to Senator Sarah Hanson-Young* 21 October 2019 Folder 3, no 7/15.

The review commenced on 14 October 2019 and adopted a systematic approach and developed a methodology to guide the process. The methodology identified three phases:

1. Collation and review of relevant governance and other documents;
2. Analysis, stakeholder meetings and development of a future state; and
3. Writing and presentation of the review report.

I was supported in the review by a Detective Superintendent, a Coordinator, three Detective Sergeants, a Team Leader and a Team Member.

The review identified individuals, departments and agencies that could assist the review. In all, the review conducted 55 meetings and met with more than 100 stakeholders over 21 days. The review produced a file note for each meeting, checking the accuracy of such with the stakeholder. This allowed the team to qualitatively assess themes and ensure each option included in the report was well-founded. The full list of stakeholder meetings is at **Appendix D**.

While there may have been benefit in engaging an even broader span of stakeholders, this was not possible within the scope and timing of the review. The review therefore selected the stakeholders on the basis of a considered assessment, including analysis of the identified sensitive investigations referred to the AFP over the past five years. A number of stakeholders were selected based upon their entity's prominence in these referrals.

The review collated, reviewed and analysed a significant number of relevant documents including but not limited to: internal and external governance documents; internal investigations reviews and samples of sensitive investigations conducted by the AFP between 2005 and 2019; and external investigation reviews.

There were just over three months between the commencement of the review and the due date for the report to the Commissioner. The three phases therefore ran concurrently rather than consecutively.

TERM OF REFERENCE 1

BASELINING OF WHAT CONSTITUTES A SENSITIVE INVESTIGATION

The review, as its first and cornerstone Term of Reference, is required to baseline what constitutes a sensitive AFP investigation.⁵⁰ The AFP currently has no organisational definition of a sensitive investigation. Those hoping for a simple, unambiguous, stationary, and non-prescriptive baseline of what constitutes a sensitive AFP investigation, may be disappointed in the review's analysis and ultimate definition.

Investigations: identifying the scope

The Macquarie Dictionary defines 'investigation' to be:

- ▶ *The act or process of investigating.*
- ▶ *A searching inquiry in order to ascertain facts; a detailed or careful examination.*⁵¹

The AFP, as the Australian government's national policing agency, investigates a wide range of matters.⁵² The AFP's functions are set out in section 8 of the *Australian Federal Police Act 1979* (Cth) (AFP Act). The AFP's functions include enforcing criminal law through investigations, providing protection services for Commonwealth establishments and dignitaries, conducting international police assistance, and community policing in the Australian Capital Territory (ACT) and certain external territories. The AFP's policing services is divided into National Operations (Outcome 1) and ACT Policing (Outcome 2).⁵³

In terms of investigative work undertaken by the AFP, this can include:

- ▶ Administrative (personnel security vetting, workplace health and safety investigations, professional standards investigation);
- ▶ Civil (asset recovery action); and

50 The Macquarie Dictionary defines a 'baseline' to include a basic standard or level, usually regarded as a reference point for comparison: Macquarie Dictionary. (2019). Macquarie Dictionary. Macmillan Publishers Australia Retrieved from <https://www.macquariedictionary.com.au/>.

51 Ibid.

52 AFP Website. *Our Organisation. AFP Vision and Mission* Retrieved from <https://www.afp.gov.au/about-us/our-organisation#mission>.

53 Outcome 1 principally captures AFP national and international policing activity. Outcome 2 reflects the AFP's community policing activities delivered to the Australian Capital Territory (ACT) through ACT Policing: AFP (2019) *Corporate Plan 2019-20* Retrieved from <https://www.afp.gov.au/corporate-plan-2019-20>.

- Criminal, whether by a dedicated team, such as Offshore and Sensitive Investigations (OSI) or Human Trafficking, or conducted as part of a joint taskforce arrangement such as a Joint Counter Terrorism Team (JCTT) or Taskforce Blaze.⁵⁴ These taskforces, which may be with foreign law enforcement agencies, may see the AFP as the lead agency, a joint agency, or as a contributing agency.

In this context, an AFP investigation is any process of inquiry conducted by, or with the support of the AFP, seeking information relevant to an alleged, apparent or potential breach of the law, or involving possible judicial proceedings.⁵⁵ These processes may be commenced upon the subject matter coming to the attention of the AFP regardless of the manner in which this occurs.

Investigations being conducted by other agencies or bodies who require the application of AFP powers or capabilities,⁵⁶ can draw the AFP into a sensitive investigation, outside of its governance structures and direct control.⁵⁷

The primary purpose of an investigation is to gather admissible evidence for any related criminal, civil, disciplinary or administrative proceeding, to inform prevention and/or disruption action or to inform a decision for no action to be taken. The term ‘investigation’ can also include intelligence processes which directly support the gathering of admissible evidence.⁵⁸ AFP decisions to continue or discontinue an investigation, prior to commencement of an associated prosecution, are based on the ongoing assessment of a range of issues including the sufficiency of evidence and the public interest.⁵⁹

What is ‘sensitive’?

With reference to the ordinary meaning of the word, the Macquarie Dictionary defines ‘sensitive’ to include:

- Readily affected by external agencies or influences;
- Highly susceptible to adverse criticism; and
- (of an issue, topic etc) arousing strong feelings or reaction.⁶⁰

All AFP activities, including all investigations and the matters to which they relate, are conducted to protect Australians and Australia’s interests and are therefore sensitive to some degree.⁶¹

54 Taskforce Blaze is an agreement between the AFP and the Chinese National Narcotics Control Commission to combat the manufacture and exportation of methamphetamine (ice) from China to Australia: AFP. (2018). *Australia re-signs landmark deal with China*. AFP Media Release. 13 December 2018 Retrieved from <https://www.afp.gov.au/news-media/media-releases/australia-re-signs-landmark-deal-china>.

55 This includes judicial inquests and government-appointed committees of inquiry; AFP. (2013). *Australian Federal Police Investigations Doctrine*. Folder 3, no 5/2/5 and Attorney-General’s Department. (2011). *Australian Government Investigations Standards 2011* Retrieved from <https://www.ag.gov.au/Integrity/counter-fraud/fraud-australia/Documents/AGIS%202011.pdf>.

56 Such as: requests for investigative assistance to execute a search warrant to obtain evidence; mutual assistance requests from foreign law enforcement agencies; and requests for forensic assistance to undertake fingerprint and DNA examinations.

57 For example, the search warrant assistance provided by the AFP to the Registered Organisations Commission in relation to the Australian Workers Union.

58 Attorney-General’s Department. (2011). *Australian Government Investigations Standards 2011*. Op. Cit.

59 Commonwealth Director of Public Prosecutions. (2019). *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process* Retrieved from <https://www.cdpp.gov.au/sites/default/files/Prosecution%20Policy%20of%20the%20Commonwealth.pdf>.

60 Macquarie Dictionary. (2019). Op. Cit.

61 AFP. (2019). *Australian Federal Police Corporate Plan 2019-2020*. Op. Cit.

However, there exist AFP investigations involving specific ‘sensitivities’ that result in significant, high or critical risk of negative consequences to:⁶²

- ▶ Australia’s national reputation, international relationships, economy or environment;
- ▶ The operation or administration of an Australian or foreign Government or agency, legislature or judiciary; and/or
- ▶ Confidence in the performance of the AFP by the Australian community, civil society including the media, Parliament or Government or of the AFP’s partners.

Some examples of ‘sensitivity risk triggers’ which are evident at the beginning of an AFP investigation include: significant media scrutiny; the particular crime type; political sensitivities; the likelihood for unprecedented scrutiny on investigators; the involvement of high-profile persons; and time pressures.⁶³ Equally, time, date and location can also create sensitivities.⁶⁴

‘Sensitivity risk triggers’ also have the propensity to escalate or emerge during or post the AFP’s involvement with the investigation. Sensitivities arising after the AFP’s involvement are more often characterised by non-adherence to existing internal processes and governance, which has resulted in reputational damage to the AFP, media scrutiny, financial costs and political interest.⁶⁵

The AFP Act which establishes the AFP and sets out its “powers” and “functions”, does not define either ‘sensitive’ or ‘investigation’. Section 15M Crimes Act restricts investigation to criminal activity, including an investigation extending beyond the Commonwealth. Section 6 *Privacy Act 1988* (Cth) lists over a dozen categories of personal information that are categorised as sensitive information under that Act.

There are also a range of other Commonwealth legal, policy and governance documents and frameworks, including but not limited to National Guidelines, Better Practice Guides, Investigations Doctrine and agreements which all attempt to set parameters around sensitive investigations to some degree.⁶⁶

An internal AFP review in 2009 described ‘politically sensitive investigations’ undertaken by the AFP to include any investigation that may impact on the Commonwealth government. These range from low level unlawful disclosure to investigations pertaining to national security.⁶⁷ However, the term ‘politically sensitive investigation’, drawn from the AFP National Guideline on politically sensitive investigations is a subset of the broader category under current examination.

62 AFP. (2019). *AFP National Guideline on risk management* Retrieved from <https://www.afp.gov.au/sites/default/files/PDF/IPS/afp%20national%20guideline%20on%20risk%20management%20-%20Nov%202019.pdf>; Australian Securities Exchange Corporate Governance Council. (2019). *Corporate Governance Principles and Recommendations* (4th Edition). Retrieved from <https://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-fourth-edn.pdf>.

63 The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

64 State Coroner of New South Wales. (2017). *Inquest into the death arising from the Lindt Café siege. Findings and Recommendation* Retrieved from <http://www.lindtinquest.justice.nsw.gov.au/Pages/Findings.aspx>.

65 The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

66 Such as: Attorney-General’s Department. (2017). *Commonwealth Fraud Control Framework 2017* Retrieved from <https://www.ag.gov.au/Integrity/counter-fraud/fraud-australia/Documents/CommonwealthFraudControlFramework2017.PDF>.

67 The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

The National Guideline defines a ‘politically sensitive matter’ as:

...matters under investigation which either:

- ▶ *are likely to be of particular interest to:*
 - *the Commonwealth Government*
 - *MPs*
 - *foreign governments*
 - *the media*
 - *the community.*
- ▶ *involve interference with the administration of good government*
- ▶ *have the ability to adversely impact on international relationships*
- ▶ *have potential adverse implications concerning:*
 - *an MP*
 - *MP staff*
 - *a senior member of the Commonwealth Public Service*
 - *another politically significant figure.*
- ▶ *are triggered by Australia’s international obligations.*

Examples of politically sensitive matters include:

- ▶ *war crimes*
- ▶ *bribery or corruption of domestic and foreign officials*
- ▶ *unauthorised disclosure of Commonwealth information*
- ▶ *ministerial misconduct.*⁶⁸

This differs from the definition of ‘politically sensitive matters’ found in a Memorandum of Understanding (MOU) between the AFP and the Australian Electoral Commission (AEC) on cooperation in respect of electoral offences which came into effect on 24 April 2019. This MOU defines ‘politically sensitive matters’ as being “[m]atters that are politically sensitive in nature, or matters that are likely to attract significant media and political attention and scrutiny due to alleged circumstances, conduct and persons involved”.⁶⁹

In the ACT Policing context,⁷⁰ the AFP defines an incident type of “sensitive investigation and special references” as including offences relating to: abuse of public office; bribery; conspiracy; corruption; perjury; personating AFP members; perverting the course of justice; sabotage; and politically sensitive matters.⁷¹ ‘Special references’ is not specifically defined, however, it generally refers to matters that do

⁶⁸ AFP. (2011). *AFP National Guideline on politically sensitive investigations*. Retrieved from <https://www.afp.gov.au/sites/default/files/PDF/IPS/AFP%20National%20Guideline%20on%20politically%20sensitive%20investigations.pdf>.

⁶⁹ AFP. (2019). *Memorandum of Understanding between the AFP and the Australian Electoral Commission on Cooperation in Respect of Electoral Offences* (24 April 2019) Folder 3, no 5/2/6.

⁷⁰ When referring matters to the ACT Policing Criminal Investigations teams.

⁷¹ AFP. (2018). *Better Practice Guide Criminal investigations response and notification* Folder 3, no 5/14/1.

not fit into any specific category and are more obscure, such as politically sensitive matters. For ACT Policing specifically, it could include any matter that: investigates an offence against ACT law; involves politicians (of any jurisdiction); and would attract political interest at either the Territory, State or Commonwealth level (e.g. an offence committed by a member of the ACT Government either personally or in their official capacity, or an offence at a Government location that is of political interest such as a riot incident at a gaol).⁷² Other examples could include crimes committed by persons with diplomatic immunity, incidents where diplomats are the victim, and politically motivated offending in the ACT.

Most State/Territory police forces rely on a range of mechanisms to escalate investigations or incidents that are high risk, but do not necessarily have a specific definition of what constitutes a sensitive investigation.⁷³ This occurs in Victoria Police for example, through the High Risk Investigations Committee.⁷⁴ All jurisdictions have well developed responses to major incidents or events, particularly natural disasters, to ensure priority resourcing, and oversight of responses.⁷⁵

International

International agencies were approached to establish how they baseline and respond to sensitive investigations.⁷⁶ The United States (US) Federal Bureau of Investigation (FBI) is the only identified agency with a specific definition. The Attorney General's Guidelines on Domestic FBI Operations describes a sensitive investigative matter as follows:

*A sensitive investigative matter... is defined as an investigative matter involving the activities of a domestic public official or political candidate (involving corruption or a threat to the national security), a religious or domestic political organization or individual prominent in such an organization, or the news media; an investigative matter having an academic nexus; or any other matter which, in the judgement of the official authorizing the investigation, should be brought to the attention of FBI Headquarters... and other [Department of Justice] officials... As a matter of FBI policy, "judgement" means that the decision of the authorizing official is discretionary.*⁷⁷

While other international agencies engaged did not have specific definitions, they will likely consider: crime types; entities; investigative techniques; and/or reputational factors in determining whether an investigation is sensitive or not.⁷⁸ Table 2 compares three agencies, including the AFP, that have specifically linked certain crime types to sensitive investigations. The AFP's approach is currently most

72 AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 4 November, Written Submission 20 November] Folder 3, no 5/1.

73 Review Meetings 1 November – 20 December 2019: 5; 34; 53.

74 Review Meetings 1 November – 20 December 2019.

75 Review Meetings 1 November – 20 December 2019: 5; 26; 34; 53.

76 AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 14 October] Folder 3, no 6/3.

77 United States Department of Justice, Federal Bureau of Investigations. (2016). *Domestic Investigations and Operations Guide 2016* Retrieved from: <https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29>; United States Department of Justice, Office of the Inspector General. (2019). *Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation* Retrieved from <https://www.justice.gov/storage/120919-examination.pdf>.

78 Royal Canadian Mounted Police. (2019). *Sensitive and International Investigations* Retrieved from <http://www.rcmp-grc.gc.ca/en/sensitive-and-international-investigations>; AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 13 November] Folder 3, no 6/4/1; AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November] Folder 3, no 3/6/3.

similar to the Royal Canadian Mounted Police (RCMP),⁷⁹ although the FBI offence criteria⁸⁰ are most relevant to recent AFP investigations of public interest.⁸¹ The United Kingdom (UK) National Crime Authority's approach considers reputational risk, as well as sensitive law enforcement capabilities or techniques.⁸² The National Police of the Netherlands and the UK Metropolitan Police Service both consider factors such as, but not limited to: the seriousness of issues or subject matter; locations; and people involved.⁸³

Table 2: Comparison of sensitive crime types – international policing organisations⁸⁴

CATEGORY	AFP	FBI	RCMP
Academic nexus			
Commonwealth offences			
Corruption			
Counter proliferation			
Crimes at sea			
Cybercrime (including state sponsored incidents)			
Electoral fraud			
Espionage and foreign interference			
Foreign bribery			
Genocide/war crimes			
News/media organisations			
Offshore harm to nationals			
Offshore kidnapping			
Political official			
Public (government) official			
Threat to national security			
Unauthorised disclosure			

⁷⁹ Royal Canadian Mounted Police. (2019). Op. Cit.

⁸⁰ United States Department of Justice, Federal Bureau of Investigations. (2016). Op. Cit.; AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 29 October] Folder 3, no 6/1.

⁸¹ Such as: the execution of search warrants at ABC premises in June 2019; the execution of a search warrant at the home of a News Corp journalist in June 2019; the provision of search warrant assistance to the Registered Organisation Commission (ROC) in October 2017, regarding the ROC's investigation into the activities of the Australian Workers Union; and the alleged leaking of an Australian Security Intelligence Organisation document regarding the Medevac legislation in 2019.

⁸² AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 30 October] Folder 3, no 6/4/2.

⁸³ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 13 November] Folder 3, no 6/4/1; AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 30 October] Folder 3, no 6/4/2; AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November] Folder 3, no 6/3.

⁸⁴ United States Department of Justice, Federal Bureau of Investigations. (2016). Op. Cit.; AFP (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 29 October] Folder 3, no 6; Royal Canadian Mounted Police (2019). Op. Cit.; AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 29 October] Folder 3, no 6/1.

When an investigation is identified as sensitive, most agencies apply additional governance, information management and/or oversight to the matter.⁸⁵ For example, the US *Code of Federal Regulations* provides guidance on: obtaining information and records; interviewing; and arresting or charging members from the news media.⁸⁶ While there are exceptions, all such investigative activity must be authorised by the US Attorney-General.⁸⁷ There are also international examples of specific legislation, or amendments to legislation, which in effect apply enhanced governance and/or oversight to certain sensitive investigations.⁸⁸

Option

1. Note the review's baselining analysis.

So what should be the AFP's definition of a sensitive investigation?

The majority of 'sensitive investigations' may be identifiable by the type of matter to which they relate, e.g. allegations of an unauthorised disclosure of 'inherently harmful information' (s121.1 Criminal Code) or war crimes. However, while there are certain types of matters and investigations which are more likely than others to meet the consequence risk-based criteria; it should not be assumed 'sensitive investigations' are limited to specific types of matters.

The review's stakeholder engagement has demonstrated there is a clear need to define what constitutes a sensitive investigation and broad agreement that:

- ▶ A sensitive investigation is difficult to define;⁸⁹
- ▶ Any definition should comprise a range of characteristics;⁹⁰
- ▶ A seemingly routine investigation can become sensitive quite quickly;⁹¹
- ▶ Decisions about an investigation can be or become sensitive;⁹² and
- ▶ Risk is an important factor in defining, responding to and managing sensitive investigations.⁹³

85 United States Department of Justice. (2019). *Electronic Code of Federal Regulations, Title 28, Chapter I, Part 50.10, Policy regarding obtaining information from, or records of, members of the news media; and regarding questioning, arresting, or charging members of the news media* Retrieved from <https://www.law.cornell.edu/cfr/text/28/50.10>; AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November] Folder 3, no 6/3; AFP (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 29 October] Folder 3, no 6/1; AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 13 November] Folder 3, no 6/4/1.

86 United States Department of Justice. (2019). Op. Cit.

87 Ibid.

88 *Journalistic Sources Protection Act 2017*, Statutes of Canada Retrieved from https://laws-lois.justice.gc.ca/pdf/2017_22.pdf; AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November] Folder 3, no 6/3.

89 Review Meetings 1 November – 20 December 2019: 6; 10; 15; 40; 41; 47.

90 Review Meetings 1 November – 20 December 2019: 3; 9; 10; 23; 34; 44; 47.

91 Review Meetings 1 November – 20 December 2019: 5; 9; 11; 43; 44; 45; 47.

92 Review Meetings 1 November – 20 December 2019: 19; 1; 11; 3; 40.

93 Review Meetings 1 November – 20 December 2019: 1; 6; 11; 19; 34; 40; 41; 43; 47.

Proposed definition

An AFP Sensitive Investigation is a process of inquiry that:

- 1. Involves, or is likely to impact on and/or be of significant interest to:*
 - a. Australia's international relationships or agreements;*
 - b. The operation or administration of the Federal Government or Parliament, or a State, Territory, Local or foreign government or parliament;*
 - c. An/a:*
 - i. Elected Member;*
 - ii. Associate or staff member of an Elected Member;*
 - iii. Election candidate; and/or*
 - iv. Senior or prominent member of a public service entity, of a Federal, State, Territory, Local or foreign government or parliament;*
 - d. A professional journalist or news media organisation; and/or*
 - e. An organisation, entity or individual prominent in the Australian community or politics, and*
- 2. Is or possibly would be of significant interest to the Australian community; and/or*
- 3. Is declared to be a sensitive investigation by the AFP Commissioner.*

Some examples of crime categories that are likely to be sensitive include: terrorism; espionage and foreign interference; harm to Australians overseas (e.g. murder, natural disaster, kidnapping, serious crimes at sea); matters where there is the potential for the death penalty to be imposed; unauthorised disclosure of 'inherently harmful information' (s121.1 Criminal Code); war crimes; serious bribery or corruption of or by domestic and foreign officials; abuse of public office; serious electoral offences; critical incidents; proliferation; and breach of international sanctions.

Option

- 2. Endorse the review's definition of what constitutes a sensitive investigation, noting the change in definition will require revision of AFP and external governance, including the potential revision of the Australian Government Investigations Standards.*

Importantly, the definition significantly broadens the law enforcement understanding of the term ‘investigation’ to include a new phrase, being a ‘process of inquiry’. This reflects and captures sensitive responses (e.g. INTERPOL inquiries) and decision-making, that may not have been viewed within the context of a ‘traditional’ investigation.⁹⁴

The identification of an investigation as ‘sensitive’ is not, in and of itself, an indication of the relative risk of community harm, seriousness, importance, priority or operational security when compared to other AFP investigations; a declaration that an investigation is ‘sensitive’ is a means through which to enhance the AFP’s ability to effectively manage specific risk using escalated governance processes.

Importantly, views on the degree of sensitivity attached to an AFP investigation will likely vary starkly between differing stakeholders. Many of the matters will require some level of subjective judgement. To assist those making these judgements and to enhance transparency and accountability, risk processes and tools must be developed to help identify the inherent risks within an investigation. In addition, senior stakeholders have pointed out there is an absolute requirement for good judgement, political savvy and above all common sense to be exercised, when sensitive investigations are considered.⁹⁵ The review agrees.

Often linked to a referral of a matter to the AFP, is the regular use of the terminology characterising the status of a sensitive investigation, as being under ‘evaluation’, ‘assessment’ or similar. These words have developed over time in the AFP lexicon in an attempt to describe a state prior to a matter being formally investigated. The apparent rationale behind the use of this terminology was a desire not to give any credibility to an unsubstantiated matter, by indicating that the matter was being ‘investigated’. This play on words, without any formal delineation of what was an evaluation or an assessment, has created ambiguity and confusion even at AFP senior levels.⁹⁶ There is also a perception the AFP is seen as being “tricky” by using these terms.⁹⁷

Unsurprisingly, AFP members, including the executive, have often found themselves unable to clearly articulate any difference.⁹⁸ This situation has also been encountered within State/Territory jurisdictions who have noted that some investigative activity typically needs to be undertaken in any evaluation or assessment. Several senior members of the AFP expressed frustration at the continued use of these words. They felt a matter referred to the AFP was either under investigation or not, and in reality as soon as the AFP receives a referral, it is an investigation.⁹⁹

94 For example the Red Notice issued by INTERPOL at the request of Bahrain, regarding Mr Hakeem al-Araibi: Cannane, S. & Blumer, C. (2019). Op. Cit.; A Red Notice is an international wanted person notice: INTERPOL Website. *Red Notices* Retrieved from <https://www.interpol.int/en/How-we-work/Notices/Red-Notices>.

95 Review Meetings 1 November – 20 December 2019: 4; 5; 10; 11; 19; 20; 40.

96 Review Meetings 1 November – 20 December 2019: 3; 15; 19; 23; 32; 34.

97 Review Meetings 1 November – 20 December 2019: 23.

98 Review Meetings 1 November – 20 December 2019: 3; 19; 23.

99 Review Meetings 1 November – 20 December 2019: 15; 19; 23.

There is also acknowledgment broader language used to describe various stages of an investigation, such as ‘evaluation’ or ‘assessment’ has caused confusion and negatively impacted the AFP’s relationships with external stakeholders.¹⁰⁰

This ambiguity and confusion can be treated by the AFP no longer using the terms ‘evaluation’ or ‘assessment’ in describing the status of an investigation. The AFP should where necessary acknowledge a matter is being investigated once it has been received.

Option

3. *Agree to the cessation of the use of the terms ‘evaluation’ and ‘assessment’ and like words when referring to the status of AFP referrals, complaints or investigations. Noting this will require: AFP cultural acceptance; changes to AFP systems and governance; and clear explanations in public forums. All matters will be ‘under investigation’, as outlined in the definition.*

Adopting the terminology ‘process of inquiry’ within the definition of a sensitive investigation sufficiently captures all aspects of an investigation and assists in risk management.

Now the term ‘sensitive investigation’ has been baselined and defined, the review will explore what additional governance measures and risk responses might be required to improve the AFP’s response to sensitive investigations. That is, to reduce the likelihood of major or severe negative consequences from such investigative action. This will include the identification of options, including: escalated internal and external (including media) stakeholder engagement; escalated governance, response times, interoperability and/or joint operational arrangements; and any other tailored responses beyond that which is generally afforded to other AFP investigations as may be appropriate to sensitive investigations from time to time.

¹⁰⁰ Review Meetings 1 November – 20 December 2019: 23; 15; 19; 34.

TERM OF REFERENCE 2

ARTICULATION OF THE HUMAN RESOURCES, SKILLS, TRAINING, TECHNOLOGY AND FACILITIES REQUIRED

Human resources

Overview

Noting the proposed organisational definition of ‘sensitive investigation’, it should be assumed, as is the case currently, any area of the AFP has the potential to be responsible for a sensitive investigation. This responsibility may be in whole or in part, on a short or long-term basis and regardless of the life stage of the investigation.

