



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

FOR THE PERIOD 1 JULY 2008 TO 30 JUNE 2009

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

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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 the Australian Federal Police (AFP) handles complaints against it and its members.

To do this my office reviews AFP complaint handling by inspecting records, and once a year I report to the Parliament.

This report covers work and activities conducted by my office in relation to reviews conducted during the 2008–2009 period. We conducted two inspections and finalised one review during this time (review three) and finalised review four a few months after. This report covers the findings from review three and foreshadows trends noted in review four, which will be reported on in more detail in my report to Parliament next year.

My last report to Parliament in November 2008 noted a genuine commitment in the AFP to making workable the complaints regime established in December 2006. That report highlighted several areas where there was room for improvement:

- in complaint handling practices and processes, especially in the way complainants are regarded by the AFP
- using the complaint management system and the information it provides to give insight into AFP organisational issues.

I reported that the timeliness of the AFP’s handling of minor complaints was consistently well below benchmarks that the AFP had set itself. I referred to the Australian Standard and the need for a complaint handling system to be ‘customer focused’ and for the AFP to accept organisational responsibility for complaints in order to generate systemic change. I said that my reviews would continue to focus on how the AFP meets the challenges of responding to complainants and using complaints to achieve continual improvement in AFP practices and procedures.

This year’s reviews have shown that the AFP is putting considerable effort into making improvements in these areas—with some success—particularly in promoting consistent quality of complaint resolution across the organisation. The capacity of the technology used for complaint management remains an issue as does timeliness in complaint resolution, particularly as it relates to Category 1 and 2 cases. Timeliness remains a focus for our attention.

I am encouraged by the AFP’s positive response to the reviews we have undertaken to date and its willingness to consider making changes to improve its performance in complaint handling. The documentation supporting decision making has generally improved, and an improvement in the quality of the adjudication decisions of Category 3 complaints by the Manager of Professional Standards (PRS) area was noted as a trend in review four. The AFP Commissioner has acknowledged that timeliness is an issue that the Manager of Professional Standards has focused on improving.

The general improvement in complaint handling is reflected in the decreasing number of recommendations I am making to the AFP.

My finalised review three in this period recommended that:

1. the AFP develops clear business rules for recording and storage of complaint information including amending the Complaints Resolution and Management System (CRAMS) to show how a complaint was received.
2. the Professional Standards (PRS) Complaint Coordination Team and Complaint Management Teams (CMT) place greater emphasis on tracking and recording the outcomes of complaint issues
3. PRS further develop the Practices Register and the systems that support the identification and analysis of practices issues by PRS and CMT Managers. The systems should record the process of transmitting outcome back to operational areas of the AFP and, where appropriate, the adoption of improved policies and procedures.

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

I said in my last report to the Parliament that I would be giving more attention to the quality of investigations of complaints, treatment of complainants, and the organisational awareness and use of complaint data to improve practices and procedures. This report elaborates further on these aspects and notes that they remain issues requiring continued monitoring.

BACKGROUND

1.1 Part V of the Act provides for the handling and oversight of complaints about the AFP.

1.2 Part V commenced on 30 December 2006 as part of a broader reform to the system for handling complaints made about the AFP. As the Law Enforcement Ombudsman, I have a responsibility to review the administration of the AFP’s handling of complaints through inspection of AFP records.

1.3 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.

1.4 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.

1.5 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 practice issues and ministerially directed inquiries.

1.6 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

1.7 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 comments are then considered and the final report will note where the AFP has agreed or not to any recommendations. Once the report is sent to the AFP Commissioner, the review is considered finalised.

1.8 I conducted two reviews this year, referred to in this report as review three and review four. Review three was completed in April 2009: the inspection for review three covered AFP records of complaints finalised in the period 1 February 2008 to 31 July 2008. Review four commenced in March 2009 and was completed in September 2009: the inspection covered AFP records of complaints finalised in the period from 1 August 2008 to 1 January 2009. I have not included details of review four in this report as it was completed outside the reporting period, but I will report on it in my next report in 2010.

1.9 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).¹

1.10 For the purpose of complaint management under the Act, conduct is divided into four categories:

- Category 1 is minor management or customer service matters
- Category 2 is minor misconduct
- Category 3 is serious misconduct
- Category 4 is conduct giving rise to a corruption issue.

1.11 The principles for determining the kind of conduct that falls within these categories were agreed on by me and the AFP Commissioner and set out in a legislative instrument—*AFP Categories of Conduct*

¹ Department of Finance and Administration, Client Service Charter Principles, Canberra 2000. Responsibility for service charters policy is now with the Australian Public Service Commission.

