



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

FOR THE PERIOD 1 JULY 2012 TO 30 JUNE 2013

Annual report by  
the Commonwealth and Law Enforcement Ombudsman,  
Colin Neave, under Part V of the *Australian Federal Police Act 1979*

September 2013





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

**FOR THE PERIOD  
1 JULY 2012 TO 30 JUNE 2013**

Annual report by the Commonwealth and Law Enforcement Ombudsman,  
Mr Colin Neave, under the *Australian Federal Police Act 1979*

**September 2013**

ISSN 1835–3290

© Commonwealth of Australia 2013

The Commonwealth owns the copyright in all material produced by the Ombudsman.

With the exception of the Coat of Arms (see below) this publication is licensed under a Creative Commons Attribution 3.0 Australia Licence. Creative Commons Attribution 3.0 Australia Licence is a standard form licence agreement that allows you to copy, distribute, transmit and adapt this publication provided that you attribute the work.



Details of the relevant licence conditions are available from <http://creativecommons.org/licenses/by/3.0/au/deed.en>. The full legal code for the CC BY 3.0 AU licence is available from <http://creativecommons.org/licenses/by/3.0/au/legalcode>.

The Commonwealth's preference is that you attribute this report (and any material sourced from it) using the following wording:

Source: Licensed from the Commonwealth Ombudsman under a Creative Commons Attribution 3.0 Australia Licence. This report is available online from the Commonwealth Ombudsman website <http://www.ombudsman.gov.au>.

#### Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the It's an Honour website <http://www.itsanhonour.gov.au>.

#### Contact us

Inquiries regarding the licence and any use of this report are welcome at:

Commonwealth Ombudsman  
Level 5, 14 Childers Street  
Canberra ACT 2600  
Tel: 1300 362 072  
Email: [ombudsman@ombudsman.gov.au](mailto:ombudsman@ombudsman.gov.au)

# CONTENTS

<b>1. INTRODUCTION .....</b>	<b>1</b>
<b>2. REVIEW OBJECTIVE AND CRITERIA .....</b>	<b>2</b>
2.1 Review Objective.....	2
2.2 Review Criteria.....	2
2.3 Complaint Categories.....	2
2.4 Sources of information.....	3
2.5 Review Details.....	3
<b>3. SUMMARY OF FINDINGS AND IMPROVEMENTS MADE SINCE PREVIOUS REVIEW .....</b>	<b>4</b>
3.1 Summary.....	4
3.2 Improvements made since previous review .....	4
<b>4. REVIEW FINDINGS.....</b>	<b>6</b>
4.1 Were complaints finalised in accordance with internal timeliness benchmarks? .....	6
4.2 Were major complaint issues appropriately identified and coded?.....	7
4.2.1 <i>Corruption issues identified but not coded appropriately</i> .....	7
4.2.2 <i>Other conduct issues identified but not recorded and/or appropriately coded</i> .....	8
4.2.3 <i>Recording explanations for downgrading complaint issues</i> .....	8
4.3 Was communication with complainants (where relevant) during the complaints process reasonable?.....	8
4.3.1 <i>Category 1 complaints</i> .....	9
4.3.2 <i>Category 2 complaints</i> .....	9
4.3.3 <i>Category 3 complaints</i> .....	10
4.4 Were complaint investigations reasonably conducted?.....	10
4.4.1 <i>Category 1 complaints</i> .....	11
4.4.2 <i>Category 2 complaints</i> .....	11
4.4.3 <i>Category 3 complaints</i> .....	11
4.5 Were complaint outcomes reasonable?.....	11
4.5.1 <i>Category 1 complaints</i> .....	11
4.5.2 <i>Category 2 complaints</i> .....	11
4.5.3 <i>Category 3 complaints</i> .....	11
4.6 Were complaint records complete .....	12
4.6.1 <i>Category 1 complaints</i> .....	12
4.6.2 <i>Category 2 complaints</i> .....	12
4.6.3 <i>Category 3 complaints</i> .....	12
<b>5. CLARIFICATION ON A PREVIOUS REVIEW FINDING .....</b>	<b>12</b>

## 1. INTRODUCTION

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

Under s 40XA of the Act, at least once each financial year the Commonwealth Ombudsman (the Ombudsman) must inspect the records of AFP conduct and practice issues that have been, or are being, dealt with by the AFP. The purpose of these inspections is to review the AFP's administration of Part V of the Act.

