



Parliamentary Joint Committee on Law Enforcement

Examination of the Australian Federal Police
Annual Report 2015-16

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Acronyms and abbreviations

AAT	Administrative Appeals Tribunal
ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity
ACT	Australian Capital Territory
AFP	Australian Federal Police
AFP Act	<i>Australian Federal Police Act 1979</i>
AGD	Attorney-General's Department
annual report	Annual Report 2015–16
CACT	Criminal Assets Confiscation Taskforce
Crimes Act	<i>Crimes Act 1914</i>
KPIs	Key Performance Indicators
PBS	Portfolio Budget Statements
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
ROI	return on investment
Surveillance Act	<i>Surveillance Devices Act 2004</i>
TIA Act	<i>Telecommunications (Interception and Access) Act 1979</i>
the Act	<i>Parliamentary Joint Committee on Law Enforcement Act 2010</i>
the commissioner	AFP Commissioner, Mr Andrew Colvin APM OAM
the committee	Parliamentary Joint Committee on Law Enforcement
the Ombudsman	Commonwealth Ombudsman
the project	Future Directions project

Recommendation

Recommendation 1

3.10 The committee recommends that the Australian Federal Police considers including in future annual reports examples of the complaints corresponding to the categories of breaches outlined in Part V of the *Australian Federal Police Act 1979*.

Chapter 1

Introduction

Duty to examine annual reports

1.1 The Parliamentary Joint Committee on Law Enforcement (the committee) has a statutory duty to examine the annual report of the Australian Federal Police (AFP) under the *Parliamentary Joint Committee on Law Enforcement Act 2010* (the Act).

1.2 Subsection 7(1) of the Act includes a specific requirement for the committee to report to Parliament on matters appearing in and arising out of the annual reports of the AFP:

...(f) to examine each annual report on the AFP and report to the Parliament on any matter appearing in, or arising out of, any such annual report...¹

1.3 The duty of the committee to examine annual reports of the AFP under the Act stems from an expectation that agencies which have been granted strong coercive powers, like the AFP, should be subject to additional oversight. At the time of the introduction of the Parliamentary Joint Committee on Law Enforcement Bill 2010, the then Attorney-General noted that the bill would exemplify the 'commitment to improving oversight and accountability in relation to the exercise of the functions of Commonwealth agencies'.²

Report under consideration

1.4 The AFP's Annual Report 2015–16 (annual report) was presented to the Minister for Justice, the Hon Michael Keenan MP, on 5 October 2016. It was tabled in the House of Representatives on 17 October 2016³ and tabled in the Senate on 7 November 2016.⁴

Examination of the report

1.5 In examining the annual report, the committee held a public hearing at Parliament House, Canberra on 14 June 2017. The witnesses who appeared before the committee are listed in Appendix 1.

Structure of the committee report

1.6 In addition to this chapter, the committee's report comprises the following chapters:

1 *Parliamentary Joint Committee on Law Enforcement Act 2010*, ss. 7(1).

2 *House of Representatives Hansard*, 18 March 2010, p. 2925.

3 *Votes and Proceedings*, No. 12—17 October 2016, p. 220.

4 *Journals of the Senate*, No. 12—7 November 2016, p. 356. The annual report was presented out of sitting in the Senate on 14 October 2016.

- chapter 2 examines the AFP's compliance with reporting requirements, its performance against key performance indicators (KPIs), and issues discussed at the public hearing on 14 June 2017;
- chapter 3 the considers the AFP's complaint handling performance and the Commonwealth Ombudsman's statutory oversight of aspects of the AFP's work.

Acknowledgements

1.7 The committee acknowledges the cooperation of the AFP Commissioner and other AFP officers who assisted the committee in its examination.

Note on references

1.8 References to the *Committee Hansard* may be references to the proof transcript. Page numbers may differ between proof and official transcripts.

Chapter 2

Australian Federal Police Annual Report 2015–16

2.1 This chapter outlines key matters arising from the Australian Federal Police Annual Report 2015-16, including compliance with legislative requirements, performance against key performance indicators (KPIs) and issues discussed at the public hearing on 14 June 2017.

Background

2.2 The AFP is the Australian government's primary policing agency. The AFP describes itself as:

...a key member of the Australian law enforcement and national security community, leading policing efforts to keep Australians and Australian interests safe both at home and overseas.¹

2.3 Section 8 of the *Australian Federal Police Act 1979* (the AFP Act) outlines the functions of the AFP, including:

- the provision of police services in relation to laws of the Commonwealth, the property of the Commonwealth (including Commonwealth places), and the safeguarding of Commonwealth interests;
- the provision of policing in the Australian Capital Territory (ACT), the Jervis Bay Territory and Australia's external territories (such as Christmas Island);
- protective and custodial functions as directed by the Minister;
- the provision of police services and police support services to assist or co-operate with an Australian or foreign law enforcement agency, intelligence or security agency, or government regulatory agency; and
- the provision of police services and police support services in relation to establishing, developing and monitoring peace, stability and security in foreign countries.²

2.4 The AFP also performs functions under the *Witness Protection Act 1994* and the *Proceeds of Crime Act 2002*.³

2.5 The government's priorities for and expectations of the AFP are articulated in a 12 May 2014 Ministerial Direction, issued by the Minister for Justice, the Hon Michael Keenan MP, pursuant to subsection 37(2) of the AFP Act.⁴

1 Australian Federal Police (AFP), *Annual Report 2015–16*, p. 8.

2 *Australian Federal Police Act 1979*, s. 8.

3 Attorney General's Department (AGD), *Portfolio Budget Statement 2015–16*, p. 125.

4 AFP, *Annual Report 2015–16*, p. 8. See also *Ministerial Direction*, <https://www.afp.gov.au/about-us/governance-and-accountability/governance-framework/ministerial-direction> (accessed 20 March 2017).

2.6 This above framework provides the AFP with the responsibility to undertake its outcomes, as set out in the Attorney-General's Department Portfolio Budget Statements (PBS):

- reduced criminal and security threats to Australia's collective economic and societal interests through cooperative policing services (Outcome 1); and
- a safe and secure environment through policing activities on behalf of the ACT government (Outcome 2).⁵

Annual report compliance

2.7 In addition to the legislative requirements outlined above, the AFP is required to prepare an annual report under section 67 of the AFP Act:

The annual report prepared by the Commissioner and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include particulars of:

- (a) the AFP conduct issues that were dealt with under Part V [Professional standards and AFP conduct and practices issues] of this Act during that period; and
- (b) the action that was taken, during that period, in relation to AFP conduct issues that were dealt with under Division 3 of Part V [Dealing with AFP conduct or practices issues] of this Act.⁶

2.8 As a Commonwealth entity, the AFP must comply with the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which requires Commonwealth entities to provide an annual report to the entity's responsible minister for presentation to the Parliament on the entity's activity during the reporting period,⁷ and with the PGPA Rule 2014.⁸

2.9 Under the PGPA Act, Commonwealth entities are also required to prepare annual performance statements and include a copy of these statements in the entity's annual report that is tabled in the Parliament.⁹ The AFP's annual performance statement appears at chapter 3 of the annual report.

2.10 Based on the committee's assessment of the AFP's Annual Report 2015–16 (annual report), these requirements have been fulfilled.

AFP achievements in 2015–16

2.11 In the annual report, the AFP Commissioner, Mr Andrew Colvin APM OAM (the Commissioner), described the environment in which the AFP operated in the

5 AFP, *Annual Report 2015–16*, p. 8. See also: AGD, *Portfolio Budget Statement 2015–16*, p. 130 and p. 140.

6 *Australian Federal Police Act 1979*, s. 67.

7 *Public Governance, Performance and Accountability Act 2013*, s. 46.

8 Public Governance, Performance and Accountability Rule 2014, div. 3A.

9 *Public Governance, Performance and Accountability Act 2013*, s. 39.