The OSI team, within the National Response Operations (NRO) portfolio and Crime Operations (CO) function, has responsibility for conducting many of the AFP’s sensitive investigations. OSI consists of 14 sworn police investigators and has nine vacant positions. The OSI team is currently led by a Superintendent supervising five Sergeants.¹⁰¹ The employee budget for the team is included in Table 3. It includes an allocation from the Countering Foreign Interference New Policy Proposal from 1 July 2019.

Table 3: OSI employee budget and expenditure¹⁰²

Offshore and Sensitive Investigations			
Budget	17/18	18/19	19/20
Employee	\$2,021,320	\$2,363,378	\$2,508,983
Expenditure	17/18	18/19	19/20 (YTD)
Employee	\$2,091,775	\$2,148,438	\$724,130

¹⁰¹ AFP SAS Firefly Report 31 December 2019.

¹⁰² 2019/20 expenditure results to 31 October 2019: AFP. (2019). *Review into the AFP’s Response to and Management of Sensitive Investigations* [Email 15 November] Folder 3, no 2/8.

Expenditure to date on employee costs in the Financial Year 2019/20 is on-track to achieve an end-of-Financial Year result similar to the previous two.

Of the 14 sworn police within OSI, eight hold a detective designation and there is an average length of 17 years of sworn service. Approximately 14% of sworn OSI members have five or more years of experience within that team and/or its predecessor teams. The approximate average length of service in OSI and/or its predecessor teams is 3.5 years.¹⁰³

The CO Corporate Capability Team (CO CCT) provides corporate support for OSI, including the evaluation of referrals. The CO CCT is led by a team leader, and has three positions and one vacancy.¹⁰⁴ In addition to OSI, the CO CCT provides corporate support for the broader CO function.

Stakeholders indicated there are variances in perceptions regarding both the:

- Operational workload and sworn employee human resource needs of the team; and
- Corporate/administrative workload and support employee human resource needs of the team.

These variances occurred both at the working level and between the working and the senior executive levels.¹⁰⁵ Under business-as-usual AFP arrangements, the OSI team accesses specialist support such as legal, intelligence and forensics services through engagement and negotiation with other AFP capability and operating support functions. Whether due to capacity, practice and/or expectation management, a number of senior executives and external stakeholders perceived the AFP was unreasonably slow to progress sensitive investigations.¹⁰⁶

Internal investigation reviews conducted by the AFP between 2005 and 2019 were examined to ascertain themes that inform human resource requirements to undertake these matters.¹⁰⁷ This analysis indicated the increased pressure from time constraints and the media, public, government and AFP executive typically associated with sensitive investigations is “guaranteed to test the limits of investigative...process” and place higher levels of stress on investigators.¹⁰⁸ It was also noted sensitive investigations required continuity of appropriately skilled investigators or specifically skilled investigators (by crime type). Consideration of internal reviews indicated adherence to existing governance tended to deteriorate when organisational requirements compromised the continuity of the investigation team. The analysis also determined that under-resourcing the investigation team of employees and skillsets required for brief preparation and the prosecution phase had the potential to create sensitivities in investigations.¹⁰⁹

103 AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 18 December] Folder 3, no 1/22.

104 AFP SAS Firefly Report 2 January 2019.

105 Review Meetings 1 November – 20 December 2019: 2; 3; 15; 41.

106 Review Meetings 1 November – 20 December 2019: 12; 13; 15; 26; 29; 33; 38.

107 These reviews covered a wide range of AFP investigations. The findings reflected in this report from those reviews do not necessarily specifically relate to the Offshore and Sensitive Investigations team.

108 Street, L. (2008). *The Street Review: A review of Interoperability Between the AFP and its National Security Partners* Retrieved from <https://apo.org.au/sites/default/files/resource-files/2008/03/apo-nid2908-1230016.pdf>.

109 The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

Culture

Noting the AFP values of integrity, excellence and accountability (among others); AFP employee approaches to identifying and managing ‘sensitive investigations’ may be influenced by organisational culture.

During the course of the review several cultural issues were identified, potentially negatively influencing the AFP’s response to investigations, including sensitive investigations. The first is grounded in a belief the AFP must treat every matter the same. Notably stakeholders agreed the traditional approach of treating every referral or investigation in the same way is no longer viable.¹¹⁰ In one sense this traditional approach can be understood, but in another, clearly not all matters are the same and they must be responded to differently to manage risk. The review considers this cultural position is likely to have negatively influenced how sensitive investigations have been responded to in the past. Secondly, it was observed some investigators are of the view that once a referral was allocated, it was not the executive’s role to direct how the investigation should be undertaken.¹¹¹

There was agreement with the need for AFP officers to conduct their duties in accordance with the Oath or Affirmation.¹¹² Stakeholders are equally aware that more scrutiny, consistency and better governance is required in relation to referrals.¹¹³ There is an appreciation the operating environment has changed, a range of treatment options are required, not every investigation can be treated in the same way and that executive intervention is appropriate and may be necessary.¹¹⁴

If the review’s position is accepted, these cultural anomalies will need to be treated.

Option

4. *Develop strategies to ensure appropriate consistency in cultural perceptions regarding investigations within the AFP. This could be included as part of any broader cultural reform.*

Skills, knowledge & experience

While consideration of both the sufficiency of evidence and the public interest when making law enforcement decisions is a fundamental aspect of policing in the AFP,¹¹⁵ a number of AFP senior executives and external stakeholders noted the unique challenges associated with judging the public interest in sensitive cases.¹¹⁶ While community harm prevention and/or disruption (distinct from

¹¹⁰ Review Meetings 1 November – 20 December 2019: 9; 10; 19; 22; 23; 44.

¹¹¹ Review Meetings 1 November – 20 December 2019: 40; 42.

¹¹² *Oath/Affirmation for Commissioner, Deputy Commissioner, member or special member Form 2/3 Schedule 1 Australian Federal Police Regulations 2018* (Cth).

¹¹³ Review Meetings 1 November – 20 December 2019: 1; 4; 6; 9; 11; 23; 29; 30; 31; 34; 42; 43; 44; 47.

¹¹⁴ Review Meetings 1 November – 20 December 2019: 9; 10; 19; 22; 23; 44.

¹¹⁵ Commonwealth Director of Public Prosecutions. (2019). *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process* Op. Cit.

¹¹⁶ Review Meetings 1 November – 20 December 2019: 4; 10; 11; 19; 40.

enforcement and prosecution strategies) are central to the AFP's activities,¹¹⁷ it was perceived there may be opportunities for an increased prioritisation of such strategies in a broader range of sensitive investigations.¹¹⁸ It was noted by some AFP senior executives that OSI may benefit from not being physically isolated from the broader AFP investigative community.¹¹⁹

Existing internal and external review reports indicated pressure associated with sensitive investigations has the potential to: compromise experienced skillsets; challenge interoperability of human resources assigned to a matter; threaten the objectivity of an investigation; and blind investigators to appropriately considering exculpatory material.¹²⁰ One previous external review suggested human resources attached to a sensitive investigation benefited from the inclusion of external expertise, such as legal advisors and relevant partner agency members.¹²¹ Access to sufficient dedicated investigators and specialist technical skills and expertise has been assessed as being critical to coordinate activities and share investigation techniques.¹²² It has been suggested that skillsets of those responsible for conducting sensitive investigations could be augmented by operational tools, such as a topic specific handbook.¹²³

Security clearances

It was noted Positive Vetting security clearances are sometimes required for OSI investigators,¹²⁴ and not having appropriately cleared investigators is a concern.¹²⁵

Training, learning & development

Chief Learning Officer portfolio

The Commissioner has established an upgraded learning portfolio designed to develop the AFP's capacity to become a learning organisation. This portfolio is headed by the Chief Learning Officer (CLO). The purpose of the CLO role is to ensure the AFP is best placed to serve the Australian community through better-trained and better-equipped employees, enriched capability and knowledge management. The CLO will oversee, guide and direct learning through:

117 Including in the context of sensitive national security, international and community policing investigations: AFP. (2019). The AFP Corporate Plan 2019-20 Op. Cit.

118 Review Meetings 1 November – 20 December 2019: 3; 19.

119 Review Meetings 1 November – 20 December 2019: 10; 15; 16.

120 Clarke, M. (2008). *Report of the Inquiry into the Case of Dr Mohamed Haneef. Volume One. November 2008* Retrieved from https://www.cla.asn.au/Article/Haneef_Volume+1+FINAL.pdf; Street, L. (2008). Op. cit.

121 Clarke, M. (2008). Op. Cit.

122 Australian National Audit Office. (2012). *Administration of Project Wickenby* Retrieved from <https://www.anao.gov.au/work/performance-audit/administration-project-wickenby>.

123 Clarke, M. (2008). Op. Cit.

124 Attorney-General's Department. (2018). *Protective Security Policy Framework: 8 Sensitive and classified information* Retrieved from <https://www.protectivesecurity.gov.au/personnel/eligibility-and-suitability-of-personnel/Pages/default.aspx#c.3>.

125 Review Meetings 1 November – 20 December 2019: 3; 11.

- ▶ Continuing and augmenting existing formal and informal channels (e.g. the Australian Institute of Policing Management, the AFP College and the Jakarta Centre for Law Enforcement Cooperation);¹²⁶
- ▶ Creating a learning architecture;
- ▶ Establishing and enhancing learning enabling functions (such as leadership culture and professional development); and
- ▶ Operationalising organisational learning (through lessons learned,¹²⁷ implementing best practice, applying current research, and instilling a growth mindset organisationally).¹²⁸

Work on the upgraded learning portfolio is progressing, and the functional areas of the portfolio have been identified as the:

- ▶ AFP College, which will focus on foundational policing skills;
- ▶ AFP Centre for Advanced Policing, which will focus on advanced policing skills, investigative training and operational learning;
- ▶ Career Development Centre; and
- ▶ AFP Leadership Centre.¹²⁹

Option

- 5. Support efforts by the AFP Chief Learning Officer to continue to develop investigator skills, knowledge and judgement which will positively impact sensitive investigation outcomes.*

While many senior executives acknowledged the need for a critical mass of sufficiently skilled, qualified and experienced detectives to conduct sensitive investigations, there was strong support for regular rotation of employees, given the relative isolation of the OSI team and the workloads and nature of matters that the team were constantly exposed to.¹³⁰ This often resulted in a negative impact on employee welfare and development. It was suggested that like other investigative teams, there should be a range of experience levels represented to broaden perspectives and increase opportunities for development, including creating greater opportunities for senior members to coach and mentor more junior members.¹³¹

Many senior executives commented that the exercise of sound judgement, as opposed to the application of technical investigative skill, was the most important human resource skill factor in the

¹²⁶ Australian Institute of Police Management. (2019). Retrieved from <https://www.aipm.gov.au/>; AFP Website. *AFP College* Retrieved from <https://www.afp.gov.au/about-us/training-and-information-resources/afp-college>; Jakarta Centre for Law Enforcement Cooperation Website. Retrieved from <https://www.jclec.org/>.

¹²⁷ It has been identified in relation to critical incidents the AFP needs to take a stronger leadership role in the collation, evaluation, reporting, monitoring and implementation of lessons learned, in order to manage risk and avoid recurrences: The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

¹²⁸ Review Meeting 1 November – 20 December 2019.

¹²⁹ Review Meeting 1 November – 20 December 2019.

¹³⁰ Review Meetings 1 November – 20 December 2019: 10; 11; 15; 19.

¹³¹ Review Meetings 1 November – 20 December 2019: 10; 15; 19; 41.

context of sensitive investigations. Diverse experiences and perspectives should be valued when recruiting employees to sensitive investigational areas. Stakeholders noted ideally investigators would have the right mindset; a good investigative practice; political acumen; and an understanding of sensitive matters.¹³²

Existing internal and external review reports recommended the AFP conduct training exercises that specifically respond to problems or issues that may be involved in investigating and prosecuting sensitive matters, as a means of proactively addressing sensitive risk triggers.¹³³ Those reviews argued that joint agency training amongst likely sensitive investigation stakeholders is necessary to enhance collective skillsets and the efficiency of joint responses.¹³⁴ However, there was caution that training programs conducted in support of sensitive investigations require regular review to ensure currency and inclusion of relevant material and that such courses should be ongoing to ensure skill development and maintenance.¹³⁵

Specific training regarding the response to and management of sensitive investigations, including the use of sensitive investigation scenarios, should be considered for inclusion in relevant AFP training programs.¹³⁶

Other than criminal investigative skills and knowledge, international and domestic comparisons did not reveal any specific essential skill set pre-requisites for allocation to the conduct of sensitive investigations. Some agencies prioritised anti-corruption experience, whilst others prioritised fraud or organised crime experience.¹³⁷ Of note, the agency appearing to have the closest definition of sensitive investigations to that proposed, the FBI, trains all members from the recruit/foundational level as both intelligence officers and investigators which may influence how that agency approaches sensitive investigations, including enabling decentralised investigation.¹³⁸

Investigations Standards and Practices

The efficient and effective conduct of investigations is a central element in delivering operational outcomes and ensuring the ongoing success of the AFP. As a law enforcement agency the AFP's reputation is also heavily influenced by the professional and credible conduct of investigations and ultimately their success. Ongoing quality assurance of investigations is therefore key in promoting successful outcomes and ensuring the efficient use of investigative and operational resources.

¹³² Review Meetings 1 November – 20 December 2019: 4; 5; 10; 11; 19; 40.

¹³³ Clarke, M. (2008). Op Cit.

¹³⁴ Street, L. (2008). Op Cit.

¹³⁵ Clarke, M. (2008). Op Cit.

¹³⁶ Including but not limited to: the Detective Training Program; the Senior Investigating Officer course; and the Management of Serious Crime program.

¹³⁷ Review Meetings 1 November – 20 December 2019: 26.

¹³⁸ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 29 October] Folder 3, no 6/1.

The AFP Investigation Standards and Practices (ISP) is comprised of two groups, the Resource Centre and the Regional Investigations Advisor (RIA) network.¹³⁹ ISP is also responsible for the AFP Regional Learning & Development Trainers. The Regional Trainers and RIAs are working to ensure investigators are trained, assessed, coached and mentored in their relevant workplaces by a cadre of experienced and competent officers, and to a nationally consistent methodology and standard.

ISP has an investigative review capability, supported by a full-time investigations reviewer and associated governance.

In addition to the review options agreed to by the Commissioner, ISP should continue to play an integral role in training and supporting investigators. ISP will form a critical part of implementing and reviewing compliance with any future governance framework regarding sensitive investigations.

Technology and facilities

The examination of external investigation reviews drew a nexus between the topics of technology and facilities. Analysis indicated that without an ability to co-locate (in a multi-agency context) in a designated facility and access to joint information technology systems, interoperability, specifically in regard to timely communication, consultation, coordinated operational decision making and clarification of objectives by relevant agency members became disadvantaged.¹⁴⁰ Arguably, when not co-located, the use of multiple information sharing platforms, technologies and databases increase the potential for information to be disseminated in an untimely and ad hoc manner, all of which degrades operational effectiveness.¹⁴¹ Co-location of multi-agency teams conducting sensitive investigations, supported by formalised arrangements, can secure better access to partner agency connectivity, which can alleviate the need to transfer sensitive information via less secure methods.¹⁴² Predictably, the reviews highlighted that incongruent information technology systems and a lack of understanding in terms of how to navigate those systems by all stakeholders involved in a sensitive investigation further compounded information management challenges and interoperability generally.¹⁴³ External reviews have highlighted other factors that should be considered prior to referral to a specific facility, including availability of dedicated resources, investigator skillsets and access to technological support.¹⁴⁴

This examination indicated information management is highly complex in sensitive investigations, characterised by the need to access, administer, catalogue, store, process and communicate sensitive

¹³⁹ The Resource Centre is responsible for the establishment of a centralised body of knowledge, maintenance and review of the Investigations Doctrine, development of investigative practice standards, maintenance of a comprehensive skills register and the Detective designation process. The Resource Centre also manages the Investigator's Toolkit which provides a single focal point for investigator interaction, the provision of standardised and contemporary investigative management tools, and the Investigator's Community of Practice, which is a multi-faceted forum for the communication of investigative knowledge and practices; The RIAs provide real time support to investigators in the regional offices and the Investigators Toolkit, promoting national consistency and best practice, conduct thematic reviews of investigative practice to identify individual and organisational learnings and contribute to continuous professional development of investigators. The RIAs report on emerging investigational issues, capability gaps and the prioritisation of capability development initiatives as they relate to investigations quality and practice.

¹⁴⁰ Street, L. (2008). Op. Cit.

¹⁴¹ State Coroner of New South Wales. (2017). Op Cit.

¹⁴² Clarke, M. (2008). Op. Cit.

¹⁴³ Ibid.

¹⁴⁴ Australian National Audit Office. (2012). Op. Cit.

information, and have access to designated facilities and technology to facilitate these processes.¹⁴⁵ These complexities have proven challenging in remote, regional and offshore environments. Further, when information management practices are not robust the likelihood of sensitive risk triggers increased.¹⁴⁶

With the potential for the Commissioner to agree to the option of the amalgamation of OSI with CT (see Terms of Reference 3 and 4), it may be prudent to wait before any decisions on facilities are undertaken.¹⁴⁷ There are potential synergies that can be harnessed through this amalgamation process including the lack of a dedicated Sensitive Compartmented Information Facility for OSI.¹⁴⁸

Artificial intelligence

As a capability, artificial intelligence (AI) or predictive analytics (PA) has significant relevance to sensitive investigations, particularly those matters that require the management of significant data sets. The AFP has employed this technology in investigations including confiscated assets, fraud, anti-corruption and counter terrorism investigations, but it has broader scope with other crime types.¹⁴⁹ The requirement to manage big data sets without appropriate technology can heighten sensitive risk triggers in an investigation. AI has the ability to identify relevant data more accurately, and can be actioned in a timely manner.¹⁵⁰ Another application of this capability is its ability to identify exculpatory material through the creation of exculpatory terms that can be washed across information holdings. Recent AI technology has been employed across sensitive images, which can assist in protecting investigators from having to view harmful material and assist in refining potential evidential holdings. Finally, AI can be utilised as a tool to inform the referral process by refining large data sets to identify potential evidence categories that would assist in deciding whether the AFP is best placed to instigate a particular sensitive investigation.¹⁵¹ However, the current PA pilot in the AFP has identified that investigators are not trained in the possibilities of both PA and AI and this has limited its ability to augment and support investigations as a recognised capability.

Option

- 6. *Noting a decision is still to be made on the amalgamation of CT and OSI functions (see Option 21), if or when this occurs an assessment of relevant resource, capability and facility needs, including consideration of corporate support, should be undertaken.***

¹⁴⁵ Such as material that is highly classified or subject to parliamentary privilege.

¹⁴⁶ The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

¹⁴⁷ It is noted there is a plan is under development to enhance relevant information storage, processing and handling facilities: AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 3 January] Folder 1

¹⁴⁸ Attorney-General's Department. (2018). *Protective Security Policy Framework: 8 Sensitive and classified information* Op. Cit.; Review Meetings 1 November – 20 December 2019: 45.

¹⁴⁹ Review Meetings 1 November – 20 December 2019: 10; 34; 49.

¹⁵⁰ Ibid.

¹⁵¹ Review Meetings 1 November – 20 December 2019: 49, 50.

TERM OF REFERENCE 3

REFORMATION OF GOVERNANCE AND BUSINESS PROCESSES (INCLUDING ALTERNATIVE MECHANISMS FOR REFERRING ENTITIES BEYOND THE AFP)

Current governance and business process arrangements

The AFP's current governance and business process arrangements are set out in detail at **Appendix B**.

General observations regarding governance

The review has identified that depending on where a referral or request is directed within the AFP, a different or inconsistent approach is applied to the handling of that referral, leading to a suboptimal outcome.

The current disparate referral processes have also impacted external stakeholders who, in the absence of a clear process, have developed alternative processes.

Examination by the review of relevant governance documents identified that some: are out of date; are internally inconsistent or unclear; do not have a transparent review schedule; have had organisational changes overtake them; or reference other documents that have been archived or are not readily locatable.¹⁵² Some governance documents, such as agreements with stakeholder agencies, are not available on the AFP intranet at all.¹⁵³ The review brought this to the attention of the Commissioner, who directed senior managers review their governance documents immediately to ensure they are updated and fit for purpose. The review is aware this process has commenced.¹⁵⁴

Option

12. Commission an internal audit in the first half of 2020, to ensure the Commissioner's direction to senior managers to review internal governance has been adhered to, providing the Commissioner with additional assurance, as the accountable authority, the AFP's governance framework is relevant and fit for purpose.

Case Categorisation and Prioritisation Model

The Case Categorisation and Prioritisation Model (CCPM) has been the primary prioritisation tool utilised by the AFP since 1998.¹⁵⁵ The CCPM establishes a framework and factors for the AFP to consider in determining the acceptance, rejection, termination, finalisation and resourcing of referrals. A version of the CCPM is available on the AFP website to assist clients understand how the AFP will prioritise referrals.¹⁵⁶

A number of reviews and audits have highlighted flaws in the CCPM and associated governance, systems and supporting business structures.¹⁵⁷ Other agencies dealing in sensitive investigations, and some areas within the AFP, have already moved to a risk based approach, which is more reflective of current risk based management practices.¹⁵⁸

¹⁵² An internal AFP review in 2018 also noted the risks associated with the absence of centralised quality assurance oversight of all AFP governance, including inconsistencies, inaccuracies and/or out-of-date policies: AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [email 16 December] Folder 3, no 5.

¹⁵³ Review Meetings 1 November – 20 December 2019: 30; 31.

¹⁵⁴ The Governance Coordination and Review team report that there has been an upswing in questions and requests for advice from business areas since the Commissioner's direction: AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [16 December] Folder 3, no 5.

¹⁵⁵ The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

¹⁵⁶ AFP Website: *The Case Categorisation & Prioritisation Model: Guideline for AFP Clients 1 July 2016* Retrieved from <https://www.afp.gov.au/what-we-do/operational-priorities/case-categorisation-and-prioritisation-model>.

¹⁵⁷ The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

¹⁵⁸ For example: the Australian Commissioner for Law Enforcement Integrity, AFP Professional Standards and the Criminal Assets Confiscation Taskforce.

Audit and risk

The review was advised the audit and risk functions within the AFP are currently separate. This is at odds with most other audit and risk functions in other agencies. The review believes these two functions should be amalgamated. Further the review has been advised there is currently no effective AFP assurance capacity which should be remedied.¹⁵⁹

Option

- 13. Assess whether risk and audit functions should be amalgamated within the AFP, to ensure sufficient capacity and connectivity and the establishment of a focussed assurance/compliance capability.*

Future state

AFP governance

The governance review process instigated by the Commissioner will assist in remedying current issues within existing governance. However, to assist in attaining a state where the AFP consistently responds to and manages its sensitive investigations, existing governance should be replaced with an overarching governance document or framework that is dedicated to sensitive investigations.

The new governance will need to consistently reflect the options accepted and implemented by the Commissioner. It is suggested a team be established to oversee the implementation of the agreed options, including monitoring the overarching governance and ensuring consistency in language and application. Consideration should also be given to establishing a 'sensitive investigations' site on the AFP intranet to consolidate all relevant governance.¹⁶⁰

Options

- 14. Require the Chair of the AFP's Audit Committee to commence a process of regular monitoring to ensure the options agreed by the Commissioner are fully implemented.*
- 15. Re-establish a centralised oversight of the AFP governance framework to ensure the governance framework is current, maintained and fit-for-purpose.*
- 16. Replace existing key AFP operational governance to reflect the accepted options from this review, to ensure consistency in language and application.*

¹⁵⁹ Review Meetings 1 November – 20 December 2019: 28.

¹⁶⁰ This has been previously suggested in relation to AFP critical incidents governance: The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

Case Categorisation and Prioritisation Model

As noted above there are identified flaws with the CCPM in its current form. The review suggests a simplified risk based framework be adopted, drawing on extensive work already undertaken by the AFP.¹⁶¹ The framework will need to draw on the settled definition of a sensitive investigation. The framework can then be used to aid in the identification of sensitive investigations, either when they are referred to the AFP or as sensitivities arise during any investigation.

Option

8. *Replace the current CCPM tool, and introduce a risk based approach to managing referrals/complaints into the AFP, drawing upon the CCPM reviews already undertaken. This proposed enhancement should be thoroughly trialled, particularly to ensure that the review's baselining and definition are effective in supporting the identification of sensitive investigations*

Centralised referral process – National Headquarters Command

An enhanced and reinvigorated referral process should be introduced, in order to ensure a centralised quality assurance process in relation to all AFP referrals, including those for sensitive investigations.

Sensitive referrals reach different areas within the AFP via multiple pathways, including telephone calls and emails, along with virtual and system-based mechanisms.¹⁶² This has led to confusion and frustration, and ultimately limited the AFP's ability to effectively respond to and manage investigations including sensitive investigations.¹⁶³ Some sensitive investigation referrals come directly to the Commissioner, or to the multiple array of teams located at headquarters and detailed in **Appendix B**, for example AFP Protection Liaison (PL) members and ACT Policing.¹⁶⁴ There is a strong AFP consensus that a centralised or single point of referral is necessary and that this would enhance consistency in identifying sensitive investigations and associated decision-making.¹⁶⁵

The lack of consistent structures at an AFP headquarters level in relation to the processing of referrals is a clear weakness for the AFP. This has contributed to inconsistent decision-making regarding referrals, including a failure to consistently recognise and address the sensitivity of some referrals despite the sensitivity of the matter being very clear.¹⁶⁶

There is strong support for a National Headquarters Command and replicating AFP regional business processes in Canberra more generally.¹⁶⁷ Stakeholders noted some functional obligations (such as

¹⁶¹ This includes both the work already undertaken in relation to changing the CCPM and consideration of the risk matrixes already adopted by some areas.

¹⁶² Review Meetings 1 November – 20 December 2019: 1; 3; 4; 9; 10; 14; 15; 42.

¹⁶³ Review Meetings 1 November – 20 December 2019: 3; 4; 9; 14; 15; 40; 42.

¹⁶⁴ Review Meetings 1 November – 20 December 2019: 3; 4; 5; 15; 42.

