



Parliamentary Joint Committee on Law Enforcement

Examination of the Annual Report of the
Australian Federal Police 2013-14

September 2015

The Parliament of the Commonwealth of Australia

**PARLIAMENTARY JOINT COMMITTEE
ON LAW ENFORCEMENT**

**Examination of the Annual Report of the Australian Federal Police
2013-14**

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ABBREVIATIONS

the Act or PJCLE Act	<i>Parliamentary Joint Committee on Law Enforcement Act 2010</i>
ACBPS	Australian Customs and Border Protection Service
ACC	Australian Crime Commission
ACLEI	Australian Commission for Law Enforcement Integrity
AFP	Australian Federal Police
AFP Act	<i>Australian Federal Police Act 1979</i>
annual report	Australian Federal Police Annual Report 2013-14
ANP	Afghan National Police
ATO	Australian Taxation Office
CACT	Criminal Assets Confiscation Taskforce
Criminal Code	<i>Criminal Code Act 1995</i>
FMA Act	<i>Financial Management and Accountability Act 1997</i>
IDG	International Deployment Group
KPI	Key Performance Indicator
Ombudsman	Commonwealth Ombudsman
PGPA Act	<i>Public Governance, Performance and Accountability Act 2013</i>
PJCIS	Parliamentary Joint Committee on Intelligence and Security
SLG	Strategic Leaders' Group
Surveillance Act	<i>Surveillance Devices Act 2004</i>
the bill	Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014
the committee or PJCLE	Parliamentary Joint Committee on Law Enforcement

Recommendations

Recommendation 1

3.22 The committee recommends the Australian Federal Police include greater detail in the Annual Report with reference to all category 1, 2 and 3 complaints, including the period in which they are received, how long they take to investigate and resolve, how many are 'carried over' financial years and what proportion are substantiated.

Recommendation 2

4.21 The committee recommends that the government introduce legislation to re-establish the Parliamentary Joint Committee on Law Enforcement's oversight function with respect to the monitoring, reviewing or reporting on the performance by the Australian Federal Police of its functions under Part 5.3 of the Criminal Code.

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). 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.¹

Report under consideration

1.2 The AFP Annual Report 2013-14 (annual report) was presented to the Minister for Justice, the Hon Michael Keenan MP, on 1 October 2014. It was tabled in the Senate on 27 October 2014² and in the House of Representatives on 30 October 2014.³

1.3 The committee's report into the annual report is divided into three substantive chapters.

1.4 Chapter 2 examines issues related to the AFP's performance against its Key Performance Indicators (KPIs), together with an examination of its financial statements and staffing profile.

1.5 Chapter 3 examines key law enforcement and accountability issues arising in 2013-14, including the AFP's internal complaint handling performance and issues arising from the Commonwealth Ombudsman's statutory responsibility to oversee aspects of the work of the AFP.

1.6 Chapter 4 contains an overview of recent changes to the oversight of the AFP by the committee, due to changes implemented by the government as part of an overhaul of national security arrangements.

Examination of the report

1.7 In examining the annual report, the committee held a public hearing at Parliament House, Canberra on 4 March 2015. The witnesses who appeared before the committee are listed in Appendix 1.

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

2 *Journals of the Senate*, No. 60—27 October 2014, p. 1604.

3 *Votes and Proceedings*, No. 80—30 October 2014, p. 952.

Acknowledgements

1.8 The committee acknowledges the cooperation of the AFP Commissioner, Andrew Colvin APM OAM, and other AFP officers who assisted the committee in conducting its examination.

1.9 The committee takes this opportunity to congratulate Commissioner Colvin, who was appointed Commissioner on 1 October 2014.⁴

1.10 The committee also wishes to thank the former Commissioner, Tony Negus APM, for his commitment and dedication to the AFP during his 32 years of service.

4 Australian Federal Police, 'Andrew Colvin appointed as AFP Commissioner', *Media release*, 1 October 2014, www.afp.gov.au/media-centre/news/afp/2014/october/Media%20Release%20Andrew%20Colvin%20appointed%20as%20AFP%20Commissioner.aspx?source=rss, (accessed 1 September 2015).

Chapter 2

Australian Federal Police Annual Report 2013-14

Background

2.1 The Australian Federal Police (AFP) is Australia's international law enforcement and policing representative and the government's chief source of advice on policing issues. The role of the agency is to:

...enforce Commonwealth criminal law, to contribute to combating organised crime and to protect Commonwealth interests from criminal activity in Australia and overseas as a key member of the national security community. The AFP leads and contributes to many whole-of-government national security initiatives.¹

2.2 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 the laws of the Commonwealth and the property of the Commonwealth (including Commonwealth places) and the safeguarding of Commonwealth interests;
- the provision of police services in relation to the Australian Capital Territory, the Jervis Bay Territory and Australia's external territories (Christmas Island, Cocos (Keeling) Islands and Norfolk Island);
- the provision of protective and custodial functions as directed by the Minister;
- the provision of police services and police support services to assist or cooperate 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 to establishing, developing and monitoring peace, stability and security in foreign countries.²

2.3 The AFP's strategic priorities are determined in accordance with section 8 of the AFP Act and the revised Ministerial Direction, issued on 12 May 2014 under subsection 37(2) of the AFP Act.³ Further examination of the revised Ministerial Direction is undertaken in Chapter 3.

Annual reporting and compliance

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

1 Australian Federal Police (AFP), *Annual Report 2013-14*, p. 12.

2 AFP, *Annual Report 2013-14*, p. 12.

3 AFP, *Annual Report 2013-14*, p. 3; AFP, *Ministerial Direction*, www.afp.gov.au/about-the-afp/governance/ministerial-direction, (accessed 11 September 2015)

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.⁴

2.5 During the 2013-14 reporting period, the AFP was a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997* (FMA Act). As an FMA Act agency, the AFP was required to comply with the *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*,⁵ prepared by the Department of the Prime Minister and Cabinet and approved by the Joint Committee of Public Accounts and Audit. The annual report's compliance with these requirements is set out in a compliance index.⁶

2.6 Based on the committee's assessment of the annual report, it fulfils these requirements.

2.7 Due to the passage of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) future AFP annual reports will be produced according to the requirements in that Act.

AFP focus 2013-14

2.8 During the reporting year, the AFP continued to focus on reducing criminal and other security threats to Australia's collective economic and societal interests. The AFP concentrated on five key areas, namely:

...establishing and commencing operation of the National Anti-Gangs Taskforce. The taskforce will enhance Commonwealth investigative, intelligence and technical capabilities; deliver enhanced national and international intelligence-led policing; and inform the development of prevention and disruption activities at jurisdictional and Commonwealth levels;

supporting the whole-of-government United Nations Security Council effort by providing policing expertise, advice and capacity development;

delivering official development assistance programs in the Pacific, Timor-Leste, Afghanistan and the Republic of South Sudan;

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

5 Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, 29 May 2014, www.dpmc.gov.au/sites/default/files/publications/Requirements_for_Annual_Reports.pdf, (accessed 26 August 2015).