2015–16 reporting period as 'complex' and 'characterised by increasing globalisation and technological advances'.¹⁰ The Commissioner highlighted some of the work that the AFP had undertaken in 2015–16 to develop and maintain organisational capabilities and capacities that are aligned with, and responsive to, the AFP's operating environment:

- transitioning to a new organisational structure that exploits synergies, minimises overlap and promotes collaboration and efficiency between and within the operational, capacity and capability elements of the AFP;
- planning and investing in world-class technical and specialist capabilities, including transformational information and communications technology projects and a new forensics facility, providing platforms for more efficient operations into the future;
- focusing on organisational inclusiveness, ensuring that the AFP continues to embrace community values and expectations and benefits from diversity, understanding and engagement in our workforce;
- strengthening the protection and security regimes of the AFP to minimise the potential for harm from the ongoing high level of risk to police and law enforcement personnel of terrorist attack.¹¹

Organisational structure

2.12 On 1 July 2015, a new organisational structure came into effect in the AFP, the objective of which has been to 'focus on aligning capabilities with operational needs, both now and into the future'.¹² The annual report describes the 'core element' of the restructure as:

...the identification of three pillars of Operations, Capability and Capacity...there are two Deputy Commissioners responsible for operational outcomes, one Deputy Commissioner for the delivery of Capability, and the Chief Operating Officer responsible for Capacity.¹³

2.13 The annual report identifies some key changes from the previous structure:

- integration of the International Network and the International Deployment Group into a new International Operations function

This provides greater efficiency and effectiveness in international operations through more flexibility, faster response and alternative engagement strategies.
- incorporation of cybercrime investigations into the serious and organised crime area

10 AFP, *Annual Report 2015–16*, p. 1.

11 AFP, *Annual Report 2015–16*, p. 1.

12 AFP, *Annual Report 2015–16*, p. 10.

13 AFP, *Annual Report 2015–16*, p. 10.

- reshaping of three functions to form: Technology and Innovation, Specialist Operations, and Support Capability, bringing together technical and specialist areas under the new Capability stream

This improves alignment between information and communications technology, forensic services, intelligence and covert/specialist policing support.

- creation of the Workforce and Development function comprising the state office network and Learning and Development within the Capacity stream

The purpose of the new Workforce and Development function is to ensure that the AFP's workforce is trained, capable and flexibly deployable to meet organisational priorities.¹⁴

2.14 In July 2015, at the AFP's Strategic Leadership Group meeting, the Commissioner endorsed a revised key committee framework that introduced a new external advisory board and reduced the overall number of AFP committees.¹⁵ This change was made in order for the committees to align with the new AFP organisational structure.¹⁶

2.15 Further, on 1 March 2016, the AFP's aviation and protection functions were amalgamated to form the 'Protection Operations' function, resulting in a single chain of command.¹⁷ The annual report notes that this change 'enhances the capability and commitment of the AFP to protect Australia's national security interests'.¹⁸

Operations

2.16 The AFP's direct operational capacity includes work in respect of protection, counter-terrorism, aviation, illicit drugs, people-smuggling, victim-based crime and cybercrime.¹⁹ The annual report states that, where the results of these operations are quantifiable, they are 'significant'.²⁰ The annual report identifies a number of key operational outcomes in 2015–16, including:

- continuing to focus on partnerships and multi-jurisdictional coordination, such as the AFP commencing as Chair of the Five Eye's Law Enforcement Group's Proceeds of Crime Working Group;
- continuing to enhance the AFP's aviation facilities by opening a new AFP Aviation Operations Centre at Gold Coast Airport; and

14 AFP, *Annual Report 2015–16*, p. 10.

15 AFP, *Annual Report 2015–16*, p. 12.

16 AFP, *Annual Report 2015–16*, p. 12.

17 AFP, *Annual Report 2015–16*, p. 10.

18 AFP, *Annual Report 2015–16*, p. 10.

19 AFP, *Annual Report 2015–16*, p. 43.

20 AFP, *Annual Report 2015–16*, p. 43.

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- planning, co-ordinating and/or deploying capabilities in support of special events in Australia and overseas (such as Anzac commemorations in Turkey and Europe, the 2016 Federal Election and the 2016 Olympics/Paralympics) or major visits by international dignitaries, including the Prince of Wales and Duchess of Cornwall.²¹

Capability

2.17 The Capability group comprises the AFP's technical and specialist functions, which are described as 'critical to the effectiveness and efficiency of operations and span surveillance, covert operations, technical services, forensics, tactical operations and intelligence'.²²

2.18 The annual report notes the 'strong demand' for group services throughout 2015–16. Electronic and physical surveillance was at full capacity every week in support of high-priority national security and organised crime investigations, and there was a 150 per cent increase in undercover deployments in support of operations.

2.19 Other highlights for the Capability group in 2015–16 included:

- the establishment of a new Capability Development Office, incorporating the Investigations Standards and Practices group, to centrally manage the AFP's longer-term, enterprise-wide capability development;
- opening a new world-class AFP forensics facility at Majura (ACT), providing a platform for major and ongoing capability enhancement and delivery; and
- the focus of the dedicated Australian INTERPOL and Europol National Central Bureau on enhancing the support and outcomes for Australian law enforcement. During the 2015–16 financial year, INTERPOL and Europol Canberra received 100 432 communications from 98 foreign agencies and 26 Australian agencies.²³

2.20 More information on the forensics facility was provided to the committee by the AFP at the committee's hearing on 14 June 2017:

The project was a \$106 million project. It went through the normal Public Works Committee processes, so there is a lot of detail there. Whilst we are still finalising contractual arrangements with the builders, the project is basically within that budget. The construction of the facility was to replace a facility that we had in Weston in another part of the ACT which was a leased premises that had been converted from another, prior-use purpose that was completely inadequate from an OH&S point of view. But also, from the point of view of the emerging technologies we needed, particularly for the maintenance of the evidentiary trail, it was becoming less and less appropriate for the sort of work we were doing. So, going back a few years now, we got government approval to allocate AFP's own departmental

21 AFP, *Annual Report 2015–16*, p. 44.

22 AFP, *Annual Report 2015–16*, p. 45.

23 AFP, *Annual Report 2015–16*, p. 45.

capital to build this facility. Then, through the design, construction and completion phases, it was a period of about four years on the project itself. So, to answer your first question, it was \$106 million.

The activities that are in there...are basically the full gamut of all the forensic services of the AFP. They have moved from our Weston facility and from our headquarters building into this new facility here at Majura. It is everything from ballistics work through to DNA work, document reviews and bomb data assessment—the full gamut of all our forensics work is now done in this new building at Majura.²⁴

Capacity

2.21 The role of the Capacity group is to ensure that the AFP has 'an agile, inclusive workforce and flexible resourcing that responds to the AFP's priorities and responsibilities', and to manage the AFP's interaction with major government and policy processes.²⁵

2.22 During 2015–16, the activities of the group included:

- developing the AFP Diversity and Inclusion Strategy 2016–2020, which promotes the inclusion, respect and valuing of the inherent differences that appointees bring to the workplace;
- establishing gender diversity targets; and
- continuing to collaborate with partner agencies, such as the Australian Border Force, around investigative training programs.²⁶

Contribution to law reform and parliamentary inquiries

2.23 The AFP has continued its engagement with various parliamentary committees. The AFP lists the following contributions in its annual report:

- Senate Economics References Committee inquiry into foreign bribery;
- Parliamentary Joint Committee on Law Enforcement inquiry into illicit tobacco;
- Parliamentary Joint Committee on Law Enforcement inquiry into human trafficking;
- Senate Select Committee—Establishment of a National Integrity Commission;
- Parliamentary Joint Committee on Intelligence and Security inquiry into the Counter-Terrorism Legislation Bill (No. 1) 2015;

24 Mr Andrew Wood, Acting Chief Operating Officer, AFP, *Committee Hansard*, 14 June 2017, p. 3.

25 AFP, *Annual Report 2015–16*, p. 46.

26 AFP, *Annual Report 2015–16*, p. 46.

- Senate Economics References Committee inquiry into penalties for white collar crime;
- Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Criminal Code Amendment (Firearms Trafficking) Bill 2015 [Provisions];
- Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Family Law Amendment (Financial Agreements and Other Measures) Bill 2015; and
- Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into Australia's advocacy for the abolition of the death penalty.²⁷

AFP reporting structure

2.24 The AFP has two outcomes: Outcome 1 comprising Program 1.1 (Federal Policing and National Security) and Program 1.2 (International Police Assistance); and Outcome 2, comprising Program 2.1 (ACT Community Policing).²⁸ The PBS states:

Commonwealth programmes are the primary vehicle by which government entities achieve the intended results of their outcome statements. Entities are required to identify the programmes that contribute to government outcomes over the budget and forward years.²⁹

2.25 Table E2 at Appendix E of the AFP's annual report provides a yearly comparative breakdown of deliverables relating to Program 1.1 and Program 1.2, dating back to 2011–12.³⁰

2.26 This section reflects the new structure of the AFP annual report—which differs from the structure of the 2014–15 annual report—and in doing so considers the AFP's performance against the outcomes found in the PBS and the AFP's Key Performance Indicators (KPIs). It examines the measurement tools used to inform the KPIs and to track performance over time.