¹⁶⁵ Review Meetings 1 November – 20 December 2019: 1; 3; 11; 14; 42.

¹⁶⁶ Review Meetings 1 November – 20 December 2019: 1; 3; 16; 23; 42.

¹⁶⁷ Review Meetings 1 November – 20 December 2019: 3, 10; 11, 14; 23, 40; 42.

CT's Joint Management Committees (JMCs)) would still need to be fulfilled if a National Headquarters Command is introduced. Consideration will be required as to whether separation between the National Headquarters Command and other portfolios located within the AFP headquarters in Canberra is necessary.¹⁶⁸

Consistent application of the agreed definition and risk framework will best support the identification of sensitive investigations at the time they are referred to the AFP. To this end, consideration should be given to reinvigorating the AFP Operations Coordination Centre (AOCC) as part of the National Headquarters Command. Some stakeholders observed the AOCC function has deteriorated over the last decade and should resume its previous functions.¹⁶⁹ The AOCC can take on the responsibility of an enhanced and reinvigorated 'watch office' function, monitoring all referrals and applying the agreed risk framework in order to assess whether any referral should be treated as a sensitive investigation upon receipt. If this option is pursued, appropriately trained and experienced senior employees would be required in the AOCC. Having appropriately experienced employees in the reinvigorated AOCC may also assist to overcome issues regarding the impact of disparate referral processes on external stakeholders,¹⁷⁰ as mentioned earlier in Term of Reference 3.

Equally important to this centralised process is the requirement of AFP appointees to ensure all allegations/referrals are recorded on AFP systems in order to enable the referral to be effectively actioned by or visible to the AOCC.¹⁷¹

The diagram "Future state AFP referrals process map" on page 48 best explains what a future state for referrals to a National Headquarters Command might entail.

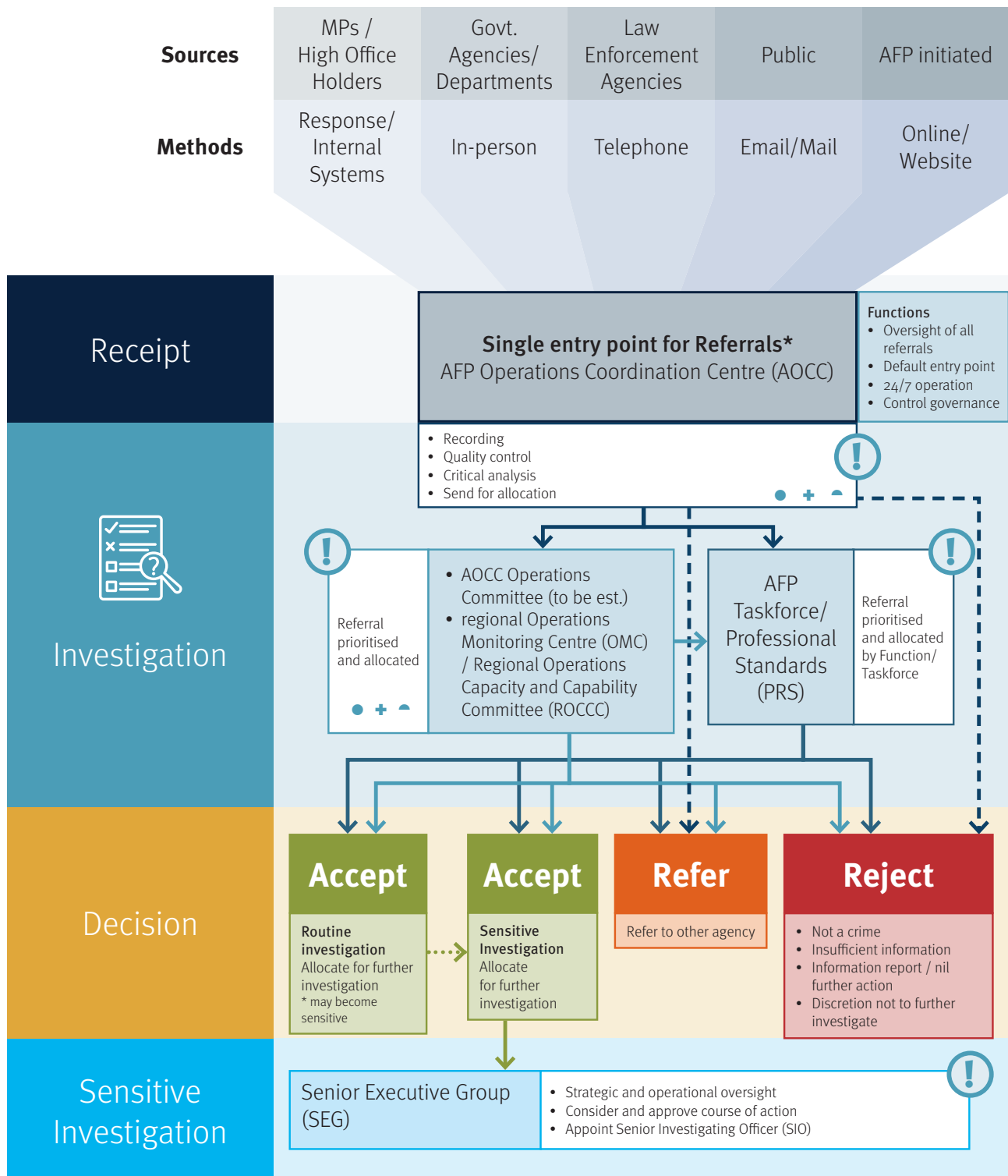
¹⁶⁸ Review Meetings 1 November – 20 December 2019: 3; 4.

¹⁶⁹ Review Meetings 1 November – 20 December 2019: 6; 52; 34.

¹⁷⁰ Review Meetings 1 November – 20 December 2019: 3; 9; 55.

¹⁷¹ For instance through appropriate revised governance such as: AFP. (2017). *Better Practice Guide Processing Referrals within the AFP* Folder 3, no 5/2/3.

Future state AFP referrals process map



! Decision point

* This will likely exclude certain existing referral processes. The finer detail will be subject to further consideration at implementation.

Escalation model

There is extensive stakeholder support for more formalised and enhanced governance processes in relation to sensitive investigations, particularly decision-making.¹⁷² With the use of enhanced risk based assessment tools, the exercise of sound judgement, experience, political awareness and common sense, in most instances it is envisaged that sensitive referrals will be identified.

Despite a desire for all sensitive investigations to be identified upon referral, it is likely that a small number of the more than 100,000 referrals the AFP receives each year will not be detected, or not detected until some later point. In either scenario, once known it is crucial the enhanced response occurs without delay, whether it is during business hours, the early hours of the morning, or on a public holiday. The capacity to identify and commence the response immediately, with sustained focus and urgency, is often key to a referral being managed effectively.

Educating employees throughout the AFP at recruit training courses, through to high level investigational training forums and into leadership and command training, will be important to raise awareness of issues that create sensitivity. Suggested improvements in that regard are reported in Term of Reference 2.

In addition, consideration should be given to holding workshops for the senior executive who might be involved in decision-making regarding sensitive investigations to ensure a shared understanding and approach.

For sensitive investigations the review has developed a range of responses that serve as an escalation framework, which the review recommends the Commissioner mandate. The responses are very practical in nature and are designed to ensure the appropriate level of oversight, engagement and accountability is in place from the outset of any sensitive investigation.

Key responses under the escalation framework of a sensitive investigation include:

- ▶ Advise the Chair of the Senior Executive Group (SEG);
- ▶ Appoint a Senior Investigating Officer (SIO);
- ▶ Advise AFP Legal;
- ▶ Engage the CDPP;
- ▶ Engage regularly with the referring agency or entity;
- ▶ Advise the Minister (subject to agreement on Ministerial briefing arrangements);
- ▶ If the sensitive investigation involves a journalist or news media organisation, engage them appropriately and likely through respective Chief/General Counsel;
- ▶ Enhance internal briefings to the SEG; and
- ▶ Complete investigations within compressed timeframes, triggering the allocation of additional and priority resources.

¹⁷² Review Meetings 1 November – 20 December 2019: 4; 6; 9; 11; 12; 23; 29; 30; 31; 34; 42; 43; 44; 47.

Given the maturity and perceived effectiveness of governance related to the AFP's CT function, many stakeholders suggested exploring this function as a potential model for sensitive investigations. In particular, stakeholders noted the use of JMCs and SIOs as 'business as usual' would be appropriate for sensitive investigations.¹⁷³ The benefits of a JMC-type approach are well understood and appreciated, with many stakeholders advocating for broader participation (including external agency representation) in current decision-making forums.¹⁷⁴ The benefits of introducing SIOs for sensitive investigations include direct exposure to and interaction with the key decision-making forum, which assumes the risk and accountability for sensitive investigations.¹⁷⁵

The escalation model goes beyond a JMC-type approach and the use of SIOs; each element of the escalation model is described in more detail below.

Establishment of a standing Senior Executive Group and the Chair's regular briefings to the Commissioner

There needs to be established a formal SEG, chaired by a Deputy Commissioner, having key Assistant Commissioners, National Managers, Commanders and Managers involved from across the AFP business areas, particularly Professional Standards (PRS) and Legal.¹⁷⁶ Other AFP employees would be co-opted as needed. Careful consideration should be given to the makeup of the SEG, including possible attendance of external stakeholders in an advisory capacity, so that risks that may present outside of the AFP environment are identified and considered. A secretariat would be required to support the SEG. A charter and business rules (or similar) would need to be developed and agreed.

The SEG would be required to meet regularly with the explicit remit to review the progress of those identified sensitive investigations, and to determine resourcing levels and access to specialist capabilities. As an oversight and decision-making body, it will be equally important for the SEG to consider and formally approve future key investigative activity, particularly any coercive or sensitive information gathering.

Attempts internally to use the SEG arrangements to just secure additional resources for non-sensitive investigations should be strongly resisted by the SEG. The SEG will need to ensure the number of sensitive investigations it has under review at any one time is manageable. The SEG should also be robust in appropriately removing investigations from its remit, where the level of sensitivity and risk has been managed to a level where it no longer requires escalated governance arrangements.

The Chair of the SEG would be required to formally brief the Commissioner following each meeting, and more often as required. These briefings will of course need to be complemented by other more

¹⁷³ Review Meetings 1 November – 20 December 2019: 3, 5; 6; 11; 15; 19, 35, 42; 43, 44.

¹⁷⁴ Review Meetings 1 November – 20 December 2019: 1; 4; 5; 6; 11; 18; 19; 23; 42.

¹⁷⁵ Review Meetings 1 November – 20 December 2019: 6.

¹⁷⁶ It is not intended that the Senior Executive Group should replace existing Joint Management Committees which appear to be working well, such as those for Counter Terrorism.

agile briefing mechanisms in place within the AFP, including a reinvigorated use of Management Significant Entries generated from the AFP Police Real-time Online Management Information System (PROMIS) system.¹⁷⁷

The SEG concept and structure are already in operation within some State/Territory police jurisdictions, shaping how State/Territory police forces respond to sensitive/high risk investigations.¹⁷⁸ Indeed similar arrangements are in operation in the AFP, an example being the National Witness Protection Program.

The review does not believe the task of the SEG should be particularly onerous. It is, however, not possible at this time to accurately determine how many sensitive investigations the SEG would need to oversee at any one time without the application of the new sensitive investigations definition. The review asked areas of the AFP to apply a draft version of the definition to their current holdings, in order to understand the likely volume of sensitive investigations.¹⁷⁹ This approach provided an indicative figure of more than 100 investigations.¹⁸⁰ This is clearly in excess of a manageable figure for the SEG and consideration should therefore be given to applying mechanisms to ensure the SEG only looks at the most sensitive matters.¹⁸¹ Such mechanisms might include a secondary list of sensitive investigations that are held in a watching brief or a monitoring phase by the SEG.

Tools such as an Executive Dashboard could be used to assist with the number of sensitive investigations and focus attention where pending overt investigation activity is planned to occur.¹⁸² The effective and efficient functioning of the SEG should be reviewed over time.

Enhanced internal briefings to the Senior Executive Group

To operate effectively and with agility, the SEG will need to have strong administrative support. This must include the provision of well-developed briefs, clearly articulating the issue to be approved, actioned or resolved. For sensitive investigations the minimum required to be briefed, including how and when, must be mandated. This will provide clarity, and transparency and allocate accountability and responsibility.

The appointment of a Senior Investigating Officer

The SEG will determine whether the appointment of a SIO is required, noting that currently there are only a limited number of trained SIOs in the AFP. It will be important for the AFP to train further SIOs. When this occurs, it would only be in exceptional circumstances that an SIO would not be appointed to a sensitive investigation. A SIO may need to be responsible for more than one sensitive investigation in the interim.

¹⁷⁷ It has previously been identified in the context of critical incidents that the AFP needs to elevate similar reports to a strategic committee or forum, in order to better manage risk through executive awareness and consideration: The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

¹⁷⁸ For example, Victoria Police.

¹⁷⁹ ACT Policing, Crime Operations, International Operations, Professional Standards and Protection Liaison. Counter Terrorism (CT) also provided indicative figures, but these have been excluded because it is not proposed that CT matters will be removed from their existing Joint Management Committee structures and placed under the Senior Executive Group.

¹⁸⁰ As at 16 December 2019.

¹⁸¹ The review considers that 20-30 investigations should be the maximum number managed by the SEG at any point in time.

¹⁸² See 'Briefing Regime' (page 56).

The AFP has an existing role of SIO and this is supported by a SIO Guide. A SIO is appointed to lead a designated investigation and make critical case management decisions.¹⁸³ The SIO is responsible for maintaining command and control of the investigation, using appropriate investigative and other resources. The SIO takes prime responsibility for the investigation outcome.

A SIO typically possesses a high level of experience and competency in investigative ability, knowledge levels and management skills. They must demonstrate operational knowledge along with a high understanding of governance, policy and legislative structures relevant to any serious crime investigation. They will typically have a detective designation, hold the rank of Superintendent and must have completed the SIO program.¹⁸⁴

Currently, a SIO is appointed when a Joint Management Group (JMG) or an Assistant Commissioner determines that an investigation or incident requires senior leadership due to the critical nature of the investigation. The SIO then reports to the JMG under a written Terms of Reference.¹⁸⁵

Advice of the referral and investigation to the Chief Counsel – AFP Legal

The review has been advised AFP Legal is not, as a matter of standard process, engaged on sensitive investigations. If AFP Legal is engaged, it is often late in the investigation when legal obstacles have become apparent.¹⁸⁶ There is no basis for allowing this situation to continue and it should be remedied immediately.

There is an absolute need for the AFP Chief Counsel to be engaged at the earliest point in a sensitive investigation, and then regularly thereafter. The Chief Counsel or delegate should be a standing member of the SEG.

AFP Legal captures many lessons-learned through Court processes on law enforcement issues. The employees in AFP Legal are highly attuned to potential legal hazards in advancing investigations and need to be heavily involved in advising and educating AFP investigators on these issues.¹⁸⁷ Their experience, along with that of the CDPP, the Australian Government Solicitor and the Solicitor-General, must be utilised as necessary, especially where it can reasonably be assumed the matters will be fiercely contested by senior counsel. Early engagement with AFP Legal on strategy and execution is critical.

The level of sensitivity or security should not be used as an impediment to engagement, as AFP Legal already undertakes sensitive national security and counter terrorism work, including the drafting of Control Orders. AFP Legal are well placed to provide assistance regarding sensitive investigations.¹⁸⁸

¹⁸³ AFP, *AFP Senior Investigating Officer Guide* Folder 3, no 5/2/9.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Review Meetings 1 November – 20 December 2019.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

Early engagement with the Commonwealth Director of Public Prosecutions

As with AFP Legal, currently the CDPP are not engaged as a matter of established process with all sensitive investigations undertaken by the AFP.¹⁸⁹ Both the CDPP and the AFP reported very positively on the relationships between the respective organisations and of the value of early engagement.¹⁹⁰

The CDPP welcomes early engagement and a framework, recognising the respective responsibilities of the agencies, is in place for the provision of pre-brief advice.¹⁹¹ Whilst acknowledging the nature of some sensitive investigations will require more or less engagement, early engagement with the CDPP provides the opportunity for pre-brief legal advice to be provided.

Regular engagement with the referring agency or entity

Referring agencies were more often than not critical of the time taken for the AFP to undertake sensitive investigations, with some investigations taking years. Whilst some delays may be out of the control of the AFP the need to expedite investigative action to the fullest extent possible will be welcomed by external referring agencies.¹⁹² The SEG must play a key role in monitoring progress in the investigation.

The review identified the need to focus more on the client or the victim. Letters sent by the AFP to clients rejecting their referrals often amounted to a pro forma template style communication with no prior oral engagement. Understandably, there was a view that clients including government agencies would be far from impressed to receive notification in this manner.¹⁹³

Stakeholders have also expressed frustration at not being informed about aspects of an investigation that are relevant to their role as an agency head or other senior stakeholder positions.¹⁹⁴ This curtails their ability as the accountable authority for their entity to identify broader strategic issues and deal with them appropriately. Consideration should be given to ensuring that appropriate information is shared with relevant senior stakeholders. The ‘need-to-know’ principle applying to information-sharing by the AFP does not mean that stakeholders ‘do not need to know’.¹⁹⁵ Information is still able to be shared appropriately within the confines of section 60A AFP Act, the ‘need-to-know’ principle, and other key legal and policy frameworks.

In changing these practices, an organisational systematic response to stakeholder engagement that is embedded into investigational practice is required.

¹⁸⁹ Review Meetings 1 November – 20 December 2019.

¹⁹⁰ Review Meetings 1 November – 20 December 2019: 3; 15; 22; 45.

¹⁹¹ Review Meetings 1 November – 20 December 2019.

¹⁹² Review Meeting 1 November – 20 December 2019: 12; 13; 15; 26; 29; 33; 38.

¹⁹³ Review Meeting 1 November – 20 December 2019: 15.

¹⁹⁴ Review Meeting 1 November – 20 December 2019: 22; 33; 35; 38.

¹⁹⁵ Australian Signals Directorate and Australian Cyber Security Centre. (2019). *Australian Government Information Security Manual* Retrieved from <https://www.cyber.gov.au/sites/default/files/2019-12/Australian%20Government%20Information%20Security%20Manual%20%28December%202019%29.pdf>.

Advice to the Minister (subject to any agreement on Ministerial briefing arrangements)

There has always been a balance to be struck between ensuring the operational integrity and independence of AFP investigational activity and the proper need to brief the Minister on investigations, in some cases before operational activity occurs.

The Australian Commission for Law Enforcement Integrity (ACLEI) has previously made observations about AFP governance and business processes. In June 2008, ACLEI produced an Investigation Report titled 'The investigation into an allegation that the Australian Federal Police 'tipped-off' a Federal Member of Parliament about an impending search'. The report recommended the AFP Commissioner should review the AFP's arrangements for handling 'politically sensitive matters' and observed the existing practice of notifying the Prime Minister's Office about politically sensitive search warrants had made the AFP "vulnerable to the criticism of showing favouritism to the Government of the day".¹⁹⁶

As a result in 2009, a review outlined how that briefing regime should occur. That review referenced a now out of date AFP guide on Ministerial briefings that stated that such briefing (cleared by the AFP executive) was required in the following politically sensitive circumstances:

- ▶ The arrest of offenders during an investigation involving a politically sensitive matter;
- ▶ At the commencement of an investigation or involvement in politically sensitive issues which have or will attract significant media attention;
- ▶ A matter that may attract significant media attention due to the political and security environment; or
- ▶ During an investigation in relation to any of the abovementioned matters when there is a significant milestone during the investigation.¹⁹⁷

In any of the above circumstances, an AFP executive cleared Ministerial briefing is required.

The most recent advice on Ministerial briefings is taken from the AFP's August 2019 submission to the Senate Environment and Communications References Committee Inquiry into Press freedom. The submission notes that:

*[t]he AFP's standard practice is to notify the Minister for Home Affairs when politically sensitive matters are referred to the AFP unless there is a conflict of interest or potential for perceived conflict of interest. This is done in accordance with the AFP National Guideline on Politically Sensitive Investigations... The AFP also notifies the Minister for Home Affairs' Office of significant, overt operational activity. Permission to commence an investigation or undertake operational activity is not sought. Nor does the AFP provide regular updates to the Minister for Home Affairs on operational activity.*¹⁹⁸

¹⁹⁶ Australian Commission for Law Enforcement Integrity. (2008). *ACLEI Investigation Report 2-2008. An investigation into an allegation that the AFP 'tipped off' a Federal Member of Parliament about an impending search* (30 October 2008) Retrieved from https://www.aclei.gov.au/sites/default/files/acleiinvestigationreport02-2008_o.pdf?v=1455097051.

¹⁹⁷ The review examined 31 AFP Internal Review & Audit Reports across a broad range of subjects.

¹⁹⁸ Parliament of Australia. (2019). *Senate Standing Committees on Environment and Communications: Press Freedom* AFP Submission (August 2019) Retrieved from https://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/PressFreedom/Submissions; The AFP National Guideline on politically sensitive investigations is the subject of further examination in Appendix B.

Given the definition of a sensitive investigation is recommended to be broadened to include sensitive investigations beyond ‘politically sensitive matters’, there are benefits all round for the requirements for Ministerial briefings to be clarified. This will avoid confusion when sensitive investigations are underway. The Commissioner should, early in his Commissionership, settle with the Minister how Ministerial briefings are best provided in different investigational scenarios. Following that agreement, there will be a need for the AFP to establish a guideline on Ministerial briefings, particularly as they may relate to sensitive investigations.

Option

- 17. Create governance documents on AFP briefing, to cover matters including Ministerial briefing requirements and an Executive Dashboard on sensitive investigations*

If involving journalists or media organisations, engagement with those entities as appropriate and likely through respective Chief Counsel

In correspondence to the review, the ABC raised how difficult it had been to engage with the AFP at senior levels.¹⁹⁹ The enhanced structures that the review is contemplating, particularly the role of the SEG, Chief Counsel and the SIO, should improve future engagement. There is merit to have this engagement conducted on a senior lawyer to senior lawyer basis, particularly when discussing arrangements to access and protect information that may be in the possession of media outlets.

Option

- 7. Agree with the elements of the proposed escalation framework when a sensitive investigation is identified or declared which include:*
 - ▶ *Advise the Chair of the SEG;*
 - ▶ *Appoint a Senior Investigating Officer;*
 - ▶ *Advise AFP Legal;*
 - ▶ *Engage the CDPP;*
 - ▶ *Engage regularly with the referring agency or entity;*
 - ▶ *Advise the Minister (subject to agreement on Ministerial briefing arrangements);*
 - ▶ *If the sensitive investigation involves a journalist or news media organisation, engage them appropriately and likely through respective Chief/General Counsel;*
 - ▶ *Enhance internal briefings to the SEG; and*
 - ▶ *Complete investigations within compressed timeframes, triggering the allocation of additional and priority resources.*

¹⁹⁹ Anderson, D. (2019). *Letter from ABC Managing Director to AFP Commissioner* 20 November 2019 Folder 4, no 2.

Briefing regime

It should be no surprise, given the absence of robust governance documents and structures, the AFP lacked clear written requirements for briefings to the executive.²⁰⁰

The review was told on numerous occasions that regular written and oral briefings were provided to the executive.²⁰¹ The executive were critical of not receiving briefings or not receiving them in a timely way.²⁰² It was also stated there was often no clear advice from the executive that the briefing had been noted and the course of action supported or otherwise.²⁰³ This disconnect is troubling.

Noting the above challenges, stakeholders were in agreement there is room for improvement and enhanced governance around how and when briefings occur, including who is involved.²⁰⁴ It was also noted better feedback processes are required between the executive and investigators, so there is a better understanding and learning as to why certain decisions are made.²⁰⁵ Decisions at all points of the investigation should be recorded in a way that demonstrates ‘why’ the decision was made, and not just the decision itself.

The review was also told the use of comprehensive PROMIS Management Significant Entries, which is preferred by some stakeholders, is now not used to consistently keep the AFP executive and other stakeholders informed of operational activity or case referrals.²⁰⁶ The use of Management Significant Entries needs to be reinvigorated, with strict adherence mandated. Doing so will provide for timely operational briefing within the AFP and will likely supplement briefings being received from other quarters.

To provide visibility to the senior executive of the most sensitive investigations being undertaken by or involving the AFP, an Executive Dashboard should be generated and updated at least fortnightly.²⁰⁷ The Dashboard should provide the Commissioner, Deputy Commissioners, Chief Operating Officer and members of the SEG and others as required, with an at-a-glance overview of the current sensitive investigations, including the ability to see when and where significant activity is planned. The Dashboard should also include information regarding sensitive investigations: (i) oversights by existing JMCs, such as CT; and (ii) involving death penalty matters. In addition to providing another briefing tool for the senior executive, it will also enable those in the executive to provide strategic insight and guidance regarding any planned significant activity.

200 Review Meetings 1 November – 20 December 2019: 3.

201 Review Meetings 1 November – 20 December 2019: 1; 3; 10; 15; 41.

202 Review Meetings 1 November – 20 December 2019: 9; 11; 34.

203 Review Meetings 1 November – 20 December 2019: 45.

204 Review Meetings 1 November – 20 December 2019: 1; 9; 10; 11; 14; 15; 17; 40.

205 Review Meetings 1 November – 20 December 2019: 40.

206 Review Meetings 1 November – 20 December 2019: 9; 14; 34.

207 The frequency of the dashboard should be subject to review over time.

Finally, notwithstanding the exceptionally sensitive nature of some investigations, sensitive investigations (including PRS sensitive investigations) must all be briefed into the SEG, or at the very least to the Commissioner, unless the allegations relate directly to the Commissioner.

