



# Australian Federal Police

ENGAGEMENT OF CONSULTANT

August 2008

*This is an abridged version of the report 08/2008.  
The full report has not been made publicly available  
due to security considerations.*

Report by the Commonwealth and Law Enforcement Ombudsman,  
Prof. John McMillan, under the *Ombudsman Act 1976*

REPORT NO. **08|2008**

## Reports by the Ombudsman

Under the *Ombudsman Act 1976* (Cth), the Commonwealth Ombudsman investigates the administrative actions of Australian Government agencies and officers. An investigation can be conducted as a result of a complaint or on the initiative (or own motion) of the Ombudsman.

The *Ombudsman Act 1976* confers five other roles on the Commonwealth Ombudsman—the role of Defence Force Ombudsman, to investigate action arising from the service of a member of the Australian Defence Force; the role of Immigration Ombudsman, to investigate action taken in relation to immigration (including immigration detention); the role of Postal Industry Ombudsman, to investigate complaints against private postal operators; the role of Taxation Ombudsman, to investigate action taken by the Australian Taxation Office; and the role of Law Enforcement Ombudsman, to investigate conduct and practices of the Australian Federal Police (AFP) and its members. There are special procedures applying to complaints about AFP officers contained in the *Australian Federal Police Act 1979*. Complaints about the conduct of AFP officers prior to 2007 are dealt with under the *Complaints (Australian Federal Police) Act 1981* (Cth).

Most complaints to the Ombudsman are resolved without the need for a formal report. The Ombudsman can, however, culminate an investigation by preparing a report that contains the opinions and recommendations of the Ombudsman. A report can be prepared if the Ombudsman is of the opinion that the administrative action under investigation was unlawful, unreasonable, unjust, oppressive, improperly discriminatory, or otherwise wrong or unsupported by the facts; was not properly explained by an agency; or was based on a law that was unreasonable, unjust, oppressive or improperly discriminatory.

A report by the Ombudsman is forwarded to the agency concerned and the responsible minister. If the recommendations in the report are not accepted, the Ombudsman can choose to furnish the report to the Prime Minister or Parliament.

These reports are not always made publicly available. The Ombudsman is subject to statutory secrecy provisions, and for reasons of privacy, confidentiality or privilege it may be inappropriate to publish all or part of a report. Nevertheless, to the extent possible, reports by the Ombudsman are published in full or in an abridged version.

Copies or summaries of the reports are usually made available on the Ombudsman website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au). Commencing in 2004, the reports prepared by the Ombudsman (in each of the roles mentioned above) are sequenced into a single annual series of reports.

**ISBN 978 0 9805344 3 6**

Date of publication: August 2008

Publisher: Commonwealth Ombudsman, Canberra Australia

© Commonwealth of Australia 2008

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Australian Government, available from the Attorney-General's Department.

Requests and enquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Copyright Law Branch, Attorney-General's Department, National Circuit, Barton ACT 2601, or posted at <http://www.ag.gov.au/ccca>.

Requests and enquiries can be directed to the Director Public Affairs, Commonwealth Ombudsman, GPO Box 442, Canberra ACT 2601; email [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au) or phone 1300 362 072 (local call charge). This report is available on the Commonwealth Ombudsman's website <http://www.ombudsman.gov.au>.

## BACKGROUND

The Ombudsman initiated an investigation into a matter raised by Commissioner M J Keely of the Australian Federal Police (AFP) about a perceived conflict of interest and an alleged lack of transparency in the engagement of an external consultant by the AFP.

The AFP needed a particular security related service to be provided. The area of the AFP concerned believed that the specialist nature and sensitivity of the security service made it difficult to source a provider. The need for, and sensitivity about, the service was compounded by certain industrial issues.

A consultant was engaged directly by an AFP officer ('direct source') and not by an approach to the market. The AFP officer who initiated the engagement had earlier met the consultant in a social setting while the consultant was in the company of a senior AFP member with whom there was a personal relationship. The senior AFP member was not involved in the decision to engage the consultant. The decision to engage the consultant was based on the view that the consultant had the relevant background and experience to deliver the service. A significant factor in that decision was the consultant's assertions that the consultant's company was already providing security services to the AFP under a deed of standing offer.

## CONCLUSIONS

### Conflict of interest

The investigation found there was no evidence that the senior officer who had a relationship with the consultant directly influenced the selection of the consultant. The investigation did find however that there was a potential conflict of interest arising from the relationship that was not well managed.

The investigation found that the guidelines on conflict of interest in the AFP are not adequate. They focus on conflict arising from material benefits that might accrue to officers. Conflicts can and do arise from situations and relationships that can affect or be seen to affect the perceived fairness of decisions. Guidelines need to address such conflicts.

### Procurement decision

The investigation found no evidence to question the quality of the service delivered. Nevertheless, the investigation found that the decision to direct source was not well founded.

The decision to direct source and not to approach the market was based on certain assumptions that were erroneous or not warranted. Those assumptions were:

- *the perceived urgency of the need to have the service* — the urgency was overstated
- *the consultancy firm was already providing security services to the AFP* — the type of security services covered by the extant deed of standing offer which the firm had with the AFP did not include the service required in this instance

## Commonwealth and Law Enforcement Ombudsman—AFP: Engagement of consultant

- *the consultant had specialised skills and experience that would be difficult to source elsewhere* — there were other providers in the market (as a later open approach demonstrated) but no steps were taken to identify those providers.

Of particular relevance to the consideration to direct source was advice provided by the central procurement policy area of the AFP that the proposed method of procurement—that is, a direct source—was appropriate. That advice was based on information contained in a business case that the sourcing area gave to the policy area; however the business case was based on the flawed assumptions above. The officers deciding on the engagement regarded the policy advice as persuasive in their decision to proceed with the direct source.

The AFP guidelines in relation to procurement methods were likely to produce confusion. On the one hand, they referred to thresholds above which certain procurement methods were ‘required’. This procurement demonstrated that despite the use of directive language, the thresholds were perceived not to be mandatory but to be more in the nature of guidance or preferred practice. Obtaining ‘sign-off’ from the policy area to a preferred procurement method was seen as a justification for departing from the guidelines.

## RECOMMENDATIONS

The Ombudsman recommended that the AFP review its procurement guidelines dealing with monetary thresholds to clearly delineate what are mandatory procedures and what are not.

It was also recommended that the AFP review the practice of the procurement policy area giving ‘sign off’ to business cases, and provide clear policy articulation of what are and what are not, the responsibilities of the policy area in relation to advice on procurement methods.

Finally, the Ombudsman recommended that the AFP develop written procedures and detailed guidance for AFP members to assist them in identifying and avoiding conflicts of interest in carrying out their duties. It was recommended that these written procedures and guidance should be made available to all AFP employees and should make it clear that a conflict situation can arise in a wide range of circumstances.

The AFP accepted all of the recommendations.