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).

1.12 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.² 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.³

1.13 For the purpose of reviews, we examine a random sample of closed Category 1, 2, 3 and 4 complaint issues.

1.14 For review three, we examined 127 CRAMS cases comprising 237 complaint issues. This comprised 25% of the closed Category 1 and 2 cases, approximately 50% of closed Category 3 cases and 100% of the closed Category 4 cases.

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

Use of technology

1.15 Last year’s report noted that the AFP complaints database, CRAMS, had insufficient capacity to report on overall complaint data so that AFP management could identify and address complaint trends. Commissioner Negus has since advised that the AFP has commenced a program of improvements to CRAMS.

1.16 During the year, several of these improvements were implemented. For example, PRS can now re-open CRAMS cases for reinvestigation; additional or follow-up material can now be added to the complaint file; and it is now mandatory for a complaint investigator to record how the complaint was received, and record whether the complaint involves an AFP practices issue. The AFP has indicated that work on CRAMS is continuing to improve its ability to deliver meaningful reports. This is a key area for the AFP to address.

² *Australian Federal Police Act 1979* s 40RH.

³ *ibid* s 40RI.

1.17 The inability of the CRAMS database to deliver statistical reports and to enable ‘back-end’ manipulation of complaint data has made my reviews more laborious than they should be. Instead of CRAMS being able to produce reports that my staff could analyse, they have to commence the process by manually capturing data from CRAMS and populate our custom database for further analysis. This cumbersome process reduces the efficiency of my review role, as is evident from the time it takes to finalise reviews. It also unnecessarily ties up AFP resources for up to several months each review while my staff are at PRS.

Timeliness

1.18 Timeliness in finalising complaints has shown up as an issue in all three reviews finalised to date, and the recently finalised review shows that the problem continues. The AFP has set itself benchmarks for finalising complaints but a significant percentage of complaints are not meeting those benchmarks. Tables 1 and 2 illustrate the problem.

Table 1: Complaint resolution benchmarks	
Category 1 (minor management or customer service matters)	21 days
Category 2 (minor misconduct)	45 days
Category 3 (serious misconduct)	180 days

Table 2: Finalised outside the benchmark			
CRAMS cases	Review one (31 December 2006–31 January 2008)	Review two (31 December 2006–31 January 2008)	Review three (1 February 2008–31 July 2008)
Category 1	45%	86%	90%
Category 2	53%	78%	89%
Category 3	Nil	15%	35%

1.19 Category 1 and Category 2 cases are being finalised well outside the benchmarks. As these complaints should be the less serious and less complex matters, such a result seems strange. For example, Category 1 conduct issues include discourtesy, inadequate service and failing to provide correct or adequate advice. Category 2 issues include inappropriate conduct or unsatisfactory behaviour, failure to comply with an order or direction, driving misconduct and failure to report. One

explanation for the delays may be that these complaints are managed by CMTs in the operational area and are investigated by AFP members who have their operational duties to undertake as well as complaint investigation. Another explanation may be that a process is being employed to deal with otherwise minor matters that is too onerous. The AFP Commissioner has advised me that a CMT Forum was convened in November 2009 with an emphasis on complaint resolution timelines and streamlining the complaint resolution approach to these matters.

1.20 The AFP has sought to improve this performance by PRS increasing education and support for the CMTs. Professional Standards has also developed, and disseminates to CMTs, statistical reports that show for each operational area CMT its complaint load and timeliness.

1.21 The AFP has indicated that it is considering extending the internal benchmark for Category 1 complaints to align with the benchmark for Category 2 complaints. The Manager of PRS has been consulting with my office on this issue and we have provided advice on our views. Our preferred approach is to encourage the AFP to consider how the complaints are managed and seek greater adherence to a managerial approach for the lower level complaints—focusing less on 'proving' what occurred and giving a greater emphasis to resolving the complaint and recording decisions and the reasons for decisions. In summary, we encourage a streamlined approach that contains sufficient documentation to demonstrate transparency and enable review. My office will continue to work closely with the AFP on this issue. I will also particularly target timeliness of both open and closed complaints during my reviews in the next financial year.

Case study: CRAMS 1430—category 2

This matter took 273 days to finalise—228 days outside the category 2 benchmark. The matter was dealt with adequately and comprehensively, yet there was no explanation as to why there was a delay in finalising this matter.

Case study: CRAMS 1432—category 3

This matter took 301 days to finalise. There was no apparent action by PRS between mid January 2008 and early April 2008 due to a delay in receiving information from AFP Finance.