6 AFP, *Annual Report 2013-14*, p. 215.

maintaining strong liaison and operational links with international partners to disrupt serious criminal and national security threats; and contributing to the whole-of-government approach to combating fraud and corruption.⁷

AFP achievements 2013-14

2.9 Commissioner Colvin highlighted a number of the AFP's key achievements in 2013-14, which included:

- the completion of the 6 and-a-half-year commitment to support the Afghan National Police (ANP);
- the fiftieth year of unbroken peacekeeping operations in Cyprus;
- the tenth anniversary of the Regional Assistance Mission to Solomon Islands;
- implementation of the National Anti-Gangs Squad;
- expansion of the deployment in Papua New Guinea;
- restraint of \$134 million worth of criminal assets;
- 95 per cent conviction rate; and
- 311 new recruits graduated from the AFP College in Canberra.⁸

2.10 In his opening statement, Commissioner Colvin noted that the AFP had successfully met its KPIs for the third year in a row.⁹

2.11 Commissioner Colvin informed the committee that, throughout the year in review, the AFP had continued several successful international engagements. These included the withdrawal of the AFP from Afghanistan after a 6 and a half year tour, and 50 years of peacekeeping duties in Cyprus with the United Nations.¹⁰

2.12 Commissioner Colvin also drew the committee's attention to the 10th anniversary of the AFP's Regional Assistance Mission in the Solomon Islands.¹¹

Strategic Leaders' Group

2.13 The Strategic Leaders' Group (SLG) is the AFP's peak advisory committee. Its membership consists of the Commissioner as Chair, Deputy Commissioners, Chief Operating Officer, Chief Police Officer ACT Policing, National Managers and two non-executive members. The SLG assists the Commissioner to make decisions and to exercise his statutory responsibilities. The SLG also supports the Commissioner in developing and enhancing partnerships with external stakeholders.¹²

7 AFP, *Annual Report 2013-14*, p. 14.

8 Mr Andrew Colvin, Commissioner, AFP, *Committee Hansard*, 4 March 2015, pp 1–2.

9 Mr Andrew Colvin, Commissioner, AFP, *Committee Hansard*, 4 March 2015, p. 1.

10 Mr Andrew Colvin, Commissioner, AFP, *Committee Hansard*, 4 March 2015, p. 1.

11 Mr Andrew Colvin, Commissioner, AFP, *Committee Hansard*, 4 March 2015, p. 1.

12 AFP, *Annual Report 2013-14*, p. 17.

2.14 During 2013-14, the SLG considered many issues, including:

- the strategic implications of an increasingly constrained fiscal environment, and future challenges and opportunities for the AFP;
- the strategic and operational environment and the consequent implications for the AFP's operational activity, technical and capability development, and international presence;
- the evolving national security environment, strategic alliances, and approaches to maintaining a focus on coordination and partnerships;
- the establishment of the Investigations Standards and Practices Group;
- operational and workforce performance, and the AFP's continued success against its key performance indicators;
- the response to government priorities, and promotion of organisational flexibility and innovation to deal with the ever-changing criminal environment;
- the reaffirmation of the AFP Strategic Plan 2012–2015;
- the implementation of the AFP's Strategic Capability Plan and development of a new strategic plan for information and communications technology; and
- developments in proceeds of crime, law reform, cybercrime, offshore fighters, technology and innovation.¹³

2.15 The SLG also maintained its focus on continuing the AFP's strong organisational and financial performance.¹⁴

AFP outcomes and planned performance

2.16 The AFP's outcomes and planned performance for 2013-14 were initially set out in the Attorney-General's Portfolio Budget Statements.¹⁵

2.17 While the AFP had four programs under Outcome 1, during the 2013-14 reporting period these were merged into two following Portfolio Additional Estimates Statements.¹⁶ The original outcomes and programs for 2013-14 are included below.

2.18 The annual report suggests that the new program structures are intended to streamline the AFP's reporting to meet whole-of-government reporting:

Three programs under Outcome 1 (1.1: National Security—Policing, 1.3: Operations—Policing and 1.4: Close Operational Support) were consolidated into a single program (1.1: Federal Policing and National Security). Program 1.2 was renamed with the more appropriate title of International Police Assistance. Simplified reporting enables the AFP to

13 AFP, *Annual Report 2013-14*, p. 17.

14 AFP, *Annual Report 2013-14*, p. 17.

15 Attorney-General's Department, *Portfolio Budget Statements 2013-14*, pp 149–150.

16 Attorney-General's Department, *Portfolio Budget Statements 2014-15*, p. 131.

meet whole-of-government reporting requirements while maximising flexibility in the use of resources. There was no change to the AFP's functions or activities as a result of the program restructure.¹⁷

Original Outcome 1

2.19 At the commencement of the reporting year and prior to the consolidation and reorganisation of the AFP's programs, Outcome 1 focused on numerous objectives of the AFP, including reducing criminal and security threats to Australia's collective economic and societal interests through co-operative policing services.¹⁸ It included the following programs:

- Program 1.1 (National Security—Policing) focused on crime prevention and comprises the Counter Terrorism, Aviation and Protection functions of the AFP;
- Program 1.2: (International Deployments) delivered initiatives on behalf of the Australian Government that are aimed at improving regional and international security, stability and governance. It was supported by the International Deployment Group;
- Program 1.3: (Operations—Policing) sought to reduce criminal threats to Australia's collective economic and societal interests by employing a multidisciplinary approach to combating crimes against the Commonwealth. The program comprised the Serious and Organised Crime (which includes the International Network) and Crime Operations functions; and
- Program 1.4: (Close Operations Support) provided specialist support to the AFP's national security and operations programs, in particular keeping pace with advancements in technology and science, and comprised the Operations Support, Intelligence, Forensic and Data Centres, and High Tech Crime Operations, Legal and Proceeds of Crime Litigation functions.

Revised Outcome 1

2.20 The revised programs are detailed below.

Revised program 1.1 (Federal Policing and National Security)

2.21 Program 1.1 now incorporates Aviation, Counter Terrorism and Protection, the Crime Program, International Network and some joint task forces with Commonwealth and law enforcement partners, and Close Operation Support.¹⁹ It merges former programs 1.1, 1.3 and 1.4.