Under s 40XD of the Act, the Ombudsman must prepare a report on our activities during the preceding 12 months. The Ombudsman must give copies of the report to the President of the Senate and the Speaker of the House of Representatives for presentation to the Senate and the House of Representatives, respectively.

Our report must include comments as to the comprehensiveness and adequacy of the administration of Part V of the Act by the AFP. Additionally, we also assess whether the AFP uses a fair and reasonable complaints process when it deals with complaints from both the public and AFP members.

As a result of our reviews, we may make recommendations or suggestions to the AFP regarding its practices with the aim of assisting it to provide the best possible service to the public and its members. We may also report on any improvements that the AFP has made as a result of previous reviews.

Following our review, we provide the AFP with a report on the outcomes of our inspections. This report then forms the basis of our annual report to Parliament. To ensure that our reporting process is fair, we provide the AFP the opportunity to comment on our findings prior to completing our annual report.

## 2. REVIEW OBJECTIVE AND CRITERIA

### 2.1 Review Objective

The objective of our review is to determine the comprehensiveness and adequacy of the AFP's administration of Part V of the Act, which prescribes the process for handling complaints made about the AFP.

### 2.2 Review Criteria

The review criteria we use to assess the AFP's administration of Part V of the Act considers the:

- provisions within Part V
- *AFP National Guideline on Complaint Management*
- *AFP internal checklists for complaint investigators*
- *Commonwealth Ombudsman Better Practice Guide to Complaint Handling* (Better Practice Guide).<sup>1</sup>

The following criteria were used to assess the AFP's administration of Part V of the Act.

- 1) Were complaints finalised in accordance with internal timeliness benchmarks?
- 2) Were major complaint issues appropriately identified and coded?
- 3) Was communication with complainants (where relevant) during the complaints process reasonable?
- 4) Were complaint investigations reasonably conducted?
- 5) Were complaint outcomes reasonable?
- 6) Were complaint records complete?

### 2.3 Complaint Categories

The Act divides complaints into four categories, depending on the conduct giving rise to the complaint:

- category 1 relates to minor management or customer service matters
- category 2 relates to minor misconduct
- category 3 relates to serious misconduct
- conduct pertaining to a corruption issue, which is colloquially referred to as a 'category 4' issue.

The principles for determining what conduct falls within what category is outlined in the *Australian Federal Police Categories of Conduct Determination 2006* (the Determination).

---

<sup>1</sup> The *AFP National Guideline on Complaint Management* includes the *Commonwealth Ombudsman Better Practice Guide to Complaint Handling* as a reference item.

Within our sample, we assessed categories one to three against our inspection criteria.<sup>2</sup>

## 2.4 Sources of information

We mainly review electronic records to assess the AFP's administration of Part V of the Act. Electronic records are maintained on:

- the Complaint Recording and Management System (CRAMS) – CRAMS is the AFP's complaint management system, and is used to record all complaints (except where a category 1 complaint is resolved informally within five days) and to manage investigations of category 1 and category 2 complaints.
- the Professional Standards Police Real-time Online Management Information System (PRS PROMIS) – PRS PROMIS is the system used by the AFP to manage and record investigations of category 3 complaints and corruption issues (where appropriate).

We may also view:

- physical files, where information required for the inspection cannot be not located on CRAMS or PRS PROMIS
- closed circuit television (CCTV) footage, in instances where a complaint concerns conduct that may have been recorded by CCTV (for instance in an airport environment or at a police watch house).

## 2.5 Review Details

Between 1 July 2012 and 30 June 2013 we considered a sample of 183 finalised AFP complaints, as detailed below in Table 1.

**Table 1: Inspections of records conducted between 1 July 2012 and 30 June 2013**

Inspection periods	Period when the complaints were finalised	Total finalised by the AFP	Sample inspected by the Ombudsman (%)
14 November 2012 to 16 January 2013	1 July to 31 October 2012	338	106 (31.1%)
2 to 22 April 2013	1 November 2012 to 28 February 2013	226	77 (34.1%)

<sup>2</sup> There were 25 category 4 complaints in the data provided by the AFP. While we reviewed these records to determine that appropriate notifications and information was provided to ACLEI, we did not conduct a full assessment against the criteria on this occasion.



