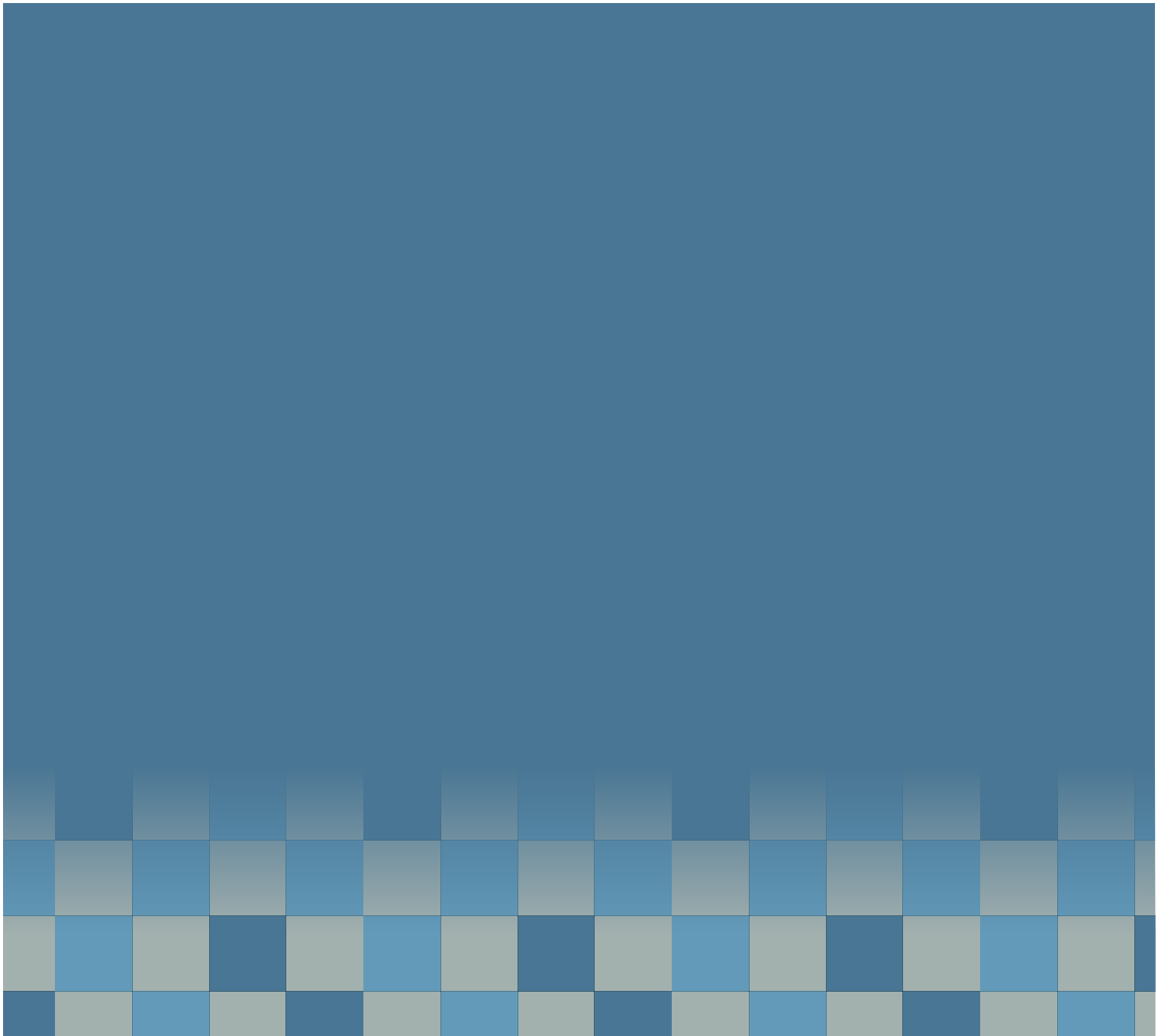




# Australian Federal Police Investigations Doctrine



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# Foreword



The threats posed to Australians by serious, organised and opportunistic crime (domestic and offshore), are real and ongoing. These threats, and their impact on the community, create a complex social, legal and policy environment in which the AFP must operate. To be effective within this environment, the AFP relies on its people to possess enthusiasm, contemporary skills and experience.

This *AFP Investigations Doctrine* is an important part of the ongoing process to reinvigorate the AFP's commitment and capabilities in regards to conducting criminal investigations. Investigations should be envisaged as the key hub of a career in the AFP. While other functions within the organisation act as the spokes of the wheel, investigators should plan to return to the investigative hub frequently to retain the core skills required to maintain the AFP as a professional investigative agency. As a consequence, every effort must be maintained to ensure that the organisation's focus be on maximising front-line policing capability. This includes the provision of information and guidance to staff that is unambiguous and explains organisational expectations.

The *AFP Investigations Doctrine* represents the philosophy for AFP investigations; it is a guide for all investigators and support staff when conducting an investigation. By referring to this doctrine, an investigator builds their expertise, which in turn further develops the AFP's capabilities.

For these reasons I commend this doctrine to all AFP personnel as being the cornerstone of the AFP's professional literature with respect to Investigations. I strongly encourage you to apply its guidance in the conduct of all investigations.

Personal  
information

**T.W. Negus APM**  
Commissioner

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# 01 Introduction

## Purpose of Doctrine

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Doctrine provides philosophical and procedural guidance on the way an organisation plans, resources and conducts business. Doctrine is authoritative but requires judgement in its application. It is derived from a mixture of observation, applied thought and experiential learning. Doctrine should be adapted within the principles, legislation, governance and professional standards to suit each operational situation.

## Intent of Investigations Doctrine

The intent of the *Australian Federal Police Investigations Doctrine* is to provide authoritative guidance that defines and develops the principles that drive the investigative culture and capability of the Australian Federal Police (AFP) at the individual, functional and organisational level. Doctrine is not a rigid compliance document in its own right. It should reflect AFP Core Values and be read in conjunction with governance such as Commissioner's Orders, National Guidelines and Practical Guides, which provide investigators with a framework to conduct investigations.

This doctrine reflects standardised language and concepts used by the AFP in the conduct of investigations.

## Scope of Document

This document is applicable to all AFP personnel conducting or participating in investigations. It provides an overview of:

- the operational context in which AFP conducts investigations
- what constitutes an investigation for the AFP
- the stages in the conduct of an AFP investigation
- decision making and risk management in AFP investigations
- how AFP investigations are managed.

Detailed descriptions of specific investigative processes or techniques or of the conduct of investigations in different contexts are detailed in relevant Commissioner's Orders, National Guidelines, Practical Guides and Aide-Memoires. They are out of scope of this publication.

This document is principally intended for all investigators across the AFP. This is an unclassified public document and is disclosable in judicial proceedings.

## Document Maintenance

The owner of the Investigations Doctrine is Deputy Commissioner Operations.

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Version	Date	Intent	Authorised by	Reference
1.1	Jun 2013	Publication of the AFP Investigations Doctrine.	AFP Commissioner	Investigations Doctrine Foreword
1.2	Sep 2020	The term referral on pages 13 and 14 changed to report" to align with the <i>Lawler Review</i> implementation. Minor amendments to language on page 14 to align the body of the text with the Model of an Investigation on page 13.	Manager Investigation and Operational Learning	CMS2020/3944

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## 02 The AFP's Operating Environment

*"The ability of the police to perform their duties is dependent upon public approval of police existence, actions, behaviour and the ability of the police to secure and maintain public respect."*

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### **Sir Robert Peel's Principles of Policing**

### Investigations and the responsibilities of the AFP

Investigators are critical to the AFP's ability to protect the Australian community. The skill, dedication and professionalism of investigators greatly contribute to the ability of the AFP and partners to concentrate their powers and capabilities most accurately and for maximum impact on crime.

The AFP investigator operates in an extremely complex and professionally challenging environment. The AFP is a multi-faceted law enforcement agency with local, national and international responsibilities and global partners. This means that the AFP investigator will routinely investigate serious criminality, which regularly transcends jurisdictional boundaries and is covered by continually evolving legislation. They routinely straddle the intersection of law enforcement, public safety and national security imperatives. This requires the investigator to act in a spirit of genuine collaboration with a diverse range of partners. The investigator must also be able to think and act globally to fight crime that impacts the community locally. The AFP investigator must be astute to all of these dynamics.

By working within and upholding the law, the AFP investigator provides protection to the community in a manner that reflects the community's standards and expectations. It is from the law, which is enacted by Parliament (as representatives of the people) and refined in practice by the courts, that the investigator's policing powers are bestowed. The AFP investigator maintains public trust by exercising these legal powers in accordance with the AFP Core Values of Integrity, Commitment, Excellence, Accountability, Fairness and Trust.

The AFP investigator always maintains independent authority to uphold the law. The AFP is accountable to the Australian Government for its national policing responsibilities and to the Australian Capital Territory (ACT) Government to maintain a safe and secure environment through policing activities in the ACT. As the elected representatives of the people drawn from the parliaments that enact the law, these Governments articulate key strategic priorities in their Ministerial Statements. Without compromising the independent office of the constable in the impartial service to the law, the AFP works collaboratively with the Government to achieve those priorities.

The complexity of the AFP's environment demands that the AFP investigator applies judgement and innovation in the conduct of their duties. Simply identifying crime and enforcing the law will rarely be sufficient. The AFP investigator is expected to explore all opportunities to proactively disrupt and prevent criminal activity in a way that best attacks criminality and protects public safety and interests. This is not an easy task. Yet it is one that is vital to the safety and well-being of Australians. It requires professional, dedicated and incisive investigators who are willing to accept this challenge.