Revised program 1.2 (International Police Assistance)

2.22 Program 1.2 promotes national security by providing policing support for international partners. This program is facilitated by the AFP's official development

17 AFP, *Annual Report 2013-14*, p. 15.

18 Attorney-General's Department (AGD), *Portfolio Budget Statements 2013-14*, pp 149–150.

19 AGD, *Portfolio Budget Statements 2014-15*, p. 131.

assistance capacity-building in Asia and the Pacific, together with AFP contributions to United Nations missions.²⁰

Outcome 2—ACT Community Policing

2.23 Outcome 2 requires a safe and secure environment through policing activities on behalf of the Australian Capital Territory (ACT) Government. The AFP fulfils this outcome via ACT Policing, as the community policing arm of the AFP in the ACT.²¹

2.24 A purchase agreement between the ACT Minister for Police and Emergency Services, the AFP Commissioner and the Chief Police Officer of the ACT specifies the cost, type and level of services required by the ACT Government from the AFP. Through ACT Policing, the AFP provides crime and safety management, road safety, prosecution and judicial support, and crime prevention to the ACT Government.²²

Key Performance Indicators

2.25 As a result of the changes to Outcome 1, the number of AFP KPIs was revised down from 33 in 2012-13 to 29 in 2013-14.²³ Following the significant program restructure (outlined above), performance indicators have been updated to reduce duplication, with targets for performance raised to 85 per cent for stakeholder satisfaction and kept at 90 per cent for conviction rates.²⁴

2.26 In his opening remarks to the committee, Commissioner Colvin noted:

[The 2013-14 Annual Report] culminates the third year in a row that we have met all of our key performance indicators which, again, was the first time in the AFP's history that we have been able to string together such a consistent term of meeting our KPIs. Of course, KPIs are only one window to view the AFP through. We feel the annual report is a very good document to outline the activities of the organisation—our successes and the things that we have been involved in for that 2013-14 year.²⁵

2.27 The annual report notes that cooperation between the AFP's business partners continues to be measured via the AFP Business Satisfaction Survey. The survey itself notes that the AFP reached 92 per cent stakeholder satisfaction in 2014, the highest figure recorded.²⁶

20 AGD, *Portfolio Budget Statements 2014-15*, p. 132.

21 AFP, *Annual Report 2013-14*, p. 31.

22 AFP, *Annual Report 2013-14*, p. 31.

23 AFP, *Annual Report 2012-13*, p. 28; AFP, *Annual Report 2013-14*, p. 22.

24 AFP, *Annual Report 2013-14*, p. 22.

25 Mr Andrew Colvin, Commissioner, AFP, *Committee Hansard*, 4 March 2015, p. 1.

26 AFP, *Annual Report 2013-14*, p. 22.

2.28 Performance also continues to be measured by 'conviction rates', which denote cases where at least one defendant was convicted or where the case is proven without conviction.²⁷

2.29 Given the amalgamation of programs and restructure of KPIs within the annual report itself, the committee has examined the AFP's performance against the revised outcomes and programs, as set out below.

Outcome 1—key highlights and performance

2.30 The AFP met all of its KPI targets for three successive financial years, with its performance improving on 12 indicators (1–3, 5, 7, 13–16, 23–24 and 27).²⁸

Program 1.1: Federal Policing and National Security

2.31 Program 1.1 focuses on the reduction of criminal and security threats to Australia:

The program's primary focus is to reduce criminal and security threats to Australia's collective economic and societal interests 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 Commonwealth, state and territory, and international partners.²⁹

2.32 Following the restructure outlined above, Program 1.1 contains three major components, largely reflective of the structure of previous Programs 1.1, 1.3 and 1.4:

- National Security—Policing;
- Operations—Policing; and
- Close Operation Support.³⁰

2.33 The annual report notes that the AFP exceeded all performance targets within Program 1.1.³¹

National Security—Policing

2.34 The annual report notes that the AFP exceeded all performance targets in National Security—Policing through:

- matching the previous year's 100 per cent prosecution, disruption or intelligence referral outcome within counter-terrorism investigations (KPI 6);
- increasing the level of community confidence in the AFP's contribution to law enforcement and security at Australian airports to 87 per cent (KPI 7); and

27 AFP, *Annual Report 2013-14*, p. 24.

28 AFP, *Annual Report 2013-14*, p. 22.

29 AFP, *Annual Report 2013-14*, p. 23.

30 AFP, *Annual Report 2013-14*, p. 24.

31 AFP, *Annual Report 2013-14*, p. 24.

- maintaining a positive result for protection services, including Uniform Protection (KPI 10) and Close Personal Protection (KPI 11).³²

Operations—Policing

2.35 The annual report notes successes against Operations—Policing KPIs as follows:

- continued adherence to the Organised Crime Strategic Framework resulting in an increase to 75 per cent in jointly conducted serious and organised crime investigations (KPI 13);
- success in drug and fraud investigations reflected in a strong return on investment (KPI 14);³³
- targeted criminal financial investigations (KPI 15) resulting in restraint of \$134 million of criminal assets restrained by the Criminal Assets Confiscation Taskforce (KPI 16) above the target of \$43.2 million.³⁴

Close Operation Support

2.36 The annual report details that the AFP's use of forensics allowed it to meet and/or exceed service-level targets for quality, timeliness and throughput in KPIs 17, 18 and 19 respectively.³⁵

2.37 The annual report also notes the AFP's successes against KPIs 20–23, which relate to High Tech Crime Operation investigation targets for high impact cases, together with case throughput. The latter two KPIs saw the AFP meet requirements for increasing technology crime awareness for AFP staff and school communities.³⁶

Operations and multi-agency taskforces 2013-14

2.38 The AFP continues to lead Australia's capacity to detect and defeat serious and organised crime through the Commonwealth Organised Crime Strategic framework.³⁷

32 AFP, *Annual Report 2013-14*, p. 24.

33 The annual report notes that seizures of illicit drugs within the Drug Harm Index were estimated at 8 tonnes valued in Australian illicit markets at \$2.3 billion. Further, the AFP estimates financial return from financial related crime investigations was \$444 million. See: AFP, *Annual Report 2013-14*, p. 25.

34 AFP, *Annual Report 2013-14*, p. 25.

35 AFP, *Annual Report 2013-14*, p. 25.

36 AFP, *Annual Report 2013-14*, p. 25.

37 AFP, *Annual Report 2013-14*, p. 53.

2.39 Some operational highlights across the AFP's programs include:

- establishment of the National Anti-Gangs Taskforce, with a focus on the enhancement of Commonwealth investigative, intelligence and technical capabilities and delivery of enhanced national and international intelligence-led policing;³⁸
- Operation Rathlin—a multi-agency counter-terrorism investigation undertaken by the Sydney based Joint Counter Terrorism Team, with representatives from NSW Police, NSW Crime Commission and the Australian Security Intelligence Organisation;³⁹
- Operation Duntulum—an investigation into the activities of a group of people believed to be engaging in or preparing to engage in the ongoing conflicts in Syria and Iraq in contravention of the *Crimes (Foreign Incursions and Recruitment) Act 1978*;⁴⁰
- Operation Celestine—a joint operation between the AFP, Australian Customs and Border Protection Service (ACBPS), and the Royal Canadian Mounted Police that uncovered a travel scam targeting elderly victims and using them as drug mules, including through countries which enforce the death penalty on drug smugglers;⁴¹
- Operation Ecrue—a joint operation between the AFP and Royal Thai Police that resulted in the seizure of 140 kilograms of heroin destined for Australia and the associated disruption to a transnational crime syndicate;⁴²
- Operation Ebrima—a joint Commonwealth-State investigation that commenced with the detection of more than 200 kilograms of methamphetamine in a six-wheeled truck from China. The estimated street value of the methamphetamine was up to \$200 million, and three individuals have been arrested, two of whom have since pleaded guilty and are awaiting sentencing. To date, it represents one of the largest cross jurisdiction and cross agency investigations within Australia, through the collaborative efforts of the AFP, State police (Victoria, New South Wales and Queensland), ACBPS, Australian Taxation Office (ATO), AUSTRAC, the ACC and the NSW Crime Commission.⁴³