Category 3—serious misconduct issues

1.22 In my previous report I advised that the process for notifying me of Category 3 matters had not worked as smoothly as we had hoped. I am pleased to report that this issue has largely been resolved. The AFP now notifies me of serious misconduct issues within 14 days of their receipt. The Commissioner decided that the AFP would provide these complaints after the categorisation had been confirmed by PRS. My view continues to be that we should be notified of all serious misconduct issues as categorised at the time of receipt, regardless of how they are subsequently re-categorised by Professional Standards.

Category 4—corruption issues

1.23 In my last report I advised that the AFP had not provided access to Category 4 complaints. I am pleased to report that this matter has been resolved. The AFP sought the views of the Integrity Commissioner and he advised the AFP that I was entitled to access these cases for the purpose of my reviews.

1.24 There were two Category 4 complaints received in the review period. Both were referred to ACLEI; the first was sent 15 days after the complaint was received and the second was sent 83 days after receipt.

Deleting complaints

1.25 In the review period, 86 CRAMS cases were deleted or otherwise re-categorised as Category 0. We were concerned that in order to maintain the integrity of the complaint records, the number taken out of the system or 'de-identified' as complaints should be minimised, and careful thought given to whether the information should be retained there for the record, but otherwise dealt with. For example, if a complainant withdraws a complaint, there may still be grounds to investigate or it may be more appropriate to exercise discretion to take no further action. My office has discussed these concerns with the AFP and considerable progress is being made in resolving our concerns.

Dealing with complainants

1.26 Throughout the reviews conducted to date, we have maintained a focus on how the AFP deals with complainants.

1.27 Over half of all outcome letters to complainants examined in review three did not provide an explanation for the decision that was being communicated. My office suggested that the AFP continue to focus

on improving outcome letters to complainants by providing details of the findings and the reasons for those findings and that it should give more attention to maintaining regular contact with complainants. The AFP advised that its Complaints Coordination Team continually provides training support and advice to CMT's and sends regular updates to remind them of their responsibilities, particularly in relation to complainants. During the year, a senior member of my staff was invited to address a forum of CMT members where she spoke at length about the importance of appropriately dealing with complainants.

1.28 The AFP also advised that it has improved the templates for outcome letters, provided more training and guidance to the CMTs, and that PRS had developed its oversight and quality assurance role, particularly with regard to the outcome letters to complainants.

Outcomes from complaints

1.29 When a matter has been investigated the findings of the investigator have to be endorsed by either the CMT which has responsibility for the complaint (for Category 1 and 2 matters) or the Manager of Professional Standards (for Category 3 matters). The endorsed findings are recorded as the 'outcome' of the complaint. The samples of cases examined in our review indicated that an 'established' finding occurs in approximately 25% of the cases.

Table 3: Complaint issue outcomes				
	s 40TF— no further action	Established	Not established	Withdrawn
Review three	25%	25%	48%	2%

1.30 We looked at the final reports of the investigations and the conclusions which supported these outcomes, to see if the reports contained a thorough analysis of the evidence and that the conclusions were consistent with the evidence. The reports met these criteria in 80% of cases. The reasons that reports were deficient included:

- not all evidence was included or it was not clear that all the evidence was considered
- aspects of a report's conclusions appeared to be at odds with the evidence recorded
- the investigation was not sufficiently thorough

- the report favoured the AFP member's evidence without adequate explanation.

Case study: CRAMS 2114—category 2

This was a complaint of minor misconduct—‘unwarranted attention’. The complainant alleged that police continued to knock on his door at all hours, looking for his brother, when they had been advised that his brother did not live with him. The finding of ‘not established’ was made on the basis of the information provided by the member, with no record that other evidence had been considered.

Implementation of the outcome of complaints

1.31 The Act provides for a range of responses when a complaint about a conduct issue by an AFP member is ‘established’. These responses range from training and development action (coaching, mentoring, training), remedial action (counselling, reprimand, warnings and changing working arrangements such as workplace location or shifts), to termination of employment.

1.32 In my first review in 2007, I recommended that systems should be amended to include a facility to track all recommended outcomes and their implementation. This facility is still not available and I remain of the view that such a capability would enhance the accountability of the AFP's complaint handling processes.

1.33 In examining the conduct issues contained in complaints in the cases we inspected, it was unclear in approximately 30% of the cases if that action had been implemented.

