

ANNUAL REPORT 2004-05



4

GOVERNANCE & ACCOUNTABILITY

CHAPTER 4

GOVERNANCE AND ACCOUNTABILITY

The AFP has continued the process of reviewing and where necessary revising its corporate governance framework and processes. This has included the continued evolution and consolidation of the AFP functional business model, the operations of the Executive Management Board and its various reporting committees, a refresh of a range of governance policies and instruments and a continued focus on corporate compliance with internal and external legislative and reporting requirements. This is underpinned by an emphasis on AFP core values and ethical conduct.

INTERNAL AUDIT

This report marks five years since Internal Audit was separated administratively from Professional Standards, on 1 July 2000. Prior to this date, and since, Internal Audit reported functionally to the Security and Audit Team (SAT). Internal Audit also provides secretariat services to the SAT and the Australian National Audit Office (ANAO).

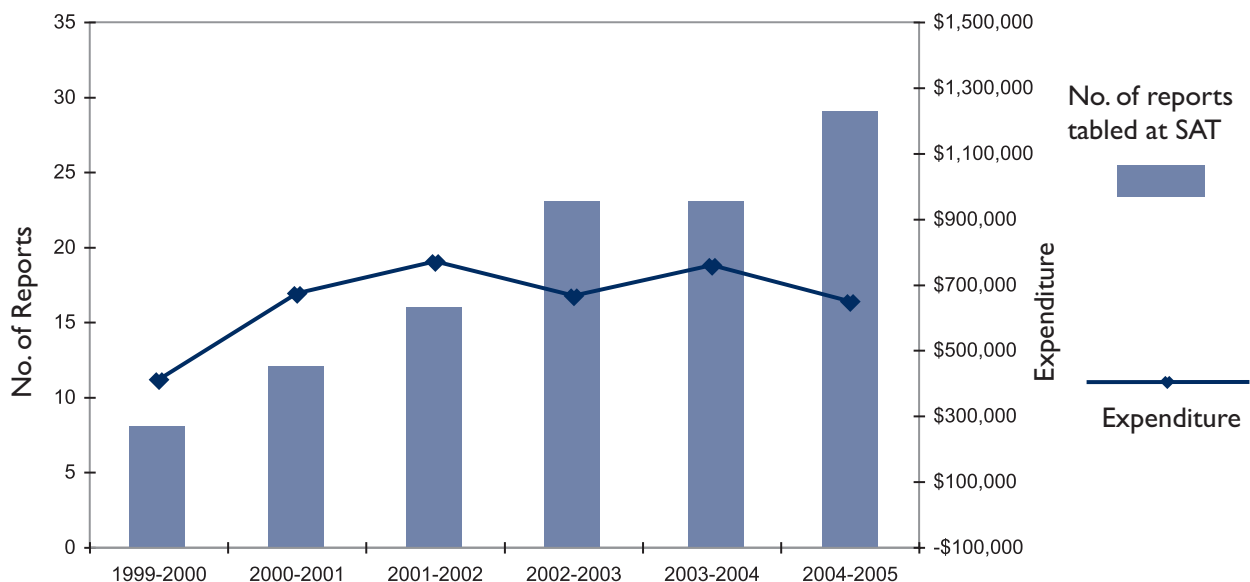
The following graph fairly reflects that the change in administrative arrangements has yielded benefits in a more cost-effective and a more productive Internal Audit function. Internal Audit has reported administratively to the Chief Operating Officer, who is also the Chairman of SAT, since 1 July 2000.

Significant projects completed by Internal Audit can be found in Appendix Table 3. Internal Audit provided SAT with 29 audit reports. Another 12 reports are in train based on audits in progress at the end of the period.

In accordance with best practice, an independent Quality Review of Internal Audit was undertaken by the Institute of Internal Auditors–Australia. The report issued late in the annual reporting period states that overall Internal Audit is operating satisfactorily and in some respects could rightly claim to be demonstrating better practices. In September 2005 SAT will finalise a position on the recommendations made, which also go to the practices of the SAT itself, after taking advice from the Manager Internal Audit and the Chief Operating Officer.

As foreshadowed in last year's report, a second independent member joined the SAT, and during this period, the SAT consciously increased its scrutiny of issues covered by the Commonwealth Protective Security Manual. Last year's report also noted the expiration of the standing deed of offer with a panel of four consultancy firms as at 30 June 2005. A request for tender in regard to a new panel was released to the market on 28 April 2005 and the evaluation of responses is expected to lead to contract negotiations by the end of July 2005.