National Anti-Gangs Squad

2.40 As outlined above, the AFP is particularly focused on anti-gang operations. This is demonstrated by the establishment of the National Anti-Gangs Squad which

38 AFP, *Annual Report 2013-14*, p. 14.

39 AFP, *Annual Report 2013-14*, p. 35.

40 AFP, *Annual Report 2013-14*, p. 35.

41 AFP, *Annual Report 2013-14*, p. 41.

42 AFP, *Annual Report 2013-14*, p. 50.

43 AFP, *Annual Report 2013-14*, p. 50.

provides 'a coordinated nationwide capability to deter, detect and disrupt gang-related crimes'.⁴⁴ Since its inception the Squad has responded to over 380 requests for assistance from state and territory jurisdictions, and assisted in disrupting serious gang-related criminal activity through 72 gang-related investigations.⁴⁵ To date, the operations of the Squad has resulted in the AFP seizing a total of 205 firearms, over \$1.2 million in cash and more than 40 motor vehicles.⁴⁶

Waterfront Operations

2.41 As discussed above, the AFP is actively enhancing its cross jurisdictional and multi-agency operations. Waterfront Operations is an example of a multi-jurisdictional and multi-agency initiative which targets serious and organised crime on the waterfront across the east coast of Australia.⁴⁷ The AFP supports the operations of waterfront taskforces in New South Wales, Victoria and Queensland.

2.42 In 2012-13, the waterfront taskforces resulted in more than 56 arrests and seized seven firearms, seizure of:

- 38 kilograms of illicit drugs and precursor chemicals;
- 177 tonnes of tobacco;
- more than \$2 million in cash; and
- \$12.7 million in restrained assets.⁴⁸

2.43 During the committee's hearing, Commissioner Colvin emphasised the importance of multi-jurisdictional and multi-agency collaboration:

...the key message...is that multiagency task forces work. Within the federated system that we have in Australia it is impossible for us to act in isolation... Through MOUs and arrangements and structures, these teams are formalising those multinational or multijurisdictional arrangements... The key for us is bringing multiple agencies to the table that have not just different jurisdictional responsibilities but also different skill sets... For instance, with the waterfront task forces, one of the key initiatives that we do is engage with some non-traditional partners...who know the business, they know the vulnerabilities and they know the industry far better than a police officer can. The success of places like our waterfront task forces and the National Anti-Gangs Squad is built on the fact that multijurisdictional, multiagency task forces is the only way to be successful against organised crime.⁴⁹

44 AFP, *Annual Report 2013-14*, p. 52.

45 AFP, *Annual Report 2013-14*, p. 52.

46 AFP, *Annual Report 2013-14*, p. 52.

47 AFP, *Annual Report 2013-14*, p. 52.

48 AFP, *Annual Report 2013-14*, p. 52.

49 Mr Andrew Colvin, Commissioner, AFP, *Committee Hansard*, 4 March 2015, p. 7.

Proceeds of crime activities 2013-14

2.44 As discussed with reference to KPI 15 above, the AFP continues to lead and host the Criminal Assets Confiscation Taskforce (CACT). Through the CACT, the AFP is able to enhance its focus on following and seizing money in targeted criminal investigations.⁵⁰

2.45 The CACT coordinates a dynamic and systematic approach to criminal asset confiscation, while aiming to remove the revenue of crime. The taskforce utilises resources of the ACC and the ATO, and consists of teams based in Brisbane, Sydney, Melbourne, Perth and Canberra that together provide national coverage.⁵¹

2.46 The annual report notes that referrals from the CACT to the ATO have resulted in the initiation of numerous cases, of which 59 have been finalised resulting in over \$30 million being raised in liabilities. Current cases have an estimated liability of around \$137 million.⁵²

2.47 Of particular note are two operations involving the CACT which are discussed in further detail below.

Operation Nosean

2.48 In October 2012, the CACT and the ATO commenced an investigation into suspected money laundering and tax fraud in relation to the purchase and sale of gold bullion. The annual report notes:

The objective of the fraud is to generate tax refunds that entities are not entitled to. The estimated loss to the Commonwealth from groups alleged to be involved in this fraud type is in excess of \$300 million and growing.⁵³

2.49 Operation Nosean, through specific targeting of a criminal group who had allegedly defrauded the Commonwealth of more than \$40 million, resulted in CACT executing 16 search warrants in New South Wales and Victoria. The operation resulted in the restraint of \$22 million in cash and other assets that were 'deemed to be proceeds of crime'.⁵⁴

Operation Euclase

2.50 Operation Euclase refers to an investigation in which a Chinese man arriving in Australia was investigated for allegedly receiving proceeds of crime through a large bag on closed circuit television. The subsequent investigation into the person's use of the funds resulted in his arrest in Sydney, and the arrest of another individual in Hong

50 AFP, *Annual Report 2013-14*, p. 53.

51 AFP, *Annual Report 2013-14*, p. 53.

52 AFP, *Annual Report 2013-14*, p. 54.

53 AFP, *Annual Report 2013-14*, p. 55.

54 AFP, *Annual Report 2013-14*, p. 55.

Kong. The annual report notes that 'the AFP acted quickly to freeze and restrain all funds associated with the crime. Further cooperation with Hong Kong is continuing'.⁵⁵

Program 1.2: International Police Assistance

2.51 Program 1.2 focuses on reducing criminal and national security threats through the International Development Group (IDG). The IDG contains numerous collaborative police development missions, internationally mandated peace operations and, in accordance with Australian foreign policy, civil policing assistance.⁵⁶

2.52 In 2013-14 the IDG exceeded its KPIs (24 and 25), as demonstrated by consistently positive feedback and high external stakeholder rating.⁵⁷

2.53 Further, the annual report notes performance against additional KPIs in Program 1.2:

The IDG committed 95 per cent of its resources to the Asia-Pacific region (KPI 27), while remaining consistent with the World Bank's rule-of-law indicators (KPI 28). The IDG also exceeded the targets for two new KPIs relating to the training of law and justice officials (KPI 26) and assistance to national security and aid priority countries (KPI 29).⁵⁸

Development assistance program in Afghanistan

2.54 A specific example of Program 1.2 in operation was the AFP's development assistance program in Afghanistan from 2007 to 2014. The operation resulted in the deployment of 136 AFP members to mentor and train the Afghan National Police (ANP) on aspects related to community policing.⁵⁹ During that period, the AFP trained and mentored over 2000 ANP officers.⁶⁰

2.55 In line with Australia's broader drawdown in the region, the AFP has gradually withdrawn its members from Afghanistan since 2013.⁶¹ The final withdrawal was completed in January 2014, when all AFP members returned home safely.⁶²

2.56 Commissioner Colvin remarked that the operation in Afghanistan had been 'a very successful deployment' under difficult circumstances and conditions.⁶³

55 AFP, *Annual Report 2013-14*, p. 55.

56 AFP, *Annual Report 2013-14*, p. 30.

57 AFP, *Annual Report 2013-14*, p. 30.

58 AFP, *Annual Report 2013-14*, p. 30.

59 Mr Andrew Colvin, Commissioner, AFP, *Committee Hansard*, 4 March 2015, p. 2; See also: AFP, *Answer to Question on Notice*, (received 26 March 2015), p. 1.