Options

- 18. Reinvigorate the use of PROMIS generated management significant case note entries, with strict adherence to their use mandated, preferably through a clear direction from the Commissioner.*
- 19. Retain the recent guideline and arrangements in managing death penalty issues and the existing CT JMC processes, noting it is not necessary to make any organisational structure changes to the JCTT operating model.*

Alternative mechanisms for referring entities beyond the AFP

Referral of Allegations of Unauthorised Disclosure Protocol between the Australian Public Service Secretaries Board and the Australian Federal Police (Protocol)

This Protocol was signed by the AFP on 2 August 2017.²⁰⁸ Given legislative changes, a new AFP Ministerial Direction and this review, there is an opportunity to reinvigorate, and expand the Protocol to cover the broader concept of a sensitive investigation. This will ensure matters being referred from the Australian Public Service (APS) are consistently formulated, with high level consideration of all aspects, including harm statements, before being referred to the AFP for investigation. It should also require relevant agencies to explore all of their own options (such as taking their own legal advice, instigating workplace investigations or other legal avenues) prior to referring any matter to the AFP. There is broad support for reinvigorating the protocol.²⁰⁹

²⁰⁸ AFP. (2017). *Referral of Allegations of Unauthorised Disclosure Protocol between the APS Secretaries Board and the AFP* (2 August 2017) Folder 3, no 5/2/6.

²⁰⁹ Review Meetings 1 November – 20 December 2019: 3; 9; 11; 13; 22; 23; 29; 30; 33; 35; 39; 41.

In the first instance, the Protocol could be advanced through the Secretaries Committee on National Security (SCNS). As the Secretary for Home Affairs has policy responsibility for the AFP Act and is a member of the Secretaries Board, it is appropriate for the Secretary for Home Affairs to pursue this on behalf of the AFP. If deemed appropriate by the Secretaries Board, the Commissioner could brief the Secretaries Board on an annual basis regarding statistics and impacts relating to the application of the reinvigorated Protocol.²¹⁰

Option

- 10. Request through the Secretaries Committee on National Security, in conjunction with the Secretary of Home Affairs, the Secretaries Board produce an enhanced Protocol detailing a systematic approach to sensitive investigation referrals for all Commonwealth departments and agencies. This systematic approach should include consideration of minimum thresholds and a harm assessment for each referral.*

Raising stakeholder awareness

Several stakeholders highlighted the importance of raising awareness of AFP sensitive investigation processes.²¹¹ This could assist in managing referrer expectations about: how/when to refer a sensitive matter to the AFP for investigation; what is required of the referrer; and how the AFP will conduct the investigation.

Promulgation of governance regarding the AFP's response to and management of sensitive investigations within the APS and at the political level will assist in ensuring a more broadly understood process regarding referrals to the AFP.²¹² Public promulgation through the AFP website will also assist.

Option

- 11. Promulgate the associated governance documents regarding sensitive investigations: within the APS; within the Federal Parliament; and publicly through the AFP's website.*

Ministerial Direction to Commonwealth Director of Public Prosecutions

The Attorney-General, the Hon Christian Porter MP, issued a Ministerial Direction to the CDPP on 19 September 2019.²¹³ The Direction requires the consent of the Attorney-General to be obtained before a prosecution is commenced for a range of offences where the person concerned is a journalist and the facts constituting the alleged offence relate to the work of the person in their professional capacity.

²¹⁰ Review Meetings 1 November – 20 December 2019: 13; 29; 30; 33; 35; 39.

²¹¹ Review Meetings 1 November – 20 December 2019: 3; 9; 12; 13; 19; 22; 26; 37; 42.

²¹² Review Meetings 1 November – 20 December 2019: 12; 13; 22; 37.

²¹³ The Hon Christian Porter MP. (2019) *Ministerial Direction (Commonwealth Director of Public Prosecutions), Director of Public Prosecutions Act 1983* (19 September 2019) Retrieved from <https://www.legislation.gov.au/Details/C2014G02068>.

The review has explored the possibility of establishing a process of seeking a preliminary view from the Attorney-General at the outset of a sensitive investigation, as to whether it would be a matter that the Attorney-General would likely consent to prosecute. This was on the basis of exploring likely resource efficiencies for the AFP and CDPP, along with neutralising the need for any potential coercive action that is often required in an investigative process where evidence is gathered.

Discussions with stakeholders have indicated that the idea has merit but is likely to be legally complex and as a result is not currently feasible.²¹⁴ The Commissioner, however, will still be able to exercise his discretion (more fully described below) in assessing whether it was in the public interest to investigate a matter.

Commissioner's discretion to reject referrals

Opportunities for improved governance arrangements have already been identified with an enhanced Protocol. This of course only captures those referrals to the AFP from APS departments and agencies. Many more come from private entities and individuals.

Some of these referrals are spurious or trivial, while others contain very little factual detail. Others are grounded on innuendo and rumour or have little chance of a successful legal outcome.²¹⁵ It is important these matters do not consume precious AFP resources and are dealt with swiftly in accordance with the risk framework this review is advocating. Doing so will allow the AFP to focus on the highest priority investigations. Matters are currently rejected by the AFP, however the review believes this acceptance or rejection decision making is not consistently applied, for the reasons outlined earlier in the report.

In conjunction with the risk framework, the Commissioner or his delegate should properly consider the application of his discretion to reject referrals including those that may have been identified as a sensitive investigation.

Option

9. *Ensure the Commissioner's redefined discretion to accept or reject referrals for investigation is delegated where necessary and utilised comprehensively in conjunction with the referral risk framework.*

Perspectives external to the AFP

The Secretary for Home Affairs has responsibility for policy and its implementation within the Home Affairs portfolio. As such, the Secretary is able to provide advice regarding the policy implications of investigations (noting importantly that this is distinct from operational advice), particularly regarding community harm and public interest.²¹⁶ This may also assist the Commissioner in exercising his discretion to investigate referrals.

²¹⁴ Review Meetings 1 November – 20 December 2019: 11; 12; 13; 22; 23; 39.

²¹⁵ Review Meetings 1 November – 20 December 2019: 3; 18; 19; 23; 26.

²¹⁶ Review Meetings 1 November – 20 December 2019.

If deemed appropriate, SCNS may also be able to assist in providing the Commissioner with some guidance (from a policy perspective) regarding some of the more complex sensitive investigations that have impacts across the national security environment. The Commissioner could advance these issues through SCNS as required.

It is noted, however, successful prosecutions should not be the only yardstick by which the accomplishment of the AFP in responding to and managing its sensitive investigations is measured. The aim of an investigation (sensitive or not) is not always prosecution; prevention, disruption and deterrence are also effective outcomes depending on the specific circumstance. The review has been advised by stakeholders that some sensitive investigations are important to undertake from a public interest perspective alone, even if they are not successfully prosecuted.²¹⁷

The governance and business processes identified for improvement throughout the review need to then be applied within the organisational structures, as detailed in Term of Reference 4.

²¹⁷ Review Meetings 1 November – 20 December 2019: 3; 31.

TERM OF REFERENCE 4

ORGANISATIONAL STRUCTURES

The review has been working with the AFP's organisational design review to minimise risk of misalignment. The four main structural options are the:

- a. Creation of a National Headquarters Command;
- b. Reinvigoration of the AOCC under the National Headquarters Command;
- c. Amalgamation of the CT and OSI portfolios; and
- d. Establishment of a SEG within an escalation model for sensitive investigations.

Each of these proposed structural change options have been discussed earlier in this report under Term of Reference 3 – Governance.

Organisational structures from an historical AFP perspective

Analysis of external reviews conducted on AFP investigations from 2007 until 2017 reveal competing hierarchical structures, either internally or with partner stakeholders, confused operational decision making in sensitive investigations.²¹⁸ This examination highlighted internal and external structures in sensitive investigations will fail if they do not operationally function, specifically decision makers and decision activators need to be congruent.²¹⁹ It was identified formalised cascading structures alleviated these issues and supported accountability and communication of operational decision making.²²⁰

Potentially due to the pressure of sensitive investigations, a tendency for executive organisational structures to default from vertical to horizontal communication practices was identified. This adversely affected cohesion of command and control, situational awareness of frontline investigators and created confusion.²²¹

It was also recognised when the SIO loses an overarching perspective of the investigation structure for a sensitive investigation, predominantly by focusing on the minutiae, it results in an inability to discern derailing material and agendas and ultimately leads to a failure to critically analyse the accuracy and quality of information.²²² This structural failure could be avoided by adherence to existing governance such as the Investigations Doctrine and SIO Guide.

218 Street, L. (2008). Op. Cit.

219 Clarke, M. (2008). Op. Cit.

220 Street, L. (2008). Op. Cit.

221 Clarke, M. (2008). Op. Cit.

222 Ibid.

Finally, this examination of external reviews indicated the need for the AFP to address areas where organisational structures horizontally merged with partner stakeholders when undertaking sensitive investigations, to ensure communication, decision making, strategy and planning were cohesive.²²³ This organisational structure observation directly aligns with internal investigation review findings that identified a need for formalised governance to support joint management arrangements at a strategic and operational level when conducting sensitive investigations.

The options suggested by the review will mitigate the concerns raised in these historical reviews and ensure transparency and accountability around operational executive decision making.

National Headquarters Command

Currently, Canberra based management of operations and resources largely continues to work in functional silos rather than a distinct line of direction and collective oversight. A clear weakness is the lack of consistent structures at an AFP headquarters level for ensuring the recording, prioritisation, allocation and briefing of incoming allegations/referrals. AFP headquarters lacks a central line of management for locally based operational resources, member welfare and development, and agility between functions. Furthermore, there is no one central point of operational contact for security risk and treatment plans.²²⁴

This is surprising and in stark contrast to the AFP Regional Commands, which have long established and largely well-functioning regional coordination centres to triage and manage referrals. They have Regional Operations Capacity and Capability Committees (ROCCC), which bring together the multiple functional streams to consider referred investigations, resolve resourcing, settle prioritisation and guide investigational delivery at the regional level.

The National headquarters investigational environment has over 400 investigators, which is equivalent to the AFP's largest Regional Command, New South Wales (NSW). Headquarters is responsible for a range of investigational activities. The functional areas all manage their investigations in different ways and through different structures. Some functions have well developed structures and governance – an example being CT with its multi-agency committees – while others have little to none. In some instances, for example PRS, some degree of separation may be necessary. Within this environment, there are no structures to support that investigational activity holistically, nor effective structures to manage the most sensitive of AFP investigations. This scenario does not allow investigational risk to be properly recognised, understood and managed.

Previous AFP management were aware of these structural weaknesses and the risks they posed, commissioning a 'Canberra Office Project' in an effort to understand the problem in detail and remediate this situation. The proposal aimed to complement the regional offices, ensuring all teams and functions are adequately managed in a streamlined process.²²⁵ Unfortunately, that structure

²²³ Street, L. (2008). Op. Cit.

²²⁴ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 15 November] Folder 3, no 1/5.

²²⁵ Ibid.

has not yet been implemented. A National Command is forming part of the Commissioner's initial considerations. The National Headquarters Command may be able to have some responsibility for functions such as the AOCC, the Operational Prioritisation Model and investigators/employees.²²⁶

The former executive were also concerned about the overall management of human resources and the availability of enabling support created by a fragmented environment. Individual managers, to their credit, have tried to overcome these weaknesses through the refinement of the Capability and Operational Priority Committee and the creation of the Canberra Staffing Committee and functional Operations Committees. Since the review commenced, a Sensitive Decisions Panel (SDP) has also been established as an interim measure. These structures either had a limited management focus or restricted coordination authority.

The governance structures at a headquarters level need to be consolidated and strengthened.

Option

22. Establish a National Headquarters Command, drawing on aspects of the 'Proposed Canberra Office Project' and replicating what is working well by way of the management and governance structures in operation within the AFP Regional Commands.

Restructuring of the AFP Operations Coordination Centre under the National Headquarters Command

The AOCC structure has changed over a period of years from being a communications centre for Outcome 1 operations. It previously operated as the central point of referrals and a '24 hour a day 365 days of the year watch office'. It is now a smaller team, largely focussed on transactional activity around requests from and to international agencies, State/Territory police forces and the public. INTERPOL requests previously played an important part in this function, however this work was separated and now falls under the International Operations function. The AOCC Client Liaison Team (AOCC CLT) deals with online reports of crime via the AFP's website, and large scale written correspondence from members of the public, which are often not reporting crime.

The AOCC CLT will assess the correspondence and refer matters to regional Operations Monitoring Centres (OMCs) and headquarters-based functions by PROMIS referral Case Note Entry (unless urgent, in which case a radio or telephone communication would occur). Not all OMCs are consistent, however, in how they receive referrals.

There are clear benefits to be realised from expanding the remit of the AOCC, improving its governance practices and ensuring it is part of a reinvigorated National Headquarters Command and an updated prioritisation model aligned with senior executive key operational and strategic priorities. Key to the success of the enhanced AOCC functions to reduce operational risk to the AFP will be to ensure all

²²⁶ The review examined 31 AFP Internal Review & Audit Reports.

matters are referred to it and senior employees are available to identify and triage incoming referrals including sensitive matters. Consideration should be given to having AFP Legal involved in this identification and triage process.

Options

23. Reinvigorate the AOCC as part of the National Headquarters Command, monitoring all referrals and applying an agreed risk framework, including assessing whether any referral should be treated as a sensitive investigation upon its receipt.

24. Staff the AOCC 24 hours a day, 365 days a year with appropriately trained and experienced senior employees, including consideration of members from AFP Legal.

Counter Terrorism/Offshore and Sensitive Investigations amalgamation

At an AFP headquarters level, CT was held up as a model which has a strong risk management overlay.²²⁷ With the more recent inclusion of espionage and foreign interference (EFI) as part of OSI's responsibilities, synergies have emerged which make combining the two areas sensible.

CT has strong governance practices including multi agency committees, an effective briefing regime, and developed stakeholder engagement relationships, particularly with the intelligence community and State/Territory police.²²⁸ In addition, it already has the physical security facilities at its disposal,²²⁹ along with a large number of employees security cleared to the highest levels.²³⁰

There is stakeholder support for the amalgamation of the two areas.²³¹ The AFP's CT function is perceived as having mature and effective governance and business processes.²³²

An amalgamation offers opportunity for the rotation and upskilling of employees between the variety of investigational opportunities to aid in the management of fatigue and to bolster morale.

International models, particularly the UK's SO15 arrangements, lend support to an amalgamation of the two areas. Some risks would require treatment, including the need for close stakeholder engagement and ensuring countering terrorism remains the highest priority in protecting Australia and Australians.²³³

²²⁷ Review Meetings 1 November – 20 December 2019: 3; 5; 6; 11; 15; 19; 42; 43.

²²⁸ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 19 December] Folder 3, no 5/14/10.

²²⁹ Review Meetings 1 November – 20 December 2019: 51.

²³⁰ This incorporates a proportion of employees who hold a Positive Vetting clearance.

²³¹ Review Meetings 1 November – 20 December 2019: 6; 11; 22; 34; 42; 44.

²³² Review Meetings 1 November – 20 December 2019: 3; 5; 6; 11; 15; 19; 42; 43.

²³³ Counter Terrorism Policing. (2018). *Our network*. Op. Cit.

Option

- 21. Amalgamate the headquarters CT and OSI portfolios, noting the benefits of engaging key partners from the intelligence community and State/Territory police forces on this change.*

Sensitive investigations escalation framework – establishment of a Senior Executive Group

The review has written at length under Term of Reference 3 on the reasons why a structural change is needed and how a ‘sensitive investigations SEG’ could be created. Whilst the establishment of the SEG should be relatively straight forward, some of the underpinning structures and governance will likely take longer to establish. Notwithstanding that challenge, the SEG should be activated as soon as possible and be supported until the underpinning supporting structures and governance are in place.

Option

- 20. Establish a SEG, within an escalation framework for the oversight and management of the full range of AFP sensitive investigations. The Terms of Reference for the SEG should reflect the narrative and intent of this report. The SEG should not unnecessarily duplicate existing JMC arrangements, e.g. CT, but should ensure they have sufficient visibility of other investigations involving the AFP.*

Potential legislative change on the horizon

Commonwealth Integrity Commission

While not a structural change the AFP needs to be immediately concerned with, the review is aware a Commonwealth Integrity Commission (CIC) is being considered.²³⁴ The CIC has the potential to deal with a sizeable proportion of the sensitive investigations which are currently referred to the AFP. Equally, it is possible there may be an increase in matters referred to a CIC which are then forwarded to the AFP for investigation. It is too early to understand any impact, noting the legislation and scope of the CIC's remit have not yet been settled.²³⁵ The AFP should monitor these developments closely and input into the policy discussions as appropriate.

Public Interest Disclosure Scheme

The review is also aware of public comments on potential changes to the *Public Interest Disclosure Act 2013* (Cth).²³⁶ The implications of any changes in relation to sensitive investigations will need to be assessed once the extent of the legislative change is known.

Parliamentary privilege

As detailed earlier in this report, some sensitive investigations have had a nexus to the Federal Parliament where issues of parliamentary privilege have become apparent. Historically, some investigations have involved the use of intrusive processes impacting Members of Parliament resulting in parliamentary privilege being claimed over seized material.²³⁷ The Senate Standing Committee of Privileges has questioned the AFP's use of its powers in these circumstances. The Committee has provided greater clarity on their views on the extent parliamentary privilege applies in certain circumstances.²³⁸

The Attorney-General's Department is currently examining these developments. The outcome of this examination has the potential to impact how the AFP conducts sensitive investigations involving Members of Parliament into the future. The AFP legal and policy teams should continue to monitor these developments.

²³⁴ Morgan, C. (2019). *Proposed Commonwealth Integrity Commission will 'breed further suspicion' around corruption: analyst* The Canberra Times. 28 August 2019 Retrieved from <https://www.canberratimes.com.au/story/6348862/commonwealth-integrity-commission-will-breed-further-suspicion-around-corruption-analyst/>.

²³⁵ Review Meetings 1 November – 20 December 2019: 12.

²³⁶ The Hon Christian Porter MP. *Address to National Press Club Canberra* (20 November 2019) Retrieved from <https://www.attorneygeneral.gov.au/media/speeches/address-national-press-club-canberra-20-november-2019>.

²³⁷ For example: AFP Operations Alcos and Amaranth/Elucidate (detailed in Appendix A).

²³⁸ For example: Parliament of Australia. (2018). *The Senate: Committee of Privileges. Parliamentary privilege and the use of intrusive powers. 168th Report (March 2018)* Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Privileges/Completed_inquiries/2016-2019/intrusivepowers/Report.

CONCLUSION

Even the most cursory examination of this report will identify the attention to detail, breadth of research, and analysis that has been drawn upon to present the options as outlined on pages 16–19. It is envisaged it will take some time for the Commissioner to consider the report and decide on the options he wishes to advance and any order of priority.

At the centre of the review’s findings are a definition of ‘sensitive investigation’ and a key structural and governance change creating an escalation model for the AFP to better manage sensitive investigations. If this alone is delivered, significant improvements to the way the AFP handles sensitive investigations will result. The other suggested enhancements in the report will only further improve the way the AFP responds to its investigational risks.

Once any options are agreed, it will be critical the AFP’s governance and risk management processes are applied to ensure the agreed options are delivered in a structured and timely way. In identifying the options available to the Commissioner, it was clear the AFP had already recognised some shortcomings in investigational governance and structural arrangements.

A common theme emerging from the review has been the failure of the AFP to implement a range of earlier internal and external review and audit findings. To that end, the AFP’s Audit Committee has very experienced external members; this experience should be harnessed and the Audit Committee tasked to ensure that comprehensive implementation of the agreed options occurs. Experience in other Commonwealth departments shows without robust oversight of implementation through follow-up audits, there is a high risk that crucial delivery will not happen as it should.

Community and stakeholder confidence in the AFP has been negatively impacted as a result of recent sensitive investigations. A clear objective of this review is to improve that confidence in, and support for, the AFP’s actions in protecting Australians and Australia’s interests. The AFP’s response to this review should further embed the AFP’s values, particularly accountability, excellence and commitment. If the AFP implements effectively the options contained in this report then significant improvements to the conduct of investigations, including matters involving journalists and media outlets, will occur. Further, community confidence in the AFP will be enhanced.

APPENDIX A: A COMPENDIUM OF DIVERSE AFP SENSITIVE INVESTIGATIONS

The review has formed a view the following matters are all covered to various degrees by the ‘sensitive investigation’ definition, noting in particular all of them are, or possibly would be, of significant interest to the Australian community.

2012 – 2013: INTERPOL Red Notice – Chichakli

The AFP, Australia’s host for INTERPOL, processes fingerprints shared through INTERPOL. In 2012, the AFP identified fingerprints from an INTERPOL Red Notice as belonging to a fugitive wanted in the US for money laundering in regards to breaching the International Emergency Economic Powers Act (IEEPA) and United Nations Security Council sanctions.²³⁹ Investigations revealed Richard Chichakli (Chichakli) had forged a new identity and relocated to Australia, where he applied for a protective security officer position with the Victoria Police, providing his fingerprints as part of this process.²⁴⁰ The AFP swore a provisional arrest warrant and Chichakli was extradited back to the US to face charges relating to conspiracy to purchase planes to transport arms into international combat zones.²⁴¹ In 2014, Chichakli was convicted in the US for conspiring to violate IEEPA, money laundering conspiracy, wire fraud conspiracy and wire fraud, resulting in his imprisonment for five years, the requirement to forfeit \$1.7 million and pay \$70,000 in restitution.²⁴²

Sensitivity and complexity factors

- ▶ Significant interest to Australia’s international relationships;
- ▶ Significant media and community interest; and
- ▶ Chichakli was connected to high profile criminal figures known to the international law enforcement community.

²³⁹ AFP. (2019). *Review into the AFP’s Response to and Management of Sensitive Investigations* [Email 5 December 2019] Folder 3, no 3/1.

²⁴⁰ AFP. (2015). US fugitive leaves an impression. *AFP Platypus Magazine* (Jun-Dec) pp. 31-35 Retrieved from <http://www.austlii.edu.au/au/journals/AUFPPlatypus/2015/15.pdf>.

²⁴¹ Portelli, E. (2013). *International fugitive Richard Chickakli requests extradition to US to face charges linking him to Russian arms dealer*. Herald Sun. 4 April 2013 Retrieved from <https://www.heraldsun.com.au/news/international-fugitive-richard-chichakli-requests-extradition-to-us-to-face-charges-linking-him-to-russian-arms-dealer/news-story/81a670126ccce9bb9a963f682e1f1894>.

²⁴² AFP. (2015). US fugitive leaves an impression. *AFP Platypus Magazine*. Op. Cit.

2014 – 2018: Operation Niro

Operation Niro was a joint international investigation into Philippines based Australian national, Peter Scully (Scully), who established a lucrative international pedophile ring that offered video streams of children being sexually abused on the dark web. Amongst the most heinous of Scully's productions was a video series depicting extreme sexual and physical abuse of children.²⁴³ The broader joint investigation identified 13 victims, 12 of whom were located.²⁴⁴ The remains of a female child, alleged to have been killed by Scully whilst filming her extreme abuse, were located.²⁴⁵ In February 2015, Scully was tracked, located and arrested in the Philippines.²⁴⁶ In June 2018, Scully was sentenced to life in prison and is currently serving this term in the Philippines.²⁴⁷

Sensitivity and complexity factors

- ▶ Significant interest to the Australian and Philippines governments;
- ▶ Death penalty considerations;
- ▶ Operating in a high risk offshore environment;
- ▶ Abhorrent crime type;
- ▶ Domestic and international political and media interest; and
- ▶ The requirement to negotiate, strategise and share sensitive information with international law enforcement counterparts from across the globe.

2014 – ongoing: Operation Arew

Operation Arew is the AFP's contribution to Australia's response to the shooting down of Malaysia Airlines flight MH17 enroute from Amsterdam to Kuala Lumpur on 17 July 2014, killing all 298 persons on board – including 38 people who called Australia home.²⁴⁸ The aircraft was shot down in the Donetsk Oblast region of Eastern Ukraine which was at the time under the control of pro-Russian separatists involved in a military conflict with Ukraine.²⁴⁹

Sensitivity and complexity factors

- ▶ The AFP was the lead agency in Operation Bring Them Home, a whole of government effort to recover the Australian victims of MH17 and repatriate them to Australia;

²⁴³ AFP. (2015). *Annual Report 2014-15* Retrieved from <https://www.afp.gov.au/afp-annual-report-2014-15>; Brown, T. (2015). *Catching a monster: Part one (2015)*. 60 Minutes Australia. 22 January 2018 Retrieved from <https://www.youtube.com/watch?v=Y133EPICW5w>; NZ Herald. (2017). *Revealed: Luxury life of alleged child torturer Peter Scully's assistance revealed* 12 nzherald.co.nz. February 2017 Retrieved from https://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=11799226.

²⁴⁴ AFP. (2015). *Annual Report 2014-15*. Op. Cit.

²⁴⁵ NZ Herald. (2017). *Revealed: Luxury life of alleged child torturer Peter Scully's assistance revealed*. Op. Cit.

²⁴⁶ AFP. (2015). *Annual Report 2014-15*. Op. Cit.

²⁴⁷ Sutton, C. (2018). *Depraved Aussie child predator smiles as he gets life*. News.com.au. 14 June 2018. Retrieved from <https://www.news.com.au/world/asia/depraved-aussie-child-predator-smiles-as-he-gets-life/news-story/e93f97493efb1c8ec09e9872405f7b63>.

²⁴⁸ AFP. (2015). *Annual Report 2014-15*. Op. Cit.

²⁴⁹ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 13 December] Folder 3, no 3/6.

- ▶ The search and recovery effort for all victims was conducted in partnership with the Netherlands and Malaysia with access to the crash site facilitated by the Organisation of Security and Cooperation in Europe;
- ▶ The Joint Investigation Team (JIT) arrangements under Eurojust provisions, which comprised investigators from Australia, Belgium, Malaysia, the Netherlands and Ukraine;
- ▶ The alleged nexus to State actors and the complexities of international law;
- ▶ The alleged involvement of a foreign government in the shooting down of MH17;
- ▶ Community and media interest has been and continues to be high;
- ▶ The requirement of four key international agreements and arrangements that provide the foundation for Australia's participation in the investigation. The agreements include both treaties and arrangements supporting the JIT;
- ▶ Investigation outcomes supported the May 2018 notification by Australian and Dutch governments to the Russian Federation that they held it responsible under international law for its role in the shooting down of MH17 and requested negotiations; and
- ▶ The investigation is one of the most complex, resource intensive and protracted investigations the AFP has ever conducted.