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## Legal Framework

The AFP's responsibilities and the powers of individual sworn officers primarily stem from legislation. For the AFP this includes legislation enacted by the Parliament of Australia (applicable across the entire Commonwealth) and by the ACT Legislative Assembly (applicable in the ACT). There is no single piece of legislation that defines this entirely; there are a multitude of laws that serve these purposes in different contexts. Investigators have a professional responsibility to have an up-to-date understanding of the key relevant legislation and its application. This is an ongoing process as legislation is subject to change and different legislation may be applicable in the different jurisdictions in which the AFP operates.

The following legal framework is intended to provide investigators with an overarching view of the primary legislation relevant to AFP operations and what they mean for AFP investigations.

**Founding legislation.** The legislation that establishes the AFP is the *Australian Federal Police Act 1979* (Cth). This legislation defines the functions of the AFP, such as the protection of Commonwealth interests and the performance of policing functions in the ACT and the organisation's administration. The Act also determines the appointment of members and sets out their duties.

**Legislation that defines criminal offences.** A large number of Commonwealth and ACT laws create offences that are within the jurisdiction of the AFP to investigate. Significant pieces of legislation include the ACT and Commonwealth crimes acts and criminal codes. An offence will consist of physical and fault elements; an AFP investigation is planned with the aim to compile evidence to prove these elements. While the physical elements will be defined in the particular offence provision, determining the fault elements may require the investigator to have regard to the relevant Criminal Code (Commonwealth or ACT) which contains key principles for the interpretation of the offence provision. The Criminal Code also sets out defences. In certain circumstances state or territory law may be relevant to an AFP investigation of an offence, either because it is a state or territory offence with a Federal aspect or it is a state law that has been applied as a Commonwealth law because it is an offence that is committed in a Commonwealth place<sup>1</sup>.

**Sources of police powers.** Commonwealth and ACT legislation provides sworn AFP members with powers to investigate offences. These powers include actions such as arrest and detention of suspects, searching for and seizing evidential material, and the use of technical surveillance. This type of legislation describes the circumstances under which these powers can be used. Many key investigative powers are specified in the Commonwealth and ACT crimes acts; additional police powers are defined in legislation related to certain categories of crime, circumstances or uses of technology.

**Law that relates to judicial processes.** The laws<sup>2</sup> of the state or territory in which proceedings commence will apply with regard to bail, summary conviction, committal of a person for trial and the trial of a person on indictment. This includes laws relating to the presentation of evidence in court.

**Legal Framework for international investigations.** Many key Commonwealth offences have extraterritorial effect, and as a result many AFP investigations involve criminal conduct that has occurred to some degree outside Australian borders. Extradition and mutual assistance legislation and international arrangements facilitate the removal of suspects to Australia for prosecution, and the obtaining of evidence from foreign jurisdictions for use in prosecutions. Commonwealth, state and territory evidence law provides mechanisms for the admission in Australian courts of evidence obtained in foreign jurisdictions. The AFP is also able to collaborate with international partners in their investigations by virtue of the AFP functions in the *Australian Federal Police Act 1979* (Cth) including assisting and cooperating with foreign counterparts in the provision of police and police support services.

1 *Commonwealth Places (Application of Laws) Act 1970*

2 This includes both statute and common law

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## Partnerships

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Partnerships are key to the AFP's success in achieving operational outcomes. Strong partnerships and a collaborative approach best enable the AFP to meet its role 'to enforce Commonwealth criminal law, to contribute to combating organised crime and to protect Commonwealth and national interests from criminal activity in Australia and overseas<sup>3</sup>'. The AFP is the Commonwealth's chief source of advice on policing issues. To be successful, it is critical for the AFP to work collaboratively with the community, and with State, Territory, Commonwealth and/or international partners.

Partnerships bring capabilities, authority, expertise, capacity and operational reach that may not be achievable within the AFP's own resources. Collaboration allows for a multijurisdictional, multidisciplinary approach to crime, applying a range of policing and administrative powers, public and private sector capacities to resolve shared criminal and public security issues.

Critical partners that the AFP works collaboratively with include:

- **Community.** The ability of the AFP to function effectively is dependent upon public support, contributions and assistance.
- **Law enforcement** including domestic, national and international agencies. As well as sharing a common professional culture, working with other policing agencies enhances the capability to deal with criminal issues of mutual concern. This cooperation may be through joint operations, support to partner agencies, liaison and/or information sharing.
- **Criminal justice system,** including prosecutors, the judiciary and corrections. These elements share a common interest in upholding the law and the AFP initiates judicial action through this system.
- The AFP is a key partner in the **national security community.** It maintains relationships with other agencies such as Defence, Customs and Border Protection, the Department of Immigration and Citizenship and the Australian Intelligence Community. The AFP's ability to investigate criminal activity is an essential component of an effective whole-of-government approach to national security issues. The AFP also benefits from these relationships in terms of access to a wider range of information sources and capabilities.
- The AFP also partners with **other government departments** at the Commonwealth, State and Territory levels. Each party possess skills, information and specialist capabilities that can contribute to success.
- Domestically and internationally, the AFP engages with **private sector and non-governmental organisations** to assist in the proactive pursuit of law enforcement, capacity development and public security initiatives.

In some cases the relationship will be enshrined in memoranda of understanding, inter-governmental agreements, international treaties or other agreements that set expectations on AFP's involvement in various issues or activities. Furthermore, where consistent with AFP objectives and priorities, the imperatives of collaboration may shape priorities that are not articulated in government direction or by the legal framework.

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3 AFP Strategic Plan 2012-2015

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## Operating Contexts

The AFP routinely operates in a range of different jurisdictional contexts. AFP investigators should understand the implications of, and work effectively across, each context.

- **ACT.** ACT Policing is responsible for providing quality policing services to the people of the ACT. This responsibility requires ACT Policing to maintain a similar breadth of partnerships as those required in the national context.
- **National.** The AFP enforces Commonwealth criminal law across all Australian jurisdictions and works collaboratively with partners to address public safety, serious crime, organised crime and other national security priorities.
- **International.** International partnerships provide the ability for the AFP to protect Australian interests by fighting crime offshore. As Australia's national police service, the AFP represents all Australian law enforcement agencies internationally. The AFP conducts, leads and participates in joint investigations of crimes committed in international jurisdictions where consistent with the legal framework. The AFP: coordinates complex international investigations; cooperates with partners to combat transnational crime (including terrorism); significantly contributes to peacekeeping missions; supports international police capacity development; contributes to international disaster relief; and provides close personal protection for Australian dignitaries travelling abroad.
- **Australia's External Territories.** The AFP provides policing services in Australia's External Territories. Given the close proximity of some territories to foreign nations, policing in this context will often include a prominent international dimension.

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## 03 AFP Investigations

*"The police seek and preserve public favour, not by catering to public opinion, but by constantly demonstrating absolutely impartial service..."*

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### Sir Robert Peel's Principles of Policing

#### Definition

Investigations are an objective search for the truth by the discovery and presentation of evidence in an exhaustive, comprehensive and organised manner. This is reflected in the 2011 Australian Government Investigations Standards, which defines an investigation as:

*"... a process of seeking information relevant to an alleged, apparent or potential breach of the law, involving possible judicial proceedings<sup>4</sup>. The primary purpose of an investigation is to gather admissible evidence for any subsequent action, whether under criminal, civil penalty, civil, disciplinary or administrative sanctions. Investigations can also result in prevention and/or disruption action. The term investigation can also include intelligence processes which directly support the gathering of admissible evidence."*

AFP investigations provide a service to the Australian community by having a positive impact on crime, national security and the public interest.

In conducting an investigation, the AFP investigator applies professional investigative expertise in accordance with relevant legislation and the AFP's Core Values, Strategic Plan and governance.

#### Investigative Mindset

A good investigator is committed, naturally inquisitive and continually engages in personal and organisational learning.

They apply critical thinking and innovation in the development of investigative strategies that are adaptable in application.

A good investigator is a responsible leader and an excellent communicator who always asks questions while being respectful of all.

They identify and utilise all available resources including specialist expertise.

A good investigator is tenacious, collaborative, courageous and unrelenting in the search for the truth without being inflexible.

They are always current with relevant laws, governance and investigative techniques.

A good investigator is a calculated risk-taker who is accountable for their actions and whose decisions are reasonable, proportionate and necessary.

The Investigative Mindset embodies the AFP Core Values and is consistent with the ethos of the wider policing profession. It highlights the particular attributes, knowledge and cognitive skills relevant to the investigative craft.

4 This includes judicial inquests and Government-appointed committees of inquiry.

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## Objectivity

People's life experiences, values and beliefs give rise to the potential for personal bias (conscious and unconscious). Bias can also emanate from organisational culture, contextual situations or 'group think' where people are discouraged from properly challenging the reasoning for making a decision. Good investigators understand these risks and adopt the principles of procedural fairness and natural justice. They identify and mitigate bias through an objective application of the Investigative Mindset.

## Critical thinking

Critical thinking is an essential discipline for investigators. It requires detailed examination of all available information to understand its significance. It also includes judicious consideration of available investigative resources to determine their most efficient and effective employment. Critical thinking involves objective self-examination to recognise any bias and to identify potential shortcomings in the intended investigative approach. This ensures that the conduct of the investigation is justified, reasonable and proportionate.

## Investigative strategy

The conduct of investigations needs to be organised around an investigative strategy that seeks to achieve an optimal outcome and gives all activity a coherent and uniform sense of purpose and direction. It is by reference to the investigative strategy that all taskings should be derived, explained, sequenced and justified. An investigative strategy will also provide the basis for maintaining accountability through testing the effectiveness of investigative activity and investigative decision making.