60 AFP, *Answer to Question on Notice*, (received 26 March 2015), p. 1.

61 AFP, *Answer to Question on Notice*, (received 26 March 2015), p. 1.

62 AFP, *Annual Report 2013-14*, p. 6.

63 Mr Andrew Colvin, Commissioner, AFP, *Committee Hansard*, 4 March 2015, p. 2.

Resources and staffing

2.57 The AFP reported a departmental operating deficit of \$12 million which represents an increase from a deficit of \$2.5 million in 2012-13.⁶⁴

2.58 The report notes the deficit can be attributed to expenses for the costs of redundancies, 'recognised at the end of the financial year to allow the AFP to establish a sustainable workforce in the future'.⁶⁵

2.59 The departmental operating income for 2013-14 was \$1296 million, an increase from \$1282 million in 2012-13,⁶⁶ that comprises:

- \$992 million in government appropriation (\$978 million in 2012-13);
- \$159 million from the ACT government for policing services (\$146 million in 2012-13); and
- \$158 million in other revenue (\$145 million in 2012-13).⁶⁷

2.60 The AFP also received an additional \$31 million (\$25 million in 2012-13) in government appropriation for capital expenditure and \$59 million (\$11 million in 2012-13) as an equity injection 'for new initiatives'.⁶⁸ In 2013-14, the AFP administered \$20 million in expenses on behalf of the government (an increase from \$17 million in 2012-13).⁶⁹

2.61 As of 30 June 2014, the AFP had 6853 staff comprising 3620 sworn police, 639 protective service officers, 2582 unsworn staff and 12 employees in the Asia-Pacific Group.⁷⁰

2.62 The following table provides a comparison of staffing figures between 2012-13 and 2013-14.⁷¹

64 AFP, *Annual Report 2012-13*, p. 107; AFP, *Annual Report 2013-14*, p. 104.

65 AFP, *Annual Report 2013-14*, p. 104.

66 AFP, *Annual Report 2012-13*, p. 107; AFP, *Annual Report 2013-14*, p. 104.

67 AFP, *Annual Report 2012-13*, pp 107–108; AFP, *Annual Report 2013-14*, p. 104.

68 AFP, *Annual Report 2012-13*, pp 107–108; AFP, *Annual Report 2013-14*, p. 104.

69 AFP, *Annual Report 2012-13*, pp 107–108; AFP, *Annual Report 2013-14*, p. 104.

70 AFP, *Annual Report 2013-14*, p. 104.

71 AFP, *Annual Report 2012-13*, p. 208; AFP, *Annual Report 2013-14*, p. 198.

Table 1—AFP staffing 2012-13 and 2013-14

Sworn status	2012-13	2013-14
Sworn police	3573	3620
Protective service officer	733	639
Unsworn staff	2591	2582
Total	6897	6841
Asia-Pacific Group	12	12
Grand Total	6909	6853

Committee view

2.63 The committee is satisfied that the AFP has met its KPIs for 2013-14, and notes it has done so with a higher overall stakeholder satisfaction rating of 92 per cent, up from 90 per cent in 2012-13. The committee notes the significant streamlining of programs within Outcome 1 and will continue to monitor the AFP's outputs in Outcomes 1 and 2 over the coming reporting period.

2.64 In relation to the AFP's financial statements, the committee agrees that the AFP has had a successful year, notwithstanding the increase in operating deficit from \$2.5 million in 2012-13 to \$12 million in 2013-14. The committee notes that the deficit is relatively small, at approximately one per cent of the AFP's operating income. The committee will continue to monitor the AFP's financial statements accordingly.

Chapter 3

Key issues and accountability

3.1 This chapter examines some issues of ongoing interest to the committee. These include the Australian Federal Police's (AFP) revised Ministerial Direction, its ongoing work to monitor complaint handling processes, as well as an overview of the findings of the Commonwealth Ombudsman (the Ombudsman), who 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. These issues are examined below.

Revised Ministerial Direction

3.3 As indicated in Chapter 2, the committee noted that the Minister for Justice, the Hon Michael Keenan MP, issued a revised Ministerial Direction to the AFP pursuant to section 8 of the *Australian Federal Police Act 1979* (AFP Act).¹ The AFP explained that the new Ministerial Direction resulted in the addition of numerous instructions, including:

- protecting Commonwealth revenue;
- contributing to whole-of-government efforts to prevent Australia from being a safe haven for proceeds of crime, including from corruption, or used for money laundering purposes;
- leading Commonwealth's efforts to disrupt organised criminal groups by restraining and seizing their assets and unexplained wealth;
- maintaining focus on investigating Commonwealth offences, particularly those relating to firearms and foreign bribery; and
- taking a leadership role and collaborating with state and territory law enforcement to deliver national law enforcement initiatives to disrupt the operation of criminal gangs, reduce the proliferation of child exploitation material and reduce the harm caused by illicit drugs.²

3.4 The AFP noted that three instructions had been removed from the Ministerial Directions. These include redundant instructions to implement relevant recommendations of the Federal Audit of Police Capabilities and two other items:

1 AFP, *Annual Report 2013-14*, p. 3.

2 AFP, *Answers to Questions on Notice*, p. 15, (received 26 March 2015).

- taking account of the Government's long-standing opposition to the application of the death penalty (this is part of AFP's standard procedures); and
- building a relationship of trust with the indigenous community (this was a focus during Operation Pleach — the joint NT Police/AFP Child Abuse Taskforce in the Northern Territory).³

3.5 When asked about the AFP's policy on the sharing of intelligence with agency partners overseas in the broad context of the Bali Nine case, Commissioner Colvin responded:

The AFP operates under very strict guidelines as to what we will share, how we will share it and what considerations will be taken into account. Inherent in those guidelines is an actual prohibition without further approval on some information and that also depends on the stage of the investigation...

