

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

FOR THE PERIOD 1 JULY 2010 TO 30 JUNE 2011

Annual report by  
the Acting Commonwealth and Law Enforcement Ombudsman,  
Alison Larkins, 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) the Ombudsman has oversight responsibilities in respect of the way that the Australian Federal Police (AFP) handles complaints about it and its members.

This office reviews AFP complaint handling by inspecting records, and once a year I report to Parliament.

This report covers work and activities conducted by my office in relation to reviews conducted during the 2010-11 period. We conducted one review inspection during the period.

This review repeats the findings from Reviews 5 and 6 – that is, establishment rates for complaints made from members of the public are much lower than establishment rates for internally generated complaints.

The timeliness of managing and finalising complaints continues to deteriorate – particularly in relation to the most serious complaints. We have often raised this issue in our reviews, but to date the measures that the AFP has taken to address the issue have not proven to be effective. More recently the AFP has indicated to us that timeliness is improving and that certain new initiatives have cleared a large backlog. We will see at our next review if there has been any substantial improvement.

At the close of the review period no complaints by members of the public about excessive use of force had been established for complaints closed in the period from 31 December 2006 to 31 August 2010. We will continue to monitor the way that the AFP deals with complaints about use of force.

The frequency of contact with complainants has improved but it was clear in only 12% of the cases examined that a complainant was provided with advice about the complaint process.

We continue to see cases where an AFP member's version of events is preferred over that of the member of the public in circumstances where the record does not disclose substantive justification or where corroborating evidence has not been sought.

We did not make any formal recommendations in this review.

## INTRODUCTION

Part V of the *Australian Federal Police Act 1979* (the Act) prescribes the process for recording and dealing with complaints about AFP conduct issues and AFP practices issues. An AFP conduct issue is an issue about whether an AFP member has engaged in conduct that contravenes AFP professional standards or engaged in corrupt conduct. An AFP practices issue is an issue about the practices and procedures of the AFP.

Under s 40XA, the Ombudsman must annually inspect the records of AFP conduct and practices issues that have been dealt with under Division 3 (Dealing with AFP conduct or practices issues) and Division 4 (ministerially directed inquiries) of Part V of the Act for the purposes of reviewing the administration of that Part.

Under s 40XD of the Act, the Ombudsman must report to the President of the Senate and the Speaker of the House of Representatives about his or her work and activities under Part V Division 7 of the Act during the preceding 12 months. This report must include comments about the comprehensiveness and adequacy of the AFP’s administration of matters under Divisions 3 and 4 of Part V of the Act, which relate to the management of complaints about the AFP conduct and practice issues and ministerially directed inquiries.

This report covers Ombudsman activities under s 40XA for the 12-month period commencing 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, it satisfies the requirement at s 40XD.

This report covers work and activities of the Ombudsman during the 2010-11 period – Review 7. The review inspection was conducted at the AFP Professional Standards (PRS) office in Canberra. This review covers all AFP complaint issues closed in the review period, 1 March to 31 August 2010.

**Table 1: Inspections**

	<b>Period of Records</b>	<b>Date of Inspection</b>	<b>Final report</b>
Review 7	1 March 2010 to 31 August 2010	11 September 2010 to 20 October 2010	20 September 2011

The review team inspected electronic records in the AFP’s Complaint Recording and Management System (CRAMS) for all complaints finalised in the review period. A selected sample of complaints for the review period was more closely inspected. Where the complaints raised a Category 3 conduct issue, the records in the Professional Standards Police Real-time Online Management Information System (PRS PROMIS), and hard copy files were also inspected.

## BACKGROUND

### *Previous report*

The Ombudsman's report covered three reviews with the reports finalised in September 2009, June 2010 and July 2010 respectively. Because of the number of reviews reported on, a significant number of recommendations made to the AFP over the period were noted. The time that the AFP was taking to finalise complaints over the period was raised as a particular concern.