## Dimensions of an Investigation

Each investigation can be characterised in terms of risk, complexity, scale and time.

- **Risk.** Each investigation involves different threats, opportunities, consequences and levels of risk. Investigation risks are discussed in more detail in Chapter 5.
- **Complexity.** The degree of complexity of an investigation derives from the type and seriousness of criminal activity, relevant legislation and the nature of the individuals, groups or networks involved. The number of investigating agencies and jurisdictions that need to be involved also add to the complexity. Proactive and covert investigations also introduce complexity.
- **Scale.** The scale of an investigation is determined by the risks and complexity involved. Where there is complex subject matter, substantial consequences and a wide variety of risks, an investigation may require more resources and a broader range of investigation capabilities. This could result in a larger investigation team drawn from a wide range of AFP functions and potentially other national and international partners.
- **Time.** The duration of an investigation will also be influenced by complexity and risk. The greater the complexity; the longer the likely timeframe necessary to complete the investigation. The relationship between risk and time is more nuanced. Some high-risk investigations will require more time to ensure that the investigation and its outcome are sufficiently planned and robust to achieve success. Other high-risk investigations will be time sensitive where the outcome should be achieved quickly.

Understanding these dimensions is critical for shaping an investigation. They influence the assessment and planning of an investigation and will need to be reflected in the investigation team structure and governance arrangements. It is also important to note that the fundamental principles and conduct of an investigation remain the same, regardless of its risk, complexity, scale and time dimensions.

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## Principles of Investigation

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The principles of investigation underpin all successful investigations and should be considered as general and adaptable guidelines. The principles, which remain valid regardless of the dimensions of the investigation, are:

- All investigations are conducted in a manner consistent with the **AFP Core Values**.
- The conduct of all investigations is consistent with **human rights** principles, including Rights of the Child and natural justice.
- Application of the **Investigative Mindset** is fundamental in the successful conduct of an investigation.
- The investigation (including its objectives and tasks) strives toward an **optimal outcome** that balances the time and resources used in proportion to the impact of the outcome (**impact, cost and time balance**). Where possible, outcomes that prevent, disrupt or deter crime should be considered.
- **Reviews** are an integral part of any investigation. They help ensure effectiveness and that investigations are conducted lawfully, efficiently and objectively.
- The AFP's investigative powers and responsibilities are derived from and are applied toward the enforcement of **legislation**. Investigative decision-making should be underpinned by a thorough understanding of the most up-to-date legislation and applicable case law.
- A central element of an investigation is the **collection and management of information**. Consideration should be given to the admissibility of evidence in terms of proper use of evidence gathering powers and the rules of evidence. Non-evidentiary information may still be extremely valuable as intelligence. Information should be stored in a manner in which it can be reliably sorted, retrieved, cross-referenced and its source is identifiable.
- **Risk** is inherent in all police work. Investigators should understand the threats and opportunities associated with their investigation. They assess risk levels, implement appropriate risk mitigation measures and are prepared to tolerate calculated risk in order to achieve the desired outcomes.
- The complexity of investigations conducted by the AFP means that they will often involve **collaboration** across disciplines and with partners in order to achieve the desired outcome. A multidisciplinary partnership is normally the most effective approach.
- As an investigation involves uncertainty, it is a **decision making** process. All personnel involved in an investigation (the investigation leadership, individual investigators as well as those in the AFP governance structures) should understand their responsibilities and accountabilities, be able to apply professional discretion and justify all decisions made during the course of an investigation. All decisions should be recorded in a manner that allows later review.

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## Relationship between Intelligence and Investigations

Intelligence is a product derived from adding value to information to provide insight and influence decision making. Intelligence gathering and processing and investigations are closely related activities. Developing a culture for effective information-sharing and collaboration will result in a mutually-supporting relationship between intelligence and investigations. Key elements of this relationship are as follows:

- Intelligence-led initiations provide a primary means of commencing an investigation of an individual, group, network or a type of criminal activity.
- During an investigation, intelligence staff may work closely with investigators by adding value to tactical information and providing guidance to team decision making.
- An investigation is in itself a process of collecting information on criminal activity. This may constitute a body of information in its own right or may contribute to the sum of criminal intelligence data available to the AFP and its intelligence partners.

At the conclusion of an investigation, any intelligence dividend from the investigation should be fed back into the criminal intelligence system. Where it does not compromise the investigation, an information source or the chances of prosecutorial success, investigators should take every opportunity to share investigation information with the intelligence system.

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## 04 Conduct of an Investigation

*“The conduct of outstanding investigations remains a key pillar in the success of the AFP and the reinvigoration of investigations has been a continued focus for me as Commissioner. Investigators provide leadership in the workplace through their high level skills, competence and confidence in undertaking investigations.”*

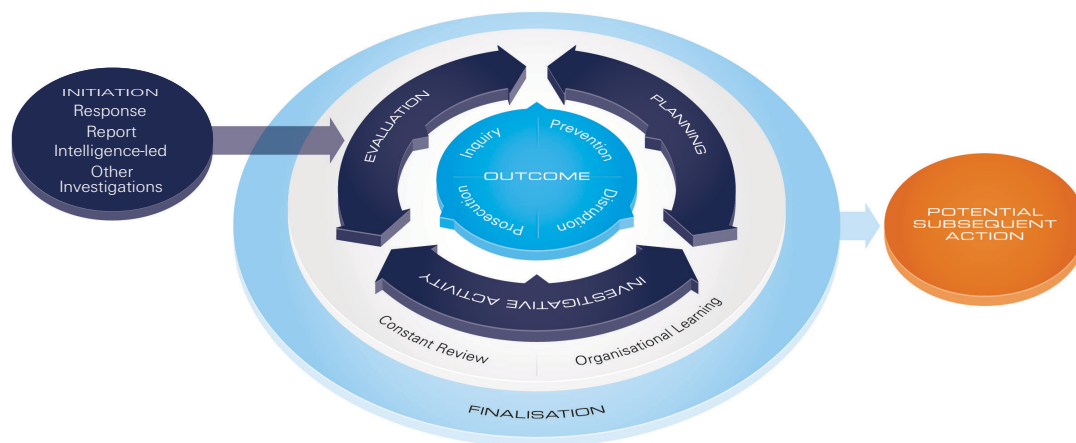
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### AFP Commissioner Tony Negus

An investigation should be understood as a part of the continuum of AFP operations in accordance with its law enforcement, protective and national security responsibilities. Given the complexity of criminal and security issues, an investigation is rarely an end in its own right. It may link to previous, ongoing and subsequent AFP investigations. An investigation may be influenced by or influence other investigations by the AFP and partner agencies.

The way an investigation progresses will depend on a number of factors including the specific circumstances, the dimensions of the investigation and the decisions made in the course of the investigation. However, at a fundamental level, investigations will generally conform to the model illustrated in Figure 4-1. This includes the stages of initiation, evaluation, planning, investigative activity, outcome and finalisation. The model should not be taken as an inflexible template for an investigation. Investigators will always retain the discretion to organise their investigation however necessary to achieve the most suitable outcome.

Figure 4-1: Model of an Investigation



This model is not linear. It recognises that although investigations will conform to this general approach, they may follow different paths. There will be the potential need to step back to previous stages (possibly numerous times) before an investigation can be finalised. In some cases, an investigation may be finalised before an outcome is achieved. It also illustrates the constant need to review the investigation throughout all stages.

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## Initiation

Initiation is the process by which a matter is brought to the AFP for consideration for investigation. There are a number of paths by which the investigation may be initiated. These are not necessarily mutually exclusive.

- **Response.** Includes a broad range of AFP operational activities, such as AFP deployment to an incident<sup>5</sup>, AFP protection operations, or response to criminal activity that has been reported from the community, police patrol activities or other sources.
- **Report.** When a matter is reported by a member of the public, a Minister or Member of Parliament, or partner agency to the AFP, it becomes an investigation. A report can be received at the international, national, or jurisdictional level.
- **Intelligence-led.** These are where the intelligence system (including intelligence interaction with other agencies) informs AFP investigations. Intelligence should provide a primary mechanism for initiating investigations.
- **Other Investigations.** One investigation will often initiate another. Further criminal matters may be identified during any stage of an investigation (evaluation, planning, investigation, outcome or finalisation). These matters may need to be evaluated for subsequent investigation. In some cases, this may result in widening the scope or initiating a new stage of an existing investigation. In other cases, a separate investigation may need to be considered.

## Evaluation

An evaluation is a process of determining whether the AFP will continue to investigate a matter and assigning it a priority.

The evaluation includes major decisions taken by AFP. It will determine if the AFP will:

- continue to investigate
- refer the matter to a partner agency and, if so, whether AFP will collaborate in a joint investigation
- record it as a criminal matter without further investigation (due to the level of criminality, allocation of resources to higher priority matters, likelihood of successful prosecution and/or not in the public interest)
- reject the matter.

When the decision involves no further investigation by the AFP, the matter moves directly to the finalisation stage.

The AFP considers all matters cognisant of the operating environment. Factors that influence the evaluation process include the AFP's prioritisation model, public interest, available resources, existing inter-agency agreements and an assessment of appropriate investigative strategies. Consideration at this stage should also include what investigative strategy may yield the optimal outcome with respect to the impact, cost and time balance.

<sup>5</sup> Incident – an event requiring police response and includes emergency, planned and unplanned operations and other events. An incident covers anything from a vehicle accident to a multijurisdictional bushfire, which may comprise multiple incidents (ANZPAA – A Common Approach to Incident Management: ICCS Plus)

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In all cases, regardless of the result of the evaluation, decisions should be recorded. This is essential for ensuring accountability, transparency and to allow possible review. The record of the evaluation should include details of the matter, the method of initiation, the decision taken and the context and reasons for that decision.