What I will say, though, is that we do work now, and we did then, to very strict guidelines that tell us when we can share information and what sort of information we should share. Obviously, we have an international remit and we work with our partner agencies in countries in our region, as well as more broadly in the world. We do so, knowing that they operate very different judicial systems and very different law enforcement systems to us. We probably know those systems and those countries better than anybody else, so we are best placed to make those judgements within the confines and parameters that we have been set.⁴

Complaints handling process

3.6 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'.⁵ The government responded to the recommendation in September 2012 noting that the 2011-12 report would provide information on the average number of

3 AFP, *Annual Report 2013-14*, p. 3.

4 Mr Andrew Colvin, Commissioner, AFP, *Committee Hansard*, 4 March 2015, pp 9–10.

5 See: Parliamentary Joint Committee on Law Enforcement, *Examination of the Australian Federal Police Annual Report 2012-13*, pp 19–20; Parliamentary Joint Committee on Law Enforcement, *Examination of the Australian Federal Police Annual Report 2011-12*, pp 21–22; Parliamentary Joint Committee on Law Enforcement, *Examination of the 2010-11 Annual Reports of the Australian Crime Commission and the Australian Federal Police*, pp 26–28.

days taken to resolve complaint matters in relation to Serious Misconduct/Category 3 investigations.⁶

Complaints management

3.7 In 2013-14, the AFP received a total of 263 category 3 complaints (compared to 398 received in 2012-13).⁷

3.8 In 2013-14, the AFP received a total of 564 category 1 and 2 complaints which is a reduction on 670 complaints in 2012-13.⁸ These figures do not include Category 3 complaints, nor corruption issues investigated in concert with Australian Commission for Law Enforcement Integrity (ACLEI).⁹

3.9 The 2013-14 annual report does not include detail on the number or the length of time of investigations of outstanding Category 3 complaints in 2013-14.

3.10 Further discussion on these matters is included below in the committee view, from paragraph 3.16.

Commonwealth Ombudsman's findings

3.11 In February 2015, 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.¹⁰

3.12 The Ombudsman was provided with a list of all complaints closed between 1 July 2013 and 30 June 2014 (the review period) which comprised 564 closed complaints. The Ombudsman conducted a review over two periods: part one covering the period 1 March and 31 August 2013, and part two from 1 September 2013 to 28 February 2014. The Ombudsman found that there were:

- 305 complaints closed in the first period; and
- 225 complaints closed in the second period.¹¹

6 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](http://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 31 August 2015).

7 AFP, *Annual Report 2013-14*, p. 99.

8 AFP, *Annual Report 2013-14*, p. 194.

9 AFP, *Annual Report 2013-14*, p. 194.

10 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, February 2015, www.ombudsman.gov.au/files/activities_under_part_v_08.pdf, (accessed 31 August 2015). Part V of the AFP Act governs professional standards and AFP conduct and practice issues.

11 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, February 2015, p. 4.

3.13 The Ombudsman examined a sample of 226 complaints of which 124 complaints were reviewed in the first period and 102 complaints were reviewed in the second period.¹²

3.14 In its 2013-14 report, the Ombudsman found that the AFP's administration of Part V of the AFP Act was 'comprehensive and adequate'.¹³ The report noted ongoing issues within the complaint management process but found that those issues 'did not necessarily impact the outcomes of those complaints.'¹⁴

3.15 The Ombudsman noted that the AFP had not notified his office of approximately 20 per cent of Category 3 complaints:

Based on the data provided there were 188 category 3 conduct issues for which the AFP should have notified the Ombudsman under s 40TM(1) of the Act. We did not locate notifications for 39 of these issues.¹⁵

3.16 The Ombudsman reported that the AFP had advised that classifications of complaints to particular categories may have been reassigned to a different category prior to the investigation being accepted. The report notes:

During this period, the use of categories is no more than an administrative process until a [Professional Standards] Coordinator endorses a particular category. The AFP advised that it will notify our office of all category 3 conduct issues once they have been appropriately endorsed by a [Professional Standards] Coordinator. We will consider this in our future reviews.¹⁶

3.17 The Ombudsman's report notes that the AFP has subsequently reviewed and amended its processes to ensure better compliance with subsection 40TM(1) of the AFP Act, requiring notifications being made to the Ombudsman's office.¹⁷

12 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, February 2015, p. 4.

13 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, February 2015, p. 5.

14 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, February 2015, p. 5.

15 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, February 2015, p. 10.

16 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, February 2015, p. 10.

17 Commonwealth Ombudsman and Law Enforcement Ombudsman, *Annual Report on the Ombudsman's activities under Part V of the Australian Federal Police Act 1979*, February 2015, p. 10.

Committee view

3.18 The committee notes that previous AFP annual reports have included detail of category 1, 2 and 3 complaints. This information is particularly useful for determining the AFP's performance in completing investigations in a timely manner.

3.19 The committee has previously commented at length on the AFP's internal complaints handling processes,¹⁸ and has found that detail extremely helpful.

3.20 The committee is of the view that the AFP should include more detail on its complaints handling outcomes. In this regard, the committee draws the AFP's attention to its previous annual reports as well as the *Annual Report of the Integrity Commissioner 2013-14*, and the inclusion of detail of investigations carried over across financial years.¹⁹

3.21 The committee believes ACLEI's table is a clear example of how that data could be conveyed in future AFP annual reports. Further, the same detail as previously provided, with reference to how many complaints are received in the reporting period, how long they take to investigate and resolve, how many are 'carried over' financial years and the proportion substantiated, is necessary for the committee to fulfil its statutory role to examine the annual reports of the AFP.

Recommendation 1

3.22 The committee recommends the Australian Federal Police include greater detail in the Annual Report with reference to all category 1, 2 and 3 complaints, including the period in which they are received, how long they take to investigate and resolve, how many are 'carried over' financial years and what proportion are substantiated.

Surveillance devices

3.23 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

18 See: Parliamentary Joint Committee on Law Enforcement, *Examination of the Australian Federal Police Annual Report 2012-13*, pp 19–20; Parliamentary Joint Committee on Law Enforcement, *Examination of the Australian Federal Police Annual Report 2011-12*, pp 21–22; Parliamentary Joint Committee on Law Enforcement, *Examination of the 2010-11 Annual Reports of the Australian Crime Commission and the Australian Federal Police*, pp 26–28.

19 Australian Commission for Law Enforcement Integrity (ACLEI), *Annual Report of the Integrity Commissioner 2013-14*, p. 195.

devices'.²⁰ 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.

3.24 The Ombudsman's report into inspections under the Surveillance Act notes that while it makes no formal recommendations, there were numerous instances of non-compliance and instances in which the Ombudsman could not determine whether the AFP had acted in compliance with the Surveillance Act.²¹

3.25 The Ombudsman's report also notes:

Additionally, [the Ombudsman] requested documents relevant to the inspection which were not provided by the AFP. As the documents fell within the scope of s 55(3) of the Act, which entitles the Ombudsman to full and free access to all records relevant to an inspection, the Ombudsman issued to the AFP a Notice to Produce under s 56(2) of the Act on 21 October 2014.

