

**Submission by the  
ACT Ombudsman**

**Inquiry in the form of an evaluation of  
current ACT Policing arrangements**

Submission by the ACT Ombudsman, Michael Manthorpe PSM

**February 2020**

## Introduction and summary

The ACT Ombudsman welcomes the opportunity to make a submission to the Standing Committee on Justice and Community Safety 'Inquiry in the form of an evaluation of current ACT Policing arrangements'.

This submission outlines the assurance activities undertaken by my Office as an oversight body for ACT Policing and comments on the benefits to the ACT Government relating to the current service agreements for the ACT Ombudsman's oversight of ACT Policing.

## Background

The role of the ACT Ombudsman is to influence systemic improvement in public administration in the ACT, as well as providing assurance that ACT government agencies act with fairness and integrity. Our Office works with agencies to ensure they provide accessible and effective complaint-handling processes to the public.

The ACT Ombudsman is also the Commonwealth Ombudsman. The ACT Ombudsman's oversight role in relation to ACT Policing is delivered by the Commonwealth Ombudsman under a service agreement with the ACT Government, which outlines the services the Office provides on behalf of the ACT Government.

The service agreement specifies that activities undertaken by the Ombudsman with respect to ACT Policing includes:

- investigation of individual complaints
- conduct of own motion investigations
- inspection of AFP records relating to the handling of complaints
- provision of a summary of statistics relating to ACT community policing services complaints inspected by the Ombudsman under the *Australian Federal Police Act 1979* (AFP Act).

As Commonwealth Ombudsman, we take complaints about the Australian Federal Police, and perform a growing portfolio of inspectorial and reporting roles about the way in which Federal and (at times) state law enforcement bodies exercise covert or intrusive powers under Commonwealth legislation. This includes statutory responsibility for inspecting ACT Policing's use of covert and intrusive powers under ACT and Commonwealth legislation. My Office oversees the following covert powers:

- surveillance devices such as listening devices and tracking devices
- controlled operations which police use to get evidence that may lead to the prosecution of a person
- assumed identities which police use for intelligence gathering in relation to criminal activity.

My Office also monitors ACT Policing's management of the ACT's Child Sex Offenders Register (the register). Only the Chief Police Officer of ACT Policing and other people authorised by the Chief may have access to the register.

## ACT Policing activities undertaken by the Ombudsman under the service agreement

### *Receiving individual complaints*

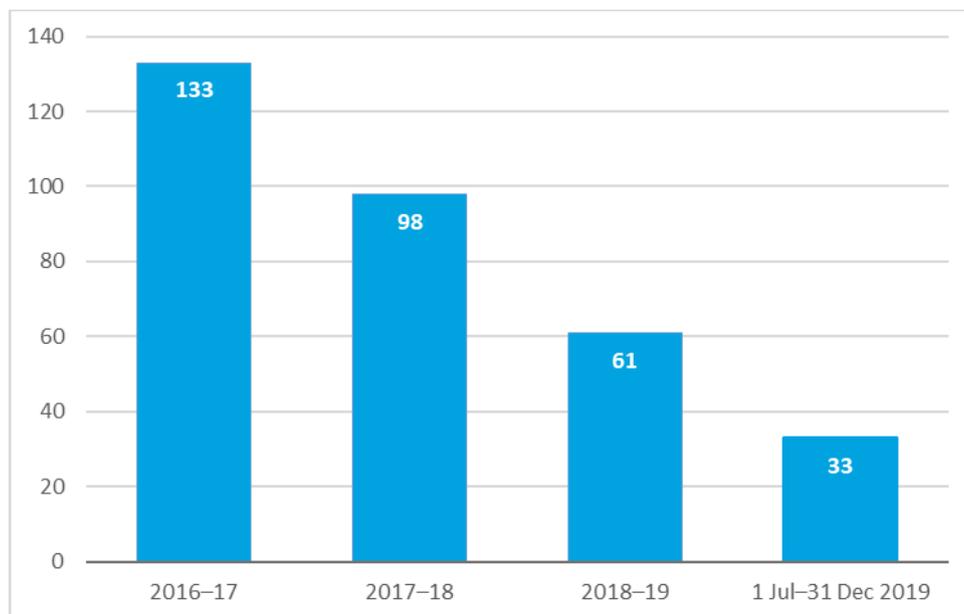
My Office takes complaints about ACT and Commonwealth government agencies, with a few exceptions, such as the Australian Taxation Office and intelligence agencies. People can make complaints about ACT Policing using the complaint form on our ACT Ombudsman website, or by calling us on 02 6276 3773. We also have a dedicated Indigenous number 1800 060 789 and access the Translating and Interpreting Service and National Relay Service where required.