Reviews 5 and 6 looked in particular at the establishment rates<sup>1</sup> of complaints by members of the public versus the establishment rate for complaints made internally. Both reviews found a very low rate of establishment for complaints by members of the public – 7.4% and 11% respectively.

Our last report also noted that no complaints from members of the public about excessive use of force had been established in the period from when the new AFP complaints management framework had been implemented between 30 December 2006 and 30 November 2009.

### *Legislative basis*

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.

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. Category 3 issues include excessive use of force, a subject of some discussion within this report.

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<sup>1</sup> A complaint is established by the AFP where the investigation concludes in favour of the complainant or against the AFP member.

The principles for determining the kind of conduct that falls within each of these categories were agreed on by the Ombudsman and the AFP Commissioner in December 2006 and are 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).

As noted, 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>2</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>3</sup>

The Minister with responsibility for the Act may arrange for an inquiry to be held concerning the conduct of an AFP appointee or any matter relating to the AFP where the Minister considers it appropriate to do so. No Ministerial inquiries have been held since the commencement of Part V of the Act.

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<sup>2</sup> *Australian Federal Police Act 1979* s 40RH

<sup>3</sup> *ibid* s 40RI

## SCOPE

### Methodology

The purpose of this report is to comment on the comprehensiveness and adequacy of the AFP's administration of Divisions 3 and 4 of Part V of the Act, which relate to the management of complaints about AFP conduct and practices issues and ministerially directed inquiries.

In conducting the reviews we apply:

- the guidelines for complaint handling referred to or set out in the Orders issued by the AFP Commissioner (Commissioner's Orders), with particular reference to the Commissioner's Order on Professional Standards (CO2) and the National Guideline on Complaint Management (the guidelines)
- the Commonwealth Ombudsman 'Better Practice Guide to Complaint Handling'.

The review covered the period 1 March 2010 to 31 August 2010, during which a total of 363 cases were closed. We examined the data provided by PRS and focused on complaint elements with a large number of complaints. From this we examined a random sample of 76 cases, and from those we selected 12 complaints as case studies for the review.<sup>4</sup>

### Objective

The objective of Review 7 was to:

- a. determine if the findings of the last two reviews were repeated in relation to the low rate of establishment of complaints made to the AFP by members of the public
- b. look at the timeliness for complaint finalisation to see if there was any improvement from previous reviews
- c. examine all use of force complaints and
- d. examine all complaints about the International Deployment Group.

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<sup>4</sup> The AFP complaint coding model includes the complaint context, complaint element, complaint issue and complaint category. The complaint elements are: serious misconduct, breach of the code of conduct, use of force, minor misconduct, property exhibits, customer service, inappropriate action and performance.

## Access to Records

### *Background*

The AFP utilises two databases to record complaints about conduct, namely CRAMS and PRS PROMIS. We had noted in previous reports that our ability to review complaint information was hampered by the limited reporting functionality in CRAMS and a lack of access to PRS PROMIS. Since that time we have been provided with access to both CRAMS and PRS PROMIS, at AFP premises, and CRAMS has been upgraded to enhance its ability to generate ad hoc reports and perform some analysis of complaint data.

Records were more easily accessed by the review team in this review than had previously been the case, in large part due to the AFP providing complaint data to the review team in a spread sheet. There was evidence that the CRAMS Upgrade Reporting Project had delivered a number of enhancements to CRAMS functionality to enable the extraction of aggregate complaint data, which allowed our office to undertake further analysis. However, in our view the improvements, while significant, still do not allow the range of reporting that is necessary to properly manage complaints or to identify systemic issues, for example, to identify trends in the issues raised across functional streams. Complaints are a valuable source of information for any organisation seeking to improve the way it does its business.

### *Other matters*

It was noted in the last report that another significant step forward had been the agreement by the Commissioner to provide the Ombudsman's office with a secure link to enable access to AFPNET (and thus to CRAMS and PRS PROMIS) for authorised Ombudsman personnel. This is to allow us to conduct a large part of our review function from within our office, and will result in significant resource efficiencies and improved analysis and reporting. This access is yet to be implemented and discussions about how this will be achieved are ongoing.