Chart 7 – Number of Internal Audit Reports tabled and Internal Audit actual expenditure



Significant internal audits conducted included:

- Human Sources—which found that handlers are actively managed to deliver accountable, secure and effective informant handling services
- People Smuggling—which found that the joint AFP–DIMIA People Smuggling Strike Team was functioning in accordance with the expectations of the Australian Government and that the AFP specifically, in respect of its people smuggling outputs, was operating in an effective, efficient and ethical manner
- Accounts Payable—relevant systems in both AFP and PS were found to be free of significant risks.

SAT follows up with line management directly on the implementation of agreed recommendations from previous internal reports. In that regard SAT continues to actively monitor improvements in the systems for handling property and exhibits. The implementation of an audit package within the PROMIS property module in early December 2004 is seen as a key advance and will be the subject of further internal audit coverage in 2005–06.

PROTECTIVE SERVICE QUALITY MANAGEMENT TEAM

The PS Quality Management Team (QMT) conducted 60 quality management system (QMS) audits of PS stations and national headquarters enabling support functions in 2004–05. Included in the program of audits were the PS operations at the Australian High Commissions in Port Moresby and Kuala Lumpur and the Australian Embassy in Jakarta. The PS QMS continued to meet the accreditation requirements of the International Standard AS/NZS ISO 9001:2000.

The PS QMS is independently audited by Lloyds Register Quality Assurance (LRQA). In addition to the QMS audits 12 LRQA site surveillance audits were completed in this period. The LRQA surveillance reports for June 2005 indicated:

“Very significant progress has been made both at Station and National Management level in ensuring compliance to requirements and defining strategic directions and planning for the business.”

INSURANCE AND RISK MANAGEMENT

The AFP has in place a range of strategies to address risk management issues including insurance cover. These strategies aim to provide a systematic approach to identification and mitigation of risks and informed decision making.

Comcover provides a range of insurance services in the areas of:

- public and professional liability
- property loss and business continuity
- motor vehicle
- overseas travel—medical emergencies and personal effects.

The AFP participated in the Comcover benchmarking exercise in April 2004, resulting in a discount of 3 per cent for AFP’s insurance premium for 2004–05.

The AFP purchases additional insurance from commercial sources with respect to leased vehicles and the shipment and storage of employees’ personal effects in the case of overseas deployments of more than six months.

The AFP has in place business continuity plans for each of its key sites across Australia, and also covers disaster recovery for critical information and communications technology services for the AFP.

The AFP conducts risk assessments for all large procurement activities and assesses risks throughout the life of the contracts. Risk mitigation strategies include:

- detailed risk assessments applied to the tender evaluation stage
- full consultation with legal advisers at all stages of the procurement and contract negotiation phases
- regular meetings with and the provision of reports from the contractors
- annual risk assessments of the large contracts undertaken by the contract managers.

All internal business cases seeking capital funding for projects are required to incorporate a comprehensive risk assessment to evaluate the likely success of the project.

AUDITOR-GENERAL REPORTS

The ANAO audited the AFP’s financial statements and performance measures relating to the AFP’s community policing contract with the ACT Government.

The Auditor-General did not include the AFP as a primary subject of any report tabled in Parliament. However, the AFP was an active participant in the following cross-agency audits:

No.10 – The Senate Order for Departmental and Agency Contracts (Calendar Year 2003 Compliance) notes the exclusion of a new AFP contract from the Internet listing. ANAO considered that it was appropriate that this

contract was not listed due to reasons of national security.

No.13 – Superannuation Payments for Independent Contractors working for the Australian Government—AFP was among the agencies surveyed and subsequent Internal Audit activity has since quantified the scope of the liability.

No.21 – Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2004—four category B issues were reported for the AFP and subsequent action has cleared these issues.

No.56 – Interim Phase of the Audit of Financial Statements of General Government Sector Entities for the Year Ending 30 June 2005—three new category B issues were reported against the AFP:

- lack of an Updated Fraud Control Plan
- FMIS User Access Management
- Business Continuity Planning

FRAUD CONTROL AND ANTI-CORRUPTION PLAN

The AFP Fraud Control and Anti-Corruption Plan (FCACP) addresses the requirements of the Commonwealth Fraud Control Guidelines.

An updated risk assessment was conducted along functional lines, based on environmental scanning. A new FCACP was then developed and provided to SAT which is the agency Audit Committee for the purposes of the *Financial Management and Accountability Act 1997*.