Outcome 1

2.27 The 'critical focus' of Outcome 1 is 'the development and application of resources and skills to tasks with the greatest impact and disruptive effect on criminal networks and security threats'.³¹ The PBS states that Programs 1.1 and 1.2:

...acknowledge key features of the current environment: (i) threats to Australians and Australia's interests have an international base; (ii) organised serious crime represents, in itself, a security threat to Australian interests; and (iii) weak rule of law undermines development and

27 AFP, *Annual Report 2015–16*, p. 87.

28 AFP, *Annual Report 2015–16*, p. 8.

29 AGD, *Portfolio Budget Statement 2015–16*, p. 112.

30 AFP, *Annual Report 2015–16*, Appendix E, pp 148–49.

31 AGD, *Portfolio Budget Statement 2015–16*, p. 130.

provides opportunities for terrorist and other criminal enterprises to flourish. These programmes integrate prevention and disruption priorities towards crime reduction and impede criminal elements that threaten the security of Australians and Australian interests.³²

Program 1.1 (Federal Policing and National Security)

2.28 The objective of Program 1.1 is to reduce criminal and security threats to Australia's collective economic and societal interests.³³ The AFP aims to achieve this objective by promoting the safety and security of Australian communities and infrastructure; preventing, deterring, disrupting and investigating serious and organised crime and crimes of Commonwealth significance; and ensuring effective collaboration with international, Commonwealth, state and territory partners.³⁴

2.29 The program focusses on deliverables in respect of national security, federal policing, and specialist and supporting capabilities.³⁵

2.30 As set out in the PBS, during the reporting period this included a 'full year of operation of additional counter-terrorism funding and enhanced protective security arrangements' which amounted to \$7.692 million of the \$981.166 million expenditure.³⁶ This expenditure was a decrease of \$39.605 million from the estimated actual expenses of 2014–15.³⁷ The expenditure on counter-terrorism funding and enhanced protective security arrangements therefore offset the \$39.605 million decrease in expenditure which 'largely' came from the following AFP programs:

...the conclusion of the protective security arrangements for the Cricket World Cup and Asian Football Cup (\$16.867m), the reduction of funding for Operation Sovereign Borders (\$8.265m), the impact of government savings measures (\$13.377m) and a reduction in available funding from the efficiency dividend (\$10.263m).³⁸

Program 1.2 (International Police Assistance)

2.31 The objective of Program 1.2 is similarly to reduce criminal and national security threats to Australia's collective economic and societal interests, but through international engagement.³⁹ The AFP aims to achieve this objective by delivering collaborative law and order police development missions, participating in

32 AGD, *Portfolio Budget Statement 2015–16*, p. 130.

33 AGD, *Portfolio Budget Statement 2015–16*, p. 132.

34 AFP, *Annual Report 2015–16*, p. 22.

35 AGD, *Portfolio Budget Statement 2015–16*, pp 133-34.

36 AGD, *Portfolio Budget Statement 2015–16*, p. 132.

37 AGD, *Portfolio Budget Statement 2015–16*, p. 132.

38 AGD, *Portfolio Budget Statement 2015–16*, p. 132.

39 AGD, *Portfolio Budget Statement 2015–16*, p. 138.

internationally mandated peace operations and providing civil policing assistance in accordance with Australian foreign development policy priorities.⁴⁰

2.32 In 2015–16, the AFP carried out law enforcement and police development mission activity in Nauru, Papua New Guinea, Samoa, the Solomon Islands, Timor-Leste, Tonga and other Pacific nations.⁴¹ The AFP carried out stabilisation operations and multi-national peace support activities in conjunction with the United Nations in Cyprus and Liberia.⁴² Further, under Program 1.2 the AFP also delivered community policing in Australia’s territories, including Christmas Island, Cocos (Keeling) Islands and Norfolk Island.⁴³

Outcome 2

2.33 Under Outcome 2, the AFP provides policing services to the ACT government in order to contribute to a safe and secure environment in the ACT.⁴⁴

Program 2.1 (ACT Community Policing)

2.34 The objective of Program 2.1 is the provision of a community policing capacity to the ACT government, including through three key outcomes of reduced crime, public safety, and community and partner engagement.⁴⁵

2.35 A purchase agreement between the ACT Minister for Police and Emergency Services, the Commissioner and the Chief Police Officer of the ACT specifies the type, level and cost of services required by the ACT government from the AFP.⁴⁶

Key performance indicators⁴⁷

2.36 While the Commissioner noted that the AFP continued to perform strongly against its international, national security and criminal investigation KPI targets during 2015–16, it was acknowledged that the AFP did not meet two KPIs, and that there has been some reduction against other KPIs. The Commissioner explained that a number of factors contributed to these negative results and noted that ‘it is important that the future state of the AFP, its capabilities, resources and KPIs are aligned’.⁴⁸

40 AFP, *Annual Report 2015–16*, p. 34.

41 AFP, *Annual Report 2015–16*, p. 34.

42 AFP, *Annual Report 2015–16*, p. 34.

43 AFP, *Annual Report 2015–16*, p. 34.

44 AFP, *Annual Report 2015–16*, p. 38.

45 AGD, *Portfolio Budget Statement 2015–16*, p. 141.

46 AFP, *Annual Report 2015–16*, p. 38.

47 Key Performance Indicators (KPIs) 1–9 correspond with Program 1.1, and KPI 10 and 11 correspond to Program 1.2.

48 AFP, *Annual Report 2015–16*, p. 2.

KPI 1—Level of external client/stakeholder satisfaction

2.37 The results from the AFP Business Satisfaction Survey 2015–2016 indicate that all program areas across the AFP recorded above target results, with an overall satisfaction level of 90 per cent. High satisfaction levels have been maintained in recent years for Federal Policing and National Security programs, and for the AFP overall.⁴⁹

2.38 The annual report does not contain a breakdown of the survey responses for each program.

KPI 2—Percentage of cases before court that result in conviction

2.39 The AFP achieved a conviction rate of 95 per cent, five per cent above its target. This result is consistent with that of previous years, and is based on a total of 382 cases with court outcomes finalised in 2015–16. The convictions related to investigations across the range of Commonwealth offences, most notably: drug importation (52 per cent); child protection offences (19 per cent); and financial crimes, such as money-laundering, fraud and corruption (14 per cent).⁵⁰

2.40 There is no explanation in the annual report as to why some cases have not resulted in a conviction.

KPI 3—Percentage of counter-terrorism investigations that result in a prosecution, disruption or intelligence referral outcome

2.41 The AFP finalised 44 counter-terrorism investigations in 2015–16, two of which resulted in prosecutions. The investigations that did not resolve in prosecutions 'were deemed as having successful outcomes through disruption, deterrence or accumulation and sharing of intelligence'.⁵¹ These results are only a subset of the AFP's counter-terrorism activity during the reporting period: at the time of publishing the annual report, there were over 100 ongoing investigations.⁵²