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## Planning

### Critical Thinking in Investigation Planning

The conduct of all investigations needs to be organised around an Investigation Plan. The focus of planning should be on applying critical thinking to develop an investigative strategy that gives all activity a coherent and uniform sense of purpose and direction. The result is a plan that is not a templated solution, rather it is a coherent and well-considered approach consistent with the principles of investigation to achieve optimal outcomes.

### Planning Considerations

The specific level and type of detail required in an Investigation Plan will reflect the dimensions of the investigation. It should identify an optimal outcome to be sought (reflecting the impact, cost and time balance) and any requirement for a joint agency approach.

The application of critical thinking in the development of an investigative strategy should give the investigator a clearer understanding of the following:

- **Potential threat to life and public safety.** The safety of any victim(s) and the general public is paramount. Consideration for threat to life should also be extended to the offender, including death penalty situations.
- **Potential impact on the community.** The interests of the community need to be protected. Any intrusion on the public must be justifiable.
- **Consideration of outcome(s).** A possible outcome or combination of outcomes should be clearly identified in planning. The selection of an outcome(s) will strongly influence decisions on methodology, investigative means and resourcing. Outcomes are discussed in a later section of this chapter.
- **Scope of investigation.** When terms of reference are issued, it will specify the scope. Where there are no terms of reference, the planning process should carefully determine the scope of the investigation. This sets the boundaries and legal basis for the investigation and helps to ensure that limited resources are effectively applied.
- **Risks.** Risks are inherent in all investigations. They will identify requirements for specific mitigation measures and will inform investigation resourcing. Investigative risks are discussed in Chapter 5.
- **Potential impact on victim(s).** The interests of victims need to be carefully considered. Victims may need to be engaged during the investigation, particularly if the matter proceeds to prosecution. A favourable outcome can protect victims from further crime or can provide justice to the victims. However, the conduct of the investigation, if not handled sensitively, can create undue embarrassment or more trauma.
- **Partners.** Investigation planning should be done in consultation and integration with partners. Planning should consider the interests, different perspectives, objectives and involvement of partners. Partner agency involvement can provide more effective outcomes and address the interests of more partners.

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- **Impact/cost/time balance.** The potential impact of the investigation should be balanced against the overall costs associated with resourcing and the time required to achieve the desired outcome. This same balance should be considered for all activity conducted during the course of an investigation.
- **Consultation with specialist advice.** Specialist advice (including legal, asset confiscation and operations support) should be consulted throughout the planning process and investigative activity and be integrated into the investigative team where appropriate.

Not all investigations will require the production of a formalised Investigation Plan. However, in all cases, a written record of the planning process should be created. The length and detail required in the written record will be scalable in proportion with the dimensions of the investigation.

**Planning tools and templates.** Templates for developing written plans are available to investigators. They are essential to help support and cross reference the development of an investigative strategy. Templates are not a substitute for the application of critical thinking by a good investigator.

### Phases and Milestones

The dimensions of an investigation may require it to be phased. This will help investigators deal with the scale and complexity of the task and keep the application of resources focused on achieving the outcome within a justifiable timeframe.

Each phase should have a specific measurable objective that supports the investigative strategy. A phase should also be time bound. Inability to achieve the objective within the timeframe should prompt re-evaluation of whether further investment in a specific avenue of inquiry is justified and/or whether alternative approaches should be considered.

The completion of each phase also creates a milestone in the investigation. These milestones should be taken as opportunities to review investigative progress and possibly to re-evaluate and/or re-plan the investigation.

### Operations support

The AFP and partner agencies have a range of operations support capabilities (such as intelligence, asset confiscation, forensics and physical and technical surveillance) available to help deal with the complexity and sophistication of criminal activity. These are valuable and finite resources that should be managed efficiently and not overtasked or underutilised. Their use at all times should be reasonable, proportionate and necessary. Operations support capabilities complement the skill of the investigator, but should never be considered as a substitute for it. A good Investigation Plan is innovative in both the use of operations support capabilities and the identification of new investigative techniques.

Operations support capability owners should be consulted early during the planning stage to determine how each can be best utilised. Through the consultative process the investigator should nominate objectives required and operations support will determine the most suitable approaches for achieving those objectives.

### Legal aspects

Planners should consider the broad spectrum of legal aspects to ensure that any action taken does not jeopardise the investigation. This is particularly important in joint investigations where there may be differing legal requirements across the various jurisdictions involved.

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Investigators should seek specific legal advice from prosecutors or AFP Legal where appropriate and available. In all dealings with lawyers, the investigator needs to be cognisant of the impact of Legal Professional Privilege; where and how it applies and how and when it will need to be protected.

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### Asset Confiscation

'Following the money' and identifying opportunities for asset confiscation is a highly effective investigative strategy in removing the proceeds of crime and preventing re-investment into further criminal activity.

### Media

The use of the media must be carefully considered as it represents both a risk and an opportunity for an investigation. It can aid an investigation by both disseminating information to, and eliciting information from, the public. However, it may also inadvertently compromise an investigation or methodology.

Any investigative activity must comply with standing AFP governance regarding media. AFP media support personnel may provide direct advice or support to investigations.

### Planning throughout an investigation

Planning is not a discrete activity that is only conducted at the beginning of an investigation, it is a continuous process. Investigators should constantly be alert for the need to review, particularly (but not exclusively) when milestones are reached. Investigators should regularly review the investigative and supporting strategies to ensure that their assumptions and basic approach remains valid and appropriate. Where this is not the case, the Investigation Plan should be changed or the investigation re-evaluated.

### Investigative Activity

This stage is the actual conduct of investigative activity to determine the facts related to the case. The organising logic of this stage should be based on the gathering of admissible evidence against each of the physical elements and fault elements of a criminal offence.

For a person to be convicted of an offence, all physical and fault elements of that offence must be proven beyond reasonable doubt. Investigators have a responsibility to search objectively for the truth of the case. They should engage in critical thinking and explore possible sources of inculpatory and exculpatory evidence to challenge the strength of any investigative hypotheses. Inculpatory evidence shows, or tends to show, a person's involvement in an act or omission. Exculpatory evidence is favourable to a suspect or defendant. This process makes the investigation more robust and improves the chances of success in any judicial proceedings.

Investigative activity should be sensitive to the possible need to change the scope of the investigation as it may become apparent that different offences are more applicable. This may have implications for the structure of future investigative activity and its associated risks.

Investigative activity should link to an objective that is achievable, in accordance with the AFP's priorities and consistent with the investment of time and resources committed to the investigation. As discussed in planning, this stage may consist of several phases each with objectives and milestones contributing to the investigative outcome.

### Avenues of Inquiry

Avenues of inquiry are the sources of information from which investigators seek to derive admissible evidence. There is no single, comprehensive set of avenues of inquiry that will be applicable in all investigations. Each investigation will need to be considered on its own merits to determine and sequence the appropriate avenues of inquiry that may lead to the preferred outcome(s).

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Investigative activity is an exhaustive pursuit of relevant inculpatory and exculpatory evidence related to the physical and fault elements of criminal offences. A single avenue of inquiry will rarely yield all of the evidence necessary to prove each element. Hence the investigation should explore all available lines of inquiry in order to establish the truth of the case beyond a narrow focus on the elements necessary to prove the offence.

Over time, sources of information available to investigators may change as legislation, technology and other factors evolve. AFP investigators need to remain innovative in the identification and use of avenues of inquiry and abreast of all new technologies, relevant legislation, policy and governance.

### Investigative Interviewing

Interviewing is a key investigative skill; it is a skill that is not innate but must be learned. Interviews provide investigators with an excellent opportunity to obtain actionable information from members of the public, suspects, victims, human sources and witnesses.

The gathering of information from a well-prepared interview of a victim or witness will contribute significantly to the investigation. An effective interview of a suspect can commit that suspect to an account of events that may include an admission or a false denial. In making an admission, the suspect may detail how the offence was committed and thus the investigation can be more focused. A properly obtained admission may prove the fault elements of the offence beyond reasonable doubt.

The cornerstone of all effective interviews is planning. This is a strategy for lawfully eliciting an accurate and reliable account in relation to a matter under investigation. Interview plans can be completed very quickly or in depth, depending on the circumstances. However to ensure its admissibility as evidence, the manner in which this information is elicited must always be fair, ethical and in accordance with legislation, the rules of evidence and organisational procedures.

During the interview planning process, it is imperative for the investigator to develop a detailed knowledge of the matter being investigated and the context within which the interviewee features. This includes an understanding of the culture and nature of the interviewee; this assists the investigator to build rapport. By remaining open minded, employing active listening techniques and undertaking behavioural and action analysis, the good investigator is able to work flexibly within their interview plan to ask the right questions at the right time. This has a positive impact on the quality and quantity of information that may be elicited, and allows the investigator to thoroughly probe all available avenues of inquiry.

### Adherence to the Legal Framework

Investigations must be conducted in a manner that is consistent with the legal framework. This is particularly relevant with regard to the collection, handling and presentation of evidence and the application of police powers. This means that the investigator should be conversant with implications of relevant law on their ability to collect evidence and conduct the investigation. AFP governance may also have implications for the conduct of investigations.

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## Admissibility of evidence

To be admissible, evidence must be relevant, reliable and obtained lawfully and fairly.