## FINDINGS

This review has confirmed that the trends identified in Reviews 5 and 6 remain:

- establishment rates for external complaints are significantly lower than establishment rates for internal complaints;
- timeliness of resolving complaints continues to deteriorate and
- of the cases finalised in the period, no external complaints of excessive use of force had been established.

We highlighted this continuing trend in relation to establishment rates for consideration by the AFP and we draw no conclusions from that result. A more thorough analysis by this office may be considered at a future time.

In the last report we noted that timeliness in resolving complaints across all categories, from minor to the most serious, was deteriorating. At the time this latest review work was undertaken, it appeared that the processes the AFP had implemented to improve the management of complaints were still not operating effectively. We have been advised by the AFP of some improvement since we conducted our inspection, which will be explained later in this report.

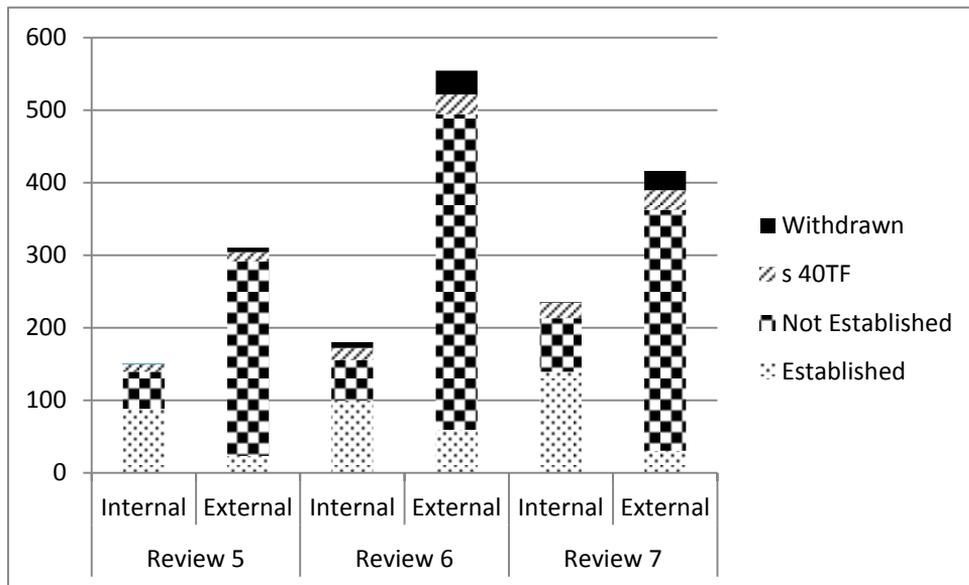
### ***Establishment rates***

The overall internal establishment rate for this review was 60% while the external establishment rate was 7%. The overall internal establishment rate in Review 5 was 58.5% and the overall external establishment rate was 7.4%. For Review 6, the overall internal establishment rate was 55% and the overall external establishment rate was 11%.

***Table 2: Analysis of Closed Complaints – Review 7***

	Cat 1		Cat 2		Cat 3	
	Internal	External	Internal	External	Internal	External
Established		19 (9%)	98 (56%)	10 (6%)	41 (72%)	1 (4%)
Not Established	4 (80%)	168 (77%)	59 (35%)	146 (83%)	8 (14%)	17 (74%)
s 40TF	1 (20%)	17 (8%)	12 (7%)	8 (5%)	8 (14%)	2 (9%)
Withdrawn		13 (6%)	1 (1%)	11 (6%)	0	3 (13%)
TOTAL	5	217	170	175	57	23

**Graph 1: Overall establishment figures**



**Customer Service Complaints**

The customer service complaint of discourtesy is predominantly a complaint from members of the public about the actions of AFP members. There were 101 complaint issues about discourtesy seen in this review period. The overall establishment rate for discourtesy was four per cent. Eighty-six per cent of discourtesy complaints from members of the public were not established. The complaint issue of failure to act (raised 29 times) had an overall establishment rate of 10%; 83% were not established. The issue of unwarranted attention (raised 39 times) had no complaints established.