The AFP complied with the Notice, and the documents were considered in finalising our inspection findings.²²

Review period, sample and focus

3.26 The Ombudsman's inspection of the AFP's surveillance device records was conducted from 17 to 21 March 2014.²³ It focused on surveillance device warrants and authorisations (and associated records) that expired or were revoked during the period 1 July to 31 December 2013 as well as records relating to the use of tracking device authorisations.²⁴

3.27 A report of the results of the inspection was provided to the AFP on 18 December 2014.²⁵ While all the records held by the respective agencies under the Surveillance Act are potentially subject to inspection:²⁶

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 2015, p. 1, www.ombudsman.gov.au/files/Surveillance_devices_six_monthly_report_-_1_July_to_31_December_2014_-_March_2015_-_WEB_VERSION.pdf, (accessed 31 August 2015).

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 2015, p. 7.

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 2015, p. 7.

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 2015, p. 2.

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 2015, p. 2.

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 2015, p. 2.

26 *Surveillance Devices Act 2004*, ss. 55(5).

...the Ombudsman's discretion under s 55(5) of the Act was exercised to limit inspections to those warrants and authorisations that had expired or were revoked during the relevant inspection period.²⁷

3.28 The Ombudsman inspected results relating to 100 warrants and authorisations (a 32 per cent sample) and 18 records relating to tracking device authorisations (a 52 per cent sample).²⁸

Ombudsman's findings

3.29 While the Ombudsman's report made no recommendations as a result of the inspection carried out in March 2014, it did make several observations of instances where it was unable to determine compliance. These are set out below.

Use of devices without the authority of a warrant or authorisation

3.30 The report notes the AFP self-disclosed three instances where surveillance devices had 'been used without lawful authority.'²⁹ The first instance related to an incident where a tracking device was used despite not having been authorised by a warrant. This was because the relevant officer was unaware that the device installed under the warrant was a tracking device. In this instance, the AFP advised that it sought a variation to the warrant to include the device in question so that it could be lawfully retrieved.³⁰

3.31 The second instance was a further example of when a tracking device was installed without a warrant. In this case, the AFP advised the Ombudsman that '[the AFP] relied upon the information contained within the application, which listed a tracking device, rather than the information listed on the warrant'.³¹

3.32 The third incident was when surveillance devices installed on a premises continued to be used 'after it was identified the person listed on the warrant was no longer at the premises'.³² The AFP told the Ombudsman that once identified, the devices were discontinued and the unlawfully obtained material was quarantined.³³

27 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 3.

28 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 2.

29 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 7.

30 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 8.

31 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 8.

32 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 8.

33 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 8.

AFP response

3.33 The AFP advised the Ombudsman that it has 'introduced a range of new administrative practices and processes to prevent similar occurrences in future.'³⁴

Records to confirm actions taken under warrants

3.34 The Ombudsman's report raises instances where the AFP had not kept accurate records on the use, and maintenance, of listening devices on premises. Specifically:

For a number of warrants authorising the installation, use and maintenance of devices on premises where the person named on the warrant is reasonably believed to be or likely to be, there was insufficient information to establish whether this was the case.³⁵

3.35 The report notes that the Ombudsman has raised this issue with the AFP in the previous report to the Attorney-General and suggested to the AFP that its existing compliance measures were no longer effective.³⁶

AFP response

3.36 The Ombudsman report notes that the AFP has advised it has subsequently implemented additional procedures to ensure sufficient records are kept.³⁷

Keeping protected information for longer than five years

3.37 Under paragraph 46(1)(b) of the Surveillance Act, the chief officer (officer in charge of an investigation) must ensure that a record or report comprising protected information is destroyed if they are satisfied that it is no longer required by the law enforcement agency.³⁸

3.38 The chief officer may also certify that the information be retained if it is still likely to be required by the law enforcement agency. This decision must be made within 5 years after the record or report's creation. This decision must be re-made every 5 years until the information is destroyed. The Ombudsman's report notes:

We identified that protected information obtained under three warrants had been kept for a period longer than five years, however there were no records on file to indicate the chief officer had certified that it could be

34 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 8.

35 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 8.

36 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 8.

37 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, p. 8.

38 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, pp 8–9.

retained or that the protected information had been entered into legal proceedings.³⁹

AFP response

3.39 In response the AFP stated that the instances referred to by the Ombudsman occurred due to an internal destruction freeze.⁴⁰

Ombudsman's report

3.40 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.⁴¹

Committee view

3.41 The committee is generally satisfied as to how the AFP has discharged its obligations with respect to controlled operations and listening devices. Nevertheless, the committee is concerned with some ongoing administrative issues that appear to have been overlooked or repeated across inspection periods. Inadequacies in record keeping arrangements are a particularly relevant concern to the committee.

3.42 The committee will monitor these ongoing administrative issues in future reporting periods.

39 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, pp 8–9.

40 Commonwealth Ombudsman, *Report to the Attorney-General on the results of inspections of records under s 55 of the Surveillance Devices Act 2004*, March 2015, pp 8–9.

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

Chapter 4

Changes to the Committee's oversight of the AFP

4.1 As noted in Chapter 1, the Parliamentary Joint Committee on Law Enforcement (PJCLE) is established under the *Parliamentary Joint Committee on Law Enforcement Act 2010* (the PJCLE Act).

4.2 The PJCLE is responsible for the oversight of two important Commonwealth law enforcement agencies—the Australian Federal Police (AFP) and the Australian Crime Commission (ACC). It is required to report to both houses of Parliament on certain matters related to those agencies' performance, including their annual reports.

4.3 In 2014, the government introduced a bill to amend Australia's national security arrangements, the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (the bill). Following the bill's introduction in the Senate¹ it was referred to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) on 24 September 2014 by the Attorney-General.²

4.4 In its inquiry into the bill, the PJCIS recommended that oversight functions of the PJCIS be extended to include the counter-terrorism functions of the AFP:

[PJCIS] recommends that the functions of the Parliamentary Joint Committee on Intelligence and Security be extended to encompass the counter-terrorism activities of the Australian Federal Police, including, but not limited to, anything involving classified material.³

4.5 The PJCIS's recommended extension of its oversight powers was clearly intended to be additional to, rather than as a substitute for existing oversight mechanisms, including those of the PJCLE:

While not wanting to impinge on these oversight mechanisms including the important role played by the Parliamentary Joint Committee on Law Enforcement, the Committee considers its oversight powers should be extended to include the counter-terrorism activities of the AFP. The Committee can provide a useful *additional* oversight function, particularly in relation to classified material that is not able to be considered by other parliamentary committees.⁴

4.6 The government subsequently accepted the recommendation of the PJCIS. In doing so, the revised explanatory memorandum noted the bill would now also

1 *Journals of the Senate*, No. 55—24 September 2014, p. 1487.

2 Parliamentary Joint Committee on Intelligence and Security, *Advisory report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, October 2014, p. vix.

3 Parliamentary Joint Committee on Intelligence and Security, *Advisory report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, October 2014, p. xv.