We assess each complaint we receive from members of the public, and ACT Policing members, about the actions of ACT Policing to determine the most appropriate action. We consider a number of factors in assessing complaints and determining the appropriate action to take. For all complaints, this includes consideration of whether:

- the complainant has complained to the agency involved
- we can resolve the complaint quickly, for example, by providing a better explanation
- another agency or oversight body can provide a better outcome for the complainant
- the event complained about happened more than 12 months ago
- the agency has made a reasonable and lawful decision, based on the information provided by the complainant, without the need for us to request additional information.

When we investigate a complaint our intention is to discover what happened and whether action by the agency is required to resolve it. Since 2016, my Office has observed an overall decrease in complaints received about ACT Policing. Figure 1 shows my Office received 61 complaints about ACT Policing in 2018–19, down from 98 in 2017–18 and 133 in 2016–17. Between 1 July and 31 December 2019, we received 33 complaints about ACT Policing, trending at a similar rate to 2018-19.

Figure 1—ACT Policing complaints received 1 July 2016–30 June 2019



It is unclear whether there is any specific change in policy or procedure which might be causing the decrease in complaints. My Office continues to engage with the ACT community, as well as ACT Policing, to understand issues and concerns shared by the community about ACT Government agencies and the possible reasons behind any trends in complaint numbers. This engagement also

assists my Office to identify any individual matters we may use to draw on to produce reports and recommendations that have a systemic impact. This role is discussed further in the ‘Complaints Assurance Program’ section.

***Inspection of Australian Federal Police (AFP) records relating to the handling of complaints and provision of a summary of statistics relating to ACT community policing services complaints inspected by the Ombudsman under the AFP Act***

Under Part V of the AFP Act, my Office is required to review the administration of the AFP’s handling of complaints through inspection of AFP records. This includes inspection of records relating to complaints about ACT Policing. The results of these reviews are tabled in Parliament on an annual basis.

Part V of the AFP Act prescribes the process for recording and dealing with conduct and practices issues relating to the AFP. An AFP conduct issue relates to whether an AFP appointee has engaged in conduct that contravenes the AFP professional standards or has engaged in corrupt conduct. An AFP practices issue relates to an issue that raises concerns about the practices and procedures of the AFP.

Under s 40XA of the AFP Act, my Office must, for the purpose of reviewing the administration of Part V, inspect the records of AFP conduct and practices issues dealt with under Divisions 3 and 4 of Part V of the Act, at least once every 12 months. Under s 40XB of the AFP Act, my Office may conduct a review at any time, referred to as an ad hoc review.

As a result of our reviews we may identify a range of issues, including minor administrative errors, instances of maladministration and systemic issues. We may make recommendations or suggestions if we identify an issue that has not been addressed by the AFP or if we think it is warranted in the circumstances. We also comment on what we understand of the AFP’s policies and procedures supporting its administration of Part V of the Act, based on information provided during the review.

Section 40XD of the AFP Act requires the Ombudsman to report to Parliament as soon as practicable after 30 June each year on review work and activities conducted during the preceding 12 months. The report must include comments as to the comprehensiveness and adequacy of the administration of matters dealt with under Part V of the AFP Act.

My Office’s reports on activities under Part V of the AFP Act can be found on the Commonwealth Ombudsman website. My Office’s Annual Report for 2018–19 is currently being finalised and we anticipate the report will be tabled in Parliament in April 2020. We will provide a copy of the Report to the Committee when it is available.