**Case study: Unacceptable service during traffic stop**

The complainant was pulled over by police when the police noticed the wrong colour registration sticker on his vehicle. When the officers checked the registration, it was discovered that the vehicle was registered but the complainant had been sent the wrong coloured registration sticker.

The complainant got out of his car and started yelling at the police. The police admit to yelling at the complainant to get back in his vehicle. The police state they yelled at him as they were concerned for the complainant’s safety as he kept walking onto the very busy road.

The police identified that the complainant should have been wearing corrective lenses. When questioned by police, the complainant stated that his house had burnt down and he had not been able to get new glasses. The police told him he should not be driving without corrective lenses. The complainant again became agitated. The complainant claimed the police mumbled that he may be charged for this offence (though it is clear that they had used discretion given the circumstances and had decided not to charge him).

The actions of the police at the time were not unreasonable. The police admitted however that they did yell at the complainant. It is our view that the complaint about discourtesy should have been established, or at least an apology offered to the complainant.

This complaint was well investigated by PRS but took 105 days to finalise despite being considered a simple complaint.

### ***Consideration of an apology for actions taken***

Circumstances may arise where police unintentionally offend or cause harm during the course of their duties. In some cases, such as in the next case study, it is our view that an apology from the police (preferably at the time of the incident) may be appropriate to ease tensions between a complainant and the police.

#### **Case study: Alleged assault of 12-year-old boy**

The mother of a 12-year-old boy complained that he was approached by police, physically restrained, held against a police vehicle and questioned.

An incident had occurred in a north Canberra suburb involving a number of teenagers. The police attended the area and saw a vehicle that was suspected of being involved in the incident parked in the driveway of a residence. The police witnessed a boy running from this residence (a place of interest). The complainant alleged the police grabbed the boy by the arm and pushed his face into the boot of a police vehicle. The officer presumed the boy was a person of interest. It was later determined that he was not.

The complaint was well managed by PRS with a number of witnesses interviewed.

We were not critical of the actions of the officer, which may have been reasonable given the events in the area at the time. However, we considered that an apology to the complainant and her son was an option that could have been considered by the AFP.

***ACT Policing and Aviation Security***

ACT Policing and Aviation Security were considered in Review 7 because the areas featured highly in previous reviews. These are the areas of the AFP with the greatest public contact and the greatest number of external complaints.

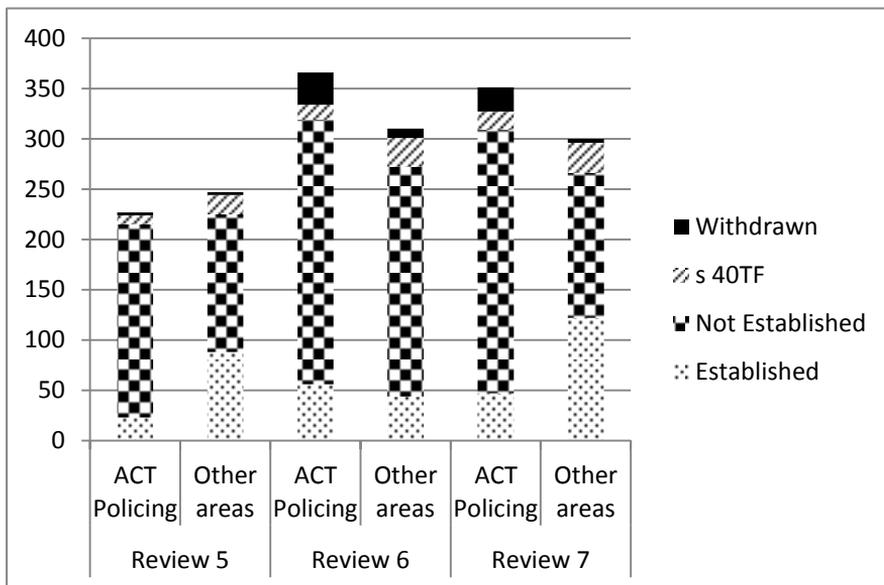
This review again highlighted the significance of ACT Policing in the conduct system. Of the 651 conduct issues in the review period, 351 (54%) related to ACT Policing. Aviation Security accounted for 116 (18%) of complaint issues.