### 3. SUMMARY OF FINDINGS AND IMPROVEMENTS MADE SINCE PREVIOUS REVIEW

#### 3.1 Summary

Apart from the findings detailed below, this review has found that overall, the AFP's administration of matters under Divisions 3 and 4 of the Act is comprehensive and adequate.

The table below provides a summary of our review findings against each criterion. Some findings have been reported against each complaint category.

**Table 2: Summary of review findings**

Criteria	Category 1 Complaints	Category 2 Complaints	Category 3 Complaints
1. Were complaints finalised in accordance with internal timeliness benchmarks?	Improvements in meeting internal benchmarks noted.  The AFP is taking steps to amend systems to record its performance against new timeliness benchmarks.		
2. Were major complaint issues appropriately identified and coded?	Issues noted for nine records.		
3. Was communication with complainants (where relevant) during the complaints process reasonable?	No significant issues noted.	Issues noted for 20 records.	Issues noted for 27 records.
4. Were complaint investigations reasonably conducted?	No significant issues noted.	One record identified where an irrelevant factor may have been considered in the investigation (but the outcome was not unreasonable).	No significant issues noted although in some cases delays in allocating complaints to investigation officers were noted.
5. Were complaint outcomes reasonable?	No significant issues noted.	No significant issues noted.	No significant issues noted.
6. Were complaint records complete?	Issue noted for one record where there was a gap in the ACT Policing Watch House footage.		

#### 3.2 Improvements made since previous review

As a result of previous reviews, the AFP advised that it had taken steps to improve aspects of its complaint management process, including the level of contact with complainants and the recording of such contact.

However, the effectiveness of these actions may not be reflected in this review, due to the retrospective nature of our reviews and older complaints still to be finalised. We will continue to monitor the AFP's communication with complainants in future reviews.

The AFP also advised in our previous review that it is continuing to work on reducing its backlog of complaints while attempting to improve its performance against amended timeliness benchmarks.

We note that the AFP reported on its achievements in reducing its backlog of complaints in its 2011-12 annual report.<sup>3</sup> We encourage the AFP to continue this practice of providing comprehensive information to the public on its efforts to improve its complaints management processes.

---

<sup>3</sup> Australian Federal Police, *Australian Federal Police Annual Report 2011-12*, page 89.

## 4. REVIEW FINDINGS

### 4.1 Were complaints finalised in accordance with internal timeliness benchmarks?

Under this criterion we assessed whether the AFP had finalised complaints in accordance with its internal benchmarks.

The AFP measures its performance in finalising complaints in a timely manner against benchmarks which indicate the number of days within which complaints in a particular category should be finalised. New timeliness benchmarks came into effect at the end of August 2012. The previous benchmarks still apply to complaints submitted prior to the end of August 2012. Table 3 outlines the previous and amended timeliness benchmarks. There is no specific timeliness benchmark for category 4 complaints given that such complaints are referred to, and may be investigated by, ACLEI.

**Table 3: AFP internal timeliness benchmarks (previous and amended)**

Overall complaint category	Benchmark prior to 31 August 2012 (days)	Benchmark after 31 August 2012 (days)
1	21	42
2	45	66
3	180	256 <sup>4</sup>

Data provided by the AFP indicates an improvement in the number of complaints finalised within relevant timeliness benchmarks compared to previous reviews. Additionally we noted an improvement in performance against the benchmarks between our first and second inspections this year. We will continue to monitor the AFP's performance in this area in future reviews.

The AFP also advised that in 90% of cases, the average number of days to finalise category 3 complaints for the period 1 July 2011 to 30 March 2012 was 447 days. For the period 1 July 2012 to 30 March 2013 the average number of days to finalise category 3 complaints was 284 days. This represents a reduction of 36%.

