



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

FOR THE PERIOD 1 JULY 2009 TO 30 JUNE 2010

Annual report by the Commonwealth and Law Enforcement Ombudsman,
Allan Asher, under Part V of the Australian Federal Police Act 1979

February 2011

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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 finalised during the 2009-10 period. We conducted two inspections and finalised three reviews.

The AFP continues to make efforts to improve the quality and consistency of its complaint handling. Its case management system has been given some reporting capacity, the Professional Standards area conducts training and awareness-raising across the organisation and provides a quality assurance role. The AFP has generally agreed with our recommendations and has taken steps to implement them.

However, this report notes that timeliness in resolving complaints across all categories, from the minor to the most serious, is deteriorating. It appears that the processes that the AFP has put in place to manage complaints are not operating efficiently. Information provided by complainants could be better used in addressing systemic problems.

This year's work has shown that complaints from members of the public have a consistently low rate of being established. In the three year period—from December 2006 (when Part V provisions commenced) to November 2009—we found that no 'excessive use of force' complaints by members of the public were established.

We studied sample cases to look for reasons for these outcomes. Our work shows that reporting on excessive use of force has often been incomplete and deficient. In some cases there is little evidence to show that AFP members took steps to diffuse difficult situations before resorting to force.

The AFP takes a case by case approach to investigating complaints, even where there may be a substantial history of complaints against the member. This is consistent with what the Ombudsman has previously identified as the 'criminal investigation' approach to complaints, rather than dealing with them by way of an administrative inquiry.

Such an inquiry is not bound by the rules of evidence and does not need to be proved beyond reasonable doubt. It should be conducted expeditiously and with a view to process improvement to avoid a repeat of the complained of conduct.

The delay in reaching conclusions on investigations, the low establishment rate for external complaints and the manner of conducting investigations calls into question whether or not the principal aims of amending AFP complaint handling, via the enactment of Part V, are being sufficiently met.

INTRODUCTION

Part V of the Act prescribes the process for recording and dealing with complaints about AFP conduct and practices—and came into effect on 30 December 2006 as part of a broader reform to the system for handling these complaints.

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 12 month period.

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.

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 conducted by this office in relation to reviews conducted during the 2009–10 period. We finalised three reviews during this time—Reviews 4, 5 and 6. Inspections, which formed the basis of the work and activities for the purposes of this report, were conducted at the AFP Professional Standards (PRS) office, Canberra. We note that this report includes some data and recommendations arising from reviews conducted almost two years ago. Since then the AFP has made a variety of enhancements to address some of the issues we have highlighted.

Table 1: Inspections

	Period of Records	Date of Inspection	Final Report
Review 4	1 August 2008 to 31 January 2009	3 March to 31 March 2009	September 2009
Review 5	1 February 2009 to 31 July 2009	27 October to 2 December 2009	June 2010
Review 6	1 August 2009 to 28 February 2010	12 March to 8 May 2010	July 2010

The review team inspected electronic records in CRAMS (Complaint Recording and Management System) for all the complaints that were reviewed. For Category 3 (conduct) and Category 4 (corruption issues), electronic records in both CRAMS and the Professional Standards Police Real-time Online Management Information System (PRS PROMIS), as well as the relevant paper files were examined.

BACKGROUND

Previous report

The Ombudsman's last report noted that the AFP had put considerable effort into making improvements to its complaint handling, particularly in promoting consistent quality of complaint resolution across the organisation, with some success. The report stated that the capacity of the technology used for complaint management remained an issue as did the timeliness in complaint resolution.

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.

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

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.¹ 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.²

¹ *Australian Federal Police Act 1979* s 40RH.

² *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 practice issues and ministerially directed inquiries. We do this by undertaking a series of reviews that examine individual complaints to determine whether or not they have been administered appropriately.

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'.

Reviews

Review 4

The fourth review examined cases closed in the period 1 August 2008 to 31 January 2009 (307 complaints). The review team examined 25% of CRAMS Category 1 (20 complaints) and Category 2 (44 complaints) complaints finalised during the review period, for a total of 64 randomly selected cases, in addition to 17 open matters. All Category 3 complaints (31 complaints) and the single Category 4 complaint finalised during the review period were examined. The 96 closed complaints examined included a total of 159 conduct and practice issues.

Review 5

The fifth review examined cases closed in the period 1 February 2009 to 31 July 2009 (258 complaints). The review team examined 60 randomly selected CRAMS complaints, comprising 25% of CRAMS Category 1 (20 complaints) and Category 2 (40 complaints) complaints finalised during

the review period. All Category 3 complaints (17 complaints) finalised during the review period were examined. There were no Category 4 complaints. The 77 closed complaints examined included a total of 124 complaint issues.

Review 5 also analysed all complaints closed in that period (not just the sample) to look at whether the complaint was made by someone external to the AFP (such as a member of the public) or made internally by an AFP member. We also looked at the outcomes for each of these categories and the issues they raised.