## Disclosure

Appropriate and informed disclosure requires the provision to the accused prior to trial of a brief detailing the prosecution's case against the accused. It includes any information in relation to the credibility or reliability of the prosecution witnesses and material which the prosecution does not intend to rely on as part of its case which either runs counter to the prosecution case or might reasonably be expected to assist the defendant in advancing a defence. Some material (usually involving potential compromise of intelligence capabilities, sensitive investigative sources or techniques or other adverse impact on public interest or security) can be exempted from disclosure but this will need to be in accordance with the law, policies and AFP direction.

The implications of disclosure should be recognised in the initial investigation planning. All information relevant to the investigation needs to be recorded and handled in accordance with the potential need for disclosure. Before disclosing any material obtained from an ACC hearing, AFP Legal should be consulted.

## Investigative Records and Accountability

The maintenance and management of complete and accurate investigative records is of fundamental importance. Decisions made, actions taken and information uncovered should be recorded in detail while the information is still contemporary.

Accurate and well-managed records can directly facilitate the conduct and outcome of the investigation. This is particularly important in a complex, large or long-term investigation. During the conduct of an investigation, the ability to store, analyse and retrieve collected information in a timely fashion can help track progress toward objectives and identify new avenues of inquiry. At the outcome stage, this will facilitate the compilation of a brief of evidence which may be necessary for a prosecution or inquiry or to obtain any warrants necessary for certain prevention or disruption activities. Investigators should use the most effective and efficient information management system or tools consistent with dimensions of the investigation.

Any information management system used needs to be able to record information and identify sources, credibility and any assessment of its truth and relevance.

Effective information management is also required for accountability and transparency of the investigation. This facilitates disclosure to a defendant and assists the identification and categorisation of non-disclosable material. Records should also be maintained to document decisions made during the investigation and the context and reason for these decisions. Such records will be particularly important in the conduct of internal or external reviews. They also facilitate the consistent and efficient handling of subpoena and Freedom of Information (FOI) requests.

Accurate and comprehensive records also contribute to the sharing of investigative information. This can feed into AFP reporting against performance measures and provide information for data centres or intelligence reports. Finally, if a concluded investigation can be re-opened in the future, the investigative records will be the starting point for the new investigation.

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## Outcome

It is through the outcome that the AFP investigation is able to have an effect on crime or otherwise provide a service to the community. The government, the courts and the community will judge the success of an investigation and the competence of the AFP through the quality, conduct and appropriateness of investigative outcomes. Hence it is of vital importance to get optimal outcomes and that the quality of the investigation supports pursuit of the right outcomes.

There is no standard suite of outcomes that can be applied to achieve this; it is the responsibility of investigators to apply professional judgement and innovation in determining how to achieve the most suitable outcome. Investigative outcomes can be categorised as having one or more of four general effects. These are prevention, disruption, prosecution or inquiry (including inquest).

These investigative outcomes are not necessarily discrete or mutually exclusive. There may be a number of intermediate and final outcomes from an investigation. For example, during an investigation, there may be several opportunities to prevent and/or disrupt criminal activity and prosecute the person or persons involved.

**Prevention.** A prevention outcome is achieved when an individual, group or network stops or is stopped from committing or continuing to commit criminal activity. Prevention outcomes may take many different forms, as lawfully appropriate to the circumstances.

**Disruption.** A disruption outcome delays, diverts or otherwise complicates the commission of criminal activity or the operations of a criminal entity. A successful disruption outcome may also be a significant increase in the risks and/or costs borne by an individual, group or network undertaking or participating in a criminal activity. Disruption may be achieved through a variety of lawful actions in differing circumstances; in some cases this may be by the same type of action that would achieve prevention in other situations.

**Prosecution.** Prosecution means the initiation, conduct and ongoing support to formal judicial proceedings against an individual or individuals believed to have committed a specific criminal offence(s). The investigator's level and type of involvement in the prosecution process may vary from case to case, but the provision of a brief of evidence to prosecutors will usually be the cornerstone of that involvement.

**Inquiry (including inquest).** An inquiry is a judicial proceeding that seeks to determine the facts related to an incident (such as the cause of a death or an accident). An AFP investigation supports an inquiry by collecting evidence to help a court determine if criminal offences may have occurred. An inquiry may result in initiation of a criminal investigation.

## Finalisation

This is the process of concluding an investigation, noting that at some stage in the future the investigation may need to be re-opened on the basis of new information or judicial direction.

### Decision to Finalise an Investigation

An investigation can be finalised at any stage in the process (see Figure 4-1). The decision to finalise will be made in accordance with the governance arrangements under which the investigation is conducted. In some cases the decision may be made by the AFP Senior Executive or influenced by judicial decisions.

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## Actions on Finalisation of an Investigation

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The actions necessary to finalise an investigation may be detailed in relevant standard operating procedures or governance documents. The most important of these actions will be the completion of any outstanding legal action, contributing relevant information to databases or the intelligence system and the storage of investigative records in a manner that facilitates subsequent retrieval.

## Constant Review

Reviews are an integral part of any investigation. They should occur regularly throughout all stages of an investigation with outcomes being recorded. Reviews assist investigators by presenting opportunities to apply critical thinking to the progress of an investigation, confirm the direction and outcome of an investigation, guide future activities and integrate lessons learned. They also contribute to the objective accountability, transparency and quality control of investigations and ensure that they are conducted in accordance with the rule of law and authorised practices and procedures. Consequently, it is critical that a record of the results of a review and any actions taken is maintained.

### Types of Review

**Self.** All members of the investigative team have a responsibility to apply critical thinking to constantly re-assess the Investigation Plan. This type of review requires self-awareness by the investigator to challenge their own assumptions and conduct, and identify the impact of any personal and/or contextual bias.

**Peer.** This type of review provides an opportunity for a colleague not intimately involved with investigation to offer an objective perspective. Peer reviews do not replace the need for self reviews.

**Supervisory.** This type of review refers to the ongoing responsibility of managers within the investigative team or the governance structures to provide oversight of the investigations and investigative conduct. It is an inherent management responsibility.

**Formal Internal.** These are independent assessments that will have a written purpose and be conducted within a specific timeframe. These reviews are initiated from within the AFP. Best practice is for formal reviews to be conducted by experienced investigators not directly involved in the investigation. It may also include the contribution of experts (from law enforcement or other professional disciplines) from outside the AFP. The size and structure of a formal internal review team is dependent on the extent and depth of the review.

**Formal External.** AFP investigations and conduct of activity during investigations are subject to scrutiny by a number of external entities. External reviews may be directed and/or conducted by the courts, Parliament (including the Parliamentary Joint Committee on Law Enforcement and the Senate Estimates process) or independent oversight agencies such as the Ombudsman and Australian Commission for Law Enforcement Integrity (ACLEI).

### Decision to conduct an internal review

Decisions to undertake internal reviews are normally made by the Team Leader, coordinator or more senior managers. The decision to undertake a review may be made at any time but it is generally linked to assessing progress in achieving milestones and objectives.

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## Scope of a Review

The scope of a review may vary and can focus on single or multiple issues. These can include (but are not limited to) the overall conduct or continuation of an investigation, past and potential investigative strategies, appropriate risk mitigation and re-assessment of the balance between the impact, cost and time of an investigation.

## Contributing to Organisational Learning

The AFP should take every opportunity to learn from its previous experience and drive continuous improvement. All stages of an investigation provide learning opportunities which need to be recorded and consolidated. The knowledge gained should inform the periodic reviews and updates of important governance, best practice advice and training material.

## Subsequent Action

An investigation is not an end in itself. Wherever possible, it should contribute to assisting the wider aims and objectives of the AFP and partners. Throughout all stages of an investigation, investigators should be alert for the potential to contribute to other priorities of the AFP or partners. This may include:

- **Intelligence sharing.** Information and intelligence should be shared, noting any limitations arising from legislative, judicial, evidentiary or governance regimes. As part of the finalisation process, investigators should ensure that all relevant information and intelligence is appropriately recorded. In some cases, the finalisation of an investigation may initiate a major intelligence project.
- **Further AFP investigations.** All investigations, but particularly investigations of serious crime and organised crime, have the potential to uncover information that may warrant the initiation of another AFP investigation.
- **Referrals to partners.** AFP investigations may also uncover information and intelligence relevant to partners. This information may not be limited to criminal proceedings, but can also be relevant to civil or administrative proceedings.

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# 05 Decision Making and Risk Management AFP Investigations

*That I will faithfully and diligently exercise and perform all my powers and duties as a person declared to be a member under section 40B of the Act of the Australian Federal Police without fear or favour, affection or ill will, from this date until I cease to be... a member ...of the Australian Federal Police.*

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## From the AFP Oath (AFP Regulations 1979)

### Investigative Decision Making

A decision is a choice between a variety of alternatives and a decision maker is whoever makes such a choice. A decision can be made instantly but more often involves the decision maker in a process of identification, analysis, assessment, choice and planning<sup>6</sup>.

As Constables of the law, all sworn AFP investigators are independently responsible for *exercis[ing] and perform[ing] all...powers and duties...without fear or favour, affection or ill will.*<sup>7</sup> This means that, although the investigator may be working as a part of a team, each will be empowered to exercise their own discretion in applying the law. Using discretion is making a decision. This highlights the importance of all investigators being independently able to consistently apply critical thinking in the course of their duties across all stages of an investigation. This empowerment should be cultivated, encouraged and supported by AFP leadership.

Decisions are made in situations of uncertainty. As an investigation always involves uncertainty, it is a decision-making process. Decisions have to be made at all levels in an investigation (strategic and field) when points are reached where there is a choice of options.