Almost all action items from the previous FCACP were implemented by 2004, and it was extended into 2004–05 to accommodate preparation of the new FCACP in the context of the move to the new AFP Functional structure.

Progress reporting and updates on implementation were provided to the SAT for reporting on fraud and fraud control activities to the AGD and to the Minister for Justice and Customs.

COMMISSIONER'S DECLARATION

In accordance with Guideline 1.9 and 2.8 of the Commonwealth Fraud Control Guidelines the AFP Commissioner certified he is satisfied there were in place appropriate fraud prevention, detection, investigation, reporting, and data collection procedures and processes to meet AFP needs and comply with the Commonwealth Fraud Control Guidelines.

EXTERNAL SCRUTINY

JUDICIAL DECISIONS AND ADMINISTRATIVE TRIBUNAL DECISIONS IMPACTING ON OPERATIONS

Like other public sector organisations AFP operations and the actions of members are occasionally affected (directly or otherwise) by judicial or administrative decisions. Implications for the AFP in a given case are assessed by the Legal Team which may seek further specialist advice as required. Adjustments to operating procedures or the conduct of members arising from assessments are promulgated throughout the AFP in the most appropriate way – written advice, publication of a directive/guideline or the making of a Commissioner's Order.

The decision of the Supreme Court of Papua New Guinea (PNG) in the Wenge case (Special Reference Pursuant to Section 19 PGSC NO 2 of 2004), delivered on 13 May 2005, significantly affected the rights, privileges, powers and immunities of Assisting Australian Police deployed to PNG. As a result of the decision, Assisting Australian Police were

withdrawn from PNG pending ongoing negotiations with the PNG Government.

Estimates Hearings– Senate Legal and Constitutional Committee

- 15 February 2005–Consideration of Additional Estimates
- 24 May 2005–Consideration of Budget Estimates

Other Parliamentary Committees of Inquiry

- 1 July 2004–Senate Legal and Constitutional Committee – Inquiry into the Telecommunications (Interception) Amendment (Stored Communication) *Bill 2004*
- 26 July 2004–Senate Legal and Constitutional Committee – Anti-Terrorism Bill No.2 2004
- 9 August 2004–Senate Legal and Constitutional Committee – Inquiry into *Provisions of the Crimes Legislation (Telecommunications Offences & Other Measures) Bill (No.2) 2004*
- 23 February 2005–Senate Legal and Constitutional Committee – Inquiry into the *Criminal Code Amendment (Trafficking in Persons) Bill*
- 7 March 2005–Joint Standing Committee on Treaties – UN Convention against Corruption
- 11 March 2005–Senate Standing Committee for the Scrutiny of Bills – Inquiry into Entry, Search and Seizure Provisions
- 19 May 2005–Joint Committee on ASIO, ASIS and DSD – Review of Division 3 of part III of the *Australian Security Intelligence Organisation Act 1979* – Questioning and Detention Powers
- 20 May 2005–Senate Legal and Constitutional References Committee – Inquiry into the *Privacy Act 1988*
- 15 June 2005–Senate Legal and Constitutional Committee – Inquiry into the Crimes Legislation Amendment (Telecommunications Interception and Other Measures) *Bill 2005*

COMMONWEALTH OMBUDSMAN'S REPORTS

In 2004–05, the Ombudsman's office received 696 complaints about the AFP, compared to 712 in 2003–04, a decrease of 2 per cent. There was an increase in complaints finalised, to 749 from 664 in the previous year (up 13 per cent). Fluctuations in complaint numbers have occurred over the past six years.

The Ombudsman's investigations, or oversighting of AFP Professional Standards investigations, included matters arising in Protective Services, the Building

and Accommodation area, and ACT Policing City Watch House.

Due to the high rate of interaction with the public, for the year, the AFP's community policing role remained the primary source of complaints, the majority of which were resolved through workplace resolution. Most complaints were of a relatively minor nature and concerned the alleged conduct of police, such as incivility or rudeness.

The number of complaints received by, or notified to, the Ombudsman concerning the Protective Service (PS) in 2004–05 was 46, compared to seven in the previous year. This increase was an expected consequence of the PS falling under the proactive notification requirements of the Complaints Act from July 2004.

