

Chapter 3

Key Issues

Complaint handling

3.1 The matter of complaints handling has been considered by the committee in previous examinations of AFP annual reports. For example in its examination of the 2010-11 AFP annual report, the committee recommended that in future annual reports, the AFP 'include the average number of days taken to resolve cases for each category of complaint, to enable the committee to better monitor the timeliness of complaint resolution'. The government responded to the recommendation in September 2012 noting that the 2011-12 report would provide information on the average number of days taken to resolve complaint matters in relation to Serious Misconduct/Category 3 investigations.¹

3.2 In compliance with the committee's recommendation, the AFP provided details in the 2012-13 annual report in relation to the timeliness of category 3 complaints.

Complaints management

3.3 In 2012-13, the AFP received a total of 233 category 3 complaints (compared to 223 received in 2011-12). In addition, there were 167 outstanding category 3 complaints in 2012-13 compared to 258 in 2011-12.² The AFP stated that it is committed to ensuring complaints are resolved in a timely manner and has continued to focus on reducing any backlog.³

3.4 The average number of days open for all category 3 complaints submitted, including those still in progress, is 82 days.⁴

3.5 A substantial reduction in the average running time of category 3 complaints was achieved over the review period. The annual report noted that there was a sixfold reduction in category 3 complaints open for over 365 days.⁵

1 Government Response to Parliamentary Joint Committee on Law Enforcement, *Examination of the 2010-11 Annual Reports of the Australian Crime Commission and the Australian Federal Police*, September 2012, www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Annual_Report_s/2012/AFP/~media/Committees/Senate/committee/le_ctte/annual/2012/gov_response/gov_response.ashx (accessed 9 July 2014).

2 AFP, *Annual Report 2012-13*, p. 121.

3 AFP, *Annual Report 2012-13*, p. 121.

4 AFP, *Annual Report 2012-13*, p. 121.

5 AFP, *Annual Report 2012-13*, p. 106.

3.6 In 2012-13, the AFP received a total of 358 category 1 and 2 complaints which is a reduction on 390 complaints in 2011-12.⁶

Commonwealth Ombudsman's findings

3.7 In September 2013, the annual report of the Commonwealth Ombudsman (Ombudsman) in relation to activities under Part V of the *Australian Federal Police Act 1979* (AFP Act) was published.⁷ The Ombudsman was provided with a list of all complaints closed between 1 July 2012 and 28 February 2013 (the review period) which comprised 564 closed complaints. The Ombudsman conducted a review over two periods: part one covering the period 1 July 2012 to 31 October 2012, and part two from 1 November 2012 to 28 February 2013. The Ombudsman found that there were:

- 338 closed complaints in the first period;
- 226 closed complaints in the second period.⁸

3.8 The Ombudsman examined a sample of 183 complaints of which 106 complaints were reviewed in the first period and 77 complaints were reviewed in the second period.⁹ Reviewing the comprehensiveness and adequacy of complaint handling, the Ombudsman's key findings were that there was 'an improvement in performance against the benchmarks between our first and second inspections this year'.¹⁰ A year earlier, the Ombudsman's report had noted that 'processes the AFP implemented in 2011...have been effective'.¹¹

3.9 The Ombudsman noted that the AFP recorded a reduction of 36 per cent in the time it took to finalise category 3 complaints:

...in 90 per cent of cases, the average number of days to finalise category 3 complaints for the period of 1 July 2011 to 30 March 2012 was 447 days.

6 AFP, *Annual Report 2012-13*, p. 121.

7 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, September 2013, www.ombudsman.gov.au/files/activities_under_part_v_07.pdf (accessed 1 August 2014). Part V of the AFP Act governs professional standards and AFP conduct and practice issues.

8 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, September 2013, p. 3.

9 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, September 2013, p. 3.

10 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, September 2013, p. 6.

11 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, November 2011, p. 1.

For the period 1 July 2012 to 30 March 2013 the average number of days to finalise category 3 complaints was 284 days.¹²

Committee view

3.10 The committee is encouraged by the initiatives undertaken by the AFP to improve complaint management. These initiatives have clearly reduced the backlog of complaints and improved the timeliness of handling individual complaints.

Surveillance devices

3.11 The *Surveillance Devices Act 2004* (Surveillance Act) restricts the use, communication and publication of information obtained through the use of surveillance devices. The Surveillance Act also establishes procedures for law enforcement agencies to obtain permission to use such devices in relation to 'criminal investigations and the recovery of children, and imposes requirements for the secure storage and destruction of records in connection with the use of surveillance devices'.¹³ Under subsection 6(1) of the Surveillance Act, the term 'law enforcement agency' includes the AFP, the ACC, ACLEI and state and territory police forces.