2015 – 2018: Operation Okenite

Between September 2015 and October 2015, a Vietnamese national accessed customer data belonging to two major Australian companies via the IBM web platform used by both companies for online sales. The individual contacted both companies identifying as an independent security researcher and advised of the theft of 243,000 customer records. This matter was referred to AFP Cybercrime Operations who engaged with both a foreign law enforcement agency and the Vietnamese Authorities.

In July 2016, the offender made overt blackmail demands to both companies in an attempt to extort payment by threatening the release of those customer records on the dark web. The offender was subsequently arrested and charged by Vietnamese authorities. In November 2018, the offender was found guilty and sentenced to 12 years imprisonment under relevant Vietnamese law.²⁵⁰

Sensitivity and complexity factors

- ▶ Likely to be of significant interest to Australia's relationship with Vietnam;
- ▶ Political interest – matter referenced in 2016 by the then Prime Minister Malcolm Turnbull when the Australian Cyber Security Strategy was released;
- ▶ Offending had international reach and the offender was located offshore;
- ▶ Involved two companies that were prominent in the Australian community; and
- ▶ The complexities of progressing a Mutual Assistance Request within a limited timeframe in support of the Vietnamese prosecution.²⁵¹

²⁵⁰ AFP. (2019). *Annual Report 2018-19* Retrieved from <https://www.afp.gov.au/annual-report-2018-19>.

²⁵¹ Ibid.

2019 – ongoing: Operation Diependael

On 15 March 2019, a single gunman carried out an alleged terrorist shooting attack on two mosques in Christchurch, New Zealand (NZ) during Friday prayers.²⁵² The gunman livestreamed the first attack on Facebook.²⁵³ The attacks killed 51 people and injured 49 others. A 28 year old Australian national, subscribing to extreme right wing ideologies was subsequently captured and charged with 51 counts of murder and 40 of attempted murder.²⁵⁴ Following the attack, the AFP deployed over 60 people in a multi-tiered response. Support provided to NZ Police included Family Investigation Liaison Officers, bomb identification, digital forensics and appraisal capabilities, specialist response, disaster victim identification and specialist forensic capabilities. In Australia, the NSW JCTT undertook a range of inquiries to assist NZ Police with their investigation. This included facilitating a whole-of-government investigation and intelligence response to requests for information, which was activated in accordance with the Australia–New Zealand Counter-Terrorism Committee protocols.²⁵⁵

Sensitivity and complexity factors

- ▶ Involved Australia's international relationship with NZ;
- ▶ The alleged offender was an Australian citizen and resided in NSW prior to the attacks in NZ;
- ▶ Significant interest in Australian authorities regarding their knowledge of the gunman;
- ▶ The attack was live streamed via social media, causing significant domestic and international media and community interest;
- ▶ The attack led to changes in legislation for social media in Australia and gun laws in NZ;²⁵⁶
- ▶ Introduction of new legislation relating to the Sharing of Abhorrent Violent Material in Australia, which required a direct referral for content and hosting service providers into the AFP;²⁵⁷ and
- ▶ Significant political interest.

2012 – 2019: Operation Corrina

The AFP commenced an investigation commenced as a result of a referral from the AEC alleging fraudulent conduct in the division of Reid in the lead up to the 2012 local government elections in NSW. Salim Mehajer and his sister, Fatima Mehajer, were alleged to have been forging and/or submitting electoral enrolment variation applications to the AEC requesting changes to residential addresses

²⁵² Ibid.

²⁵³ Macklin, G. (2019). *The Christchurch attacks: Livestream terror in the viral video age*. Combatting Terrorism Center Sentinel, 12(6), 18-29 Retrieved from <https://ctc.usma.edu/christchurch-attacks-livestream-terror-viral-video-age/>.

²⁵⁴ Walden, M. (2019). *New Zealand mosque attacks: Who is Brenton Tarrant?* Aljazeera. 18 March 2019 Retrieved from <https://www.aljazeera.com/news/2019/03/zealand-mosque-attacks-brenton-tarrant-190316093149803.html>.

²⁵⁵ AFP. (2019). *Annual Report 2018-19*. Op. Cit.

²⁵⁶ Menon, P. (2019). *New Zealand votes to amend gun laws after Christchurch attack*. Reuters. 10 April 2019 Retrieved from <https://www.reuters.com/article/us-newzealand-shooting-parliament/new-zealand-votes-to-amend-gun-laws-after-christchurch-attack-idUSKCN1RMOVX>.

²⁵⁷ The Parliament of the Commonwealth of Australia. (2019). *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Bill 2019* – Explanatory Memorandum. Retrieved from https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1201.

in the names of individuals who later verified that they did not submit these applications and did not reside at the addresses stipulated. All new addresses outlined in their fraudulent applications were located in a local government area that the two offenders were standing for election in.²⁵⁸ Both offenders were charged and convicted in relation to a Commonwealth fraud.²⁵⁹

Sensitivity and complexity factors

- ▶ Potential to impact on the administration of a local government election;
- ▶ Electoral fraud;²⁶⁰
- ▶ Involved election candidates; and
- ▶ Media and community interest.

2009 – 2011: Operations Amaranth/Elucidate

These investigations related to an allegation regarding the creation of a fake email and a number of unauthorised disclosures of information from Australian Treasury officials that occurred in 2009. In June 2009, AFP investigators executed a search warrant on the former Treasury office of Godwin Grech and obtained evidence of a draft false email sent from his Treasury account to his personal account. A second warrant was executed on Grech's home address which revealed email traffic from Mr Grech's Treasury account and personal computer to prominent members of the community affiliated with the Liberal party. The information contained in the emails was believed to be obtained in the course of his role as a Treasury employee and Commonwealth officer, of which he had a duty not to disclose. The AFP submitted a brief of evidence to the CDPP pertaining to Grech in December 2009.²⁶¹ The brief of evidence detailed 35 alleged offences for consideration by CDPP relating to unauthorised disclosure and abuse of public office. In 2010 it was determined that whilst there was sufficient evidence to commence a prosecution, due to matters of public interest and Grech's health issues, these charges would not be pursued.²⁶²

Sensitivity and complexity factors

- ▶ The unauthorised disclosure had the potential to undermine government;²⁶³

²⁵⁸ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 10 December] Folder 3, no 3/3/3.

²⁵⁹ Ford, M. (2018). *Salim Mehajer convicted of multiple counts of electoral fraud in 2012 Auburn Council elections* ABC News. 11 April 2018 Retrieved from <https://www.abc.net.au/news/2018-04-11/salim-mehajer-guilty-of-electoral-fraud-auburn-council-elections/9640204>.

²⁶⁰ Whitbourn, M. (2018). *Salim Mehajer jailed for electoral fraud* The Sydney Morning Herald. 22 June 2018 Retrieved from <https://www.smh.com.au/national/nsw/salim-mehajer-jailed-for-electoral-fraud-20180622-p4zn1x.html>.

²⁶¹ Parliament of Australia. (2009). *The Senate Committee of Privileges: 142nd Report: Matters arising from the Economics Legislation Committee Hearing on 19 June 2009 (referred 24 June and 12 August 2009)* Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Privileges/Completed_inquiries/2008-10/report_142/index.

²⁶² Commonwealth Director of Public Prosecutions. (2010) *Media Statement* (19 November 2010) Retrieved from https://www.cdpp.gov.au/sites/default/files/MR-20101119-Godwin-Grech.pdf?acsf_files_redirect.

²⁶³ Griffiths, E. (2009). *Political leaders exchange calls for resignation* The World Today. 22 June 2009 Retrieved from <https://www.abc.net.au/worldtoday/content/2008/s2604635.htm>.

- ▶ Significant political and media interest, with the matter becoming known as “Ozcar” and “Utegate”;²⁶⁴
- ▶ The requirement for the AFP to respond to the Committee of Privileges in relation to the allegation that the AFP had contravened the *Parliamentary Privileges Act 1987* (Cth) by commencing the criminal investigation in response to Grech’s evidence before the Economics Legislation Committee;²⁶⁵ and
- ▶ The requirement for investigators to consider Parliamentary Privilege issues and obtain evidence from senior executive members of government departments, senators, MPs and their staff.²⁶⁶

2012 – 2015: Operation Portilla

This was an AFP investigation into an allegation the Hon Peter Slipper MP, an elected member of the House of Representatives had misused travel entitlements, specifically cab charge vouchers, for personal purposes, causing a risk of loss to the Commonwealth. On 28 July 2014, the Hon Peter Slipper MP was found guilty and convicted in relation to three charges of dishonestly causing a loss to the Department of Finance and Deregulation. On 26 February 2015, the ACT Supreme Court overturned this conviction.²⁶⁷

Sensitivity and complexity factors

- ▶ Impacted on an elected member of the Federal government;
- ▶ Involved the potential application of parliamentary privilege;
- ▶ Involved a prominent politician;
- ▶ Significant media and community interest; and
- ▶ Involved the misuse of public monies.

2018: Threats to a senior member of the Australian Public Service

The AFP received a referral from an APS agency reporting that a phone call had been received in which the caller made threats to kill the senior member of the agency. The AFP commenced inquiries on the phone number utilised to make the threat and identified the number as belonging to a person in NSW. The AFP coordinated with NSW Police Force (NSWPF), which dispatched a unit to speak with the suspect to determine their level of risk. The AFP also organised for the AFP Canberra Diplomatic Protection Unit (DPU) to be vigilant at the senior member’s residence until the threat had been

²⁶⁴ Parliament of Australia. (2009). *The Senate Committee of Privileges: 142nd Report*. Op. Cit.

²⁶⁵ Ibid.

²⁶⁶ AFP. (2019). *Review into the AFP’s Response to and Management of Sensitive Investigations* [Email 6 December] Folder 3, no 3/12.

²⁶⁷ *Slipper v Turner* [2015] ACTSC 27.

assessed. The NSWPF contacted the AFP and advised the suspect had admitted to making the threats and due to mental illness, they were scheduled under the Mental Health Act 2007 (NSW). The AFP then informed the agency and advised the DPU.²⁶⁸

Sensitivity and complexity factors

- ▶ Involved a threat to harm a senior member of an APS agency;
- ▶ Time critical;
- ▶ Required coordination with State partner law enforcement agency; and
- ▶ Highlights a sensitive investigation, resulting in an outcome that was not sensitive.

2015 – 2017: Operation Alcos

In December 2015, the AFP received a referral from the NBN Co Limited (NBN Co), an Australian Government-owned corporation, in relation to the disclosure of two sensitive internal NBN Co documents in prominent newspapers and online.²⁶⁹ The AFP investigation involved the execution of three Commonwealth search warrants during May and August 2016 at the office of Senator Conroy in Melbourne, at the home of an opposition staff member and on the premises of the Department of Parliamentary Services at the Australian Parliament House.²⁷⁰ Senator Conroy claimed parliamentary privilege over all material seized from these warrants and the AFP sealed and delivered this material to the Clerk of the Senate and the Clerk of the House of Representatives respectively.²⁷¹ Senator Conroy further alleged the AFP and NBN Co were in contempt over their handling of the privileged material. A Senate Inquiry report tabled 28 March 2017 determined that the material seized was privileged and improper interference had occurred, but both the AFP and NBN Co were cleared of any contempt.²⁷² The investigation was subsequently finalised due to insufficient evidence.

Sensitivity and complexity factors

- ▶ Likely to impact on an elected MP;
- ▶ Involved parliamentary privilege;
- ▶ Involved an Australian Government-owned corporation prominent in the Australian community; and
- ▶ Significant political and media interest, in particular following the execution of search warrants during the government caretaker period.

²⁶⁸ AFP. (2019). *Annual Report 2018-19*. Op. Cit.

²⁶⁹ Reichert, C. (2016). *Federal police confirms NBN referred leak investigation* ZDNet. 19 May 2016 Retrieved from <https://www.zdnet.com/article/federal-police-confirms-nbn-referred-leak-investigation/>.

²⁷⁰ Parliament of Australia. (2017). *The Senate: Committee of Privileges. Search warrants and the Senate. 164th Report (March 2017)* Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Privileges/Completed_inquiries/2016-2019/Documents_seized/Final_Report.

²⁷¹ Reichert, C. (2016). Op. Cit.

²⁷² Parliament of Australia. (2017). *The Senate: Committee of Privileges. Search warrants and the Senate. 164th Report*. Op. Cit.

2014 – 2016: Operation Zapala

Operation Zapala was a proceeds of crime (civil) investigation the AFP launched into the suspected literary proceeds intended to benefit Schapelle Corby as a result of an alleged interview she had secured with Seven West Media. As part of this investigation the AFP executed *Proceeds of Crime Act 2002* (Cth) (Proceeds of Crime Act) search warrants and s246 Proceeds of Crime Act orders on Seven West Media and their lawyers.²⁷³ These warrants were subsequently challenged and in 2014 the Federal Court of Australia ruled the warrants be quashed as invalid.²⁷⁴

Sensitivity and complexity factors

- ▶ The execution of search warrants involving a news media organisation;
- ▶ The subject of the civil action was prominently known in the Australian community;
- ▶ The investigation was of significant interest to the media, community, Australian and Indonesian governments;
- ▶ The execution of the search warrants was filmed and aired live, placing the investigators under significant pressure;²⁷⁵
- ▶ The finding of the Federal Court of Australia had the potential to diminish the confidence in the performance of the AFP by the community, media, government and partner stakeholders; and
- ▶ Time constraints.

2017: Operation Murray

Operation Murray was a joint investigation task force established by the ACLEI and AFP PRS revealed that an AFP officer had deliberately provided police information to a person associated with a criminal syndicate suspected of being involved in importing border-controlled drugs. On 16 January 2014, an associate of the man suspected of being part of the criminal syndicate contacted the AFP officer and conveyed interest in obtaining information. The investigation detected that the officer had searched an AFP database and released that information to the associate, for which he received approximately \$7,000. The officer did not report that he had released the information or received the cash. On 22 November 2017, former AFP officer Ben Hampton was sentenced to 22 months' imprisonment for dishonestly receiving a benefit contrary to s142.1(3) Criminal Code.²⁷⁶

273 Parliament of Australia. (2014). *The Senate Legal and Constitutional Affairs References Committee. Current investigative processes and powers of the Australian Federal Police in relation to non-criminal matters. May 2014* Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/AFP_Inquiry/report/Report.

274 *Seven West Media Limited v Commissioner, Australian Federal Police* [2014] FCA 263.

275 Olding, R., Ralston, N., Bachelard, M. & Roas, A. (2014). *Police raid Channel Seven over Schapelle Corby interview* The Sydney Morning Herald. 18 February 2014 Retrieved from <https://www.smh.com.au/national/police-raid-channel-seven-over-schapelle-corby-interview-20140218-32x5c.html>.

276 AFP. (2018). *Annual Report 2017-18* Retrieved from <https://www.afp.gov.au/sites/default/files/PDF/annual-report-2017-2018.pdf>; Kidd, J. (2017). *Former AFP officer Ben Hampton jailed for selling secret information* ABC News. 23 November 2017 Retrieved from <https://www.abc.net.au/news/2017-11-22/former-afp-officer-jailed-for-selling-secret-information/9179582>.

Sensitivity and complexity factors

- ▶ The matter involved an AFP employee accused of corruption who was alleged to have links to organised crime entities;
- ▶ The disclosure of sensitive information had potential to compromise operational security and member safety; and
- ▶ Loss of confidence by stakeholders and the community in the AFP.²⁷⁷

2018: Thai cave rescue

In June 2018, 12 boys and their soccer coach became trapped in a cave in the Tham Luang Nang Non cave system in Northern Thailand after heavy rains flooded parts of the cave system. The boys and their coach had been missing in the cave system for seven days. On 30 June 2018, at the request of the Thailand Government, six AFP Specialist Response Group (SRG) divers left Australia to assist in locating and rescuing the missing boys. A total of 13 AFP personnel, including liaison officers, a media liaison officer, psychologists and a chaplain, travelled to Chiang Rai to support the rescue. The missing boys and the coach were located alive in the cave on 2 July 2018. Informed by the expertise of Australian doctors, a rescue mission was meticulously planned. The boys were to be extracted four at a time. They had to exit through nine cave chambers, some of them underwater. SRG divers were responsible for extracting the group through chambers two to four, working closely with the Thai Navy Seals and others. Ultimately, all 12 boys and their coach were extracted successfully.²⁷⁸

Sensitivity and complexity factors

- ▶ Australia was one of the few international governments represented on site and the role of the AFP reflected positively on Australia's relationship with Thailand;
- ▶ Significant international media, government and community interest;
- ▶ Pressure created by the physical presence of international media on site, particularly during Thailand government declared media blackout when the rescue commenced; and
- ▶ Legally challenging environment for AFP members operating in Thailand.

²⁷⁷ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 9 December] Folder 3, no 3/13.

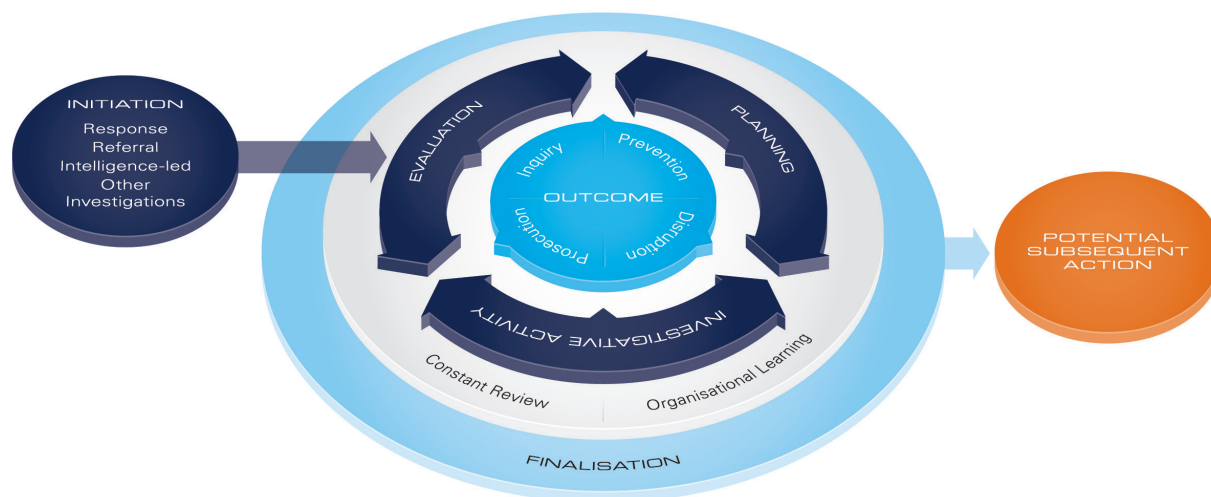
²⁷⁸ Australian Federal Police. (2019). *Annual Report 2018-19*. Op. Cit.

APPENDIX B: CURRENT AFP GOVERNANCE

Terminology

The AFP Investigations Doctrine provides authoritative guidance to define and develop principles that drive AFP investigative culture and capability. The Doctrine contains a 'Model of an Investigation' (depicted below) featuring 'Evaluation', 'Planning' and 'Investigative Activity' as processes all occurring within the model. The model identifies 'Initiation' as 'the process by which a matter is brought to the AFP for consideration for investigation.' This includes through a 'Referral' or in 'Response' to an incident.²⁷⁹

Model of an Investigation²⁸⁰



²⁷⁹ AFP. (2013). *Australian Federal Police Investigations Doctrine* Folder 3, no 5/2/5.

²⁸⁰ Ibid.

While on balance the Doctrine seeks to include ‘evaluation’ as part of an investigation, this is not universally clear within the Doctrine itself and related AFP governance, and is possibly inconsistent with the Australian Government Investigations Standards.²⁸¹ It is also likely not universally understood within the AFP.²⁸²

To add further confusion, while primary governance documents and the PROMIS system label the initial treatment of a referral as an ‘evaluation’, some areas of the AFP use ‘assessment’ or ‘triage’ either in place of or interchangeably with that term.²⁸³

It can be confusing, for both the AFP and the general public alike, that inquiries and action undertaken during an ‘evaluation’ (which can last over 12 months) are often investigative in nature (e.g. obtaining information from a witness or conducting police database checks). Further complicating the matter is that these actions may be undertaken by either police officers or unsworn members without formal investigations training. Questions have been asked about whether actions taken by the AFP during an evaluation could be fairly described, in layman’s terms, as an investigation.²⁸⁴

The review proposes a solution to this confusing terminology at ‘Proposed definition’ in Term of Reference 1. It is acknowledged this may require governance documents and training content to be updated.

Referral Processes – Public forms and procedures

The AFP undertakes a range of activities in the provision of police services in support of AFP, joint taskforce and external (e.g. local and foreign law enforcement agencies) activities. This includes: the conduct of criminal and administrative investigations; the execution of search warrants on behalf of other Commonwealth agencies; obtaining evidence on behalf of foreign law enforcement agencies; facilitating extraditions; the provision of forensic services; the provision of search and rescue services; conducting proceeds of crime litigation; actioning requests from or making requests of INTERPOL, Europol and foreign law enforcement agencies; and facilitating international enquiries.²⁸⁵

The AOCC is intended to provide AFP Outcome 1 with a centralised monitoring, initial response, coordination, and communications support service. The AOCC’s role includes receiving and acting upon referrals that are sent to the AFP (via website, telephone, mail or email). The AOCC is supplemented by OMCs located in each regional office who also receive and process referrals.

However, the review has identified a number of formal and informal referral pathways into the AFP for the referral of investigations including sensitive investigations.

281 Attorney-General’s Department. (2011). *Australian Government Investigations Standards 2011* Retrieved from <https://www.ag.gov.au/Integrity/counter-fraud/fraud-australia/Documents/AGIS%202011.pdf>; AFP. (2019). *Better Practice Guide Processing Referrals within the AFP* Folder 3, no 5/14.

282 Review Meetings 1 November – 20 December 2019: 3; 15; 19; 23.

283 For example Crime Operations uses the word ‘assessment’ and Protection Operations uses the word ‘triage’. See also: Parliament of Australia. (2019). *Parliamentary Joint Committee on Intelligence and Security inquiry into the impact of the exercise of law enforcement and intelligence powers on the freedom of the press. Submission 21.4 – Supplementary Submission*. Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/FreedomofthePress/Submissions.

284 Drysdale, K. (2019). *When is an investigation not an investigation?* Crikey. 18 October 2019 <https://www.crikey.com.au/2019/10/18/george-christensen-non-investigation/>.

285 ‘Police Services’ is defined in s4 AFP Act as ‘**police services** includes services by way of the prevention of crime and the protection of persons from injury or death, and property from damage, whether arising from criminal acts or otherwise’.

The AFP receives referrals for investigation via a variety of methods. These include: telephone calls (e.g. triple zero, direct to the senior executive); written correspondence; online (AFP website) submissions; Crime Stoppers reports; National Security Hotline reports; INTERPOL pathways; and internal referral mechanisms. The source of referrals is also diverse, including: members of the public; Members of Parliament; government departments and agencies; private sector organisations; and domestic and foreign law enforcement agencies.

The AFP has developed a number of forms to assist with referring a matter to the AFP including, but not limited to, the:

- ▶ ‘Report a Commonwealth Crime’ form;²⁸⁶
- ▶ ‘AFP Referral Form’²⁸⁷ for external agencies wanting to refer matters to the AFP; and
- ▶ ‘Complaints form’.²⁸⁸

Governance and guidance exists in relation to the referral of matters from external agencies to the AFP, including the Commonwealth Fraud Control Framework and the MOU between the AFP and the AEC.²⁸⁹

The referral process is supported by internal AFP business rules, principally the AFP Better Practice Guide Processing Referrals within the AFP.²⁹⁰ The Better Practice Guide outlines the process for the ‘evaluation’ of referrals and articulates the range of outcomes that may result from that evaluation. These can include: accepting the matter for investigation; referring the matter to a partner agency; deciding not to investigate the matter (for reasons including ‘not in the public interest’); and rejecting the matter.

The AFP uses a CCPM as one of the primary tools for prioritising referrals for investigation. The CCPM establishes a framework and factors for the AFP to consider in determining the acceptance, rejection, termination, finalisation and resourcing of referrals. A version of the CCPM is available on the AFP website to assist clients understand how the AFP will prioritise referrals.²⁹¹

The review has identified that the CCPM is not consistently or universally used across the AFP as originally intended, is out of date, unsupported by appropriate governance and business structures, and is no longer fit for purpose.

By way of overview, the current AFP referral process is illustrated in the diagram “Current AFP Referral Process” on page 80.

²⁸⁶ AFP Website. *Report a Commonwealth crime* Retrieved from https://forms.afp.gov.au/online_forms/report_a_crime. The form and other information on the AFP website refer people to other agencies depending on the options/crime type selected or nature of complaint.

²⁸⁷ AFP Website. *AFP Referral Form* Retrieved from <https://www.afp.gov.au/what-we-do/referrals-investigation-services-government/referrals>.