2.42 At the public hearing, the committee was told that '100 per cent' of counter-terrorism investigations over the reporting period involved co-operation with state or territory police.⁵³ The AFP elaborated:

The crime type of counterterrorism investigations is basically the only crime type in the country where no unilateral action is taken by any police force. The arrangements we have with each of the state and territory police forces are such that all investigations in counterterrorism are done by the joint counterterrorism teams in each state. Those teams are made up of the

49 AFP, *Annual Report 2015–16*, p. 23.

50 AFP, *Annual Report 2015–16*, p. 24.

51 AFP, *Annual Report 2015–16*, p. 25.

52 AFP, *Annual Report 2015–16*, p. 25.

53 Mr Michael Phelan, Acting Commissioner, AFP, *Committee Hansard*, 14 June 2017, pp 4–5.

AFP, the relevant state or territory police force and [Australian Security Intelligence Organisation]. Others are seconded in as necessary.⁵⁴

2.43 With regard to the AFP's international counter-terrorism network, the AFP noted that each relationship, which has a 'two-way flow of information', is different.⁵⁵ As the Five Eyes countries are facing similar threats of terrorism, the AFP explained that:

The relationship in Five Eyes countries and other like-minded jurisdictions is one that is genuine partnership and working together. In some other countries where we are we have a little bit more licence to do more things and work with local government agencies and police as well. In some countries we cannot do anything without specific permission of the host country we are in. We work very closely with the host countries. Our international network is something we are very proud of. I do not know off the top of my head, but I think it is about 30-odd countries we are in at the moment, and we have been for a long time.⁵⁶

KPI 4—Level of community confidence in the contribution of the AFP to aviation law enforcement and security

2.44 The annual AFP Airport Consumer Confidence Survey is based on face-to-face interviews with over 1000 passengers at domestic and international terminals in Adelaide, Brisbane, Canberra, Melbourne, Sydney and Perth.⁵⁷

2.45 The AFP achieved a satisfaction result of 78 per cent, three per cent above the target, and consistent with the 2014–15 reporting period.⁵⁸ This result was lower than that of previous years,⁵⁹ but no information is provided in the annual report about the reasons for this.

KPI 5—Response to aviation law enforcement and/or security incidents within priority response times

2.46 This KPI categorises four different priority responses:

- Priority 1: life-threatening or time-critical situations;
- Priority 2: situation requiring immediate AFP attendance, however not life-threatening;
- Priority 3: no immediate danger to safety or property but where AFP response or attention is required (determined in consultation with the complainant but, in any event, no later than 90 minutes from the initial contact by the complainant); and

54 Mr Phelan, AFP, *Committee Hansard*, 14 June 2017, p. 5.

55 Mr Phelan, AFP, *Committee Hansard*, 14 June 2017, p. 5.

56 Mr Phelan, AFP, *Committee Hansard*, 14 June 2017, p. 5.

57 AFP, *Annual Report 2015–16*, p. 27.

58 AFP, *Annual Report 2015–16*, p. 26.

59 AFP, *Annual Report 2015–16*, p. 26.

- Priority 4: no immediate danger to safety or property but where police response or attention is required (determined in consultation with the complainant but, in any event, not later than 24 hours from the initial contact made by the complainant).

2.47 The five minute target for Priority 1 was not met: the AFP responded within five minutes to life-threatening or time-critical situations in 70 per cent of situations, five per cent below the target.⁶⁰ A range of factors contributed to the AFP failing to meet its target for the 'priority 1 criterion':

These include the growth in airport passenger movements, the commissioning of additional terminals, the wide physical spread of terminals within airports and the competing priorities of uniform policing staff. Analysis also shows that the priority 1 result was impacted by a large number of alarm call-outs, many of which were false alarms. The AFP is addressing this by liaising closely with the affected businesses in the airport environment and reviewing dispatch protocols. This appears to have had an effect, with an improved priority 1 incident response meeting the five-minute target in the second six months of the reporting period.⁶¹

2.48 The targets for the remaining three priority responses were met or exceeded.

KPI 6—Number of avoidable incidents per 5,000 protection hours

2.49 Avoidable incidents are defined as:

...incidents that could have been avoided through physical action, intervention or reasonable intelligence and that result in death, injury or loss of dignity or embarrassment to those individuals and interests identified by the Commonwealth Government or the AFP as being at risk.⁶²

2.50 The annual report notes that there were no avoidable incidents in 2015–16, compared with one in the previous reporting period.⁶³

KPI 7—Return on investment for investigation of transnational crime

2.51 The AFP calculates return on investment (ROI) based on 'estimates of social benefit from disrupting crime outweighing the costs of those investigations, subsequent legal processes and detainment (prison costs)'.⁶⁴

2.52 The AFP made these calculations for the reporting period by reference to drug and financial crime investigations that were finalised in 2015–16, analysis of which allows the AFP to estimate the financial impact of these crime types through the

60 AFP, *Annual Report 2015–16*, p. 28.

61 AFP, *Annual Report 2015–16*, p. 28.

62 AFP, *Annual Report 2015–16*, p. 29, see note 1.

63 AFP, *Annual Report 2015–16*, p. 29.

64 AFP, *Annual Report 2015–16*, p. 30.

AFP's Drug Harm Index and the Estimated Financial Return.⁶⁵ Further detail on the ROI methodology is accessible through the AFP's website.⁶⁶

2.53 The ROI for the reporting period was five (consistent with the previous reporting period, and above the target of one).⁶⁷ The AFP's analysis indicated that the ROI value is approximately 4 to 1 for drug investigations and 13 to 1 for financial crime investigations.⁶⁸

KPI 8—Assets restrained

2.54 The AFP's Criminal Assets Confiscation Taskforce (CACT) restrained assets worth an estimated value of \$96.5 million under the *Proceeds of Crime Act 2002*, which was below the \$111.1 million target,⁶⁹ and a decrease in the trend over previous reporting periods.

2.55 The annual report states that not only has the:

...previously increasing trend...not been sustained but also there is considerable variation from year to year. Substantial restraint figures for the 2014–15 financial year, combined with the high complexity of these types of investigations, have translated into an increased commitment of resources to proceeds of crime matters currently before the court. This has had a direct impact on CACT's capacity to pursue new restraint action in 2015–16.⁷⁰

KPI 9—Increased or reinforced cyber safety and security awareness

2.56 The AFP delivered presentations to parents, carers, teachers and students through the ThinkUKnow program, and achieved a result of 94 per cent for increased awareness or reinforced awareness, calculated from 814 responses to feedback surveys conducted after the delivery of these programs.⁷¹ This result exceeded the AFP's 85 per cent target, but was a decrease of two per cent from the previous reporting period.⁷² This negligible decline is not addressed in the annual report.

2.57 The AFP advised the committee that it has increased the number and skillset of the people working in the cybersecurity area.⁷³ The AFP also advised that it has outsourced to a research organisation its work on big data visualisation.⁷⁴

65 AFP, *Annual Report 2015–16*, p. 30.

66 AFP, *Annual Report 2015–16*, p. 30.

67 AFP, *Annual Report 2015–16*, p. 30.

68 AFP, *Annual Report 2015–16*, p. 30.

69 AFP, *Annual Report 2015–16*, p. 32.

70 AFP, *Annual Report 2015–16*, p. 32.

71 AFP, *Annual Report 2015–16*, p. 33.

72 AFP, *Annual Report 2015–16*, p. 33.

73 Mr Neil Gaughan, Acting Deputy Commissioner Operations, AFP, *Committee Hansard*, 14 June 2017, p. 4.

KPI 10—Level of external client/stakeholder satisfaction

2.58 The AFP's International Police Assistance program achieved a satisfaction result of 95 per cent in the AFP Business Satisfaction Survey 2015–16, 10 percentage points above the target (85 per cent), and a nine per cent increase from the previous reporting period (86 per cent).⁷⁵

2.59 The annual report notes that satisfaction was lower from the private sector (83 per cent) compared to government stakeholders (100 per cent) and other law enforcement agencies (95 per cent).⁷⁶