In relation to reporting on its performance against its benchmarks, the AFP has advised that while CRAMS can generate reports on the AFP's performance against its previous benchmarks, it is unable to generate reports on the amended benchmarks. The AFP has advised that amendments to CRAMS have been proposed, however CRAMS does not recognise the new benchmarks at this stage. Existing reporting is manipulated outside of CRAMS to report against the new benchmarks.

We note that if CRAMS was amended to report accurately on both the previous and amended timeliness benchmarks, this would be a more effective reporting mechanism and would also reduce the risk of human error that may occur in manipulating data outside the CRAMS environment.

---

<sup>4</sup> This benchmark applies to complaints that do not involve criminal prosecution. Complaints that involve a breach of criminal law may not be finalised by the AFP until any action before the courts is finalised.

## **4.2 Were major complaint issues appropriately identified and coded?**

Under this criterion we assessed whether:

- all major complaint issues were appropriately identified and coded in accordance with the *Australian Federal Police Categories of Conduct Determination 2006*
- a reasonable explanation was provided where a complaint issue has been upgraded or downgraded.

It is important that the AFP identifies and appropriately codes all major complaint issues, as this affects the way in which the complaint is managed. Category 1 and 2 complaints are managed by Complaint Management Teams (AFP appointees within specific business areas to address complaints against these areas) in accordance with Division 3, Subdivision C of Part V of the Act. Category 3 complaints are managed by AFP Professional Standards in accordance with Division 3, Subdivision D of Part V of the Act.

Additionally, by appropriately identifying and coding complaint issues, the AFP would be able to identify any trends within particular business areas or in relation to individual AFP members.

From our sample we identified nine records where complaint issues may not have been appropriately identified and/or coded and two records where the explanation for changing a complaint category was not clear, as discussed below.

The AFP has acknowledged the importance of ensuring accurate coding of all complaints, not only to ensure a complete investigation of the complaint but also to support trend analysis.

### **4.2.1 Corruption issues identified but not coded appropriately**

For four category 3 records we noted that either a 'non-significant' or 'significant' corruption issue was identified, but the conduct was not coded as a category 4 'corruption issue'. The AFP had coded these as category 3 conduct issues. However, we noted that it had also notified ACLEI of these records.

In its initial response to this finding, the AFP advised that it coded the conduct as category 3 conduct as it considered that it more accurately reflected the nature of the conduct. The AFP also considered that if it recorded the same conduct issue as both a category 3 and a category 4 conduct issue, it would result in inflated reporting statistics.

While we acknowledged the AFP's initial view, we noted that s 40RK(6) of the Act provides that if conduct would otherwise belong to more than one category, it is taken to belong to the higher or highest of those categories.

In the records referred to above, while the AFP has coded the conduct as category 3, it has also by virtue of notifying ACLEI of the corruption issues, identified the more serious conduct issue of corruption. Therefore, while the conduct may be classified as either category 3 conduct issue or a category 4 corruption issue, under s 40RK(6) of the Act, it appears that this conduct should have been coded as the higher category.

In its response to our draft report, the AFP advised that it recognised that these cases should have been recorded as 'corruption' issues. However, due to an administrative error, they were recorded as category 3 issues.

#### **4.2.2 Other conduct issues identified but not recorded and/or appropriately coded**

For two records a category 3 conduct issue was identified but not coded within the complaint. The complainants stated that an AFP member had not provided their name/s and/or badge number/s when asked. It is an offence under s 40YC of the Act for an AFP appointee not to provide their name or identification number where a person advises either expressly or by implication that they propose to complain about an action taken by an AFP member. In these cases it would have been appropriate for these issues to be coded as 'Serious Breach of the AFP Code of Conduct' or 'Criminal Offence' (both category 3 issues).

The AFP agreed that in the circumstances it would have been appropriate to have coded these category 3 conduct issues regarding the provision of AFP members' names and/or badge numbers at the time of the complaints being received.

For another record it appeared that a complaint issue was not identified and therefore not coded appropriately. For this record the issues identified were 'Discourtesy' and 'Inadequate Service', both category 1 issues. However, based on the initial complaint and the investigator's report and findings, it appears that it would have also been appropriate for the issue of 'Inadequate Investigation', a category 2 conduct issue, to have been raised.