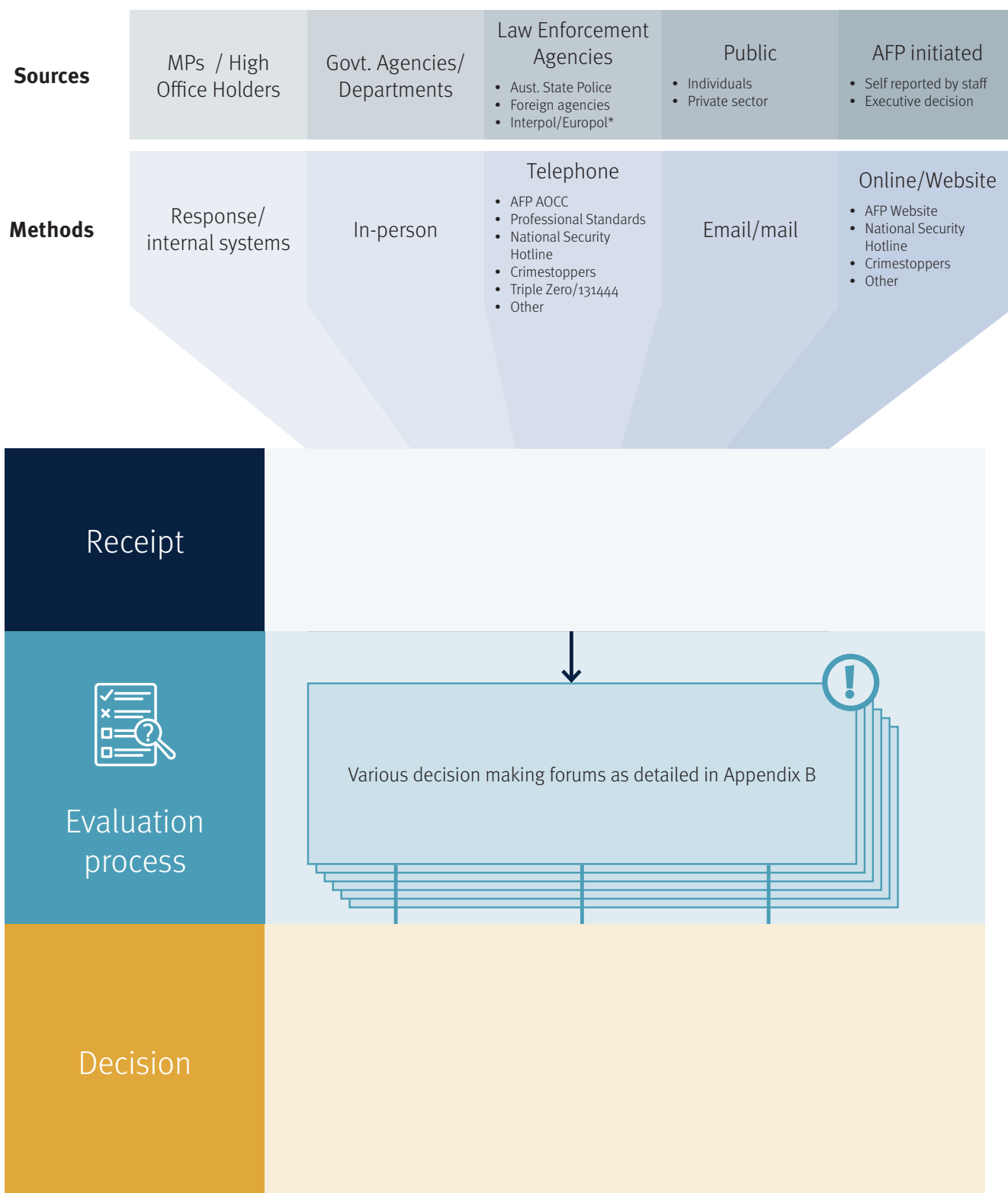
²⁸⁸ AFP Website. *Complaints form* Retrieved from https://forms.afp.gov.au/online_forms/complaints_form.

²⁸⁹ The Commonwealth Fraud Control Framework was issued by the Attorney-General's Department in 2017. This Framework provides guidance to Commonwealth agencies in relation to serious and complex fraud matters and their referral to the AFP: Attorney-General's Department. (2017). *Commonwealth Fraud Control Framework 2017* Retrieved from <https://www.ag.gov.au/Integrity/counter-fraud/fraud-australia/Documents/CommonwealthFraudControlFramework2017.PDF>; This Memorandum of Understanding concerns the referral of electoral offences and invites the AEC to discuss with the AFP whether a matter should be considered serious, complex or politically sensitive. It also notes in some cases the AEC may seek preliminary legal advice from the Commonwealth Director of Public Prosecutions before referring a matter to the AFP for investigation: *Memorandum of Understanding between the Australian Federal Police and the Australian Electoral Commission on cooperation in respect of electoral offences*. (24 April 2019). Op. Cit.

²⁹⁰ AFP. (2017). *Better Practice Guide Processing Referrals within the AFP*. Op. Cit.

²⁹¹ AFP Website. *The Case Categorisation & Prioritisation Model: Guideline for AFP Clients*. 1 July 2016. Op. Cit.

Current AFP Referral Process



 Decision point

* Comprises participating Law Enforcement Agencies

The review has identified that depending on where a referral is directed within the AFP, a different or inconsistent approach is applied to the handling of that referral. This is despite the existence of the Better Practice Guide and CCPM which are designed to bring uniformity and certainty to this process. The different processes are examined in more detail on pages 82–98 in relation to the following AFP areas:

- ▶ AOCC and OMCs;
- ▶ ACT Policing;
- ▶ Criminal Assets Confiscation Taskforce (CACT);
- ▶ OSI;
- ▶ PRS;
- ▶ Protection;²⁹² and
- ▶ CT.

The current disparate referral processes have also impacted external stakeholders who, in the absence of a clear process, have developed alternative processes. For example, some external stakeholders seek pre-referral advice from specific AFP executive leaders. While this process ensures sensitive information or investigations are triaged by appropriately experienced and ranked AFP members, there is a risk that information or referrals are missed or become more complicated if the AFP individuals move or are on leave.²⁹³

Examples of discrete processes

Where referrals are received by an AFP function (whether directly from a referrer or from the AOCC), they are generally evaluated in accordance with discrete and separate internal processes. Many, but not all, of these processes give consideration to the CCPM.

For example, where the AFP International Network receives or generates a referral, business rules dictate these are to be referred directly to the relevant OMC or Canberra function for evaluation, thus bypassing the AOCC CLT.²⁹⁴ Similarly, other work areas that receive referrals may redirect those referrals to another function, also bypassing the AOCC CLT. For instance, PL may refer a report directly to CO, ACT Policing or a State/Territory police counterpart.²⁹⁵ Some of those processes are examined in more detail on pages 82–98.

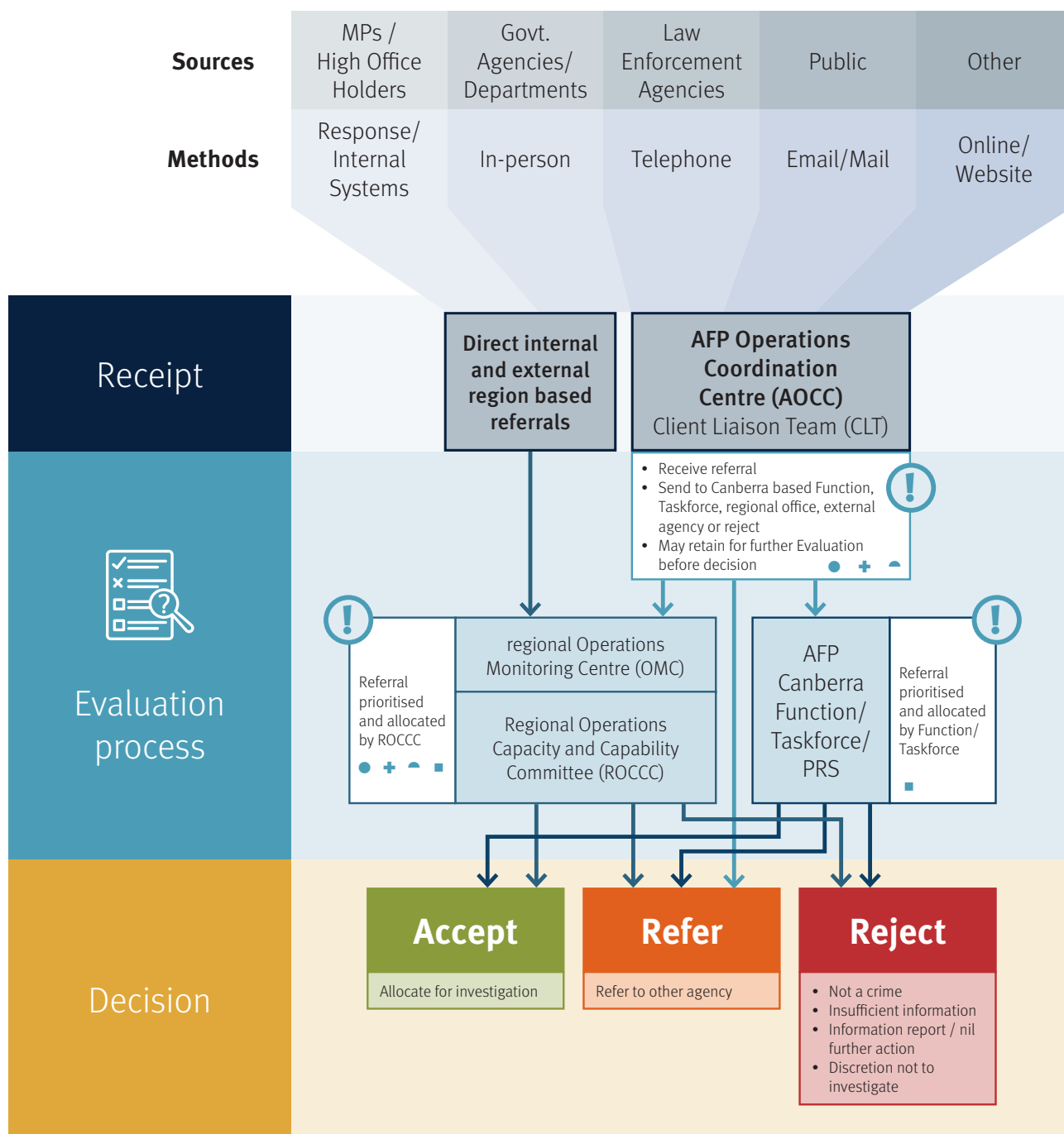
²⁹² Focussing on Protection Liaison.

²⁹³ Review Meetings 1 November – 20 December 2019: 3; 9; 55.

²⁹⁴ AFP. (2017). *Better Practice Guide for processing referrals within the AFP*. Op. Cit.

²⁹⁵ Review Meetings 1 November – 20 December 2019: 7.

Current AOCC + OMC Referral Process



! Decision point

Cleared: 24/12/2019

Key Governance

- CCPM
- + Better Practice Guide Processing Referrals within the AFP
- ▲ PROMIS Procedures
- Local Business Rules

AFP Operations Coordination Centre and Operations Monitoring Centres

The AOCC CLT and AFP regional OMCs are the primary gateways for most referrals into the AFP.

Where the AOCC receives a referral, the CLT will review the matter to determine if it is a report of a Commonwealth crime or otherwise for consideration by the AFP. The CLT will then place the matter into ‘evaluation’ on PROMIS and forward it to a regional OMC for evaluation by a ROCCC or will refer it directly to an AFP function (e.g. CO) or relevant work area (e.g. PRS, PL, a joint taskforce etc) for evaluation. In prioritising formal referrals for criminal investigation, which impacts on whether or in what order a referral is investigated, the AOCC is heavily reliant on the CCPM.²⁹⁶

OMCs are based in each AFP regional office. The exception is Canberra, where each Canberra function is responsible for evaluating, accepting and rejecting its own work.²⁹⁷ Fundamentally, OMCs can be conceptualised as satellite teams for the AOCC CLT, providing an initial point of contact to liaise with and receive referrals from internal and external clients within each respective region. On receipt of a referral, OMCs may be required to liaise with client agencies on issues relating to the referral, preliminary processes of inquiry and preparation of evaluation submissions to the ROCCC for endorsement, rejection or recommendation for transfer to another office or agency.

Notably, some different crime types such as Child Protection and CT require different gateways for referral into the AFP. The OMCs have no influence over this, but can still facilitate their progression to a ROCCC for consideration. A recent review of OMC structures and responsibilities indicates that each office is nuanced by the number and nature of its human resource allocation and are performing other duties, including PROMIS coordination, operational response, Mutual Assistance Requests and Property/Exhibits.²⁹⁸ These nuances have the potential to impact on the consistency and standard of referral processes and the manner in which organisational risk and referrals are managed.

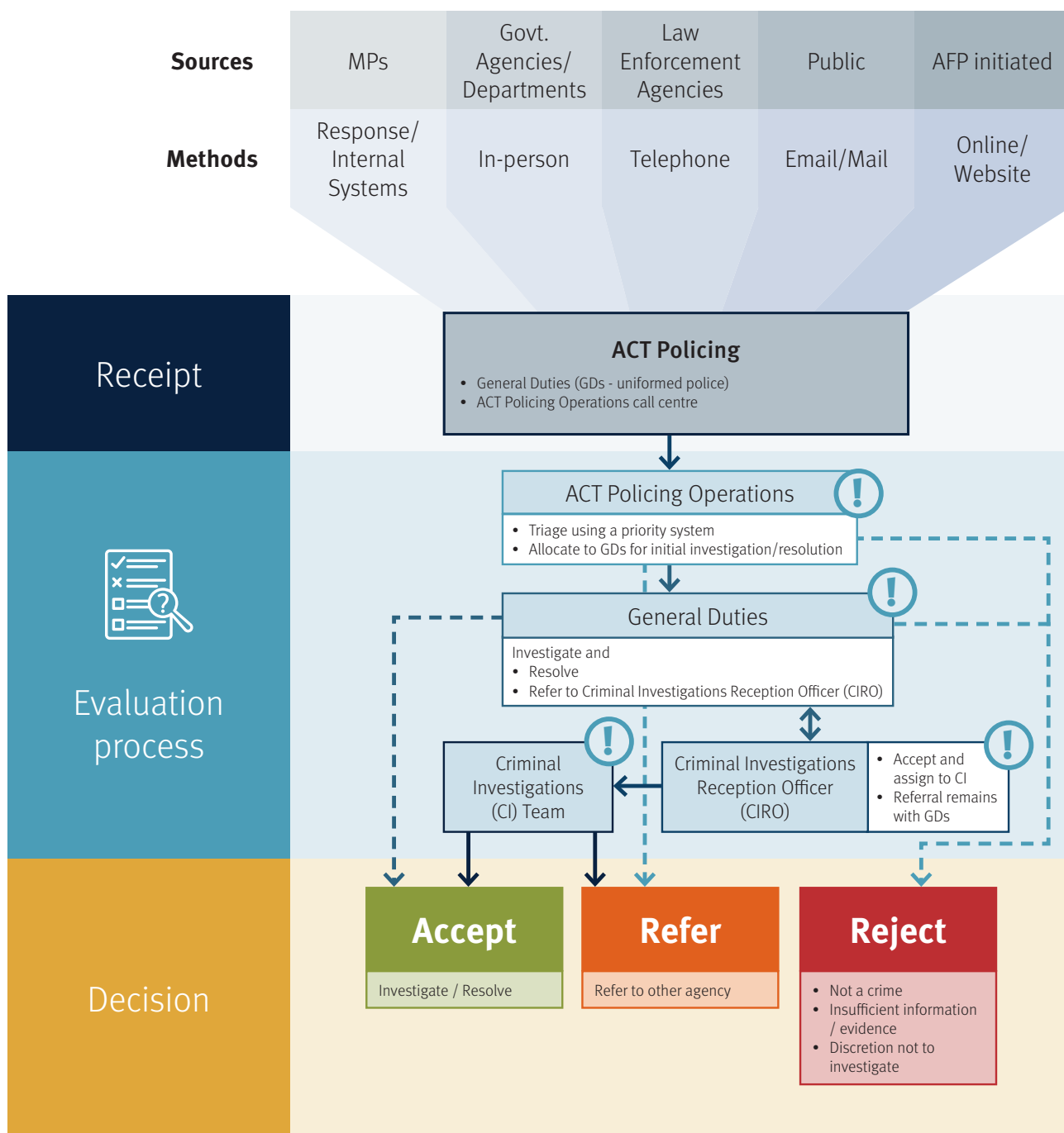
The AOCC and OMC referral process is illustrated in the diagram on “Current AOCC + OMC Referral Process” on page 82.

²⁹⁶ Review Meetings 1 November – 20 December 2019: 8.

²⁹⁷ AFP. (2017). *Better Practice Guide for processing referrals within the AFP*. Op. Cit.

²⁹⁸ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 12 December] Folder 3, no 3/5/14/11.

Current ACT Policing Referral Process



! Decision point

Cleared: 17/12/2019

Key Governance

Better Practice Guide on Criminal Investigations response and notification

Better Practice Guide Processing Referrals Duty Operations Manager and Alpha 8 roles

Australian Capital Territory Policing (Outcome 2)

ACT Policing receive referrals for investigation and reports of crime through various sources and means, including:

- ▶ Emergency calls or requests for police assistance direct to ACT Policing Operations on either Triple-Zero or the Police Assistance Line;
- ▶ Information reported to Crime Stoppers;
- ▶ Online or written correspondence from members of the public;
- ▶ Other agencies including state police and partnering law enforcement agencies;
- ▶ Internally generated matters;
- ▶ People attending police stations or making phone calls directly to the police stations; and
- ▶ Direct enquiries received by the ACT Community Police Liaison Officer.²⁹⁹

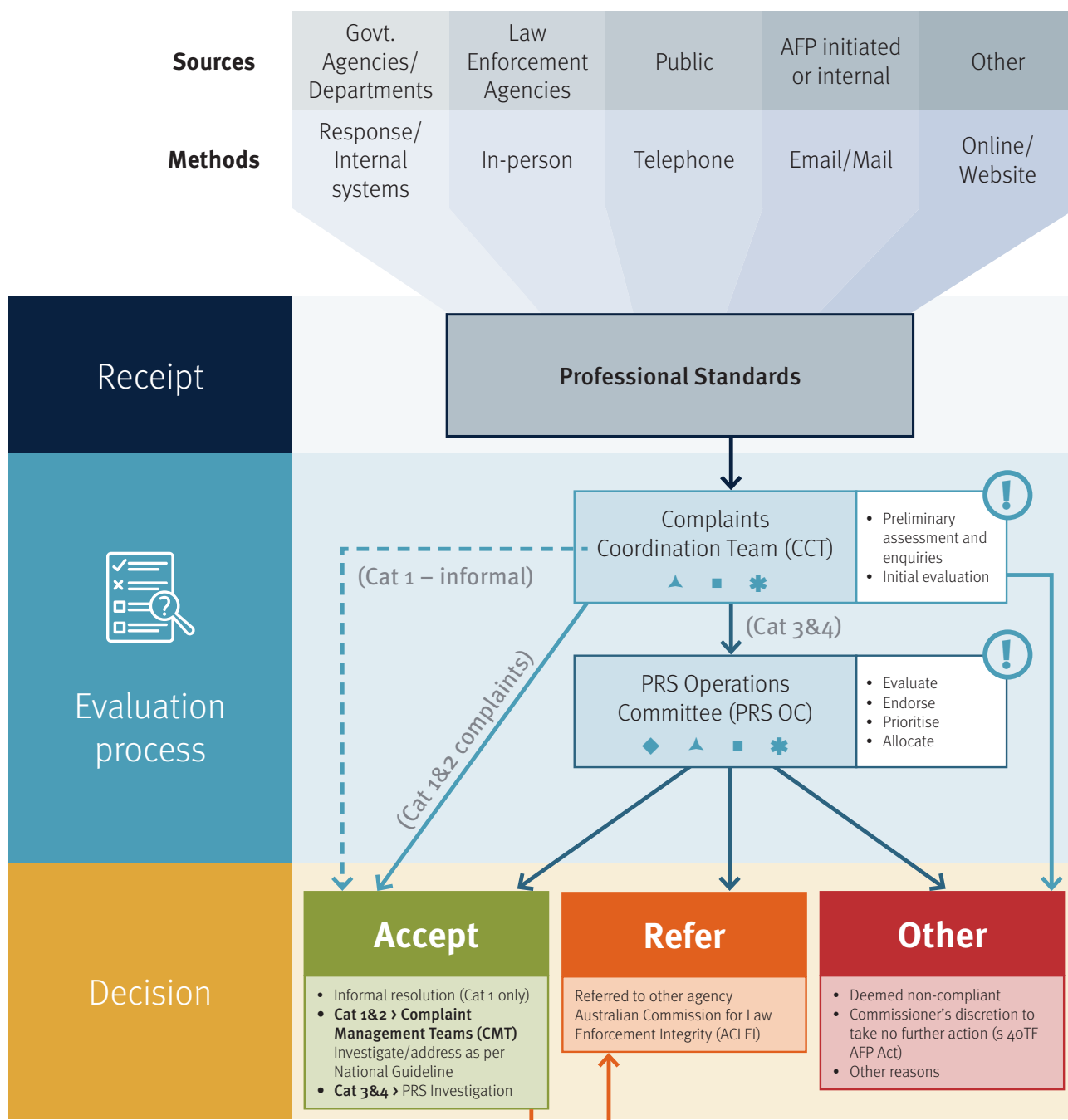
ACT Policing specific governance enables the allocation and prioritisation of more complex, protracted or crime type specific investigations by ACT Policing's specialised area, Criminal Investigations. The protocol for most referrals to Criminal Investigations is a briefing to the rostered Criminal Investigations Reception Officer (CIRO). Generally, there is consultation between the relevant Patrol Sergeant and Crime Managers (Officers-in-Charge) or the Superintendent of Criminal Investigations. Once this has occurred, the matter is assessed and, if accepted, allocated to a relevant team for further action. The CIRO exercises their discretion to brief the Criminal Investigations chain-of-command on referrals.³⁰⁰

The ACT Policing referral process is illustrated in the diagram "Current ACT Policing Referral Process" on page 84.

²⁹⁹ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 20 November] Folder 3, no 5/1.

³⁰⁰ Ibid.

Current Professional Standards (PRS) Referral Process



 Decision point

Cleared: 16/12/2019

Key Governance

- ◆ PRS OC Evaluation Form
- ▲ Commissioner's Order on Professional Standards (CO2)
- National Guideline on complaint management
- * National Guideline on public interest disclosure

Professional Standards

The main PRS referral pathways are the following categories:

- ▶ General (usually external) sources: PRS Hotline; PRS online compliant form; all forms of correspondence; and direct meeting with PRS;
- ▶ AFP internal reporting: Complaint Recording and Management System; Integrity Reports; Direct meeting with PRS; AOCC CLT; AFP Security; Workplace Incident Reports; Confidant Network and Safe Place; and
- ▶ External agencies: State/Territory police; Commonwealth and State/Territory government departments; ACLEI; and the Commonwealth Ombudsman's Office.

PRS uses the AFP Categories of Conduct Determination 2013, the AFP Code of Conduct and the PRS Operations Committee (PRS OC) Evaluation Form in considering a matter.³⁰¹

The PRS Complaints Coordination Team (PRS CCT) receives all complaints coming into PRS. The PRS CCT conducts preliminary enquiries, assessment and evaluation of all new referrals.

Once a complaint has been received, it may follow one of four resolution processes:

- ▶ Resolve prior to formal recording (Informal Category 1);
- ▶ Commissioner's discretion to take no further action (s40TF AFP Act);
- ▶ Category 1 and Category 2 matters resolved within the workplace and oversighted by the relevant Complaint Management Team; and
- ▶ Category 3 and Category 4 matters formally investigated by PRS or ACLEI.³⁰²

Public Interest Disclosure matters are not typically dealt with under the AFP complaint framework but are allocated for investigation to internal subject matter experts or related portfolio members.³⁰³ They may result in a PRS investigation.³⁰⁴

The PRS CCT prepares Category 3 and 4 matters for consideration by the PRS OC which meets weekly to achieve a more holistic approach to more serious conduct issues. The PRS OC is chaired by Manager PRS and involves key AFP stakeholders from: PRS; Organisational Health; Security; Safe Place; and People Strategies. The PRS OC considers a risk assessment for each matter during its deliberations, which considers: allegations of criminality; whether workplace protections are required; whether the AFP executive or a PRS member is involved; political and media implications; employment suitability; and any other aggravating factors (e.g. health/safety issues).³⁰⁵ The risk assessment is a living

³⁰¹ Australian Federal Police *Categories of Conduct Determination 2013*. Retrieved from <https://www.legislation.gov.au/Details/F2013L01429>; AFP, *The AFP Commissioner's Order on Professional Standards (CO2)*. Retrieved from https://www.afp.gov.au/sites/default/files/PDF/IPS/AFP%20Commissioners%20Order%20on%20Professional%20Standards%20CO2_o.pdf; The Professional Standards Operations Committee Evaluation Form includes a risk assessment: AFP, *Professional Standards Operations Committee Evaluation Form* Folder 3, no 5/13.

³⁰² AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 15 November] Folder 3, no 5/13.

³⁰³ As per the *Public Interest Disclosure Act 2013* (Cth).

³⁰⁴ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 18 November] Folder 3, no 5/13.

³⁰⁵ The AFP Categories of Conduct Determination and AFP Code of Conduct are used to assess the facts of the matter and decide whether the matter is best categorised as a: personal conflict; performance issue; management issue (Human Resources, employment-related, administrative decision, Enterprise Agreement-related); minor misconduct issue; serious misconduct issue.

document that requires ongoing review to ensure the matter is categorised appropriately (this is done in the investigation team as the case progresses). This process applies for ‘routine’ PRS investigations that become significant or sensitive, although there is no specific governance around this.³⁰⁶

The PRS risk assessment was introduced in 2017 after a review considering the AFP’s processes for handling PRS-related conduct matters, and associated options for reform. One of the observations noted was that the then framework and practice in relation to PRS investigations under Part V AFP Act did not appear to provide the level of risk management required by the Commissioner and AFP Executive. It was also recommended that:

- ▶ PRS ensure investigations are appropriately triaged, planned and managed to ensure that high priority issues are identified at an early stage;
- ▶ such issues be identified quickly in order to carefully plan, manage and resource the investigation in order to mitigate risks, including legal and reputational risks; and
- ▶ a risk matrix be developed to assist in the identification of high-risk cases at an early stage.