2.60 The annual report states that:

Analysis of feedback from the survey suggests that the relationships will continue to be strong provided that focus remains on communication and cultural sensitivity.⁷⁷

KPI 11—Mission/external territories performance evaluation

2.61 This KPI is measured against mission performance reports and formal evaluation programs in respect of the Papua New Guinea—Australia Policing Partnership mid-term evaluation, the Tonga Police Development Program mid-term evaluation, and the Pacific Police Development Program final evaluation.⁷⁸

2.62 The annual report provides one example of a mission performance report related to the Royal Solomon Islands Police Force, and details the positive results in respect of the formal evaluation programs.⁷⁹

2.63 The annual report identifies corresponding deliverables, all of which indicate that the AFP has exceeded its targets.⁸⁰

Analysis of performance

2.64 In its own analysis of its KPI results, the AFP identified that it underperformed in two areas, against KPIs 5 and 8. The annual report states that some other results are lower than previous years, suggesting that such results are 'dependent on many factors and need to be considered in the context of both the internal and external operating environment'.⁸¹

2.65 The annual report refers to the AFP Corporate Plan, which identified that the breadth and complexity of AFP operations is expanding as a result of 'increasing

74 Mr Gaughan, AFP, *Committee Hansard*, 14 June 2017, p. 4.

75 AFP, *Annual Report 2015–16*, p. 34.

76 AFP, *Annual Report 2015–16*, p. 34.

77 AFP, *Annual Report 2015–16*, p. 34.

78 AFP, *Annual Report 2015–16*, p. 35.

79 AFP, *Annual Report 2015–16*, p. 35.

80 AFP, *Annual Report 2015–16*, p. 36.

81 AFP, *Annual Report 2015–16*, p. 37.

pressures from globalisation, increased importance of international relations, increasing use of rapidly changing technology by both the public and criminals, and the sustained high level of terrorist threat'.⁸² The annual report states that, in this context, it is critically important that the AFP continues to work on 'defining and transitioning to a future state that reflects, and can meet, stakeholder expectations within available capacities'.⁸³

2.66 The AFP's discussion of results against each KPI is brief and targeted; however, some results, for example those for KPIs 1 and 11, do not include relevant details such as a further breakdown for each operation and taskforce in respect of KPI 1, and mission performance report in respect of KPI 11. Additionally, for KPI 2, the annual report does not provide an explanation as to why some cases have not resulted in a conviction, and in respect of KPI 4, the annual report does not discuss why the result was lower than previous years or how the result may be improved.

2.67 The annual report usefully provides a comparative breakdown of results in relation to the performance of Program 1.1 and Program 1.2 in relation to KPIs, dating back to 2011–12,⁸⁴ as well as comparative results of deliverable indicators for Programs 1.1, 1.2 and 2.1.⁸⁵

Staffing and financial management

2.68 On 30 June 2016, the AFP had 6657 staff, including 3481 sworn police, 2491 unsworn staff and 672 protective service officers.⁸⁶ Of these staff 45 per cent were located outside the AFP headquarters in the ACT, with 284 overseas and 28 serving in Commonwealth external territories.⁸⁷

2.69 Thirty five per cent of AFP staff were female, the same as at 30 June 2015.⁸⁸

2.70 The AFP continued to experience low attrition rates in 2015–16. Overall, the attrition rate at 30 June 2016 was 2.61 per cent, an increase of 0.21 per cent from 2014–15.⁸⁹

2.71 The AFP informed the committee the majority of matters that arise in respect of people with a disability, including mental health matters, are 'where people have worked in the environment that we are in, which has a high propensity for causing

82 AFP, *Annual Report 2015–16*, p. 37.

83 AFP, *Annual Report 2015–16*, p. 37.

84 AFP, *Annual Report 2015–16*, Appendix E, pp 146–47.

85 AFP, *Annual Report 2015–16*, Appendix E, pp 148–49.

86 AFP, *Annual Report 2015–16*, p. 88.

87 AFP, *Annual Report 2015–16*, p. 88.

88 AFP, *Annual Report 2015–16*, p. 88.

89 AFP, *Annual Report 2015–16*, p. 88.

mental trauma'.⁹⁰ The AFP stated that it looks at best practice for supporting the mental health of these staff.⁹¹

2.72 The Australian National Audit Office (ANAO) determined that the AFP had complied with the *Australian Accounting Standards and the Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*, and presented fairly its financial position as at 30 June 2016, and its financial performance and cash flows for 2015–16.⁹²

2.73 In 2015–16, the AFP reported a departmental comprehensive loss of \$123 million. The annual report states that '[e]xcluding the impact of unfunded depreciation of \$90 million, the AFP recorded a deficit for the year of \$33 million, less than two per cent variance from the original budget and reflecting no significant changes in financial results from the 2014–15 financial year'.⁹³ The report notes that:

The deficit was driven in part by net valuation adjustments on leave liabilities of \$13 million. The result was achieved in the context of a successful year in which the AFP has delivered effectively for the government on national security, on international deployments and in meeting international aid responsibilities.⁹⁴

2.74 The departmental operating income for 2015–16 was \$1298 million comprising:

- \$1006 million in government appropriation (\$1061 million in 2014–15);
- \$161 million from the ACT government for policing services (\$160 million in 2014–15); and
- \$131 million in other revenue (\$115 million in 2014–15).⁹⁵

2.75 The AFP received an additional \$30 million (\$35 million in 2014–15) in government appropriation for departmental capital expenditure and \$42 million (\$84 million in 2014–15) in equity injections.⁹⁶ The AFP also administered \$14 million in expenses on behalf of the Commonwealth government during 2015–16 (a reduction of \$4 million compared with 2014–15).⁹⁷

Future Directions project

2.76 The annual report describes the Future Directions project as follows:

90 Mr Andrew Wood, Acting Chief Operating Officer, AFP, *Committee Hansard*, 14 June 2017, p. 7.

91 Mr Wood, AFP, *Committee Hansard*, 14 June 2017, p. 7.

92 AFP, *Annual Report 2015–16*, p. 98.

93 AFP, *Annual Report 2015–16*, p. 72.

94 AFP, *Annual Report 2015–16*, p. 72.

95 AFP, *Annual Report 2015–16*, p. 72.

96 AFP, *Annual Report 2015–16*, p. 72.

97 AFP, *Annual Report 2015–16*, p. 72.

The AFP Future Directions project was launched in July 2015 to assess the future challenges for the AFP and the long-term capability required for the AFP to meet those challenges.

Key features of the project include:

- ▶▶ a foreseeable global operating environment for Australia, and hence for the AFP, in the coming decade
- ▶▶ how external drivers may shape the operating environment
- ▶▶ the type of capability the AFP needs to meet future demand.⁹⁸

2.77 The AFP told the committee that the process is 'iterative', and provided the following explanation of the project:

A number of challenges for us are around mindset: How do we investigate? What is a modern investigation? What do we require in terms of capability as we move forward into the next 10 years, when everybody at this table is gone? Well, maybe they will be around, but I will not be. What do we want to do? Is it around disruption and investigations, and what do we require? In the past, we have stacked everything around being a police officer and having police powers. In the future, maybe that is not the direction in which we want to go. Maybe we need police to be able to do policing things—so exercise police powers—but we need them to be supported by accountants, people who have the forensic ability to look at computers, people who can understand the language of the times. We are looking at it in terms of that. We are looking at it in terms of technology to help us sift through the vast amount of data that is there. Back when I was a fraud detective I thought it was daunting that we would go to a major tax brief and the room would be half as big as this one and stacked half to the ceiling full of files, and you would think you would never get through it. That is a drop in the ocean now. That data that you have to go through is on someone's phone now.