#### **4.2.3 Recording explanations for downgrading complaint issues**

For one record, based on the available records, it did not appear that the downgrading of the complaint issue from category 2 'Information release (inadvertent)' to a category 1 issue was reasonable, as the Determination prescribes a minimum coding of category 2 for any unauthorised information release by an AFP appointee.

In another instance, while the record contained a reasonable explanation for the downgrading of the initial complaint from category 3 to category 2, there did not appear to be a reasonable explanation for why the issue was further downgraded from category 2 to category 1. The AFP has acknowledged that the explanation to downgrade the conduct issue from category 2 to category 1 was not recorded in CRAMS.

While s 40RK(7) of the Act allows for the category to which conduct belongs to be changed, best practice requires that an explanation for this decision be appropriately recorded in CRAMS. Without such records, it is difficult to establish whether the change of category was reasonable.

The AFP has agreed with the need for recording explanations for downgrading complaint issues.

### **4.3 Was communication with complainants (where relevant) during the complaint process reasonable?**

Under this criterion we assessed whether the records indicated that the AFP:

- acknowledged the complaint
- explained the complaint process to the complainant
- provided the complainant with the opportunity to be heard (s 40TH(1)(a)(ii) of the Act)
- kept the complainant informed of progress in dealing with the complaint (ss 40TA(2)(a) and (3)(a) of the Act)

- advised the complainant of the outcome(s) of the complaint and provided reasons for the outcome(s).

The Act and the AFP's internal procedures prescribe minimum levels of communication with complainants. However, the frequency and means of communication between the AFP and a complainant varies depending on the nature and complexity of the complaint. Given this, we assess each case on an individual basis in determining whether the AFP's communication with complainants was reasonable.

As category 2 and 3 complaints are of a more serious nature than category 1 complaints, as a matter of best practice we would expect that, where appropriate, the AFP explained the complaint process to the complainant and advised the complainant of the progress of the relevant investigation. We would also expect to see that the AFP acknowledged the complaint and advised of the investigation outcome.

#### **4.3.1 Category 1 complaints**

We considered 55 category 1 complaint records in this review.

We did not identify any significant issues regarding the AFP's communication with complainants.

The records indicated that, where appropriate, complaints were acknowledged and the complainant was notified of the outcome of their complaint. In particular, we noted several outcome letters that clearly explained the particulars of the complaint and the reason or reasons for the outcome of the complaint.

#### **4.3.2 Category 2 complaints**

We considered 65 category 2 complaint records in this review.

Where appropriate, it appeared that the complaint was acknowledged and the complainant was notified of the outcome of their complaint, except in one instance.

For one record it appeared that an acknowledgment of the complaint was not initially sent. The complainant contacted the AFP to request an acknowledgment but the AFP did not respond. The complaint investigator reviewed the complaint and decided to take no further action under s 40TF of the Act. A letter acknowledging the complaint and explaining the outcome was sent several weeks after the complaint was submitted.

The AFP agreed that a letter of acknowledgment should have been sent to the complainant in this instance.

We also noted 20 examples where there were insufficient records to show that the complaint process had been clearly explained to the complainant when it would have been appropriate to do so.

For all records considered, it appeared that where appropriate, complainants were provided with the opportunity to provide their version of events in accordance with s 40TH(1)(a)(ii) of the Act.

### **4.3.3 Category 3 complaints**

We considered 63 category 3 complaint records in this review.

Where appropriate, it appeared that complaints were acknowledged and outcome letters were issued to complainants, except for three records where we were unable to locate the acknowledgment of the complaint.

There were six records where the outcome letters did not appear to provide complainants with an explanation of what was considered in the investigation of their complaint and reasons specific to their complaint that led to the outcome. These letters only advised that the investigation included obtaining and reviewing information relevant to the matter and that the adjudicator determined that the complaint was not established. No further details appeared to have been provided.

The AFP acknowledged that these six complaint outcome notifications could have included an explanation for the decision.

For 18 records, the documents did not indicate that the complaint process was explained to the complainant or that the complainant was advised of the progress of their complaint where it would have been appropriate to do so.

In its response to our draft report, the AFP agreed that it is important to explain the complaint process to the complainant and that it is best practice to ensure that there is a record that the explanation has been provided. The AFP will continue to reinforce the need to record all interactions with the complainant including providing an explanation of the complaint process.