ACT Policing’s overall internal establishment rate for Review 7 was 60% (26 established of 43 complaint issues), and the overall external establishment rate was 7% (21 established of 308 complaint issues).

***Table 3: Findings for ACT Policing Complaints***

<b>Issue Finding</b>	<b>Internal Complaints</b>	<b>External Complaints</b>	<b>Total</b>
Discretion not to Proceed (s40TF)	4	14	18
Established	26	21	47
Not Established	13	249	262
Withdrawn		24	24
<b>Total</b>	<b>43</b>	<b>308</b>	<b>351</b>

**Graph 2: Establishment figures ACT Policing vs. other areas of AFP**



The overall internal establishment rate for Aviation Security in Review 7 was 60% (40 established of 67 complaint issues). Of the 48 external complaints one was established (2%).

**Table 4: Findings for Aviation Security Complaints**

Issue Finding	Internal Complaints	External Complaints	Total
Discretion not to Proceed (s40TF)	8	3	11
Established	40	1	41
Not Established	19	42	61
Withdrawn		2	2
<b>Total</b>	<b>67</b>	<b>48</b>	<b>115</b>

### **International Deployment Group**

We examined all 22 complaints (comprising 29 complaint issues) about the AFP’s International Deployment Group (IDG).

Nineteen of the 22 complaints were either self-reported complaints or complaints from other AFP members about the conduct of colleagues. Three complaints were from members of the public. One complaint involved an allegation of drug use by an unidentified AFP member in the Solomon

Islands, but the evidence examined was not sufficient to prove that it was a member of the AFP, so the complaint was not established.

**Table 5: Findings for IDG Complaints**

Issue Finding	Internal Complaints	External Complaints	Total
Discretion not to Proceed (s40TF)		1	1
Established	17		17
Not Established	8	2	10
Withdrawn	1		1
<b>Total</b>	<b>26</b>	<b>3</b>	<b>29</b>

The complaints from the IDG were predominantly coded as minor misconduct, covering issues including failure to comply with directions or procedures, a breach of the AFP code of conduct (including one serious breach), inappropriate behaviour and diligence failure. One complaint related to property and exhibits involving 311 pairs of operational trousers, valued at \$22,000, going missing as outlined in the following case study.

**Case study: Possible misconduct of an AFP member (or members) in relation to missing uniform trousers from the IDG warehouse at Majura (ACT)**

A shipment of operational trousers destined for the Nauru police force (311 pairs valued at \$22,000) went missing between the supplier and the IDG warehouse.

The CRAMS record contains evidence of a thorough investigation. All witnesses appear to have been identified but the records at IDG could not confirm that the shipment arrived. Several scenarios were tested. The matter was coded as ‘property holding failure’. In our view, the matter need not have been addressed through CRAMS. However, when the decision was made to enter it in CRAMS, the correct coding should have been ‘criminal conduct’ and ‘diligence failure’.

‘Criminal conduct’ at IDG could not be established because of its poor procedures. The fact that this issue raised practices and procedures issues that resulted in changes to practices at Majura must in itself lead to an established finding of ‘diligence failure, ... which includes (according to the determination) a ‘...lack of attention to detail by an AFP member.’

We do not support the ‘not established finding’ and cannot support the use of ‘property holding failure’. The fact that the records held showed little and the shipment was never recovered clearly shows ‘diligence failure’ and the matter should have been ‘established’.