Review 6

Review 6 was conducted quite differently from the earlier reviews. This review was 'case study based' and its objective was to establish if the AFP's establishment rate for external complaints was significantly and consistently lower than its establishment rate for internal complaints (which was what our work on Review 5 had indicated)—and if so, to look for reasons why. Establishment rate refers to the number of complaints where the issue raised by the complaint was found to be established in relation to the number of complaints received in that category.

We examined complaint data for 399 complaints and 737 complaint issues closed in the period 1 August 2009 to 28 February 2010 (the review period). We also examined all 254 issues for excessive use of force', comprising 109 complaints—80 of which came from members of the public, recorded from January 2007 (when Part V of the Act came into force) to November 2009. From both of these data sets, we selected a sample of 43 cases for detailed examination.

This review highlighted the significance of ACT Policing in the conduct system because of the 737 conduct issues raised in the review period, 62% of them were from ACT Policing.

FINDINGS AND RECOMMENDATIONS

The following findings were made as a result of the three reviews finalised. While not exhaustive of issues identified, they represent the most significant and pervasive.

Access to Records

Background

The AFP utilises two databases upon which complaints about conduct are recorded, 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 Reviews 4, 5 and 6 than had previously been the case. 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 my view the improvements, while significant, 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

Another significant step forward has 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 will 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.

We note the AFP's assistance in the provision of training to Ombudsman staff in CRAMS and PRS PROMIS which made the inspections more efficient for both the AFP and the Ombudsman's office.

Timeliness

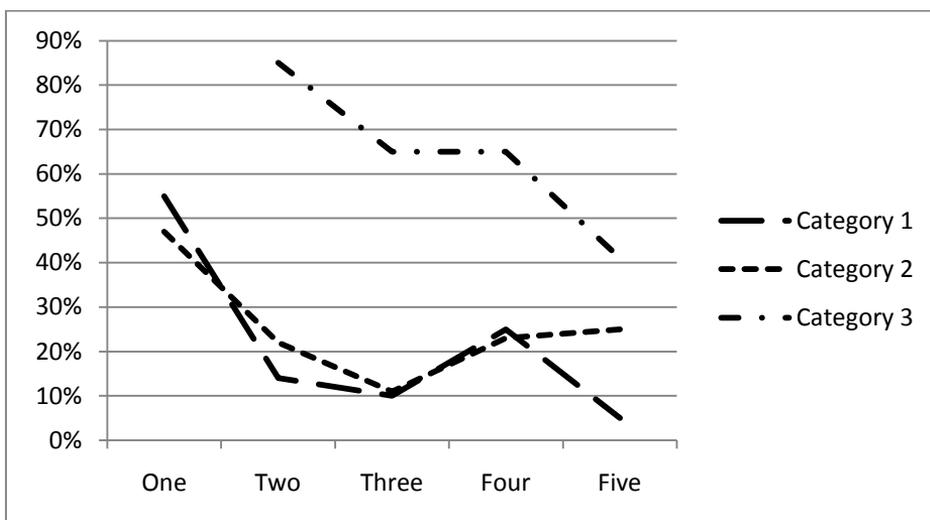
Meeting benchmarks

AFP guidelines set out the following benchmark standards for investigating and resolving complaints:

- Category 1 issues – 21 days
- Category 2 issues - 45 days
- Category 3 issues – 180 days

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

Graph 1: Percentage of Cases Finalised with Benchmark



During the same period, complaints received by the AFP have declined from 1016 in 2007-08 to 802 in 2009-10 (a 21% reduction).

Our concerns are twofold. Firstly, the number of complaints finalised within the benchmarks is low, and secondly, the trend has been for these

percentages to decrease further. This trend has been most pronounced in relation to Category 3 complaints.

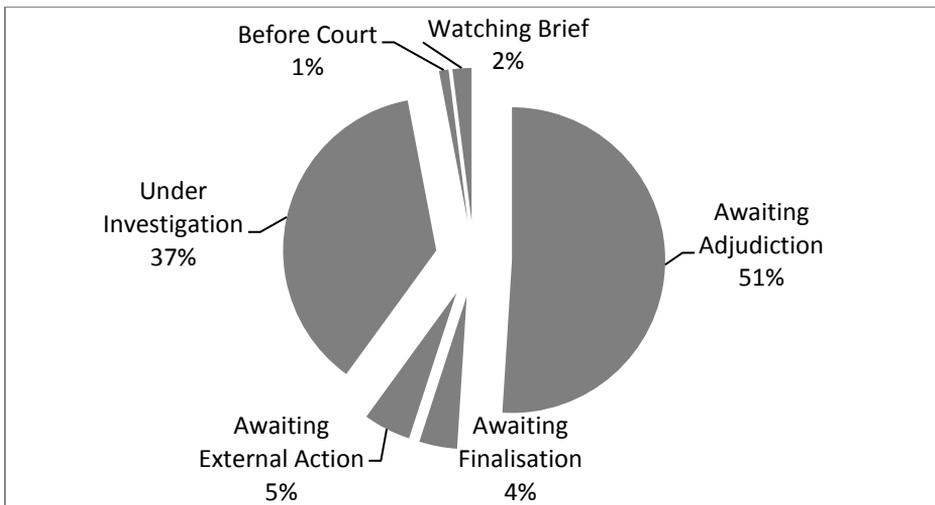
The AFP has sought to improve performance by increasing education and support for the investigators. The AFP has also incorporated a performance measure in the Human Resources Business Plan to improve the timeliness of complaint resolution by 25%.