3.12 The Ombudsman's report into inspections under the Surveillance Act states that it found the AFP to be compliant with the Act with the exception of four cases relating to the use and retrieval of tracking devices.¹⁴ One of these cases was self-disclosed to the Ombudsman by the AFP. However, the annual report notes that the High Tech Crime Operations had received an assessment from the Ombudsman which found the AFP was compliant with the *Telecommunications (Interceptions and Access) Act 1979* for telecommunications interception and described as having good process with regards to its procedures for handling stored communications'.¹⁵

Review period, sample and focus

3.13 The Ombudsman's inspection of AFP surveillance device records was conducted from 4–6 March 2013. It focused on surveillance device warrants and authorisations (and associated records) that expired or were revoked during the period 1 July to 31 December 2012 as well as records relating to the destruction of information carried out during the same period. A report of the results of the inspection was provided to the AFP on 27 August 2013.¹⁶ While all the records held

12 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, September 2013, p. 6.

13 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 1, www.ombudsman.gov.au/files/Surveillance_Devices_March_2014.pdf (accessed 1 August 2014).

14 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 6.

15 AFP, *Annual Report 2012-13*, p. 99.

16 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 6.

by the respective agencies under the Surveillance Act are potentially subject to inspection, under the Ombudsman's discretion¹⁷, the inspections were limited to 'those warrants and authorisations that had expired or were revoked during the relevant inspection period'.¹⁸

3.14 The Ombudsman inspected results related to 86 warrants and authorisations (a 31 per cent sample) and records relating to the destruction of information obtained under 72 warrants and authorisations (a 67 per cent sample).¹⁹

Ombudsman's findings

3.15 Under section 42 of the Surveillance Act, a warrant may be issued in relation to the investigation of a relevant offence where it becomes apparent that there will be a need for extraterritorial surveillance.²⁰

3.16 The Ombudsman's inspection found the AFP compliant with the requirements of the Surveillance Act except for four instances.²¹ The AFP self-disclosed that it had not complied with section 39 of the Surveillance Act in relation to one case in which it had 'applied and was granted a tracking device authorisation (rather than a warrant) in relation to extraterritorial surveillance.'²² In addition, the AFP did not notify the Attorney-General of extraterritorial surveillance in accordance with subsection 42(6) of the Surveillance Act.²³

3.17 The Ombudsman made no recommendations as a result of the inspection, although a 'number of suggestions were made regarding how the AFP could better comply with relevant provisions under the Act.'²⁴ The Ombudsman further noted that the AFP 'initiated an internal review and...as a result, AFP guidance regarding extraterritorial surveillance has been reviewed and updated.'²⁵

17 Subsection 55(5) of the *Surveillance Devices Act 2004*.

18 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 3.

19 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 6.

20 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 7.

21 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 6.

22 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 6.

23 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 6.

24 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 6.

25 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2014, p. 7.

Unexplained wealth

3.18 On 19 March 2012, the committee tabled its report into *Commonwealth unexplained wealth legislation and arrangements*.²⁶ At its public hearing into the AFP's annual report, the committee asked the AFP for an update on unexplained wealth at the federal level. The Commissioner replied that the States and Territories were beginning to recognise the need for federal arrangements due to the current jurisdictional limitations of the Commonwealth in this area. However, the States and Territories were also eager to ensure that the resources are evenly distributed. Commissioner Negus continued:

A lot of it does rest on the states' and territories' confidence that they will get an appropriate share of this type of money. Again, from our perspective, we are more than happy to foster that and to look at appropriate sharing based on resource inputs and other things that should go to states and territories as well...we just want a model that will work, and is fair and equitable to everyone who is putting in.²⁷

Ombudsman's report

3.19 The committee received a report from the Commonwealth Ombudsman regarding the AFP's involvement in controlled operations under Part 1AB of the *Crimes Act 1914* during the preceding 12 months. The report was provided in accordance with section 10 of the *Parliamentary Joint Committee on Law Enforcement Act 2010*. The committee noted the report and has received it as confidential correspondence.²⁸

Committee view

3.20 The committee congratulates the AFP on an extremely productive and successful year in respect of operations, investigations and improved efficiencies.

3.21 The committee recognises that collaboration and cooperation both across Commonwealth agencies, state boundaries and international borders is central to contemporary law enforcement. Over the review period, the AFP has achieved exceptional results which reflect the agency's determination to build relationships with domestic and international partners and contribute to whole-of-government efforts. These efforts are matched by a focus on improving internal processes and implementing more efficient procedures.

Mr Bert van Manen MP

Chair

26 Parliamentary Joint Committee on Law Enforcement, *Commonwealth unexplained wealth legislation and arrangements*, March 2012.

27 Mr Tony Negus, Commissioner, AFP, Committee Hansard, 26 February 2014, p. 4.

28 *Parliamentary Joint Committee on Law Enforcement Act*, s. 10.