There is no way humanly possible to go through that sort of information, so we need high-end data analytics and we need people who can understand that and help us build those capabilities. That is the sort of stuff we are looking at in the future across all investigations, not just our standard crime investigations but all the high-end stuff that we do, and a lot of it is about bringing a lot of data together and being able to understand it. But we need the people and the capabilities. We are in a competitive market, particularly for analysts and smart people like that. We are up against not only partners in the intelligence community; we have state partners as well. So it is a very competitive market. I reiterate exactly what Deputy Commissioner Neil Gaughan said: for anybody sitting at the back of the room who wants a job in our organisation in the future—work in engineering or high-end science work—those are the sorts of places they are going to get jobs, because they are the sorts of people we are after.⁹⁹

98 AFP, *Annual Report 2015–16*, p. 14.

99 Mr Phelan, AFP, *Committee Hansard*, 14 June 2017, pp 7–8.

2.78 Indeed, the annual report states that the outcomes of the project 'will be reported during 2016–17 but this work continues to both inform, and be informed by, broader AFP strategic alignment activity'.¹⁰⁰

Committee view

2.79 The committee congratulates the AFP on its strong overall performance meeting its KPIs and thanks it for its constructive engagement with the committee.

2.80 The committee acknowledges the complex environment in which the AFP is operating in respect of the AFP's performance against KPIs 5 and 8 and its reduction in results in relation to other criteria noted above. The committee will observe with interest whether the AFP's new organisational structure will enable it to meet its targets in the future.

2.81 The committee considers that the inclusion of more detailed information, for example in respect of KPIs 2 and 4, would assist the committee to better perform its statutory obligation to monitor and review the performance of the AFP.¹⁰¹ The committee expects it would also assist the AFP to identify areas of weakness and/or areas that may require action from government (for example amending relevant legislation).

Oversight of counter-terrorism functions

2.82 The committee has previously recommended in past reports on the AFP annual report that the government introduce amendments to re-establish the committee's oversight of the AFP's counter-terrorism functions under Part 5.3 of the *Criminal Code Act 1995*.

2.83 In response to the committee's report on the *Examination of the Annual Report of the Australian Federal Police 2014-15*, the government outlined its disagreement with this recommendation, stating:

The Government supports the transparency and accountability afforded by appropriate Parliamentary oversight of the AFP's functions and activities. However, legislating for the Committee to have duplicate oversight of the AFP's functions under Part 5.3 of the Criminal Code in addition to the [Parliamentary Joint Committee on Intelligence and Security] would place an unnecessary burden on the AFP.¹⁰²

2.84 Given the government's response, the committee will not re-state its recommendation but it remains concerned that it cannot comprehensively perform its statutory function of oversight of the AFP without the capability to examine the AFP's counter-terrorism activities. This was again illustrated at the committee's hearing on 14 June 2017 where questioning had to be curtailed:

100 AFP, *Annual Report 2015–16*, p. 14.

101 *Parliamentary Joint Committee on Law Enforcement Act 2010*, para. 7(1)(d).

102 Australian Government, *Australian Government response to the Parliamentary Joint Committee on Law Enforcement report: Examination of the Annual Report of the Australian Federal Police 2014–15*, 17 October 2017, p. [1].

Senator SINGH: I do need to draw your attention again to that section of our act that I read out before in relation to terrorism, which is not in this committee's purview. You can ask these questions in another committee, obviously, but not this committee, which is reviewing the annual report of the AFP 2015-16.

Senator ABETZ: And a key performance indicator is counterterrorism. We cannot ask questions about one of the key performance indicators?

Senator SINGH: That is right. I actually raised this last night in my contribution to the tabling of the 2014-15 annual report as an issue for this committee, because we have the rest of the AFP that we can examine bar this one component. It is for another discussion and another time, but I would prefer that this committee did have the purview to examine all of the AFP's operations rather than having it split between this committee and the committee on national security. But that is just how it is, and that is the way it is in the legislation.¹⁰³

Chapter 3

Complaints handling and Ombudsman's findings

3.1 This chapter examines the ongoing management of complaints by the Australian Federal Police (AFP), as well as an overview of the findings of the Commonwealth Ombudsman (the Ombudsman), which has a statutory oversight role of the AFP.

3.2 Examination of the Ombudsman's findings with respect to the AFP is limited to oversight of complaints management and controlled operations, including the use of surveillance devices.

Complaints management

3.3 During the reporting period, the AFP received 494 complaints, a 4 per cent increase on the previous reporting period (477 complaints).

3.4 The committee questioned the AFP about the increase in the number of complaints relating to alleged AFP corruption during the reporting period.¹ The committee was informed that, rather than there being an increase in the incidents of corruption, the reported increase was a result of administrative changes to the way corruption was referred to the Australian Commission for Law Enforcement Integrity (ACLEI), which oversees the integrity of officers of certain law enforcement agencies pursuant to the *Law Enforcement Integrity Commission Act 2006*.²

One of the things on which we agreed with the then ACLEI commissioner in around 2013 was to err on the side of caution and include referrals rather than make a judgement call ourselves on what may or may not fall under the definition of 'serious corruption' under the ACLEI act. So we started referring anything that they might interpret as serious corruption under the definition in their legislation and allowing them to make the decision on whether they wanted to be involved in the matters or not. I am not responsible for this part of the organisation at the moment, but I was at the time that occurred.

Basically, we had a formal request from ACLEI to make sure that we referred matters that could be interpreted as such or that could emerge to be through further investigation. Hence, we started changing the language a bit to include matters that, if established, would be serious corruption, rather than 'we already know they are serious corruption'. It was not a legislative change; it was more of an administrative arrangement where we reached an agreement with the ACLEI commissioner to say we would send them more, and they would then make a call on the matters within that broader group that they wanted to retain an interest in.

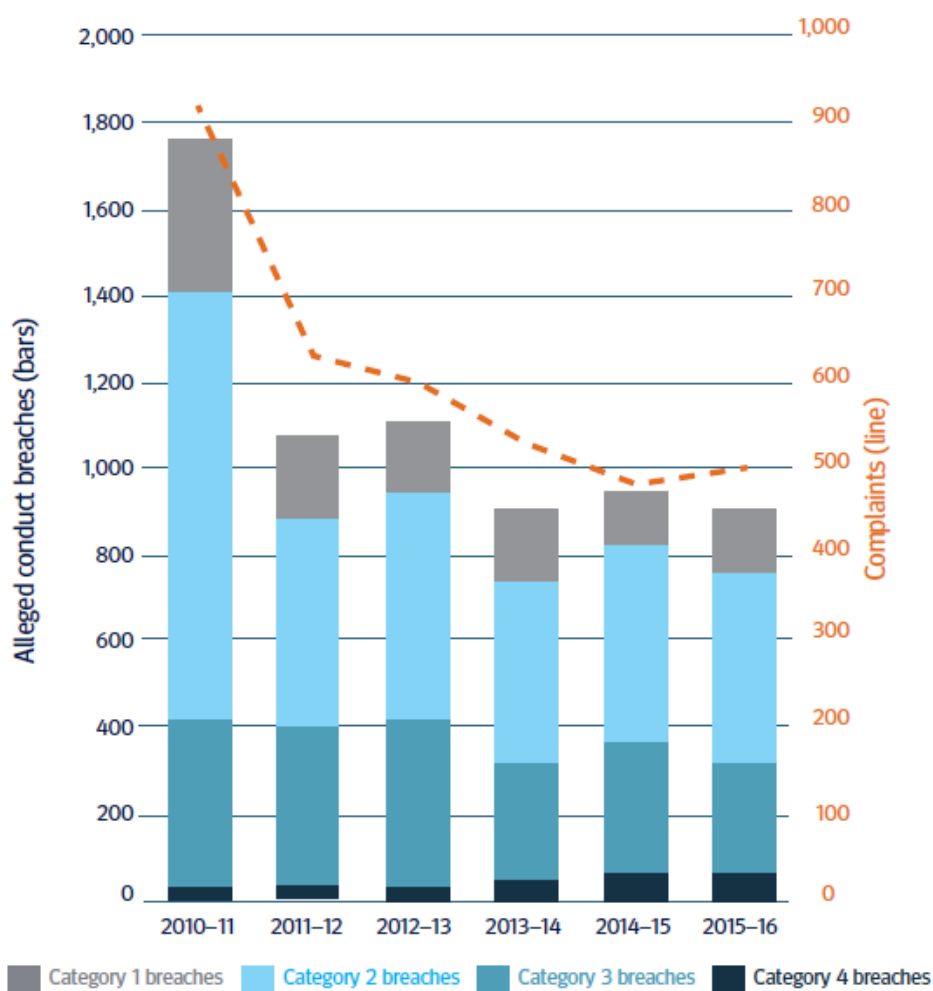
1 Australian Federal Police (AFP), *Annual Report 2015–16*, p. 84.