Exercising a discretion not to investigate

1.34 Under s 40TF of the AFP Act the Commissioner (or his delegate) may decide to take no further action in relation to a complaint for certain reasons. Some of the grounds for exercising this discretion include:

- the person became aware of the conduct more than 12 months before making the complaint
- appropriate action had already been taken against the AFP member
- the complainant had exercised a right to have the matter reviewed by a court or tribunal and there was no special reason to take further action in relation to the matter complained of, or the

complainant had that right but did not exercise it in circumstances where it would be reasonable for them to have exercised that right

- the complaint was trivial
- the conduct complained of occurred when the AFP member was not on duty, or it was private conduct and it was lawful and reasonable in the circumstances
- the investigation, or further investigation, of the issue was not warranted having regard to all the circumstances.

1.35 Table 4 indicates the frequency with which we found the discretion was used in the cases we inspected.

Table 4: Decision to take no further action in a complaint					
	Current findings (issues)	Cat 1 cases	Cat 2 cases	Cat 3 cases	Cat 4 cases
Review three	25%	3%	4%	53%	50%

1.36 We focused on the exercise of this discretion in review three to ascertain if it was being used appropriately and if the reasons for doing so were adequately recorded.

1.37 Generally the discretion was exercised appropriately although there were instances where we had doubts or felt that better justification could have been provided.

Case study: CRAMS 1701

An off-duty member made an allegation against another off-duty member which gave rise to a potential criminal charge. The complainant declined to make a criminal complaint. After investigation, a decision was made to take no further action, on the basis that the complainant had a right to have the other AFP member’s conduct reviewed by a court. This, incorrectly in our view, did not distinguish between a complainant’s right to institute some form of civil proceeding to remedy a wrong, and the responsibility for instituting criminal proceedings, which is not vested in an individual and could not be regarded as a right of the complainant.

Case study: CRAMS 2296

An ambulance called for police assistance to transport a person to hospital who was experiencing a psychotic episode. Over 12 months later, the woman complained about her treatment by the police. The AFP checked to make sure that the complainant was aware of the process for making a complaint and then a decision was made under s 40TF(2)(a) of the Act to take no further action, on the grounds that the matter was over 12 months old.

This was an appropriate and thorough consideration prior to the use of s 40TF.

Practices and systemic issues

1.38 In my previous report, I emphasised that the AFP needed to demonstrate the capacity to implement and monitor recommendations about AFP practices issues. In particular, there needed to be more evidence that complaints were seen as a useful tool for bringing about improvements in administration. This theme continued to be noted in the reviews this year and it still appears that the recognition, reporting and examination of practices and systemic issues remain underdeveloped.

1.39 Previously each CMT was required to keep a register entitled ‘AFP Practices Register’ and I had found that there was no consistent approach to recording information in these registers. Since my previous report, the AFP has developed a centralised Practices Register which is managed by Professional Standards. The CRAMS system has also been improved (as noted earlier) making the recording of any practices issue a mandatory field for complaint investigators to complete. Finally, the AFP has indicated that it will review and improve the AFP’s approach to practices issues.

GENERAL CONCLUSIONS

1.40 My conclusions in this report are similar to those I made in my last report. The AFP is making commendable progress in improving its complaint management practices and procedures. Timeliness remains a considerable issue with respect to the resolution of minor complaints; processes around their handling need to be simplified and streamlined.

1.41 There has also been improvement in the response of the AFP to complainants, particularly in outcome letters. However, there is further room for improvement in the consistency of communication, particularly when matters are delayed.

1.42 The AFP has responded positively to the reviews my office has conducted and has advised that it is actively taking up the issues identified for action and working to implement my recommendations.

1.43 The AFP has assured me that it is now addressing the constraints around its systems to improve its data collection and reporting capabilities. Once that is accomplished, the AFP will need to focus on analysing the data that is reported to improve its administration of complaints and to give insight into organisational issues.

1.44 I have indicated to the AFP that future reviews will evaluate AFP complaint handling against the Commonwealth Ombudsman publication *Better practice guide to complaint handling*. The guide describes the five elements of effective complaint handling:

1. **Culture**
Agencies must value complaints as a means of strengthening their administration and improving their relationships with the public.
2. **Principles**
An effective complaint handling system must be modelled on the principles of fairness, accessibility, responsiveness, efficiency and integration.
3. **People**
Complaint handling staff must be skilled and professional.
4. **Process**
The outlined seven stages of complaint handling—
acknowledgement, assessment, planning, investigation,

response, review and consideration of systemic issues—should be clearly outlined.

5. ***Analysis***

Information about complaints should be examined as part of a continuous process of organisational reviews and improvement.

Prof. John McMillan
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