Decision making in an investigation is often a very complex process undertaken in difficult and time critical circumstances, yet is open to internal and external review and challenge. The AFP, its management and individual investigators are responsible to the community, to government and to the law for the quality of investigative decisions, and should always be seeking to learn from past successful and unsuccessful decisions.

The reason a decision is made is in order to most safely, effectively and efficiently achieve a desired outcome(s) in accordance with law, AFP Core Values and governance.

Making good decisions is about calculated risk taking. A decision should be judged on the quality of the decision-making, not on the outcome. An investigator should demonstrate that they acted objectively, reasonably and fairly in the circumstances. As such, it is crucial that investigators document their decisions contemporaneously.

### Attributes of a Good Investigative Decision Maker

To make good and justifiable decisions, investigators should constantly apply the attributes described in the Investigative Mindset (which incorporate the AFP Core Values). In particular they should seek to recognise and mitigate the influences of personal and cultural bias (described in Chapter 3).

### Components of Good Investigative Decision-Making

There are numerous models for decision making<sup>8</sup>. These vary in specific construct, but all include similar component stages which should to be undertaken to achieve the best investigative decisions and subsequent outcomes.

<sup>6</sup> Heller R (1998) *Making Decisions*, Dorling Kindersley

<sup>7</sup> AFP Oath of Service

<sup>8</sup> These include the United Kingdom Association of Chiefs of Police *National Decision Model*; and the AFP *Ethical Decision Making Model*

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**Defining the Situation.** This is the identification of the existing circumstances and the particular problems, threats, risks and/or opportunities. This is undertaken via the gathering of all available relevant information (including evidence and intelligence). This is particularly important as it defines the circumstances under which the decision was made, the information available to the decision maker at the time and the rationale for the decision.

**Choice.** This is an assessment and ranking of the various options in terms of their potential positive outcomes balanced against their risks. The option with the minimal risk is not necessarily the best, as good investigators will take calculated risks to create an opportunity to achieve the best outcomes. Often a combination of options may achieve the most positive outcomes.

**Justification.** As investigative decisions are open to challenge and/or review, they must always be recorded and be justifiable (reasonable, necessary, fair and proportionate).

**Action and Review.** Once the chosen option has been actioned, in line with the Investigative Mindset, good investigators should constantly be questioning, assessing and reviewing their actions and decisions, learning from them and changing them where necessary.

**Recording decisions.** In some cases, legislation, governance or standard operating procedures will determine the requirement for specific types of decision to be documented and when and how they are to be recorded. However, this is often left to the investigator's discretion and judgement. The context, rationale and explanation for a particular decision may need to be included in any record. The record should be proportionate to the seriousness of the situation or incident, particularly if it involves a risk to community safety or the safety of AFP employees.

**Communicating the decision.** Communication is a critical component of decision making. Team colleagues, management and partners need to be informed of key decisions in a timely fashion. Complainants and the victims of crime similarly need to be kept advised of progress of an investigation. Such communication will help assuage any concerns or anxiety on the part of victims of crime, and will help establish team trust and collaboration. In some jurisdictions there may also be legislative requirements to keep victims advised of certain stages of prosecutions.

## Risks in Investigations

When managed correctly, risk can have a positive impact on the AFP's ability to achieve objectives or goals. Risk assessments inform the decision making process and assists in determining the best options to achieve success. Calculated risk management is where deliberate decisions are made in balancing the nature and magnitude of the risk against the value of the potential outcome.

Risk is inherent in all investigations. Calculated risk management is an essential part of the Investigative Mindset. In taking calculated risks, good investigators apply their judgement, experience and professionalism to make decisions that are justifiable and will withstand scrutiny.

### Risks in the conduct of the investigation

The following risk types will influence decisions in all investigations. The level of risk retained and managed should be commensurate with the priority of the task and its contribution to achieving a successful outcome.

- **Risk to community safety.** This risk can emanate from the criminal activity itself but also from the actions (or inactions) of AFP investigators.
- **Risk to the security and safety of AFP employees.** AFP investigators often need to operate in high risk environments and conduct high risk activities. The AFP holds the safety and well-being of its appointees as a priority.

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- **Risk to public interests or to assets protected by AFP.** This risk can emanate from the criminal activity itself but also from the actions (or inactions) of police in investigating this activity.
- **Risk that an investigation does not achieve a successful outcome.** The planning and management of the investigation should focus on treating the identified risks to reduce their effect on the outcome of the investigation.
- **Risk of compromise of information or police methodology.** This can include the unauthorised release of classified information holdings, source handling procedures and compromise of surveillance processes.

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### Strategic risks to the AFP

There are a myriad of potential strategic risks that the AFP accepts by its involvement or non-involvement in an investigation. Strategic risks can affect the AFP's relationship and reputation with its partners and the overall organisation's objectives. These risks should constitute the major focus of the investigative governance oversight structures.

Examples of these risks include, but are not limited to the following.

- **Allegations by the public caused by AFP action or inaction.** This includes potential public criticism where the investigative actions of the AFP are not apparent to the public and can affect the AFP's reputation.
- **Risks related to ongoing collaboration with partners.** These can arise from poor cooperation, communication and interaction at any level that leads to poor outcomes and fails to meet community expectations.
- **Risk of corrupt and fraudulent behaviour by AFP employees.** AFP investigators are employed in a position of trust. When this trust is broken, it can have a profound impact on the AFP's reputation.
- **Risks related to investigation of sensitive political matters.** These investigations are likely to attract media/public scrutiny. It is paramount that the AFP retains its reputation for impartiality.
- **Risks from AFP involvement in perceived injustice.** This includes AFP cooperation in international investigations involving offences where the death penalty may be imposed, particularly when Australian citizens are involved, and derives from a lack of procedural fairness and / or natural justice.

### Planning and Risk

The inclusion of risk management practices within investigation planning holds major benefits to the achievement of any investigation's objectives. The AFP's Risk Management framework is the guide to risk management within the AFP. This framework incorporates the Commissioner's Risk Management Policy Statement, National Guideline on Risk Management as well as templates and user guides that govern risk management within the AFP.

The risk assessment process is a tool that allows for the proper identification and treatment of risks that will assist in ensuring the needed resources, partner relationships and activities are enacted to produce good outcomes.

During an investigation, the risk fundamentals of identifying, analysing, evaluating and treating risk are one of an investigator's core functions.

Whilst experienced investigators will manage risk on a daily basis, during the planning and conduct of an investigation the risk management process assists in the identification of potential tactical and strategic

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risks that will negate or reduce the ability to achieve the investigation's objectives.

In identifying risks, clear communication of the risks can be made to all levels and stakeholders involved within the investigation. Oversight and review mechanisms that include individual, peer and supervisory reviews, Operations Committees and Joint Management Groups, play an important role in managing risks that include aspects such as resourcing, funding and the direction and progress of an investigation.

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# 06 Investigations Management

Investigations management refers to the management arrangements in place to ensure that the investigation is conducted to the appropriate standards, reflecting the AFP Core Values. The investigation management structure provides the decision making framework of the investigation. It needs to be designed in a manner that allows decisions to be made at the appropriate levels commensurate with the priority and dimensions of the investigation and any subordinate tasks. Similar management arrangements are replicated in joint investigations that the AFP conducts with partners.

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Effective management structures are also a primary requirement for ensuring that risks are identified, considered and dealt with appropriately.

## Governance of AFP Investigations

All investigations will have governance arrangements that provide the management and coordination link between the investigation, the wider AFP and partners. Fundamentally, the governance arrangements bring an investigation into existence (at the Evaluation Stage) and provide direction and strategic oversight. The other responsibilities that need to be effected by the governance structures are:

- appointment of an investigator or formation of the investigative team, including appointment of a Senior Investigating Officer (if required, see below) and/or Case Officer
- issuing, maintenance and/or amendment of the terms of reference (if required)
- allocation of an operation name (required for any major or joint investigation)
- prioritising the investigation
- elevation or delegation of investigative oversight/management in accordance with dimensions of the investigation and any apparent changes to the dimensions
- allocation of resources and support to the investigation
- coordination of investigation activities with other AFP or partner agency activities
- initiation and coordination of internal reviews
- management of information to government and the public.

There are two general models by which governance can be provided for an investigation. In some cases, governance oversight by the existing functional reporting lines is appropriate. In other cases, an investigation may require a joint agency approach. The determinants for the design of governance structures will be the dimensions of the investigation: risk, complexity, scale and time.

## Governance by Existing Functional Reporting Lines

Unless alternative arrangements are particularly required (due to the dimensions of the investigation or if a joint agency structure is otherwise necessary), AFP investigations will usually be governed in accordance with the existing Functional Reporting Lines. Hence, these types of investigation do not require reorganisation. Decision-making and reporting relevant to the investigation will continue to be provided through the usual chain of command of Team Leader/Sergeant, Coordinator/Superintendent and Manager/Commander.

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This type of governance arrangement is scalable. As required by the complexity or risk involved in the investigation, more senior officials (such as the relevant Team Leader, Coordinator, Manager or even National Manager) may retain more direct oversight, decision-making or even direct involvement. This may include the establishment of a strategic oversight committee comprising of Executive members, including members of Operation Support functions. In these cases, additional or specialist resources can be provided in support of the team responsible for the investigation without creating a separate structure.

### Governance for Joint Investigations

The alternative governance model is to establish a joint organisational entity specifically for managing an investigation. This may also be appropriate for managing a series of related investigations and can involve enacting an existing agreement involving multiple agencies.