The Commonwealth Ombudsman performs an external scrutiny function in relation to the following AFP activities:

- *Complaints (Australian Federal Police) Act 1981*
 - Investigating complaints about Australian Federal Police members in international, national and community policing roles
 - Monitoring the practices and procedures of the AFP
- *Telecommunications (Interception) Act 1979*
 - Inspecting compliance with the record keeping requirements of the Act
- *Crimes Act 1914*
 - Reporting to Parliament on the adequacy and comprehensiveness of controlled operations records
- *Witness Protection Act 1994*
 - Investigating complaints from people placed on the witness protection program or from unsuccessful applicants
- *Australian Security Intelligence Organisation Act 1979*
 - Investigating complaints about AFP members relating to detention and questioning warrants of suspected terrorists.

COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT

During the year, Ombudsman staff worked on four special investigations under powers conferred by the Complaints (AFP) Act. Two investigations were completed, with the other two investigations to be completed in 2005–06.

One of the investigations examined the adequacy of an internal AFP investigation of alleged corrupt behaviour in the building and accommodation area of the AFP. Following notification by the AFP to the

Ombudsman of a series of complaints and internal allegations of possible corruption, the Ombudsman's office oversighted the AFP's internal investigation of the matter. The investigation focused on two issues: the AFP's ability to identify systemic weaknesses that might have enabled the individual concerned to act corruptly; and whether the AFP's response to the individual's actions was appropriate. The matter was referred to the Director of Public Prosecutions by the AFP and criminal charges have been laid.

TELECOMMUNICATIONS (INTERCEPTION) ACT

Reports on the results of the inspections covering 2003–04 were presented to the Attorney-General in September 2004. The reports provided to the agencies after each inspection concluded there is a high degree of compliance with the detailed requirements of the TI Act. Recommendations were made for improving the administrative and compliance systems and for assisting staff in administering telecommunications interception warrants.

CRIMES ACT

Controlled operations can be broadly described as covert operations carried out by law enforcement officers under the Crimes Act for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious offence. These operations may also result in law enforcement officers engaging in conduct that, unless authorised under a controlled operations certificate, would constitute an offence.

During the year, two inspections of AFP controlled operations records were conducted. The inspections concluded that with some minor exceptions the AFP was complying with the requirements of the Crimes Act and providing comprehensive information in formal reports.

WITNESS PROTECTION ACT

There were two complaints about the AFP's administration of the National Witness Protection Program (NWPP). One complaint was from a person who stated that he was offered participation in the NWPP if he assisted the AFP and that the offer was withdrawn when the person was considered less 'useful' to the AFP. This matter raised potentially serious issues for the administration of the NWPP, as participation in the program cannot be used to induce a person to cooperate with police as an offer of that kind would be in contravention of the Witness Protection Act.

Records showed that the AFP case officers made a formal request for the complainant and his partner to be considered for entry into the NWPP, and that after an appropriate assessment of the complainant's

circumstances, this request was rejected. The AFP was also able to satisfy Ombudsman staff that the AFP officers involved were careful not to create an expectation of witness protection when dealing with the person.

The second complaint concerned promises that the AFP allegedly made to a person before assessment of the complainant's suitability to enter the NWPP. The person also made complaints about the standard of accommodation provided during the time that they were under the AFP's protection.

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION ACT

Recent amendments to the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) provide for the entry and search of property by police in order to arrest and detain persons on behalf of the Australian Security Intelligence Organisation (ASIO). The ASIO Act amendments preserve the complaints role of the Commonwealth Ombudsman under the Complaints Act, by confirming that a detainee can complain about the actions of AFP members making an arrest or overseeing detention.

There were no complaints in 2004–05 arising from the amendments to the ASIO Act.

CONSULTANCY SERVICES COMPETITIVE TENDERING AND CONTRACTING

Work continued on ensuring delivery of goods and services in accordance with the core procurement principle of value for money.

The AFP conducted competitive tendering processes for goods and services including:

- cleaning services
- consultancy services
- forensic equipment
- provision of stationery
- a panel of providers to conduct a program of internal audit.

The National Procurement and Contracts team provides, in consultation with AFP's legal team, procurement and contracting advice to business areas of the AFP.

The IDG has a contracting and procurement team which manages a variety of contracts to support its international missions. These include contracts for the accommodation, logistics and health support for deployed personnel, as well as undertaking a number of procurements aimed at increasing the health and safety of personnel in mission.

CONSULTANCIES

During 2004–05, 30 new consultancy contracts were entered into (including seven contracts under \$10 000) involving total actual expenditure of \$1 424 773. In addition, 18 ongoing consultancy contracts were active in 2004–05, involving total actual expenditure of \$533 479.