## **Office oversight of covert powers**

### ***ACT Ombudsman inspections***

Our inspections in 2018–19 found ACT Policing’s records relating to controlled operations, its use of surveillance devices and its management of the Child Sex Offenders Register to be compliant, but noted a number of areas for improvement. The results of those inspections are published in my ACT Ombudsman 2018–19 Annual Report, which can be found on the ACT Ombudsman website.<sup>1</sup>

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<sup>1</sup> <https://www.ombudsman.act.gov.au/archive/publications-and-media/reports/annual-reports>

### ***Commonwealth Ombudsman inspections***

As the Commonwealth Ombudsman, my Office performs compliance inspections of the AFP's use of covert, intrusive and coercive powers, such as surveillance devices and telecommunications interceptions.

This is achieved through the inspection of paper and electronic files, systems, interviews with staff, observing practices, and obtaining and maintaining a working knowledge of each agency's systems, policies and procedures.

Due to their covert nature, a person is typically unaware they are the subject of these powers, and as a result, cannot make a complaint about or question an agency's actions. In the absence of this visibility, our role is to assess and report on an agency's legislative compliance, and to provide assurance that agencies are applying these powers as Parliament intended.

My Office has reporting obligations for each of the inspection functions (see Appendix A). These reports are published on the Commonwealth Ombudsman's website.<sup>2</sup> Details regarding my Office's inspections relating to Telecommunications Interceptions can be found on the Department of Home Affairs' website.<sup>3</sup>

### **Other oversight activities**

#### ***Complaints Assurance Program***

One of the ways I gain assurance about the way in which agencies deal with complaints made to them (including following a referral from my Office) is through ongoing education, training and support to the complaint-handling areas of major agencies.

In September 2019 my Office completed a review of ACT Policing's complaint-handling processes as part of our pilot Complaint Assurance Program (CAP). My Office and a Commonwealth agency also participated in this pilot.

The aim of the CAP is to provide assurance that agencies' complaint-handling services are both accessible and effective. The CAP focussed on both the AFP and ACT Policing as their complaint-handling procedures are interrelated. The CAP was a collaborative process with ACT Policing, and the AFP, designed to support and improve its complaint-handling, and to facilitate sharing of best practice approaches in complaint-handling with other agencies.

My review started with a self-assessment completed by ACT Policing, against the principles of good complaint handling in my *Better Practice Guide to Complaint Handling*<sup>4</sup>. My Office then conducted its own assessment of ACT Policing's processes, including through a sample of complaints already finalised by ACT Policing.

I found that ACT Policing is meeting many of the indicators of good complaint-handling, while also identifying a range of opportunities for improvement in ACT Policing's complaint-handling practices.

For example, an indicator of good complaint-handling is that senior leadership in an agency values complaints and uses complaint information to improve service delivery. My Office noted

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<sup>2</sup> <https://www.ombudsman.gov.au/publications/reports/inspection> (current as at 3 February 2020)

<sup>3</sup> <https://www.homeaffairs.gov.au/about-us/our-portfolios/national-security/lawful-access-telecommunications/telecommunications-interception-and-surveillance> (current as at 3 February 2020)

<sup>4</sup> Commonwealth Ombudsman 'Better Practice Guide to Complaint Handling', 2009.

that ACT Policing provides regular reports to the executive on complaint information and conducts weekly conversations about emerging issues at operational level.

We also noted that the AFP is undertaking a project to review its complaint management framework to ensure consistency, transparency and timeliness.

Our suggestions to AFP and ACT Policing included:

- reviewing AFP's staffing models to improve the timeliness of complaint resolution
- improving engagement with people from culturally and linguistically diverse backgrounds
- having a formally documented policy for managing unreasonable behaviour from complainants.

My Office will work with ACT Policing to monitor the implementation of identified improvements and provide assistance where required.