The AFP also advised that it balances its requirements under s 40TA(2) of the Act (keeping the complainant informed of the progress of the investigation) with the need to ensure confidentiality and preserve the integrity of the investigation. The AFP is also aware of the need to avoid unnecessary and repeated communication.

For all records considered, it appeared that where appropriate, complainants were provided with the opportunity to provide their version of events in accordance with 40TH(1)(a)(ii) of the Act.

## **4.4 Were complaint investigations reasonably conducted?**

Under this criterion we assessed whether:

- the AFP had considered all relevant information, taking into consideration whether:
  - the AFP had identified and contacted, or attempted to contact, relevant witnesses
  - where the AFP had not contacted witnesses, the complaint record contains a reasonable explanation as to why
  - the AFP had made other relevant independent enquiries (where appropriate)
- the investigation report adequately explained the information the AFP considered in the investigation.

In conducting this assessment, we relied on the records kept by the AFP and took into consideration the AFP's complaint investigator's checklist, which outlines relevant steps and considerations in investigating a complaint and the Better Practice Guide. We also note the Administrative Review Council's best practice guide that states that a finding on a disputed factual matter must be based on evidence that is relevant and logically capable of supporting the finding.

Where a decision is made to exercise discretion to take no further action under s 40TF of the Act, we have regard to whether this decision was reasonable, based on the nature of the complaint and whether an appropriate reason was provided for exercising the discretion.

#### **4.4.1 Category 1 complaints**

Based on the available records, it appeared that investigations of category 1 complaints were reasonably conducted.

#### **4.4.2 Category 2 complaints**

Based on the available records, it appeared that investigations of category 2 complaints were reasonably conducted, except in one instance.

For one record it appeared that the complaint investigator considered the intentions of the complainant in making their complaint, which could be perceived as a bias against the complainant. In this instance, the complaint outcome of 'not established' appeared reasonable. However, the complaint investigator documented statements on the CRAMS record alleging the complainant's intentions were not legitimate.

#### **4.4.3 Category 3 complaints**

We did not note any significant issues of concern with the investigations of category 3 complaints. However, we note that for several older complaints there was considerable delay between the complaint being submitted and the complaint being allocated for investigation. For example, one complaint was submitted in July 2011 and was not allocated for investigation until May 2012, while another record indicated that the complaint was submitted in October 2010 but was not allocated to a complaint investigator until January 2012.

### **4.5 Were complaint outcomes reasonable?**

Under this criterion we assessed whether complaint outcomes were reasonable based on the information available to the AFP and whether they were arrived at on the balance of probabilities.

#### **4.5.1 Category 1 complaints**

Based on the available records, it appeared that the outcomes of category 1 complaint investigations were reasonable.

#### **4.5.2 Category 2 complaints**

Based on the available records, it appeared that the outcomes of category 2 complaint investigations were reasonable.

#### **4.5.3 Category 3 complaints**

Based on the available records, it appeared that the outcomes of category 3 complaint investigations were reasonable.



## **4.6 Were complaint records complete**

In conducting our review, it will become apparent if the AFP has not met its record keeping obligations under ss 40WA(1) and (2) of the Act, and we may comment on any issues where relevant.

### **4.6.1 Category 1 complaints**

Relevant documents and information regarding each complaint were available.

### **4.6.2 Category 2 complaints**

Relevant documents and information regarding each complaint were available.

### **4.6.3 Category 3 complaints**

We noted that the ACT Policing CCTV footage on one record contained a gap of approximately 30 minutes.

## **5. CLARIFICATION ON A PREVIOUS REVIEW FINDING**

In our previous annual report on our activities under Part V of the Act, we stated that in five cases we identified a conflict of interest or potential conflict of interest in the complaint investigation.<sup>5</sup>

We would like to clarify that one of these cases was not investigated and the potential conflict of interest was identified in the *allocation* of the complaint, not in the *investigation* of the complaint.

---

<sup>5</sup> *Annual report on the Commonwealth Ombudsman's activities under Part V of the Australian Federal Police Act 1979 for the period 1 July 2011 to 30 June 2012*, p 29.





