

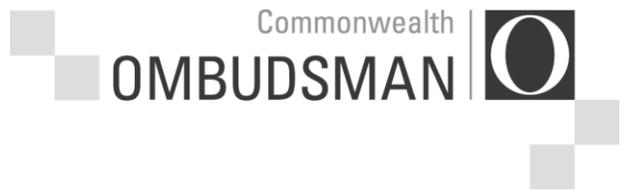


**Report on Commonwealth Ombudsman's  
activities under Part V of the  
*Australian Federal Police Act 1979***

1 JULY 2007 TO 30 JUNE 2008

Report by the Commonwealth and Law Enforcement Ombudsman  
under Part V of the *Australian Federal Police Act 1979*

**November 2008**



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## EXECUTIVE SUMMARY

Under Part V of the *Australian Federal Police Act 1979* (the Act) I have certain oversight responsibilities in respect of the way that the Australian Federal Police (AFP) handles complaints against it and its members.

To do this I conduct reviews of AFP complaint handling by inspecting records and then report to the Parliament.

This report covers my work and activities in relation to reviews conducted during the period 2007–08.

My reviews in this first full year period focused on the effectiveness of the processes and systems that the AFP had put in place for the new regime of handling complaints that commenced on 30 December 2006. The reviews found that generally the AFP had made extensive preparations for the new system and had a genuine commitment to making the arrangements work.

Nevertheless, certain deficiencies were apparent. The technology used by the AFP for recording, managing and tracking complaints and then making use of that information for management purposes, seemed to have significant limitations.

The timeliness of the AFP’s handling of minor complaints was consistently well below the benchmarks that the AFP had set itself.

My overview of complaints involving serious misconduct was hampered by disagreement between my office and the AFP on when complaints were to be notified to my office, and what information should be provided on notification.

In the period under review, we were not given access to sufficient information to be satisfied that the administrative processes for dealing with corruption issues (for example, notifying the Australian Commission for Law Enforcement Integrity) were being followed, according to legislative requirements.

There was little evidence that the AFP was making use of complaint information to improve practices and procedures on an organisational basis.

More generally, there was room for improvement in the way the AFP dealt with complainants. Best practice in complaint handling puts the complainant, and his or her treatment, at the centre of the process. However, the AFP’s approach to resolving a complaint seemed more akin to investigating a crime, where the person alleged to have committed the offence is at the centre of the process. With such an approach, complainants can be regarded more as informants or witnesses and their interests treated as secondary to the investigation and its findings in relation to AFP members involved. I recommended that communication

with complainants should be improved and that specific training in complaint handling would be of benefit to AFP members engaged in dealing with complainants.

Now that the processes for AFP complaint handling are more settled, in next year’s reviews I will be giving more attention to the quality of investigations of complaints, treatment of complainants, and organisational awareness and use of complaint data to improve practices and procedures.

## BACKGROUND

Part V of the Australian Federal Police Act provides for the handling and oversight of complaints about the AFP.

Part V commenced on 30 December 2006 as part of a broader reform to the system for handling complaints made about the AFP. The reforms removed the previous joint handling of complaints by the AFP and the Ombudsman, which was a central feature of the now repealed *Complaints (Australian Federal Police) Act 1981*. Instead, the AFP was to have the primary responsibility for investigating complaints.

As the Law Enforcement Ombudsman, I now have a new responsibility to review the administration of the AFP’s handling of complaints, through inspection of AFP records.

Under s 40XA the Ombudsman is required to inspect AFP records at least once every ‘review period’ for the purposes of reviewing the AFP’s administration of Part V of the Act. The Act defines a review period as a period of 12 months starting on the date the *Law Enforcement (Australian Professional Standards and Related Measures) Act 2006* commenced, that is 30 December 2006, and each succeeding period of 12 months.

Under s 40XB the Ombudsman may at any time conduct ‘ad hoc’ inspections of AFP conduct and AFP practices issues dealt with under Divisions 3 and 4 of Part V at any time.

Under s 40XD of Part V of the Act I am required to report to the President of the Senate and the Speaker of the House of Representatives, as soon as practicable after 30 June each year, on the work and activities of my office under Part V during the preceding 12 months. That report must include comments on the comprehensiveness and adequacy of the AFP’s administration of Divisions 3 and 4 of Part V, which relate to the management of complaints about AFP conduct and practices issues and ministerially directed inquiries.