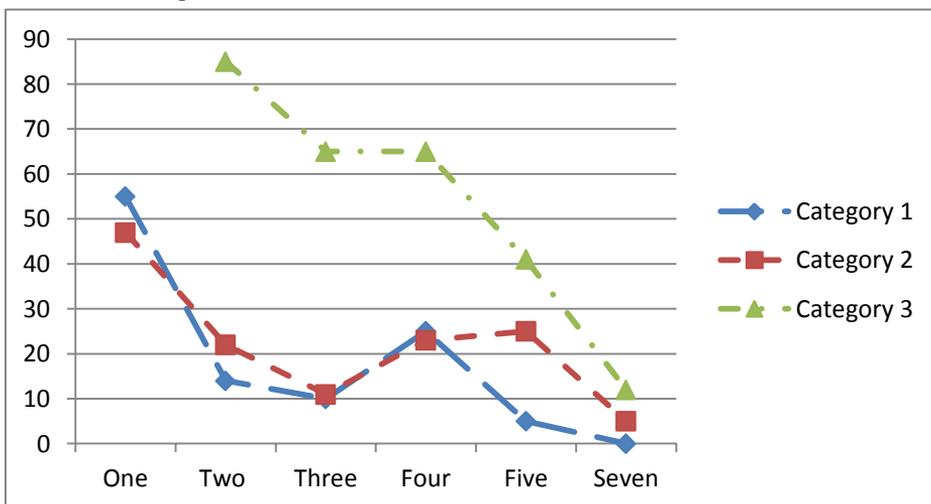
### **Timeliness**

The AFP continues to finalise many complaints outside of its own benchmark standards. The set benchmarks for which complaints involving AFP conduct issues are to be investigated and completed are:

- Category 1 complaints – 21 days
- Category 2 complaints – 45 days
- Category 3 complaints – 180 days.

The graph below shows, for each of the first six reviews undertaken by this office, the percentage of complaints examined per category that were finalised within the above benchmarks.

**Graph 3: Percentage of Cases Finalised within Benchmark**



In Review 6 we did not record the number of complaints that were finalised within benchmark and so comparative figures are not available. In Review 7 the team examined 76 complaints in detail and only six (8%) of these complaints examined were finalised by PRS within the AFP standards. One Category 2 complaint, 24 Category 3 complaints and two Category 4 complaints took in excess of one year to finalise. Two matters took in excess of 1000 days to finalise.

The graph clearly indicates the time that the AFP takes to finalise complaints is not only below its own benchmarks but that its performance over time continues to deteriorate. This trend has been most pronounced in relation to Category 3 complaints.

### ***Complaints open longer than twelve months***

During Review 7, Professional Standards advised that they had 311 complaints (amounting to 700 complaint issues) that had been open longer than twelve months and that were yet to be finalised. Fifty-seven complaints had been open for more than 1000 days. Two customer service complaints, one involving Advice Failure and one involving Discourtesy, had been open for 624 days and 591 days respectively.

***Table 5: Complaints open longer than 12 months***

<b>Category of Complaint</b>	<b>Number of Complaints open more than 12 Months</b>
Category 1	10
Category 2	9
Category 3	292
<b>Total</b>	<b>311</b>

The AFP has advised that it has placed a high priority on improving the timeliness of complaint handling. In addition to the establishment of the Adjudication Panel, a former AFP SES officer has been engaged, supported by the creation of a dedicated secretariat to finalise outstanding Category 3 complaints. During 2010-11, 366 of this category of complaints were adjudicated, significantly reducing the backlog. The AFP has also incorporated a performance measure in the Human Resources Business Plan to improve the timeliness of complaint resolution by 25%.

The AFP has recently advised us that it is meeting the benchmark standard for the majority of new complaints, although there remains a significant backlog and some cases have been open for several years awaiting finalisation.

### ***Questionable findings***

In some cases, we did not agree with the decision on the outcome of the complaint.

### **Case study: Misuse of authority**

A complaint was registered after a member of the public made an FOI request about an incident involving him and a Protective Service Officer (PSO) at Sydney Airport. The member of the public did not lodge a complaint about the incident.