A risk assessment and risk matrix were subsequently developed and have been incorporated as part of the PRS evaluation process.³⁰⁷

The PRS referral process is illustrated in the diagram “Current Professional Standards (PRS) Referral Process” on page 86.

³⁰⁶ AFP. (2019). *Review into the AFP’s Response to and Management of Sensitive Investigations* [Email 15 November]. Op. Cit.

³⁰⁷ The review examined 31 AFP Internal Review & Audit Reports; AFP. Professional Standards Operations Committee Evaluation Form. Op. Cit.

Protection

AFP Protection Operations (PO) is a functional area incorporating the Protection and Aviation branches. The PO function works to ensure the safety of individuals and interests that the Commonwealth deems to be at risk from acts of terrorism, crime and issue-motivated violence. Within PO sit a number of teams including the Protection Assessment Team (PAT), the Fixated Threat Assessment Team (FTAT) and PL.³⁰⁸

Protection Assessment Team

The PAT provides strategic and operational security advice to PO to help prioritise the allocation and deployment of operational resources against protected interests. Occurrences reported to or identified by the PAT involve unlawful activity toward protected interests from terrorists, issue motivated groups, fixated individuals or criminals, such as: protest activity; harassing/nuisance correspondence; direct approaches to principals/establishments; or reported suspicious behaviour outside establishments.³⁰⁹

Fixated Threat Assessment Team

The core function of the FTAT is to reduce the risk of harm from fixated individuals who seek to target protected establishments, High Office Holders (HOHs) and Commonwealth public officials that fall under the PO remit. In the PO context, the risks that may need to be managed include violent attack, embarrassment, dignity issues, harassment and the safety of the fixated individuals themselves. This is achieved by implementing a joint policing and health approach to risk assessment and management.

Receipt of reports

The FTAT primarily receives referrals through the PL teams and the PAT. Referrals also originate from ministerial and electoral offices, Australian High Office Holders (AHOH), the National Security Hotline (via the PAT), government agencies, law enforcement agencies and health professionals.³¹⁰ Less commonly, referrals can be received from overseas policing jurisdictions, health services, state police, and in exceptional circumstances AFP Security. Since its inception in 2016, the team has managed 782 referrals.³¹¹ The majority of FTAT referrals originate with PL teams and relate to federal politicians.³¹²

Fixated Threat Assessment Team investigations

Upon receipt of a referral, the FTAT conducts an 'analysis' of the alleged conduct and offender. This is also referred to as an 'initial assessment' or 'initial triage'.³¹³ Prioritisation will be given in accordance

³⁰⁸ AFP. (2019). *Annual Report 2018-2019*. Op. Cit.

³⁰⁹ The occurrences recorded by Protection Assessment Team (PAT) over recent years are: 1,368 (2019 YTD to 31 Oct 19), 1,723 (2018), 1,592 (2017), 1,554 (2016). The PAT team also conduct approximately 30,000 'assessments' per annum which involve assessments of individual movements by principals (e.g. a Minister attending an event): AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November] Folder 3, no 5/12.

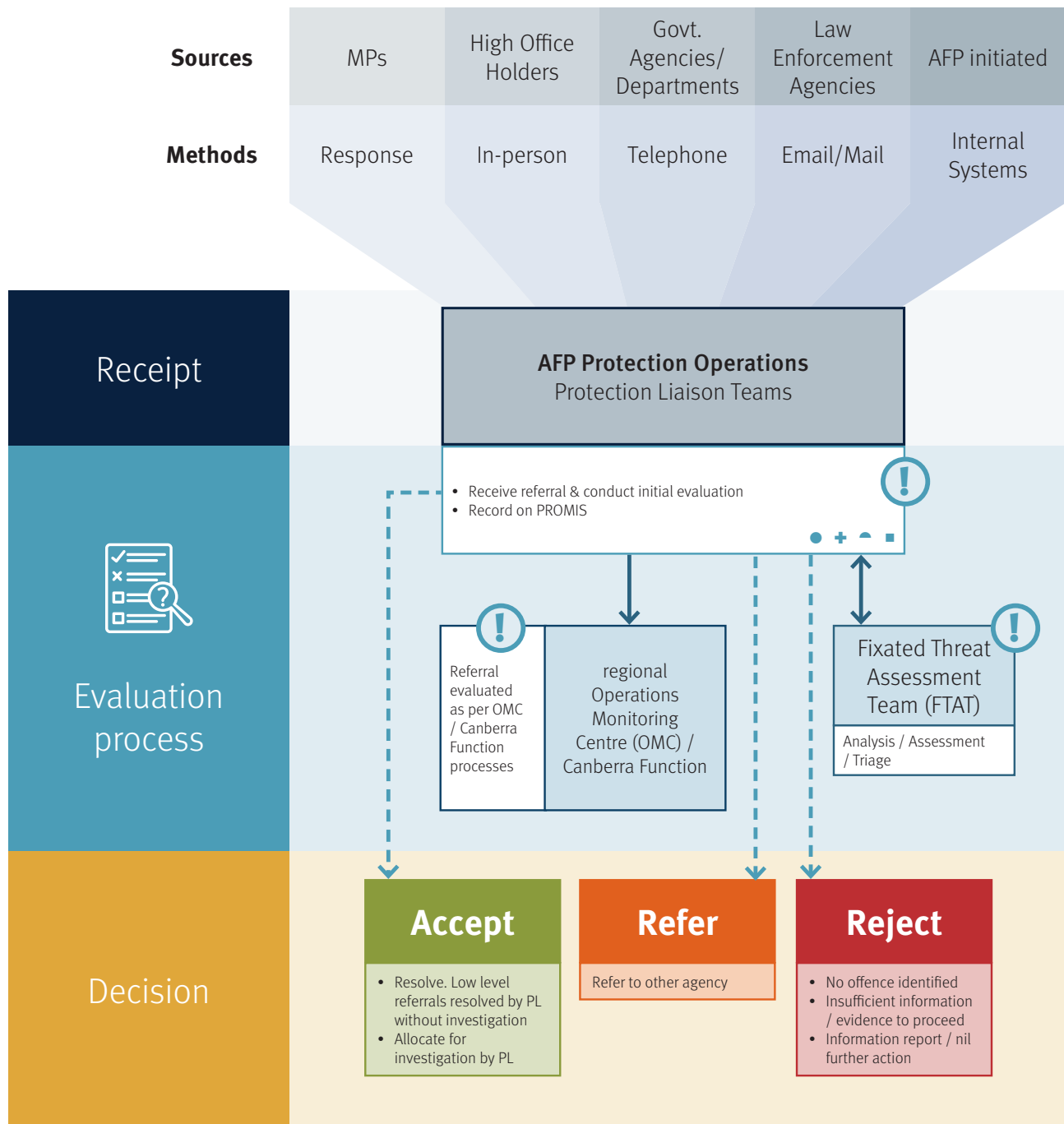
³¹⁰ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November] Op. Cit.

³¹¹ Referral numbers by Calendar year: 158 (2019 YTD to 31 Oct 19), 185 (2018), 229 (2017), 211 (2016): AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November]. Op. Cit.

³¹² AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November]. Op. Cit.

³¹³ AFP. (2016). *Better Practice Guide AFP Fixated Threat Assessment Team* Folder 3, no 5/12.

Current Protection Liaison (PL) Referral Process



 Decision point

Cleared: 23/12/2019

Key Governance

- CCPM
- + Better Practice Guide Processing Referrals within the AFP
- ▲ PROMIS Procedures
- Local Business Rules

with the level of risk (adverse consequences) to PO interests. Management strategies may include liaison with other policing agencies, government departments, providing advice to stakeholders, security assessments, and protection orders. Criminal investigations may also be commenced and pursued by FTAT where other intervention options are not available or have been ineffective.³¹⁴

Protection Liaison

PL members conduct intelligence based enquiries, analysis and provide support nationally to the AFP and relevant agencies undertaking investigations and enquiries into matters including, but not limited to, possible threats against AHOs, foreign dignitaries and diplomatic missions. PL members perform a police liaison role with all diplomatic missions and with Australian Office Holders (AOH) within the Australian Government and may be called on to undertake preliminary criminal investigations and security intelligence investigations into threats made to AOHs and non-AOHs. PL teams are located in Canberra and most AFP regional offices.³¹⁵

Receipt of reports

Reports coming to PL teams are varied and cover both Commonwealth and State offences such as offensive emails and phone calls to MPs, threatening or harassing emails, alleged assault and sexual assault, and blackmail and extortion.³¹⁶

PL receives referrals usually from AHOH, MPs and electoral offices but they can come in via the AOCC. Other teams may also engage with PL to seek advice, such as ACT Policing or State/Territory police.³¹⁷

It is up to the PL team member to identify which of these matters to report or brief up (via Team Leader to National Coordinator). For all interactions, PL members are required to complete a 'Protection Liaison' PROMIS case note entry. There are no specific internal governance arrangements requiring this work flow.

Protection Liaison investigations

The PL team will investigate where they have the capacity and relevant skills for particular referral; these are more likely lower-level referrals in terms of alleged crime. There is no PO decision-making forum for these matters to be evaluated or discussed.³¹⁸

Protection Liaison internal referral to other teams

PL use existing AFP referral processes to internally refer matters to other AFP teams. Regional PL teams send referrals to regional OMCs for consideration. PL Canberra does not, however, refer matters to the AOCC.³¹⁹

PL Canberra can refer matters for advice or investigation to the Canberra CO Operations Committee (CO OC). This can include obvious politically sensitive matters involving serious alleged crime and low level crime allegations involving high profile complainants. It is noted there is sometimes disconnect with this process, where before accepting a referral, CO will ask PL members to obtain a statement from the complainant first.³²⁰

The PL referral process is illustrated in the diagram "Current Protection Liaison (PL) Referral Process" on page 90.

³¹⁴ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November]. Op. Cit.

³¹⁵ Ibid.

³¹⁶ Review Meetings 1 November – 20 December 2019: 7.

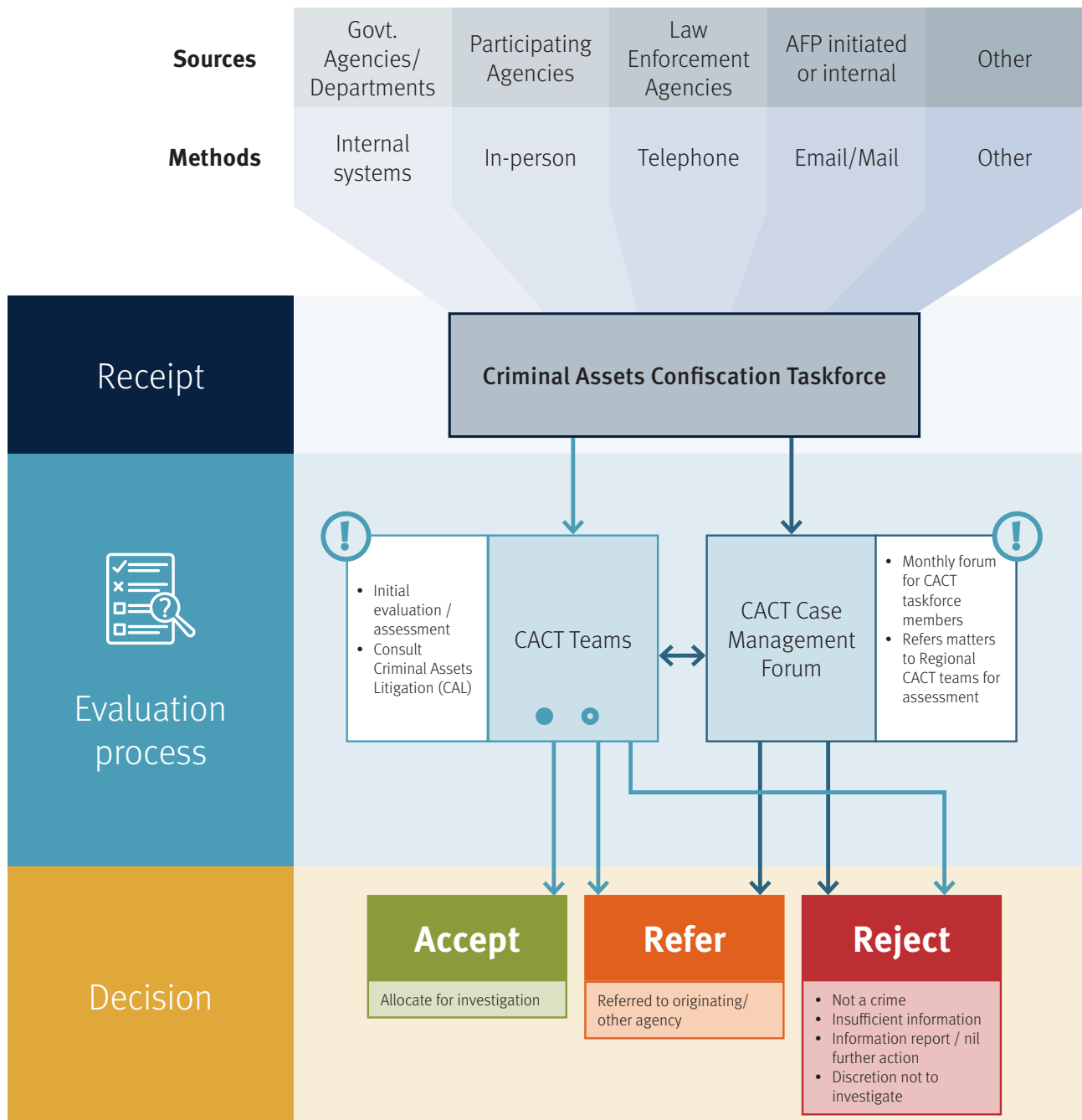
³¹⁷ Where Protection Liaison receive reports of offences against State laws, these are referred to their counterpart teams in the relevant State police force: AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 19 November] Folder 3, no 5/12.

³¹⁸ Review Meetings 1 November – 20 December 2019: 7.

³¹⁹ Ibid.

³²⁰ Ibid.

Current Criminal Assets Confiscation Taskforce (CACT) Referral Process



 Decision point

Cleared: 02/01/2020

Key Governance

- CCPM
- Attorney-General's Legal Services Directions
- Other classified governance

Criminal Assets Confiscation Taskforce

The CACT is an AFP led and hosted multi-agency and multi-discipline taskforce. CACT members are the AFP, Australian Taxation Office (ATO), Australian Criminal Intelligence Commission and the Australian Transaction Reports and Analysis Centre. Within the CACT there are two limbs: the investigation limb; and the litigation (prosecution) and legal advisory limb known as Criminal Assets Litigation (CAL). Litigation conducted by the CACT is primarily pursuant to Proceeds of Crime Act.³²¹

In broad terms, matters referred to the CACT for assessment follow a two-step process. First, the matter is referred to CACT investigators who may or may not accept the matter for further investigation. Second, after evaluation or investigation and some early consultation with CAL, CACT investigators will formally refer the matter to CAL who then conduct a legal assessment and formulate an opinion on whether there are reasonable grounds to proceed.³²²

These two steps may happen almost immediately, or may occur over an extended period and involve ongoing discussion between CACT investigations and CAL. CAL does not formally consider a matter as being taken on for litigation until Manager CAL, or the Commissioner in relation to matters that fall within the Commissioner's High Risk matters policy, have given written instructions to proceed. CACT investigation team leaders are given considerable discretion in evaluating referrals, but generally do so in collaboration with regional coordinators and in consultation with CAL.³²³

Most CACT work is internally generated or referred from other parts of the AFP and via a variety of Commonwealth agencies.³²⁴ Investigators are encouraged to discuss potential referrals to the CACT before submitting a formal referral via the CACT Referral for Investigation template.³²⁵ Importantly the referral form seeks acknowledgment from the referring agency that they 'will be responsible for facilitating the provision of all information and/or documents requested by the CACT from the referring agency in a timely manner, for the duration of the CACT investigation and litigation.'³²⁶

Referrals from external agencies are administered through the CACT Case Management Forum (CMF), a monthly meeting between the taskforce members. Where a CACT investigation or confiscation action is anticipated, the matter will generally be forwarded to the CACT investigation team in the most relevant jurisdiction who will assess the matter and recommend to the CMF whether the AFP should accept the referral. Partner agencies are encouraged to submit the same five-page CACT Referral document as internally generated referrals. Taskforce members may use the CMF to recommend referral of a matter to a particular taskforce member (e.g. ATO) for treatment.³²⁷

The CACT referral process is illustrated in the diagram "Current Criminal Assets Confiscation Taskforce (CACT) Referral Process" on page 92.

³²¹ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Emails 22 November] Folder 3, no 5/3

³²² Ibid.

³²³ Ibid.

³²⁴ Ibid.

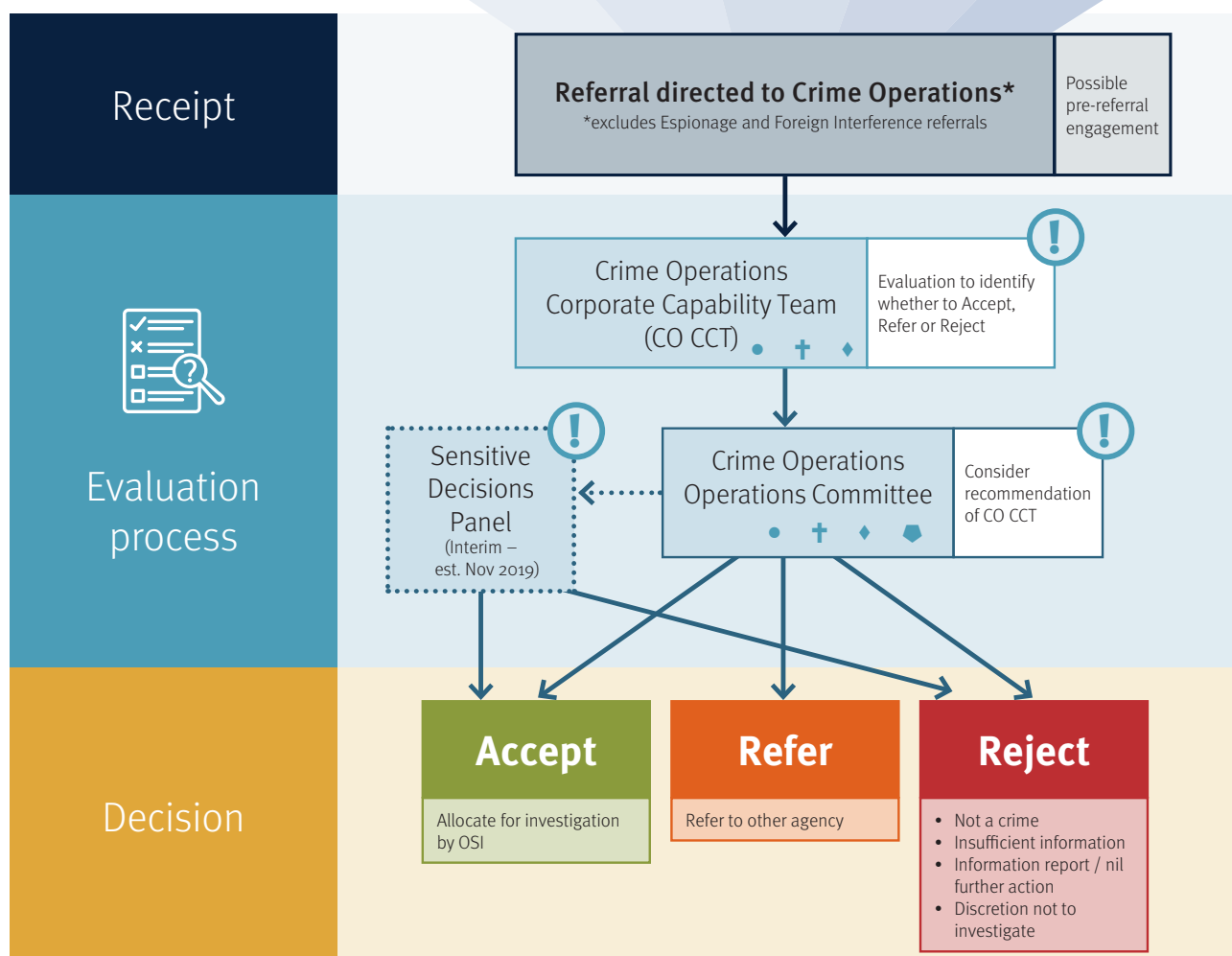
³²⁵ AFP. *Criminal Assets Confiscation Taskforce (CACT) New Matter Referral* Folder 3, no 5, no 3

³²⁶ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Emails 22 November]. Op. Cit.

³²⁷ Ibid.

Current Offshore and Sensitive Investigations (OSI) Referral Process

Sources	Govt. Agencies/ Departments	Law Enforcement Agencies	MPs/Public	AFP initiated	Other
Methods	Response/ Internal systems	In-person	Telephone	Email/Mail	Other



! Decision point

Cleared: 24/12/2019

Key Governance

- CCPM
- † National Guideline on politically sensitive investigations
- ◆ National Guideline on investigations of unauthorised disclosure of material made or obtained by a current or former Commonwealth officer
- Crime Operations OC Terms of Reference

Crime Operations – Offshore and Sensitive Investigations

The AFP contains a number of operational functions including Organised Crime and CO.³²⁸ Within the CO function is the NRO, within which the OSI area is located. OSI is an investigative area comprising three co-located investigations teams reporting to a Detective Superintendent and based at AFP headquarters, Canberra.

OSI teams conduct investigations into crime types such as war crimes, unauthorised disclosure of Commonwealth information, electoral fraud, harm to Australians overseas (e.g. kidnappings), environmental crime, breaches of sanctions, and espionage and foreign interference, and crimes at sea.

Crime Operations – Corporate Capability Team

The CO CCT is a small team staffed predominately with unsworn professional employees.³²⁹ The CO CCT provides support to the whole CO function and not just to OSI. As part of its responsibilities, the CO CCT assesses new referrals to OSI.³³⁰ Referrals are generally received via the Commissioner's Office, the AOCC CLT or directly to the CO CCT.³³¹

The CO CCT will evaluate/assess referrals to assist the CO OC to determine if a matter is to be rejected or accepted for investigation. The CO CCT will seek additional information from the referrer where necessary, may consult with OSI for advice, and obtain additional information (accessed internally) during the evaluation phase. The CO CCT observes this process takes up a significant amount of their time and would be better served if undertaken by additional sworn members with investigative experience.³³²

In receiving and evaluating a referral, the CO CCT considers the CCPM and takes into account resourcing requirements and capacity, the likelihood of success in an investigation, and whether an alternative to criminal investigation is appropriate.

The CO CCT will prepare a 'referral' type PROMIS case note entry detailing the background of the referral. This is followed by a recommendation to the CO OC. The referral is distributed to the CO OC members ahead of the meeting and discussed at the CO OC. The Chair of the CO OC makes the final decision. Decisions and action items are to be recorded in the Minutes.

³²⁸ AFP (2019) *Annual Report 2018-2019*. Op. Cit.

³²⁹ AFP SAS Firefly report 31 December 2019.

³³⁰ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 9 December] Folder 3, no 5/10.

³³¹ Offshore and Sensitive Investigations (OSI) members may also occasionally field enquiries from other Commonwealth agencies and law enforcement agencies seeking pre-referral advice. Depending on the matter, OSI may provide the advice or redirect them to the Corporate Capability Team or to the AFP senior executive depending on who is sending the referral: Ibid.

³³² AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 10 December] Folder 3, no 5/10.

Crime Operations – Operations Committee

The CO OC is a weekly meeting to: provide operational updates on CO investigations; discuss capacity and capability requirements; evaluate new referrals; and consider other administrative matters. Attendees include the Commander and Superintendent from NRO and Superintendents from other teams or areas, including Cybercrime, OSI, Crimes Against Children, and PO.³³³

EFI referrals are dealt with separate to the CO OC process. Currently the practice is that the referral into the AFP involves some input by OSI during the pre-referral stage and during the assessment of the referral. This process is currently being formalised with relevant supporting governance.³³⁴

Sensitive Decisions Panel

In November 2019, NRO established a SDP in response to the sensitive and complex nature of many of its investigations. The SDP, which is an interim measure pending the outcomes of this review, is intended to improve decision making and broaden input into strategic decisions in ‘sensitive investigations’ as currently understood. The SDP currently utilises a risk matrix based on the current PRS risk matrix in its decision making.³³⁵

The OSI referral process is illustrated in the diagram “Current Offshore and Sensitive Investigations (OSI) Referral Process” on page 94.

³³³ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 27 November] Folder 3, no 5/5.

³³⁴ AFP. (2019). *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 9 December] Folder 3, no 5/10.

³³⁵ Ibid.

Counter Terrorism

The AFP has a CT functional area. The AFP contributes to JCTTs located in all Australian states and territories with participants drawn principally from the Australian Security Intelligence Organisation and local police forces. These teams are supported by a range of governance documents.³³⁶ Additional AFP CT teams exist to perform other investigative, intelligence and specialist functions.

The JCTT's receive or generate referrals from many sources, including local and foreign law enforcement, and intelligence reports. JCTTs conduct threat based preventative investigations to minimise terrorist threats and risk and where appropriate bring criminal prosecutions.³³⁷

An Operational Coordination Group (OCG), which is generally comprised of Superintendents or equivalent drawn from JCTT participating agencies, will convene in relevant jurisdiction and consider CT referrals and any proposed course of action. This could result in the referral being accepted or referred to another agency. In some cases, such as response matters, a JCTT will accept a matter for consideration ahead of OCG process and will later brief the OCG for a decision. OCGs also provide operational oversight and management of JCTT investigations in their relevant jurisdiction. The AFP JCTT Coordinator will brief their Commander on matters discussed or decisions made in OCG meetings.³³⁸

The OCG reports to a JMC in its jurisdiction. The JMC provides strategic oversight of CT operations and assists in the identification and assessment of threats, with its core functions including ratifying JCTT investigations, SIO appointments, and ensuring operations are adequately resourced. The JMC will also endorse a strategy or trigger for an overt investigative course of action. The JMC comprises senior executive officers (e.g. Assistant Commissioner) of participating JCTT agencies.³³⁹

The CT referral process is illustrated in the diagram "Current Joint Counter Terrorism Teams (JCTT) Referral Process" on page 98.