My annual report to the Presiding Officers covers my activities under s 40XA for the 12-month period commencing on 1 July and ending on 30 June each year, notwithstanding that this period does not coincide with the ‘review period’ as defined in the Act.

## METHODOLOGY

I noted in my first report that, in the period between the commencement of my responsibilities under Part V of the Act and 30 June 2007, my office developed a methodology for reviews under s 40XA of the Act and commenced the first review on 28 May 2007.

The process of each review is that my staff conduct a physical inspection of AFP records. A draft report on the inspection with my recommendations is then prepared and forwarded to the AFP Commissioner for comment. Any such comments are then considered and taken into account in preparing a final report. When this has been done the review is considered to be finalised and the final report is sent to the AFP Commissioner.

We completed the first review in January 2008. We commenced a second review on 3 March 2008 and sent the final report on this review to the AFP in August 2008. For the purpose of these reviews my office inspected AFP records of complaints finalised in the period from 30 December 2006 to 31 January 2008.

In conducting the reviews we applied:

- the guidelines for complaint handling referred to or set out in the Orders issued by the AFP Commissioner (Commissioner’s Orders), particularly the Commissioner’s Order on Professional Standards (CO2) and the National Guideline on Complaint Management (the guidelines)
- the standard for the management of complaints recommended by the then Department of Finance and Administration (Australian Standard Customer Satisfaction – Guidelines for complaints handling in organizations AS ISO 10002–2006) (the Australian Standard).

For the purposes of complaints management under the Act, conduct is divided into four categories of which the highest is conduct giving rise to a corruption issue (Category 4). The three other categories are minor management or customer service matters (Category 1), minor misconduct (Category 2) and serious misconduct (Category 3). The principles for determining the kind of conduct that falls within these three categories were agreed on by me and the AFP Commissioner and set out in a legislative instrument – *AFP Categories of Conduct Determination 2006* (the Determination). Conduct giving rise to a corruption issue may also need to be referred to the Australian Commission for Law Enforcement Integrity (ACLEI).

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The Act differentiates between a conduct issue and a practices issue. A conduct issue is an issue about whether an AFP appointee has engaged in conduct that contravenes AFP professional standards or corrupt conduct.<sup>1</sup> A practices issue is about the practices and procedures of the AFP, which includes the internal and formal rules instructions and orders of the AFP (including Commissioner’s Orders); the policies adopted or followed by the AFP; and the practices and procedures ordinarily followed by AFP members in the performance of their duties.<sup>2</sup>

In the first review, we inspected all 110 of the complaints made after the commencement of Part V on 30 December 2006 and finalised by 24 May 2007. For the second review, large numbers made it impracticable to inspect all records and a sample of 25% of finalised complaints was inspected. However for some classes of records, for example, cases that had been deleted from the files, we inspected all records over and above the sample.

For both reviews I made recommendations for improving the handling of complaints. This report does not address all of the issues and recommendations raised in the two reviews but rather highlights the more significant ones that we addressed.

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<sup>1</sup> *Australian Federal Police Act 1979* s 40RH.

<sup>2</sup> *Ibid* s 40RI.

## **COMPREHENSIVENESS AND ADEQUACY OF THE ADMINISTRATION OF MATTERS UNDER DIVISIONS 3 AND 4**

### **Use of technology**

The AFP has two computer systems in which it manages complaints. All matters are required to be entered into the Complaint Recording and Management System (CRAMS). Matters relating to serious misconduct and corruption are also entered into the Professional Standards (PRS) PROMIS system. The use of the term PRS in this report refers to the Professional Standards Unit of the AFP, constituted under s 40RD of the Act to undertake professional standards functions.

It was apparent from the first review the AFP had made extensive preparations for the new complaint-handling regime in terms of publications and information technology. However, the AFP acknowledged that further training would be needed to deal with the complexities of the new approach to complaint handling and it was apparent from records inspected for the second review that training was still a major issue.