2 *Law Enforcement Integrity Commission Act 2006*, s. 19. For a definition of 'law enforcement agency' see section 5 of the Act.

Whether or not actual matters have increased, I think the evidence one way or the other for that is to look at the results of investigations by ACLEI and, hence, whether or not they are establishing an increase or a decrease or the same level of matters. Whilst I do not have that specific data in front of me, the impression I certainly have is that, no, the number of matters that have been established by ACLEI as meeting the definition of 'corruption' for incidents occurring within the AFP is not increasing.³

3.5 Figure 1 illustrates the trend in the number of complaints and alleged breaches from 2010–11 to 2015–16.

Figure 1: Trend in the number of complaints and alleged breaches, 2010–11 to 2015–16⁴



3.6 This figure classifies complaints according to the four categories of conduct for AFP appointees under Part V of the *Australian Federal Police Act 1979* (AFP Act), defined as follows:

3 Mr Andrew Wood, Acting Chief Operating Officer, AFP, *Committee Hansard*, 14 June 2017, p. 3.

4 AFP, *Annual Report 2015–16*, p. 84.

Category 1 is the least serious category and relates mainly to customer service breaches. Category 2 is minor misconduct and category 3 is serious misconduct. Category 4 complaints relate to corruption as defined by the Law Enforcement Integrity Act 2006. These matters are deemed to be either significant or non-significant corruption and are referred to [ACLEI].⁵

Committee view

3.7 The committee welcomes the opportunity to engage with the AFP about its complaint management process, and considers that the information in the Annual Report 2015–16 (annual report) is useful by providing a longitudinal analysis of complaints management. The committee encourages the AFP to continue with this approach.

3.8 However, the committee considers that it may also be useful to provide in the annual report examples of complaints that correspond with each category under Part V of the AFP Act for the relevant financial year.

3.9 The committee will observe with interest whether complaints increase or decrease in the next reporting period, given that the AFP's administrative arrangements for reporting corruption matters to ACLEI will have been in place for some time.

Recommendation 1

3.10 The committee recommends that the Australian Federal Police considers including in future annual reports examples of the complaints corresponding to the categories of breaches outlined in Part V of the *Australian Federal Police Act 1979*.

Commonwealth Ombudsman's report—Part V of the AFP Act

3.11 In May 2017, the annual report of the Ombudsman in relation to activities under Part V of the AFP Act was published.⁶

3.12 The Ombudsman's report outlines the results of one review conducted between 1 March 2015 and 29 February 2016. The Ombudsman found that '[o]verall, the records indicated that the AFP is investigating matters appropriately' and that the AFP's administration of Part V of the Act in respect of addressing conduct and practice issues 'is comprehensive and adequate'.⁷

3.13 However, the Ombudsman also identified 'deficiencies in records detailing the consideration of potential conflicts of interest by complaint managers, investigators

5 AFP, *Annual Report 2015–16*, Appendix A, p. 130.

6 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017. Part V of the AFP Act prescribes the process for recording and dealing with AFP conduct and practices issues (that is, conduct which may be corrupt conduct or contravenes AFP professional standards).

7 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, p. 1.

and adjudicators'.⁸ This finding was consistent with previous findings,⁹ and the Ombudsman therefore made the following recommendation:

That the Australian Federal Police demonstrate the consideration of conflict of interest in accordance with the instructions set out in sections 13(c) and 14 of the *AFP National Guideline on Complaint Management*.¹⁰

3.14 The Ombudsman also made specific recommendations in respect of updating relevant guidelines about recording and storing conflicts of interest and the consideration of conflicts of interest, to which the AFP responded that it would review its guidelines and administrative practices.¹¹

3.15 Another issue addressed by the Ombudsman was the identification of 10 complaint notification letters for category 3 conduct issues which provided little or no reasons for a decision.¹² The Ombudsman suggested that AFP Professional Standards (PRS) includes guidance in its PRS Toolkit about 'the appropriate level and type of detail that should be provided in outcome letters'.¹³

3.16 The AFP responded to this suggestion noting that it would seek legal advice about the extent of the information that could be provided, and would liaise with the Ombudsman in the process of updating and implementing PRS support tools.¹⁴

3.17 The Ombudsman also noted that, with respect to issues about the practices or procedures of the AFP (a 'practices issue'),¹⁵ the AFP Practices and Procedures Register did not reflect what action, if any, had been taken when a practices issue was recorded.¹⁶ The AFP agreed with the Ombudsman's suggestion that 'PRS investigate mechanisms for receiving feedback from AFP business areas on practice issues', and

8 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, p. 1.

9 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, p. 8.

10 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, p. 10.

11 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, p. 11.

12 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, p. 11.

13 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, pp 11–12.

14 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, p. 12.

15 *Australian Federal Police Act 1979*, ss 40RI(1).

16 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, p. 12.

advised that PRS continues to seek system enhancements to capture appropriate records.¹⁷

Committee view

3.18 The committee is concerned that the AFP has not fully addressed the Ombudsman's previous findings about deficiencies in records detailing the consideration of potential conflicts of interest. The committee urges the AFP to address the Ombudsman's concerns and in particular, the Ombudsman's recommendations that it demonstrates consideration of conflict of interests in accordance with the instructions set out in sections 13(c) and 14 of the *AFP National Guideline on Complaint Management*, as well as update relevant guidelines in relation to recording, storing and considering conflicts of interest.

3.19 The committee is pleased that the AFP has agreed to consider how it will respond to the Ombudsman's recommendations in relation to PRS outcome letters and records for AFP practices issues. The committee expects these issues to have been addressed by the time it next considers the Ombudsman's report under Part V of the AFP Act.

Ombudsman's report—controlled operations

3.20 Subsection 15HS(1) of the *Crimes Act 1914* (Crimes Act) provides that:

The Ombudsman must, from time to time and at least once every 12 months, inspect the records of each authorising agency to determine the extent of compliance with this Part [Part IAB—Controlled operations] by the agency and by law enforcement officers.

3.21 The AFP is one such authorising agency.¹⁸

3.22 Section 10 of the *Parliamentary Joint Committee on Law Enforcement Act 2010* requires the Ombudsman, at least once per calendar year, to brief the committee about the involvement of the AFP and the Australian Crime Commission (ACC) in controlled operations under Part 1AB of the Crimes Act during the preceding 12 months.

3.23 On 21 June 2017, the committee met with representatives from the Ombudsman who briefed the committee in private about controlled operations, including in respect of the Ombudsman's public report on the controlled operations activities of ACLEI, the AFP and the ACC for the period 1 July 2015 to 30 June 2016.¹⁹

17 Commonwealth Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, May 2017, p. 12.

18 *Crimes Act 1914*, s. 15GC.