### ***OPCAT***

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international treaty designed to strengthen protections for people in situations where they are deprived of their liberty and potentially vulnerable to mistreatment or abuse.

OPCAT requires signatory states to establish a system of regular preventive visits to places of detention by independent bodies known as National Preventive Mechanisms (or NPMs).

The Australian Government ratified OPCAT in December 2017 and opted to delay implementation of its NPM network for three years. My Office is the NPM Coordinator responsible for facilitating and coordinating the Commonwealth, state and territory NPMs.

My Office is also the NPM for inspecting places of detention under the control of the Commonwealth. This includes defence detention facilities, immigration detention facilities and Australian Federal Police cells, which includes the ACT Policing city watch house.

During 2020–2021 my Office will develop a phased implementation of an inspection regime for the AFP cells including the ACT Policing city watch house.

## **Benefits of the current ACT Ombudsman arrangements**

As set out in my submission, as both the ACT Ombudsman and the Commonwealth Ombudsman, my Office is able to investigate, inspect and report on the actions of ACT Policing. In these dual roles, my Office is able to provide a greater level of oversight of ACT Policing activities than if these roles were independent. Noting the close, sometimes interdependent relationship between Commonwealth AFP activities and the work of ACT Policing, my joint role enables my Office to provide effective oversight in an efficient manner.

## Appendix A

My Office conducts inspections both as the ACT Ombudsman and as the Commonwealth Ombudsman.

Commonwealth Ombudsman inspections		
Power	Legislation	Agencies subject to inspection
<b>Controlled operations authorities</b>	<i>Crimes Act 1914 – Part IAB</i>	AFP (includes ACT Policing) ACLEI ACIC
<b>Industry assistance requests and notices</b>	<i>Telecommunications Act 1997 – Part 15</i>	All State/Territory police forces, plus: AFP (includes ACT Policing) ACIC
<b>Surveillance device warrants (including computer access warrants)</b>	<i>Surveillance Devices Act 2004</i>	All State/Territory police forces, plus: ACIC ACLEI AFP (includes ACT Policing) Corruption & Crime Commission (WA) Crime & Corruption Commission (QLD) Law Enforcement Conduct Commission NSW Crime Commission ICAC (NSW)
<b>Telecommunications interceptions</b>	<i>Telecommunications (Interception and Access) Act 1979 – Chapter 2</i>	AFP (includes ACT Policing) ACLEI ACIC
<b>Stored communications</b>	<i>Telecommunications (Interception and Access) Act 1979 – Chapter 4</i>	All State/Territory police forces, plus: ACIC ACCC ACLEI AFP (includes ACT Policing) ASIC
<b>Telecommunications data (metadata)</b>	<i>Telecommunications (Interception and Access) Act 1979 – Chapter 3</i>	Corruption & Crime Commission (WA) Crime & Corruption Commission (QLD) Department of Home Affairs IBAC (Victoria) Law Enforcement Conduct Commission NSW Crime Commission ICAC (NSW) ICAC (SA)
<b>Delayed notification search warrants</b>	<i>Crimes Act 1914 – Part IAAA</i>	AFP (includes ACT Policing)
<b>Control orders</b>	<i>Crimes Act 1914 – Part IAAB</i>	AFP
<b>AFP Part V</b>	<i>Australian Federal Police Act 1979 – Part V</i>	AFP (includes ACT Policing)

ACT Ombudsman inspections		
Power	Legislation	Agencies subject to inspection
<b>Surveillance device warrants</b>	<i>Crimes (Surveillance Devices) Act 2010</i>	ACT Policing
<b>Controlled operations authorities</b>	<i>Crimes (Controlled Operations) Act 2008</i>	
<b>Child Sex Offenders Register</b>	<i>Crimes (Child Sex Offenders) Act 2005 – Chapter 4</i>	
<b>Assumed identities*</b>	<i>Crimes (Assumed Identities) Act 2009</i>	

\* To date, no inspections have been conducted under the *Crimes (Assumed Identities) Act 2009* as ACT Policing and the ACIC has advised that it has not applied any of the provisions.