The need for more training was reflected in the inconsistencies we found in the way data was recorded. There had been some improvement by the time of the second review in March 2008 in that more information about the complaint and how it was dealt with was being recorded. It was apparent that the technology itself needed improvement in order to reduce the need for free text and the consequent risk of inconsistent data entry.

We expressed concern to the AFP that the technology did not seem to have sufficient capacity to report overall complaint data for use by management to identify and address complaint trends. We received some management reports that were said to be an example of routine statistical reports. However, from the information provided we were unable to conclude that the current system provided a comprehensive tool for analysing complaint data. For the next review I have asked, under s 40XC of the Act, to be given access to all statistical reports generated in the review period.

### **Timeliness**

Both reviews found problems with, and made recommendations to improve, the timeliness of complaint handling.

The guidelines set benchmarks for complaint resolution:

- Category 1 conduct issues should be resolved within 21 days
- Category 2 conduct issues should be resolved within 45 days
- Category 3 conduct issues should be resolved within 180 days.

The time taken to finalise both Category 1 and Category 2 was not within the benchmarks set out in the guidelines. At the first review, 45% of Category 1 issues were not finalised within the benchmark. At the second review that figure had risen to 86%. At the first review, 53% of Category 2 issues were not finalised within the benchmark. Again, by the second review, that figure had risen to 78%.

On the other hand, both reviews found that the situation for Category 3 issues was significantly better. At the first review, all were finalised within the benchmark; at the second review, that figure was 85%.

These categories are handled in different ways, which goes some way to explaining the difference in timeliness. Category 1 and 2 matters are dealt with by Complaint Management Teams (CMTs) in various business units. There are 16 CMTs currently operating in the complaint framework.

These CMTs have the function of assessing that each complaint has been correctly categorised and that all the issues have been coded. The CMT then assigns the complaint to an investigator. The CMT will check the quality of the investigator’s report. That report is then sent to PRS for further quality assurance. Each CMT needs a quorum of three senior complaint managers and the guidelines say that CMTs are to meet at least once a week.

Category 3 conduct matters are the responsibility of PRS, members of which would generally investigate such matters under the supervision and guidance of the Manager PRS. This results in a much more contained and streamlined process.

By the time of the second review, the AFP complaint information system was more able to provide information on the points in the processes at which the delays in finalising Category 1 and Category 2 matters were occurring. Not surprisingly significant points of delay were around the CMTs. I recommended that the AFP take measures to reduce the time taken by CMTs to allocate and then sign-off on investigations. The AFP agreed that CMT procedures were part of the problem and by the end of the period covered by this report had begun to implement measures to ensure that CMTs met regularly and had assistance from Professional Standards in making decisions.

### **Category 3—serious misconduct issues**

The process for notifying the Ombudsman of Category 3 matters has not worked as smoothly as we had hoped. Our reviews showed that a large number of Category 3 issues had not been notified to me as required by the Act. There has also been some confusion as to what should be notified and about the recording of changes of category. A particular issue has been whether these matters should be notified to me before or after the initial categorisation has been vetted by the PRS Operations Committee.

The AFP adopted the view that it is only required to notify the Ombudsman after the complaint or conduct issue has been vetted and categorised as a Category 3 matter by the Operations Committee. This was seen as the most ‘prudent’ approach in terms of effective use of resources by both the AFP and my office.

In my view, it is the initial categorisation that should determine the requirement to notify the Ombudsman, notwithstanding that the complainant may have exaggerated or misunderstood the seriousness of the complaint. This is consistent with the oversight role imposed on me by the Act.

This is an issue which requires further discussion with the AFP to ensure that the oversight we have of Category 3 matters is sufficient.

### **Category 4—corruption issues**

A small number of issues were referred to ACLEI as raising corruption issues. The review team was not given access to either the paper files or the electronic records for these cases. The AFP took the view that these cases were subject to review by ACLEI and that the records were outside the ambit of the Ombudsman’s review. I took the view that my function of reviewing complaint handling under Part V of the Act includes review of whether processes prescribed by Part V for dealing with ACLEI have been followed. For example, the requirement to consult the Integrity Commissioner under s 40TO(7) or to comply with the Integrity Commissioner’s directions under s 40WB(2).

We did not insist on access at the time but informed the AFP that access to files on corruption issues would be requested formally at future reviews pursuant to s 40WA(5) and 40XC of the Act.