4 Parliamentary Joint Committee on Intelligence and Security, *Advisory report on the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, October 2014, p. 80 (emphasis added).

amend the PJCLE Act to remove oversight of counter-terrorism functions of the PJCLE. The removed oversight relates specifically to the functions of the AFP under Part 5.3 of the Criminal Code, which relates to counter-terrorism functions:

The amendment to subsection 7(2) removes the oversight function with respect to the monitoring, reviewing or reporting on the performance by the AFP of its functions under Part 5.3 of the Criminal Code from the Parliamentary Joint Committee on Law Enforcement. The amendments will confer that authority on the Parliamentary Joint Committee on Intelligence and Security.⁵

4.7 The PJCLE notes that this amendment went one step further than the recommendation of the PJCIS, by expressly excluding the PJCLE from monitoring, reviewing or reporting on the performance by the AFP of its functions under Part 5.3 of the *Criminal Code Act 1995* (Cth) (Criminal Code).⁶

Counter-terrorism functions of the AFP

4.8 Part 5.3 of the Criminal Code represents legislative implementation of the Agreement on Counter-terrorism Laws (the agreement), made by the Council of Australian Governments (CoAG) on 25 June 2004. The agreement notes:

The Prime Minister, Premiers and Chief Ministers agreed on 5 April 2002 to take whatever action is necessary to ensure that terrorists can be prosecuted under the criminal law, including a reference of power so that the Commonwealth may enact specific, jointly-agreed legislation...

The Commonwealth subsequently enacted legislation designed to enhance Australia's capacity to deal with terrorists, including certain Federal offences contained in Part 5.3 of the Commonwealth Criminal Code.⁷

4.9 At first glance the transfer of oversight responsibilities of the counter-terrorism activities of the AFP may seem logical. The PJCIS, which is responsible for reviewing certain matters relating to Australia's intelligence and security agencies, clearly has a legitimate interest in the counter-terrorism activities of the AFP.

4.10 However, because the AFP's counter-terrorism activities will often overlap with its important law enforcement functions, the change potentially creates uncertainty and may lead to unintended gaps in parliamentary oversight. The PJCLE is concerned that the transfer may affect the work of this committee and its future ability to effectively oversee the work of the AFP.

4.11 The PJCLE's current examination of the AFP's annual report is one clear example where the new arrangement may create uncertainty. As is stated elsewhere in

5 Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, *Revised explanatory memorandum*, p. 180.

6 *Parliamentary Joint Committee on Law Enforcement Act 2010*, ss. 7(2).

7 Council of Australian Governments (CoAG), *Agreement on Counter-terrorism Laws*, 25 June 2004, <https://www.coag.gov.au/sites/default/files/IGA%20on%20Counter-Terrorism%20Laws.pdf> (accessed 11 September 2015) p. 2.

this report, it is a legislative requirement for the PJCLE to examine each annual report of the AFP.⁸ The AFP's annual report provides details about its counter-terrorism activities. In this instance, the PJCLE has decided to examine the entire AFP annual report, as a gap in parliamentary oversight would otherwise emerge were the committee not to examine the counter-terrorism aspects of the report.

4.12 The overlap is acknowledged in the AFP's submission to the PJCLE's recent inquiry into financial related crime. That submission clearly shows how terrorism and non-terrorism issues can be intertwined:

The AFP also has strong relationships with state and territory jurisdictions and Australia's industry sector as well as 48 cooperation agreements with foreign law enforcement agencies. The majority of these agreements relate to combating transnational crime, including people smuggling and terrorism.⁹

4.13 The ACC's recent report *Organised Crime in Australia 2015* confirms the growing interconnections between organised crime and terrorism:

As counter-terrorism efforts throughout Australia are enhanced, the linkages between terrorism and the broader organised crime and volume crime environments are being identified. These linkages include, but are not limited to, Australians who finance terrorist activities, Australians who leave Australia to support terrorist causes, and who may return to Australia with the intent of inflicting harm on the Australian community, or may be recruited by organised crime groups seeking the specialist skill sets they developed in foreign conflicts.¹⁰

4.14 The ACC's report concludes that 'Australian law enforcement will increasingly look at the evolving challenges posed by the nexus between organised crime and terrorism over the next two years'.¹¹

4.15 These examples from Australia's peak law enforcement agencies highlight the interconnectedness of transnational crime and terrorist group activities. This inherent complexity creates potential uncertainty for both committees in determining how to proceed with inquiries where there is crossover between the AFP's counter-terrorism functions and its other law enforcement roles.

Committee view

4.16 The PJCLE is concerned that the new arrangements could create uncertainty for the future work of both the PJCIS and the PJCLE.

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

9 *Parliamentary Joint Committee on Law Enforcement, Inquiry into financial related crime, AFP, Submission 6*, p. 9.

10 ACC, *Organised Crime in Australia 2015*, May 2015, p. 7.

11 ACC, *Organised Crime in Australia 2015*, May 2015, p. 83.

4.17 The PJCLE notes the bill was considered in the Senate under a limitation of debate.¹² Limitations of debate can prevent senators from fully discussing the amendments and, in this case, the proposed oversight arrangements.

4.18 The PJCLE understands the significance of maintaining appropriate oversight of Commonwealth law enforcement agencies in an increasingly high-risk security environment. However, the PJCLE questions how desirable or sustainable it is for two statutory parliamentary committees to have separate oversight responsibilities over separate but often interacting responsibilities of the AFP. The PJCLE is concerned that this situation may lead to gaps in future parliamentary scrutiny of the AFP's functions.

4.19 The PJCLE supports the original recommendation of the PJCIS which was to extend the oversight functions of that committee, without impinging on the oversight responsibilities of the PJCLE. The PJCLE is of the view that the amendments contained in the Foreign Fighters bill did not effectively implement the recommendations of the PJCIS. This has resulted in uncertainty surrounding the oversight functions of the PJCLE and the potential for gaps in future parliamentary scrutiny of the AFP's functions.

4.20 Therefore the committee recommends that the government introduce amendments to re-establish the PJCLE's oversight of the AFP's counter-terrorism functions.

Recommendation 2

4.21 The committee recommends that the government introduce legislation to re-establish the Parliamentary Joint Committee on Law Enforcement's oversight function with respect to the monitoring, reviewing or reporting on the performance by the Australian Federal Police of its functions under Part 5.3 of the Criminal Code.

Mr Craig Kelly MP

Chair

12 *Journals of the Senate*, No. 61—28 October 2014, p. 1631.

Appendix 1

Witnesses who appeared before the Committee at the Public Hearing

Wednesday, 4 March 2015 – Canberra ACT

Australian Federal Police

Mr Andrew Colvin, Commissioner

Mr Michael Phelan, Deputy Commissioner, National Security

Ms Leanne Close, Deputy Commissioner, Operations

Mr Graham Ashton, Deputy Commissioner, Capability

Mr Andrew Wood, Chief Operating Officer