The investigation found that the PSO was involved in a traffic accident with the member of the public. During the incident, the PSO removed the keys from the ignition of the other car. The PSO claimed that he removed the keys because he believed the member of the public was intoxicated.

There were two issues in this complaint – misuse of authority (which is a Category 3 conduct issue) contrary to the AFP Code of Conduct, and breach of the AFP Code of Conduct (Category 2). Misuse of authority was established, as the PSO had no lawful authority to stop and detain vehicles in relation to motor traffic incidents, to take possession of ignition keys or to demand the driver's licence details. The lesser complaint of a breach of the AFP Code of Conduct was not established. The AFP considered the PSO had a legitimate reason for approaching the driver as it was believed their vehicles had collided and that the PSO's actions did not create sufficient interest from the public to have brought the AFP as an organisation into disrepute.

It is difficult to understand how the actions of the PSO did not bring the AFP into disrepute. In our view, his actions warranted an established finding for a Breach of the AFP Code of Conduct. There was also a long delay in this matter and this appears to be, in part, because the subject of the complaint was not counselled until 13 months after the adjudication.

**Case study: Member claimed to be a federal policeman during family court proceedings**

A member of the public complained that a Protective Service Officer (PSO) falsely declared himself to be a federal policeman during Family Court proceedings. The PSO was a respondent in the Family Court matter. On two separate court documents, the PSO declared his occupation as a 'federal policeman'. The PSO signed one of these documents 'as containing true information'.

The final report and coordinator review recommended that the complaint be established; however, the complaint was not established. The investigation record states that the PSO's solicitor, based on information provided by the PSO, completed the documents and the PSO attested that the information in the documents was true and correct. Although we accept that this may have been an oversight, it clearly did occur and supports the complaint by the member of the public.

In our view, a more appropriate outcome would have been an 'established' finding. If it was considered that the breach was unintentional that could have been reflected in any sanction proposed, but it did not change the fact that the complainant made a false declaration.

**Contact with Complainants**

Contact with complainants has improved since the last review. Our review indicated that the investigators were contacting complainants and effectively capturing their concerns in nearly 45% of cases. In earlier reviews this has been below 30%. Contact with the complainant was not required in 40% of complaints as they were either a self-report or an internal complaint. In the remainder of cases it was either not clear from the complaint record that the complainant was contacted, or it was not recorded.

Only very infrequently was advice provided to the complainant about the complaint process. In 88% of complaints examined there was either no evidence or the complaint record was not clear that advice was provided. In 12% of complaints there was clear evidence that the complaints process was explained to the complainant.

In more than 60% of complaints, the complainant was advised of the outcome of the investigation. In a further 30% of cases, an outcome was not required given the nature of the complaint. Five complainants or seven per cent did not receive an outcome.

### ***Obtaining and weighing the evidence***

In the broad analysis of the complaints examined in the last review (Review 6) it was evident that not all of the witnesses reasonably available to the PRS investigation were interviewed. Our impression was that investigators and decision-makers tended to prefer the evidence of an AFP member over that of a complainant and did not always seek confirmatory evidence either way when it was available (although this was not always the case). We remain of this view based on the results of this review.

In relation to the preference given to AFP members' version of events, we accept that there may be good reason for this – for example sometimes this was because the complainant was considered to be affected by alcohol or drugs at the time. However, the reason for the investigating officer's decision to accept one version over another needs to be clearly elaborated on the record, and the investigator also needs to demonstrate that sufficient effort was made to gather and test corroborating evidence from other members present or other witnesses.

### **Conclusion**

Timeliness of complaint handling remains a significant problem for the AFP. We have been advised by the AFP of actions it has since taken to improve its performance, particularly in relation to Category 3 matters, and will again focus on this issue in our next review.

Improvements have been made in respect of the amount of contact with complainants. We remain concerned that the records do not always provide sufficient justification for the weight given to an AFP member's version of events over that of a complainant or other member of the public.