**Joint Management Group.** A senior committee (usually called a Joint Management Group or JMG) will set the strategic agenda and maintain strategic oversight of the investigations team. The JMG may include senior representatives of all agencies involved in the investigation. The AFP will usually be represented in a JMG at the Assistant Commissioner level or a delegate. In some situations, the JMG may be a standing committee that oversees several investigations. The JMG is responsible for critical strategic decisions such as the appointment of a Senior Investigating Officer (SIO) and developing, issuing and amending any terms of reference. The existence of the JMG does not override each member's responsibility to their agency line of command and the existence of each party's executive command and control.

**Operational Coordination Group.** An Operational Coordination Group or OCG (or similar entity under a different name) is a subordinate committee that exists to deconflict the targets and resources of the investigation with the activities of the agencies involved. The AFP will normally be represented on an OCG at the Superintendent/Coordinator level.

**AFP Governance in Joint Agency Investigations.** The operational direction for the investigation may primarily come through joint management arrangements (the JMG and OCG, etc.). The AFP's involvement in these committees provides the link to the AFP governance system. This allows the AFP to:

- oversee AFP participation in the investigation and determine the continuing need for (or expansion or reduction of) AFP participation
- issue specific tasks to AFP members of the investigation team
- place any limitations on AFP involvement
- receive and disseminate investigative reporting
- maintain the relationship with other agencies involved in the investigation.

**Incident Command and Control System.** The joint agency approach is also applicable to an incident response that includes an investigative component. This will usually be organised in accordance with the Incident Command and Control System (ICCS) or ICCS Plus approach<sup>9</sup>. In these circumstances, the investigation is one of the functions within the incident management structure. It will report to and receive direction from the Command and Control function.

<sup>9</sup> ICCS is a structure devised and used by the Australia-New Zealand Counter-Terrorism Committee (ANZCTC) for management of terrorism incidents. ICCS Plus is variation on ICCS developed by the Australia New Zealand Policing Advisory Agency (ANZPAA) for the management of incidents requiring multi-agency and/or multijurisdictional responses.

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## Operations Support

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The AFP and partner agencies have a range of operations support capabilities (such as intelligence, forensics and surveillance) available to help deal with the complexity and sophistication of criminal activity. These are valuable and finite assets that should be managed efficiently and not overtasked or underutilised. Operations support capability owners should be consulted early during the planning stage to determine how each can be used for best effect. There are two general models for providing operations support to investigations:

- **Consultancy.** This is where control of an asset is retained by the responsible AFP functional area. The asset does not work directly within the investigative team; rather the investigators can request support for specific tasks, with support allocated as per usual procedures in accordance with the priority of the investigation.
- **Integrated.** This is where an operational support asset is assigned to work as a part of the investigative team. For the period of the assignment and subject to any specified limitations, the asset will be tasked in accordance with the priorities of the investigative leadership.

These two models are represented graphically in Fig 6-1.

Fig 6-1. Consultancy and Integrated Models of Operations Support to an Investigation



Specialist roles are usually filled by a specialist member from that function (e.g. the High Tech Crime Operations (HTCO) coordinator is a full time member of HTCO). Specialist support areas would be co-opted as an as needs basis during the investigation. Investigators should engage with the requisite specialists early in the investigation.

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## Management of an Investigative Team

As per the governance arrangements, the size, organisation and composition of an investigative team will need to be determined in accordance with the dimensions (risk, complexity, scale and time) of the investigation. Consistent with the dimensions, some investigations can be conducted by a single investigator. However, given that high complexity and high risk are common features of AFP investigations, a team approach is often employed.

**Joint investigations.** AFP involvement in investigations with partners is a common form of activity. Joint investigations are particularly common when dealing with serious and organised crime or issues of national security, but may be necessary across all crime types. All AFP investigators should be comfortable in joint investigations and working alongside representatives of other agencies.

- Different agencies may have different focus and/or direction driving their involvement in the investigation. AFP investigators need to be aware of these different dynamics and account for them appropriately in the planning, management and conduct of the investigation.
- Different agencies will be governed by differing legislation and hence their enforcement powers can vary. This may create challenges and opportunities for the investigative team.
- Partner agencies and personnel from diverse agencies may bring a range of capabilities, information sources, experience, cultures and perspectives that may not be available within a single agency. This can create challenges for investigators where inconsistencies in approach are apparent. However, the investigative team should take every opportunity to capitalise on the advantages of this diversity.

**Investigation management responsibilities.** The following three responsibilities are critical components in the management of any investigation.

- **Case administration.** This is the tracking of the development of the investigation with respect to the development of a judicial case.
- **Information management.** Information management is essential in ensuring that all relevant information is retained in a format which best supports investigations, judicial proceedings or review. This includes records of investigative activity, evidence, management of warrants, management of information for disclosure and maintenance of records of investigative decisions.
- **Task and resource management.** This is the operational responsibility to ensure the completion of tasks while maintaining the assigned resources. It also includes responsibility for all compliance requirements relevant to human, operational and financial resources.

### Considerations for team structure and composition

Where a team structure is employed it will need to be consistent with inter-agency agreements. The following should be considered in its organisation.

- **Scalability.** All investigative teams, but particularly where the investigative timeframe is long and the issues are complex, should have the potential to increase or decrease in size in response to changes in the dimensions of the investigation. Consistency in AFP's approach to conducting and managing investigations (regardless of dimension) should facilitate this.
- **Span of control.** A single investigator may be limited in how many direct subordinates they will be able to effectively control. Where the investigative team grows in scale and complexity, the use of subordinate teams may be necessary.

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- **Establishment of an Investigation Centre.** Consideration should be given to the establishment of Investigation Centre (IC) within a major operation. This will normally be required when a Senior Investigating Officer (SIO) is appointed and should be considered for other investigations that are assessed as high in any dimension. Such a facility may greatly aid in coordination of investigative tasks and information control within a complex investigation. An IC may also be established for the duration of a major activity (such as the conduct of large or multiple coordinated outcome activities) during the course of an investigation.
- **Human Resources.** The size and composition of the team should be sufficient to maintain the required workload across the duration of the investigation and in accordance with the risk and complexity involved. This may also require a structure that allows for rostering.
- **Planning and Logistics.** This includes the planning for and provision of transportation, accommodation, equipment and provisions necessary to sustain operations. Where an investigation is conducted in the context of existing functional reporting lines, logistics will usually be provided through the usual channels. However, specific logistic arrangements may be required when investigation is conducted as a Task Force and/or where tasks are conducted across number of locations, in location(s) remote from AFP offices, require significant concentration of personnel and/or impose limitations on the movement of personnel.

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## Investigation Team Roles

Depending on the dimensions of the investigation, some or all of the following roles may need to be fulfilled in an investigation team. Each role refers to the responsibility for the completion of and outcomes of a particular aspect of the investigation.

This structure is flexible. Not all roles will be required in all investigations and, in small investigations, it may be appropriate to merge roles or have a member filling several specialist roles (note that where a single investigator has been assigned, that person may need to fill all relevant roles). Conversely, larger investigations may have several teams with the same role, but regarding different aspects of the investigation (for example two or more investigations coordinators may be required). The assignment of roles is a critical decision that should be recorded in the planning documents, particularly when roles are merged.

### Senior Investigating Officer

Where a JMG or an Assistant Commissioner determines that an investigation requires senior leadership due to its dimensions, a Senior Investigating Officer (SIO) will be appointed.

An SIO will apply experience, knowledge and associated attributes in exploiting any opportunities for the gathering of covert or overt evidence for the purposes of preventing, disrupting or prosecuting criminal activity.

To be appointed as an SIO, an investigator will need to possess the requisite contemporary investigative skills required by the crime type. The rank of an AFP SIO will be dependent on the profile and complexity of the investigation, and should be fulfilled by a Superintendent, Investigations Manager (Band 8 role where it exists in the structure) or above. In a joint investigation the nominated SIO may be from a partner agency. The SIO should be given leave from their normal duties commensurate with the demands of the investigation.

An SIO will need to be supported by an Investigations Structure (i.e. a Task Force with dedicated staff may be established) and will report to a JMG.

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**Role of an SIO.** The role of SIO may include the following elements:

- Leadership, management, direction and coordination of all aspects of the investigation
- Primary decision making authority for investigative matters within the respective jurisdiction. This does not prevent the review of an SIO's decision by the JMG
- Compliance with the provisions of standing business rules, governance arrangements and/or inter-agency agreements applicable to the crime type and jurisdictions involved
- Establishment of an IC (see below)
- Determination of an appropriate case management system to assist in achieving the outcomes of the investigation
- Establishment of investigative structures and disciplines as determined by the circumstances
- Management of information, evidence and intelligence exchange with participating agencies, in accordance with legislative requirements
- Provision of status and progress reports to the JMG
- Responsibility for leading investigation planning
- Close cooperation with the chain of command and participating agencies in order to exploit opportunities for developing intelligence that may lead to preventative/disruptive action, taking into consideration the overriding importance of public safety, as well as the need to protect sensitive sources and techniques
- Provision of advice to the JMG concerning evidentiary matters, recognising that whilst a criminal prosecution will usually be the preferred outcome, there may be circumstances in criminal investigations where other forms of action may be deemed more appropriate
- Ensure any proposed media releases do not compromise investigations or police methodology.

**Terms of Reference.** The JMG will appoint an SIO by means of a written Terms of Reference. The Terms of Reference will clearly stipulate:

- The appointment of a specific individual as the SIO for the investigation
- The scope of the investigation
- The requirement for the SIO to prepare and submit investigation planning documents to the JMG for approval
- The resources available to the SIO, including authority for overtime and travel and the investigation's operating budget
- The authority by which the SIO may deploy resources under their command in accordance with the approved Investigation Plan
- The investigation management system to be used.

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## Coordinator/Superintendent

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Coordinators are responsible for managing the conduct of investigations, particularly those investigations where an SIO has not been appointed.