19 See Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017.

3.24 In respect of the AFP's disclosure obligations, the Ombudsman noted 'the AFP's cooperation during the inspection and its ongoing frank and open engagement with [its] office'.²⁰

3.25 The Ombudsman made two findings in relation to the AFP's use of controlled operations. The first finding was the failure by the AFP, in two instances, to comply with section 15HC of the Crimes Act, which provides:

...protection from criminal responsibility for conduct during a controlled operation and indemnification of participants against civil liability do not apply to a person's conduct that is, or could have been, authorised under Commonwealth law or a law of a State or Territory relating to electronic surveillance devices or telecommunications interception.²¹

3.26 The Ombudsman identified that:

...two internally granted authorities included activities that could have been authorised under the *Surveillance Devices Act 2004* and the *Telecommunications (Interception and Access) Act 1979*. Warrants authorising these activities are issued externally by a Judge or an Administrative Appeals Tribunal Member under these Acts, once the agency has demonstrated that certain thresholds and conditions have been met.²²

3.27 The Ombudsman therefore suggested that additional legal consultation be undertaken prior to the authorisation of a controlled operation 'so as to determine whether other Commonwealth laws should be relied' upon. The AFP agreed to do so 'on a case-by-case basis'.²³

3.28 The second finding concerned issues previously raised by the Ombudsman about the AFP's compliance with sections 15HA and 15HB of the Crimes Act. The Ombudsman noted that '[t]wo significant issues that were raised in our last report to the Minister were again identified'²⁴ in several instances during the reporting period, namely:

20 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, p. 8.

21 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, p. 8.

22 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, pp 8–9.

23 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, p. 9.

24 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, p. 8.

- where the participants and activities of controlled operations are not covered by an authority, contrary to sections 15HA and 15HB of the Crimes Act,²⁵ and
- instances where the Ombudsman was unable to determine whether a civilian participant in a controlled operation was acting under the direction of law enforcement officers, contrary to 15HA(2) of the Crimes Act.²⁶

3.29 In October 2015, AFP self-disclosed three instances where activities were undertaken without being covered by an authority. The Ombudsman identified a further two instances, and was unable to determine compliance in another two instances.²⁷ In April 2016, the AFP self-disclosed seven instances and the Ombudsman identified a further instance.²⁸

3.30 The Ombudsman suggested that additional targeted training be provided to relevant staff, with which the AFP agreed;²⁹ the Ombudsman also noted that the AFP's self-reporting on this issue allayed possible concerns over 'the AFP's transparency and accountability'.³⁰

Committee view

3.31 The committee thanks the Ombudsman for the private briefing it received about the AFP's exercise of its controlled operations powers during the reporting period.

3.32 The committee supports the Ombudsman's recommendations and urges the AFP to implement its responses to these. It is of particular concern to the committee that there continue to be instances where controlled operations are not covered by an authority. The committee will continue to pay particular attention to the AFP's performance in this regard.

Ombudsman's report—surveillance devices

3.33 Pursuant to section 55 of the *Surveillance Devices Act 2004* (Surveillance Act):

25 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, p. 9.

26 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, p. 9.

27 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, pp 9–10.

28 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, pp 10–11.

29 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, p. 11.

30 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's activities in monitoring controlled operations*, April 2017, p. 11.

The Ombudsman must inspect the records of a law enforcement agency to determine the extent of compliance with this Act by the agency and law enforcement officers of the agency.³¹

3.34 The AFP is one such law enforcement agency.³²

3.35 In September 2016, the Ombudsman published a report which set out the results of its inspections finalised between 1 January 2016 and 30 June 2016.³³ It did not finalise any results from inspections conducted during 1 July 2016 to 31 December 2016.³⁴

3.36 The Surveillance Act:

...regulates the use of surveillance devices by law enforcement agencies. Broadly speaking, the Act allows certain surveillance activities to be conducted under a warrant (issued by an eligible Judge or nominated Administrative Appeals Tribunal (AAT) member), an internally issued authorisation or without formal authority. The Act imposes requirements for the secure storage and destruction of records, and restricts the use, communication and publication of information obtained through the use of surveillance devices. It also imposes reporting obligations on law enforcement agencies to ensure an appropriate level of transparency.³⁵

3.37 No recommendations were made in the September 2016 report as a result of the Ombudsman's inspection of the AFP (which took place during 29 September 2015 to 2 October 2015), but the Ombudsman did note that the AFP had 'taken appropriate remedial action' in response to suggestions in previous reports, and had cooperated with the inspection the subject of this report.³⁶

Committee view

3.38 The committee is satisfied by the Ombudsman's conclusion in the September 2016 report that the AFP has taken appropriate remedial action to address the issues identified as a result of the two previous inspections.

Ombudsman's report—stored communications and telecommunications data

3.39 Pursuant to section 186B of the *Telecommunications (Interception and Access) Act 1979* (TIA Act), the Ombudsman is empowered to conduct inspections of

31 *Surveillance Devices Act 2004*, ss. 55(1).

32 *Surveillance Devices Act 2004*, ss. 6A(6).

33 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, September 2016.

34 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, March 2017, p. 1.

35 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, September 2016, p. 1 (citations omitted).

36 Commonwealth Ombudsman, *Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004*, September 2016, p. 9.

specified law enforcement agencies that can access an individual's stored communications and/or telecommunications data when investigating certain offences.³⁷

3.40 The AFP is one such agency.

3.41 The Ombudsman conducted its stored communications inspection of the AFP from 23 to 25 November 2016. It found the AFP compliant with all inspection criteria,³⁸ with some exceptions (relating to lawfully accessed stored communications, proper management of accessed information, and proper applications for preservation notices).

3.42 For example, the Ombudsman identified two instances where a stored communications warrant had been applied for and issued for multiple persons. This is not provided for under the Act. There were six instances identified where warrants were exercised (served on a carrier) by an unauthorised person.³⁹

3.43 In three instances, the Ombudsman could not determine whether stored communications had been sent by or to the person named on the warrant, meaning the AFP may have dealt with unlawfully accessed stored communications in contravention of the Act.⁴⁰

3.44 There were 25 instances (three foreign and 22 domestic preservation notices) in which the Ombudsman was unable to determine whether they should have been revoked.⁴¹ As a result, the Ombudsman suggested that:

...the AFP may wish to provide additional training for investigators on their legislative obligations under Chapter 3, and in particular, the requirement to revoke preservation notices in certain circumstances.⁴²

37 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, March 2017, p. 1.

38 Namely, whether the AFP is dealing with lawfully accessed stored communications; whether the AFP had properly managed accessed information; whether the AFP had properly applied the preservation notice provisions; whether the AFP satisfied certain record keeping and reporting obligations; and whether the AFP was cooperative and frank.

39 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, March 2017, p. 20.

40 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, March 2017, p. 20.

41 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, March 2017, p. 21.

42 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, March 2017, p. 21.

3.45 Further, the Ombudsman found that '[t]he AFP has demonstrated that it has clear organisational roles and responsibilities in place to achieve compliance with Chapter 4 of the [TIA] Act',⁴³ that is, compliance with provisions relating to access to telecommunications data.

3.46 However, in respect of support for authorised officers, the Ombudsman observed that the AFP had no record of which authorised officers had reviewed an electronic training package on the new privacy and use and disclosure requirements under chapter 4 of the TIA Act.⁴⁴ The Ombudsman suggested that 'training material for authorised officers could more specifically address compliance requirements for authorisations relating to foreign law enforcement agencies'.⁴⁵

Committee view

3.47 The committee welcomes the Ombudsman's report on the exercise of the AFP's powers under the TIA Act, and encourages the AFP to consider implementing those suggestions for further training made by the Ombudsman, in order to increase compliance with the TIA Act.

Mr Craig Kelly MP
Chair

43 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, March 2017, p. 22.

44 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, March 2017, p. 22.

45 Commonwealth Ombudsman, *A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the Telecommunications (Interception and Access) Act 1979*, March 2017, p. 22.

Appendix 1

Witnesses who appeared before the Committee at the public hearing

Wednesday, 14 June 2017 – Canberra ACT

Australian Federal Police

GAUGHAN, Mr Neil, Acting Deputy Commissioner Operations

PHELAN, Mr Michael, Acting Commissioner

SHARPE, Mr David, Acting Deputy Commissioner National Security

WOOD, Mr Andrew, Acting Chief Operating Officer

Appendix 2

Tabled documents, answers to questions on notice and additional information

Answers to questions on notice

1. Answers to questions on notice - Public hearing, 14 June 2017, Canberra (received 13 July 2017) - Australian Federal Police.

Tabled Documents

1. Documents tabled by the Australian Federal Police at public hearing on 14 June 2017