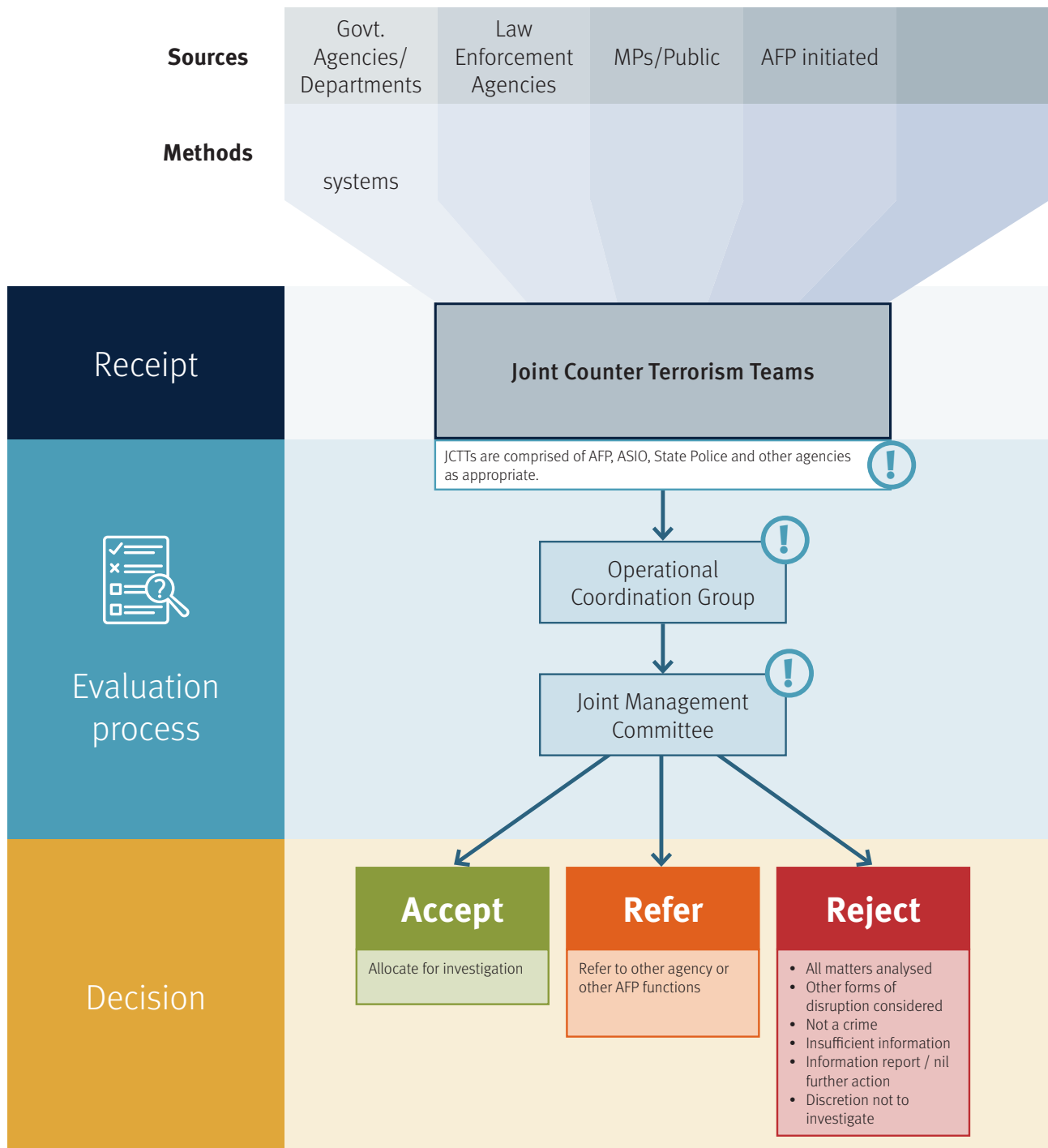
³³⁶ For example: Australia New Zealand Counter-Terrorism Committee. *National Counter-Terrorism Plan, 4th Edition 2017* Retrieved from <https://www.nationalsecurity.gov.au/Media-and-publications/Publications/Documents/ANZCTC-National-Counter-Terrorism-Plan.PDF>.

³³⁷ AFP. (2019) *Review into the AFP's Response to and Management of Sensitive Investigations* [Email 19 December] Folder 3, no 5/14/10.

³³⁸ Ibid.

³³⁹ Ibid.

Current Joint Counter Terrorism Teams (JCTT) Referral Process



Decision point

Cleared: 03/01/2020

Key Governance

ANZCTC National Counter-Terrorism Plan
Other classified governance

INTERPOL

The AFP hosts the INTERPOL National Central Bureau (NCB) (INTERPOL Canberra) which is staffed by AFP members. The review was advised that INTERPOL Canberra's work is high risk and sensitive in nature given its links with international law enforcement and INTERPOL NCBs, and the subject matter involved.³⁴⁰ INTERPOL Canberra has established procedures to best capture/record work done and to ensure it is compliant with INTERPOL protocols.³⁴¹

The review considers that much of what INTERPOL Canberra does is likely to be considered a 'process of inquiry' or investigative in nature, although not formally recognised as such. The review was told that given the volume of work undertaken by INTERPOL Canberra, any additional governance impacting that work could grind them to a halt.³⁴²

Foreign law enforcement requests and death penalty considerations

The AFP International Network may be used to conduct offshore investigative enquiries for both AFP and other law enforcement agencies. Any death penalty sensitivities are identified as part of this process.

The current AFP National Guideline on international police-to-police assistance in death penalty situations contains a 'Death Penalty Risk Category' and a tiered level of approval for requests. The National Guideline also introduces additional oversight by responsible functional leadership.³⁴³

The governance arrangements also provide improved guidance and clarity on 12 prescribed 'relevant factors' to be considered before approving the provision of assistance or cooperation (in pre-arrest/detention circumstances). The 'relevant factors' include the: purpose of providing the assistance; seriousness of the suspected criminal activity; and level of risk for the person if the AFP provides the requested information (including the likelihood of imposition of the death penalty).

While the National Guideline applies primarily to the AFP, for matters where the AFP is conducting enquiries on behalf of another law enforcement agency, the AFP ensures those enquiries too are also in compliance with the National Guideline.

The updated death penalty governance arrangements were complemented by presentations to each AFP regional office. Online training has also been developed for delivery to AFP members. These issues are also being incorporated into a range of AFP training programs via the AFP College.

³⁴⁰ For example, an Australian policing agency requested INTERPOL Canberra to raise a Blue Notice for a high profile person. While this was a routine request for the requesting agency, AFP members within INTERPOL Canberra considered it had sensitivities for the AFP as it was the AFP raising the Notice: Review Meetings 1 November – 20 December 2019: 50; A Blue Notice is a request to collect additional information about a person's identity, location or activities in relation to a crime: INTERPOL Website: *About Notices* Retrieved from <https://www.interpol.int/en/How-we-work/Notices/About-Notices>.

³⁴¹ Such as ensuring the request is not politically motivated: Review Meetings 1 November – 20 December 2019: 50.

³⁴² Such as criminal history checks, receiving referrals for investigation (e.g. allocated to State/Territory police or other agencies), missing persons enquiries/requests, welfare checks, operational enquiries (e.g. database checks), and next of kin notifications. Each year there are around 77,000 diffusions (Notices) and 40,000-50,000 other enquiries processed by INTERPOL Canberra: Review Meetings 1 November – 20 December 2019: 50.

³⁴³ AFP. (2018). *AFP National Guideline on international police-to-police assistance in death penalty situations* Retrieved from https://www.afp.gov.au/sites/default/files/PDF/IPS/AFP%20National%20Guideline%20on%20international%20police-to-police%20assistance%20in%20death%20penalty%20situations_o.pdf.

The death penalty governance acknowledges that a sensitive matter can arise during an investigation which is otherwise considered routine. In creating or refining appropriate governance documents, decision making practices and other measures, the AFP can reduce the risk of routine investigations turning into sensitive investigations, or at the very least lead to the better management of sensitive investigations.

Risk matrixes

Different types of risk assessments are used within different AFP functional areas and other government investigative agencies to better inform and address uncertainty associated to certain activities. Customised risk assessments are a tool which may indicate certain sensitivities exist at the commencement of an investigation. They can be used in addition and/or complementary to existing prioritisation models.

Australian Commission for Law Enforcement Integrity risk assessment

ACLEI uses an Operational Risk Assessment Model (ORAM) to determine potential risks and to estimate the costs of an operation at the early stages. The ORAM is re-run if significant changes are identified in the course of the investigation. The ORAM assists the Executive to allocate resources to operations. The model has 25 risk sub-categories and each category has a numeric value which can be adjusted over time on the basis of experience.³⁴⁴ An underlying algorithm calculates the overall risk score and determines a risk rating.

Together with the ORAM, ACLEI operates a Threat and Risk Assessment Model (TRAM) which assesses and allocates a numerical score to the risk rating of a particular corrupt investigation at an early stage of notification. A high TRAM score corresponds to a high threat and risk, and assists ACLEI to determine the priority of operations. The main benefit of TRAM is its ability to identify and compare, at the beginning of investigations, corruption issues which should be given higher priority.

Specialist Response Group tactical planning assessment

The SRG risk assessment is used to collate all the known information impacting on each SRG operation, including unknown or incomplete information. The risk assessment produces an initial risk rating followed by risk treatments which generate a mitigated rating.³⁴⁵

Professional Standards risk assessment

The PRS OC Evaluation Form has a risk assessment producing a risk rating. The rating determines a number of actions required, namely the level of reporting to AFP management and immediate actions in a workplace area, such as redeployment or suspension.³⁴⁶

³⁴⁴ Australian Commission for Law Enforcement Integrity. *ACLEI Multi-Jurisdiction Operation Risk Profile Tool* Folder 3, no 7/2; ACLEI. (2019) *Operational Risk Assessment Framework* (July 2019) Folder 3, no 7/2.

³⁴⁵ AFP. *Specialist Response Group Tactical Planning Assessment* Folder 3, no 5/17.

³⁴⁶ AFP. *Professional Standards Operations Committee Evaluation Form*. Op. Cit.

Current Governance Arrangements

Governance Instrument Framework

The AFP's Governance Instrument Framework (GIF) is established by the Commissioner's Order on Governance (CO1). The following are primary governance instruments, in order of hierarchy, that establish the rules, orders, instructions, practices, and procedures typically applicable to the whole of the AFP:

- ▶ Commissioner's Orders;
- ▶ Commissioner's Financial Instructions;
- ▶ National Guidelines;
- ▶ Commander's Orders;
- ▶ Doctrine;
- ▶ Investigation Standards;
- ▶ Standard Operating Procedures;
- ▶ Handbooks/Plans; and
- ▶ Better Practice Guides.

CO1 also details the compliance expectations in respect of the governance instruments. The GIF is managed by the Governance Coordination and Review (GCR) team which provides advice and support relating to the GIF as well as assisting business areas with their reviews of primary governance instruments.³⁴⁷

Within the GIF sits the Functional Governance Collection which is a central collection point for all functional governance instruments. The collection is accessible and searchable by all AFP employees and provides a mechanism by which each area manager is able to monitor and maintain the holdings within their area of responsibility. Functional governance is generally more procedural (e.g. better practice and standard operating procedures) and primary governance is usually more compliance related (e.g. Commissioner's Orders and National Guidelines).

Periodically, reviews are conducted on AFP governance instruments. The owning area/function is responsible for conducting or organising this review through a nominated governance network member or team. Primary governance instruments must be reviewed at least every three years (or two years for higher risk documents) and this review must include consultation with all stakeholders, including mandatory reviews by Security, PRS and GCR. Functional governance should be reviewed at least every four years, but all governance should be constantly managed by the owning function with reviews based on the risk and the topic (e.g. the likelihood of changes).

³⁴⁷ The Governance Coordination and Review team has been in existence since 2004 and is currently staffed by two unsworn full time equivalent employees: AFP (2019) *Review into the AFP's Response to and Management of Sensitive Investigations* [email 16 December] Folder 3, no 5.

A review of external investigations conducted from 2007 until 2017 identified that effective interoperability, internally and with external partners, is dependent on the establishment of robust governance arrangements.³⁴⁸ It was advocated that sensitive investigations need strategic support from formal JMC arrangements or similar, and this business process would provide a forum for review and endorsement of critical decisions.³⁴⁹ Similarly, this examination suggested a need for formalised operational forums to encourage a philosophy of information sharing as opposed to a need-to-know mentality, which would avoid inconsistent outcomes and confusion.³⁵⁰ Overwhelmingly, this analysis highlighted a deficit in the AFP's business processes in relation to decision making arrangements, communication processes and information management.³⁵¹

In particular, the AFP's governance and processes around: communication lines; recording of communication; relevance and timeliness of communications; briefing processes; information storage and retrieval arrangements; creation and derivative use of information; accountable information sharing; and recording and accountability of critical decisions were all subject to critique within external reviews.³⁵²

Some external reviews recognised a need for governance, guidelines and structured business processes that articulate the roles, functions and responsibilities of all agencies considered likely to participate in sensitive investigations, in order to avoid the confusion that is caused from competing agendas and to provide a common understanding.³⁵³ This is relevant to conduct of sensitive investigations in a multi-agency environment, where consideration needs to balance the powers and capabilities of an organisation with the purpose of the investigation.³⁵⁴

This analysis highlighted the benefits in the continual assessment of opportunities for governance and legislative reform to support investigative processes for sensitive investigations. These external reviews identified a need for sensitive investigation governance to articulate the regular review of legislation typically required to address these matters to determine whether it is fit for purpose, current and operationally relevant.

Governance documents relevant to sensitive investigations

Key AFP governance documents relevant to sensitive investigations include:

- ▶ AFP National Guideline on investigations of unauthorised disclosure of material made or obtained by a current or former Commonwealth officer;
- ▶ AFP National Guideline on politically sensitive investigations;
- ▶ AFP National Guideline for Execution of Search Warrants where Parliamentary Privilege is involved;
- ▶ AFP Better Practice Guide Unauthorised disclosure of information by Commonwealth employees;

³⁴⁸ Australian National Audit Office. (2012). Op. Cit.

³⁴⁹ Clarke, M. (2008). Op. Cit.

³⁵⁰ Ibid.

³⁵¹ Australian National Audit Office. (2012). Op. Cit.; State Coroner of New South Wales. (2017). Op Cit.

³⁵² Australian National Audit Office (2012). Op. Cit.; Clarke, M. (2008). Op. Cit.; State Coroner of New South Wales. (2017). Op Cit.

³⁵³ Clarke, M. (2008). Op. Cit.

³⁵⁴ Australian National Audit Office. (2012). Op. Cit.

- ▶ Referral of Allegations of Unauthorised Disclosure Protocol between the Australian Public Service Secretaries Board and the Australian Federal Police; and
- ▶ Memorandum of Understanding between the Australian Federal Police and the Australian Electoral Commission on cooperation in respect of electoral offences.

Other relevant documents include but are not limited to:

- ▶ AFP Investigations Doctrine;
- ▶ AFP Better Practice Guide Executing s3E Crimes Act 1914 (Cth) search warrants on behalf of government agencies;
- ▶ AFP Better Practice Guide Procedures to obtain a Journalist Information Warrant; and
- ▶ AFP National Guideline on international police-to-police assistance in death penalty situations.

Two of the central governance instruments are worthy of specific mention.

AFP National Guideline on politically sensitive investigations³⁵⁵

This guideline, on its face, was last reviewed in 2011 and has not been formally reviewed since. The 'Introduction' states the guideline "outlines a framework for managing politically sensitive investigations and politically sensitive matters that have been referred to the AFP for evaluation, but have not yet been accepted for investigation". However this is inconsistent with two other sections within the guideline namely:

- ▶ 'Definitions': 'Politically sensitive matter' means "matters under investigation..." which meet certain listed criteria; and
- ▶ 'Parliamentary privilege': Outlines actions relevant to the guideline "...likely to be encountered during an investigation...".

Members are guided regarding the use of the CCPM, briefing the Minister for Home Affairs (despite a linked governance document being archived) and the recording of decisions.

AFP National Guideline on investigations of unauthorised disclosure of material made or obtained by a current or former Commonwealth officer³⁵⁶

The guideline was drafted following the Ministerial Direction to the AFP relating to investigative action involving a professional journalist or news media organisation in the context of an unauthorised disclosure of material made or obtained by a current or former Commonwealth officer.³⁵⁷ This guideline applies to matters under evaluation and during 'investigative action'.

³⁵⁵ AFP. (2011). *AFP National Guideline on politically sensitive investigations*. Op. Cit.

³⁵⁶ AFP. (2019). *AFP National Guideline on investigations of unauthorised disclosure of material made or obtained by a current or former Commonwealth officer* Folder 3, no 5/2/1.

³⁵⁷ The Hon Peter Dutton MP. (2019). *Ministerial Direction on Investigative Action Involving Journalists*. (8 August 2019). Op. Cit.

The guideline states that the AFP takes into account the importance of a free and open press in Australia's democratic society and will consider "broader public interest implications" before undertaking investigative action involving a professional journalist or news media organisation. While public interest is a relevant consideration for investigators, it is unclear what 'broader public interest' means in this context.³⁵⁸

The guideline outlines the referral requirements which include the completion of a form and a harm statement signed by the head of the referring department or agency. To facilitate this, there is a requirement for referring agencies to complete the AFP Checklist for the Referral of Unlawful Disclosures of Commonwealth Information, although this document is not attached to the guideline or published.³⁵⁹

Guidance is provided regarding the evaluation process with specific reference to public interest considerations. It also states the referral must be evaluated in consultation with and agreed by the relevant Manager (Commander), who should determine the priority in accordance with the CCPM.

The guideline does not seek to provide any governance around managing the investigation process other than, where investigative action is to involve a professional journalist or news media organisation, the AFP appointee must consider: the public interest in a free and open press; whether relevant voluntary assistance can be obtained; and what alternative investigative avenues can be exhausted.

³⁵⁸ For instance AFP. (2013). *Australian Federal Police Investigations Doctrine*. Op. Cit.

³⁵⁹ AFP. (2019). *Referral to AFP, Supporting Material Checklist Folder 3*, no 5/10.

APPENDIX C: ACRONYMS AND REFERENCES

ABC	Australian Broadcasting Corporation
ACLEI	Australian Commission for Law Enforcement Integrity
ACT	Australian Capital Territory
AEC	Australian Electoral Commission
AFP	Australian Federal Police
AHOH	Australian High Office Holder
AI	Artificial Intelligence
AOCC	AFP Operations Coordination Centre
AOH	Australian Office Holder
APS	Australian Public Service
ATO	Australian Taxation Office
CACT	Criminal Assets Confiscation Taskforce
CAL	Criminal Assets Litigation
CCPM	Case Categorisation and Prioritisation Model
CDPP	Commonwealth Director of Public Prosecutions
CIC	Commonwealth Integrity Commission
CIRO	Criminal Investigations Reception Officer
CLO	Chief Learning Officer
CLT	Client Liaison Team
CMF	Case Management Forum
CMT	Complaint Management Team
CO	Crime Operations

CO1	Commissioner's Order on Governance
CO CCT	Crime Operations Corporate Capability Team
CO OC	Crime Operations Operations Committee
CT	Counter Terrorism
DoD	Department of Defence
DPU	Diplomatic Protection Unit
EFI	Espionage and Foreign Interference
FBI	Federal Bureau of Investigation
FTAT	Fixated Threat Assessment Team
GCR	Governance Coordination and Review
GIF	Governance Instrument Framework
HOH	High Office Holders
IEEPA	International Emergency Economic Powers Act
INTERPOL	International Criminal Police Organization
ISP	Investigations Standards and Practice
JCTT	Joint Counter Terrorism Team
JIT	Joint Investigation Team
JMC	Joint Management Committee
JMG	Joint Management Group
MOU	Memorandum of Understanding
MP	Member of Parliament
NBN Co	NBN Co Limited
NCB	National Central Bureau
NRO	National Response Operation
NSW	New South Wales
NSWPF	New South Wales Police Force

NZ	New Zealand
OCG	Operational Coordination Group
OMC	Operations Monitoring Centre
ORAM	Operational Risk Assessment Model
OSI	Offshore and Sensitive Investigations
PA	Predictive Analytics
PAT	Protection Assessment Team
PJCIS	Parliamentary Joint Committee on Intelligence and Security
PL	Protection Liaison
PO	Protection Operations
PROMIS	Police Real-time Online Management Information System
PRS	Professional Standards
PRS CCT	PRS Complaints Coordination Team
PRS OC	Professional Standards Operations Committee
RCMP	Royal Canadian Mounted Police
RIA	Regional Investigations Advisor
ROCCC	Regional Operations Capacity and Capability Committee
SCNS	Secretaries Committee on National Security
SDP	Sensitive Decisions Panel
SEG	Senior Executive Group
SIO	Senior Investigating Officer
SRG	Specialist Response Group
TRAM	Threat and Risk Assessment Model
UK	United Kingdom
US	United States of America

APPENDIX D: CONSULTATIONS

FRIDAY 1 NOVEMBER
Fraud & Anti-Corruption – AFP
TUESDAY 5 NOVEMBER
Chief Operating Officer Sue Bird and a/Chief Counsel Alison McDonald – AFP
THURSDAY 7 NOVEMBER
AFP Operations Coordination Centre Client Liaison Team – AFP
WEDNESDAY 13 NOVEMBER
Det A/Supt. Matt Neesham, Offshore and Sensitive Investigations – AFP
Assistant Commissioner Ian McCartney, Counter Terrorism – AFP
Mr Mark Walters, Review of the Management of Serious Crime Program – AFP
A/Deputy Commissioner Lesa Gale, National Security – AFP
THURSDAY 14 NOVEMBER
Offshore and Sensitive Investigations – AFP
Investigations Standards and Practices Team – AFP
Commander Jason Williams, National Response Operations – AFP
Ms Annie O'Connor, Crime Program Executive Coordination Team – AFP
Media Executive Roundtable with Commissioner Kershaw
FRIDAY 15 NOVEMBER
Supt. Ken McKern, Protection Assessment & Liaison – AFP
Det Supt. Andrew Smith, Offshore and Sensitive Investigations – AFP
Commander Linda Champion, AFP Operational Coordination Centre–Specialist Response Group – AFP
Chief Police Officer Ray Johnson, ACT Policing – AFP
Assistant Commissioner Scott Lee, AC International Operations – AFP
MONDAY 18 NOVEMBER
AFP Operations Coordination Centre Client Liaison Team – AFP
WEDNESDAY 20 NOVEMBER
Investigations Standards and Practices Team – AFP

MONDAY 25 NOVEMBER
Dr Chris Black, Office of National Intelligence – AFP
A/Assistant Commissioner Justine Gough, Organised Crime – AFP
Deputy Commissioner Neil Gaughan, Operations – AFP
Secretary Philip Gaetjens – Department of the Prime Minister & Cabinet
Director-General Nick Warner – Office of National Intelligence
TUESDAY 26 NOVEMBER
Assistant Commissioner Nigel Ryan, Chief of Staff – AFP
Sgt Darren Williamson, Response Operations – AFP
Assistant Commissioner Debbie Platz, Crime Operations – AFP
Assistant Commissioner Bruce Hill, Support Capability – AFP
WEDNESDAY 27 NOVEMBER
Integrity Commissioner Michael Griffin – Australian Commission for Law Enforcement Cooperation
A/Chief Counsel Stefan Jerga – AFP
Assistant Commissioner Peter Crozier, People, Safety & Security & Commander David McLean, State Manager NSW – AFP
Chief Learning Officer Warwick Jones, Workforce Development & Culture – AFP
THURSDAY 28 NOVEMBER
The Hon Peter Dutton – Minister for Home Affairs
FRIDAY 29 NOVEMBER
Assistant Commissioner Wayne Buchhorn, Department of Home Affairs – AFP
Commonwealth Director of Public Prosecutions Sarah McNaughton & Ms Andrea Pavleka & Mr James Carter – CDPP
Executive Director Michael Nelson Willis, Strategic Reform – AFP
Commissioner Reece Kershaw – AFP
Ms Angela Bunting, Organised Crime – AFP
Press Gallery Roundtable with Commissioner Kershaw
WEDNESDAY 4 DECEMBER
Chief Commissioner Graham Ashton – Victoria Police
TUESDAY 10 DECEMBER
The Hon Christian Porter – Attorney-General for Australia and Minister for Industrial Relations

THURSDAY 11 DECEMBER
Commander Robert Jackson, Counter Terrorism – AFP
FRIDAY 13 DECEMBER
Deputy Commissioner Karl Kent, Capability – AFP
MONDAY 16 DECEMBER
Secretary Michael Pezzullo – Department of Home Affairs
Director-General Paul Symon – Australian Secret Intelligence Service
Mr Warwick Fry, Liaison Officer to the Department of Foreign Affairs and Trade – AFP
TUESDAY 17 DECEMBER
Electoral Commissioner Tom Rogers – Australian Electoral Commission
Coordinator Crystal Tunningley, Internal Audit – AFP
Secretary Rosemary Huxtable – Department of Finance
Assistant Commissioner Chris Craner, Western & Central Command – AFP
President Angela Smith – AFP Association
Director-General of Security Mike Burgess – Australia Security Intelligence Organisation
WEDNESDAY 18 DECEMBER
Deputy Commissioner Tracy Linford – QLD Police Service
Commissioner Michael Outram – Australian Border Force
Commissioner Reece Kershaw – AFP
Secretary Greg Moriarty – Department of Defence
FRIDAY 20 DECEMBER
Secretary Chris Moraitis – Attorney-General’s Department
TUESDAY 24 DECEMBER
A/Secretary Tony Sheehan – Department of Foreign Affairs and Trade (written submission)

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