Subject to any governance, joint agency agreements or the appointment of an SIO for a particular investigation, the Coordinator is the primary decision maker and final arbiter on investigative matters. Coordinators set the strategic direction of an investigation and ensure the direction is adhered to. The Coordinator is the principal advocate for the investigation when engaging senior management and other AFP business areas to secure appropriate resources or any issues arising that require senior executive action.

The Coordinator will ensure that relevant information determined by the senior executive is appropriately disseminated to investigations staff. The Coordinator is not expected to have detailed knowledge of the minutiae of each investigation but will rely on Crime Managers and/or Team Leaders to ensure that all relevant information is provided to them.

The responsibilities of a Coordinator in the management of an investigation (where an SIO is not appointed) include:

- Setting the strategic direction related to the overall coordination of investigations under their command
- Maintaining oversight of all investigations under their command to ensure quality and timely progression
- Taking responsibility as the final arbiter on decisions made in investigations under their command (this does not prevent the review of investigative decisions by the normal chain of command process)
- Ensuring the risk fundamentals of identifying, analysing, evaluating and treating risk are enacted
- Ensuring compliance with governance processes and relevant legislation, policy and practice
- Maintaining oversight of the investigative structures and disciplines established by the Team Leader and ensuring those structures are appropriately resourced as determined by the circumstances
- Approving Investigations Plans as required
- Oversighting and approving status and progress reports through the normal chain of command
- Assisting in the development of any media strategy and where appropriate, performs the role of police spokesperson
- Overseeing the information exchange between partner agencies to exploit opportunities for developing intelligence that may lead to preventative or disruptive action.

## Team Leader/Sergeant

Team Leaders provide the direct, day-to-day field leadership for investigative teams. Team Leaders must provide dynamic leadership and ensure that their members are well briefed, have appropriate support and are focussed on investigative priorities. The span of control for a Team Leader will mostly (but not always) be limited to one team, which will be part of the broader investigative effort.

The exact duties of a Team Leader in investigations management will vary depending on their skills and their formal role within an investigative management structure, but in general they will include:

- Ensuring that strategic intent is implemented by the investigative team and that the conduct of investigative activities is in accordance with jurisdictional law, AFP governance and the prosecution/judicial process
- Responsibility for guiding the development of the Investigation Plan(s)

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- Ensuring that resources are efficiently and effectively utilised, and that for complex investigations, an integrated approach is adopted by the multiple teams involved in the investigation
- Managing the identification, assessment and treatment of risk
- Advising on the identification, selection and application of investigative techniques
- Maintaining awareness of legislative/policy changes and how such changes affect investigative activities and ensure these are adhered to
- Guiding and advising the development of innovative investigative strategies and prioritising tasks in accordance with investigative strategies
- Identifying efficiencies by reviewing the conduct of the investigation, the progress of tasks and where appropriate apply new methods
- Ensuring that the investigative team maintains the integrity of all information gathered, in accordance with AFP requirements
- Conducting regular supervisory reviews
- Vetting briefs of evidence to ensure all offence elements are satisfied
- Maintaining awareness of all pertinent information relating to their team's investigations.

### Case Officer

The Case Officer is the investigator that manages the case file. This makes them the hub of all coordination in the investigation and the person most familiar with the case and investigative progress. They oversee all investigative inquiries and investigator deployment. The Case Officer will report to either their Team Leader or to the SIO (if appointed).

The specific role and the decision-making and administrative responsibilities of the Case Officer will vary in accordance with the dimensions of the investigation. In a small investigation, the Case Officer may have primary responsibility for developing and implementing the investigation plan and managing assigned and supporting resources. As the risk, scale and complexity increase, many of the key operational decisions may be retained by more senior personnel; but the Case Officer will often assist and advise on these decisions (including developing the investigative strategy).

### Information Coordinator

This investigator is responsible for information flow within the investigation team. They ensure that all information collected during the investigation is recorded and collated appropriately. The Information Coordinator and their team (if assigned) ensure the quality and integrity of investigative data recorded.

### Interview Coordinator

This investigator is responsible for the planning and management of arrest and post-arrest interviews. This includes assignment of interviewers, consolidation of interview plans and statements and coordinating assistance to interviewers. This role also prepares applications for necessary legal instruments required, such as time extensions for detention and oversees compliance with legislative and governance requirements.

### Disclosure Coordinator

The Disclosure Coordinator is responsible to coordinate and oversee the recording and handling of all potentially disclosable material throughout the course of the investigation. During the conduct of any judicial action,

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the Disclosure Coordinator will work with the prosecutors to ensure that appropriate material is adequately disclosed and to advise the application of exemptions to disclosure.

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### Intelligence Coordinator

This responsibility refers to maintaining the relationship between the investigation and the intelligence system. It includes planning for intelligence support and coordinating the issuing of requests for information and the release of information reports. This support may be provided in a number of different ways, depending on the Operational Support model used. In the consultancy model, the Intelligence Coordinator may be an investigator responsible for liaison with intelligence. In the hybrid model, an Intelligence Liaison Officer may be provided from the Intelligence Function to work as a part of the Investigation Team. In a Task Force that includes a Joint Intelligence Group (JIG), the Intelligence Coordinator is responsible for managing team members comprising the JIG.

### High Tech Crime Operations (HTCO) Coordinator

The HTCO Coordinator is responsible for the planning, assignment and coordination of all physical and technical surveillance activities in support of the investigation, on behalf of the SIO. These activities may include evidence collection and display, prevention, disruption or investigation of technology enabled crime. It may also include the development or acquisition of special capabilities to meet particular challenges arising from the investigation. The role covers all services provided by Telecommunications Interception, Technical & Surveillance Operations, Technical Capability Delivery, Radio & Electronic Support and Cybercrime Operations.

### Forensic Coordinator

The Forensic Coordinator, who is a Forensic and Data Centres team leader or above, in conjunction with the investigation leadership, develops and executes a forensic strategy to meet operational requirements. The Forensic Coordinator manages the tasking and deployment of all forensic resources on behalf of Forensic and Data Centres. The Forensic Coordinator aids the SIO and Case Officer to determine which items should be subjected to forensic analysis and their priority order.

### Evidence and Exhibits Coordinator

The Evidence and Exhibits Coordinator is responsible for collecting, handling and storing evidence (physical and electronic) and exhibits. This includes identifying evidence gaps, arranging storage of evidence (in accordance with the continuity of evidence requirements) and preparing its presentation in judicial action.

### Asset Confiscation and Financial Analysis Support

The relevant Criminal Assets Confiscation Taskforce (CACT) Team will provide support and advice on opportunities for asset confiscation for the investigation. The CACT will also provide financial analysis support for the complex financial aspects of the investigation. This may include seconding Forensic Accountants into the investigations team.

### Financial Investigations Coordinator

The Financial Investigations Coordinator has responsibility for developing and coordinating the exploitation of financial avenues of inquiry. This may support the gathering of evidence and directly support prevention or disruption activities directed toward criminal finances. Where financial investigators and/or Forensic Accountants have been assigned to the investigation, the Financial Investigations Coordinator will manage this team.

### Police Tactical Group (PTG) Commander

The PTG Commander manages deploying specialist resources, including negotiators, bomb teams and tactical teams. The PTG provides a forward tactical commander and a PTG commander at the Incident Control Centre to support and advise on developing tactical resolution options (orders requiring approval). This could involve arrest,

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issuing of summons, taking into custody for questioning or preventative detention or some other activity to achieve a prevention or disruption outcome. In some cases, specialist PTG capabilities may be required. These operations will always need to be carefully planned to identify and mitigate risk and to ensure that they achieve their aim.

### Legal Support

AFP Legal is the AFP's in-house legal area, providing legal advice and assistance on a wide range of legal issues that may arise before or during the course of an investigation, in particular on the use of policing powers and the application of relevant criminal offences. Legal support is usually provided under a consultancy model arrangement, but integrated legal support may be provided to particularly sensitive investigations (such as counter terrorism investigations). Legal also coordinates the engagement of external legal service providers where required, including the Australian Government Solicitor (AGS) and Counsel. Legal does not seek to intervene in the function and role of the Director of Public Prosecutions (DPP) with respect to prosecution or mutual assistance or extradition, although Legal can also assist with inquiries relating to briefs of evidence and related matters.

Legal support will normally be provided under legal professional privilege and hence not required to be disclosed in judicial proceedings. The investigator should understand the relevance and implications of legal professional privilege in all dealings with legal advisors.

### Media Coordinator

The Media Coordinator manages the relationship between the investigation and the media, including both arranging media assistance to the investigation and controlling release of information to the media. Note that media support will often be provided as a hub arrangement rather than as a part of the investigative team.

### Family Investigative Liaison Officer (FILO) Coordinator

The FILO Coordinator manages contact between the investigative team and the victims of the crime and/or their family. This responsibility involves coordinating both the provision of necessary welfare support and gathering evidence from the victim(s) and victim's family. This includes responsibility for developing a displaced persons plan, if required.

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## Investigation Support Roles

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The Investigation Support Team helps investigators perform their functions in an effective manner by providing administrative and logistical support.

**Resources Coordinator.** The Resources Coordinator provides administrative and logistical support to ensure that a professional, comprehensive and coordinated investigation is conducted. This involves the responsibility to coordinate the employment of all resources (human resources and logistics) assigned to the investigation. It includes developing rosters and schedules, arranging logistics and managing finances.

**Wellbeing Services/Psychologist.** The stressful nature of policing work requires attention to be paid to the physical and psychological wellbeing of the investigative team. Specialist resources may be available to support this responsibility.

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