Table K – Expenditure on consultants for the three most recent financial years

	2002–03	2003–04	2004–05
New contracts let	21	21	30
Total expenditure (new and ongoing contracts)	\$1 124 278	\$1 004 987	\$1 958 252

Details of consultancy services provided to the AFP for financial year 2004–05 are shown in Table 12 in the Appendixes, and at <www.afp.gov.au> under Government and Corporate, Government Reporting Requirements.

ADVERTISING AND MARKET RESEARCH

For the 2004–05 financial year the AFP paid \$1 371 994 for its advertising needs. This figure includes costs associated with a range of recruitment services. (See Appendix Table 13)

No market research was undertaken in the reporting period given the continued relevance of the research declared in last year's report.

FREEDOM OF INFORMATION

The AFP Freedom of Information (FOI) Team facilitates public access to AFP documents, consistent with the provisions of the *Freedom of Information Act 1982*. This now includes documents held by the former Australian Protective Service which has been integrated with the AFP. Under section 23 of the FOI Act, the team leader of the FOI Team has been given the authorisation to make initial decisions under the Act. In 2004–05, the AFP received 198 requests compared with 142 requests in 2003–04, a 39 per cent increase.

FOI requests generally seek access to information concerning past or present investigations undertaken by the AFP and its predecessor organisations. These requests sometimes require extensive searches to be undertaken of AFP information holdings and can involve the examination of many hundreds of pages of documents. These documents invariably require the careful and resource intensive examination of all of the contents, in order to respect the right of access by the applicants without unduly prejudicing

personal privacy considerations or the AFP's law enforcement activities.

Following the ANAO service-wide audit of the administration of Freedom of Information requests, the Commonwealth Ombudsman advised that he had decided to conduct an own motion investigation into the quality of agency processing of requests made under the FOI Act.

The AFP submitted quarterly and annual returns under the FOI Act for the Attorney-General's report to Parliament under section 93. Detailed information about the AFP's FOI procedures appears in the Appendixes. Information on making FOI requests to the AFP can also be found on the AFP's website <www.afp.gov.au>.

COMMONWEALTH DISABILITY STRATEGY

The AFP Disability Program and Strategy 2003–06 is the AFP's commitment to comply with the Disability Discrimination Act and the Commonwealth Disability Strategy principles.

The AFP encourages support mechanisms to deliver an effective police service to the community and to consider employment opportunities for people from diverse backgrounds, including people with disabilities. Recruitment selection, placement and advancement practices were shaped to facilitate the selection of diverse groups. Due to specific requirements for operational law enforcement roles, the AFP focus is on employment opportunities for people with disabilities in non-operational roles.

In addition, employees with a disability are encouraged to participate in employee support networks and to provide advice, assistance and education in relation to their circumstances to enhance inclusiveness and a harmonious environment.

During the reporting period the AFP undertook its responsibility under the strategies to enhance understanding and provide support for individuals as required for personal development and access. This includes commissioning disability access audits to be undertaken for premises to ensure employee needs would be met pending a transfer from another location.

ECOLOGICALLY SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL PERFORMANCE

The AFP's construction and refurbishment program for WNC incorporates environmentally sustainable practices:

- recycled building materials were used extensively in the construction of the training village.
- excavated material from earthworks at the new firing range will be reused on site
- rainwater from the new firing range roof will be used for garden irrigation
- waterless urinals have been specified for the new firing range.

Environmental issues are also taken into account when purchasing office furniture and equipment. The AFP has a recycling program for paper, toner cartridges, metal and fluorescent tubes.

Environmentally sustainable principles will be integrated into the design, construction and operation of the AFP fit-out at APW and WNC, including:

- energy consumption minimisation
- water consumption minimisation
- consideration of the environmental impact of materials, furniture, fixtures and finishes, including whole-of-life costing, emissions minimisation, materials waste minimisation, recycled content and use of renewable materials
- development and implementation at occupancy of an environmental management system certifiable under ISO 14001.

In relation to vehicles, the AFP is proactively managing the size and nature of its vehicle fleet to achieve efficiencies, including use of alternative fuel sources. The AFP evaluates its vehicle replacements to ensure that the selected models:

- are the most fuel efficient make and model, in the context of operational requirements, including the use of turbo diesel commercial vehicles
- use alternative fuels, such as LPG, where operationally viable.