### **Dealing with complainants**

The Act requires that the Commissioner keep the complainant informed to a reasonable extent of progress in dealing with a complaint and of the action taken (s 40TA). It is left to the Commissioner to provide any more detailed guidelines for dealing with complainants on matters such as timelines, review of decisions and the ‘reasonable’ amount of information that can be provided to a complainant. The Australian Standard refers to the need to keep the complainant informed throughout the process.

In both reviews, we noted room for improvement in relation to the quality of communication with complainants and keeping records of such communication.

At the first review, issues of concern were inconsistent practice in acknowledging complaints; uninformative and, in some cases, abrupt outcome letters to complainants; and a failure to provide information to complainants about the role of the Commonwealth Ombudsman.

The second review indicated that there had been some progress, particularly evident in the ACT Policing CMT, towards acceptance that it is reasonable for a complainant to want to know why a complaint has not been upheld. The AFP advised that it has changed its letter templates to provide for reasons for a decision to be given, and that PRS will review outcomes of completed cases.

We have consistently recommended more training on the handling of complaints and complainants. Training might usefully cover issues such as managing complainant expectations, managing difficult behaviour and complainants with special needs. The Australian Standard refers to the need for specific complaint-handling training and the need for personnel to have good interpersonal and communications skills. This type of training would be useful for both PRS and other AFP investigators.

The AFP did not consider that particular complaint-management training was necessary due to police members’ investigation skills and experience, particularly those of members of PRS. Nevertheless, in my view complaint handling, including dealing with complainants, is different from investigating a crime, and requires skills different from those needed to deal with members of the public as informants or witnesses.

It is not the practice of the AFP to offer internal review to complainants if they are dissatisfied with a decision on a complaint, and there is no legislative requirement to do so. Internal review is, however, available to an AFP member who is the subject of a complaint involving Category 1 or 2 (that is, less serious) conduct issues. I take the view that if internal review is offered to the subject of a complaint it should also be offered to the complainant.

## **Practices issues**

The AFP needs to demonstrate a greater capacity to implement and monitor recommendations about practices issues. This was a matter on which the second review focused.

All CMTs are required to keep a register entitled ‘AFP Practices Register’. It does not appear that all of the registers contain entries. The second review found that there was no consistent approach to recording information in these registers. Each CMT was, apparently, responsible for identifying such issues in its business area and taking remedial action to address any identified deficiencies. It was not clear that there was any process in place to identify lessons learned that might have relevance to other areas of the AFP and for sharing these.

It remains unclear to what extent AFP members have an appreciation of how identifying administrative faults through complaints feeds into the process of improving practices and procedures in an agency. An understanding of the distinction between investigating a particular complaint and the broader

administrative process of complaint handling in the sense used by the Australian Standard is fundamental to improving agency performance in this area.

The AFP has expressed an intention to centralise the register of organisational issues. More refinement may be necessary to ensure that recommendations for systemic change get the attention they deserve. In particular, there needs to be more evidence that complaints are seen as a useful tool for bringing about improvements in administration.

## GENERAL CONCLUSIONS

We found that there was a genuine commitment in the AFP to making the new complaints regime work. However, there is room for improvement in practices and processes. For example, the way that complainants are regarded and dealt with is an area for continuing attention, as is appropriately using the complaint-management system and all the information it can provide to give insight into organisational issues.

The Australian Standard makes a number of references to the need for a complaint-handling system to be ‘customer focused’. Based on the reviews conducted and my more general interactions with the AFP in my role as Law Enforcement Ombudsman, the AFP’s complaint handling has room to improve in this regard. In particular, the AFP has still some way to go in accepting that resolving a complaint is different from solving a crime, where the objective is to find the person responsible. With such an approach the AFP will continue to have difficulty acknowledging that the organisation as a whole may be responsible for the circumstances giving rise to a complaint, whether through inadequate procedures or poor training of individual staff. Acceptance of organisational responsibility is what generates systemic change.

My reviews will continue to focus on how the system meets the challenges of responding to complainants and using their complaints to achieve continual improvement in AFP practices and procedures.

Prof. John McMillan  
Commonwealth and Law Enforcement Ombudsman