The AFP has advised our office 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.

Identifying the cause

As part of review 5, an analysis of Category 3 complaints was undertaken to assist in identifying where the problem existed and potential remedies. We examined all Category 3 complaints that had been open for over 12 months. A summary of the results are in the graphs and tables that follow.

Graph 2: All Category 3 complaints that had been open for over 12 months



Although this graph provides the status of Category 3 cases opened for more than 12 months, and this would be expected to result in a higher number of cases awaiting finalisation than might otherwise be the case,

it nonetheless identifies adjudication as the primary source of delay for this category of complaints. Adjudication is the stage at which the investigation into a Category 3 matter is considered by the Manager of PRS who makes a decision on whether or not it is established and, if it is, what the outcome for the AFP member is to be.

The AFP has recognised this issue and has sought to address the delay in adjudications by establishing an 'AFP Professional Standards Adjudication Panel'. This is a panel of seven SES band 1 officers who have been tasked to assist the Manager Professional Standards by adjudicating Category 3 complaints. The success of this panel in addressing this cause of delay will be assessed in subsequent reviews.

An improvement in the quality of adjudication has been previously acknowledged by the Ombudsman. However, the ability of PRS to meet the benchmark for finalising Category 3 complaints appears to be affected by a combination of the volume of Category 3 matters, available resources and current processes. Consideration of whether some less serious matters, currently categorised as Category 3 matters, would not be more appropriately dealt with as Category 2 matters is something that the AFP has raised as a possible partial solution. This and other possible strategies to improve timeliness are to be further considered by the Ombudsman and the AFP in the coming year.

Recommendation 1

The AFP should conduct further analysis to determine the causes of delay in finalising complaints in all categories.

The AFP accepted this recommendation.

Complaint Administration

Coding information

Issues that are identified in complaints are coded using the schema contained in the Determination. The Determination was issued jointly by the AFP Commissioner and the Ombudsman and provides descriptors to enable conduct issues to be categorised.

Accurate identification and coding of an issue is an important step in the complaint-handling process as the coding reflects whether the issue will be investigated by PRS, referred to a Complaints Management Team

(CMT), notified to the Ombudsman or, if a corruption issue, referred to the Integrity Commissioner. Also, if a complaint issue is not coded it may not be addressed in the investigation, in the consideration of a finding, in the final endorsement of a finding, or in the final outcome. Professional Standards has recognised the importance of accurately coding issues and developed a quality management approach by assigning to the PRS Operations Committee the function of assessing and reviewing the initial coding of complaints into conduct issues soon after they are received.

Coding of issues within complaints was an area of strength in AFP complaint management and was consistently well handled.

Notification requirements

In accordance with the Determination, the Ombudsman was properly informed in all cases of Category 3 matters being lodged with the AFP. There was one complaint relating to corruption received in the review period. ACLEI was notified 51 days after the AFP received the complaint.

Contact with complainants

Appropriate and timely contact with complainants remains an important area for improvement. Given the delay in finalising complaints across all categories, the AFP needs to pay more attention to keeping complainants informed about the progress of their complaints. In some cases, there was evidence of attempts to contact complainants, but no information recorded about whether contact had been successful.

The quality of outcome letters and the information provided to complainants in those letters is improving, albeit not uniformly. In our view more attention needs to be given to providing details in correspondence to the complainant and to quality assurance checking. In a number of cases, the correspondence to the complainant was a form letter that stated the outcome of the complaint, but did not contain the reason for the particular finding.

Case study: Category 1 CRAMS 2624 - Inadequate investigation and a poor outcome letter

A complaint was made that the complainant was poorly treated in the City Watchhouse (Police Station) and was not provided with blankets or

food. The complainant was reported as uncooperative and aggressive. The record indicates he was considered a person at risk, but this assessment appears to have been made four hours after he was taken into the Watchhouse. The finding was 'not established'. The outcome letter to the complainant provided no explanation for the findings and the outcomes.

The following recommendations were made to the AFP.

Recommendation 2

That the AFP continues to focus on improving the outcome letters to complainants to provide details of the findings made and the reasons for those findings.

The AFP accepted this recommendation.

Adequate explanation for decision making is a key component of effective administration and we will be monitoring closely whether the AFP makes acceptable progress in improvement.

Recommendation 3

The AFP should give more attention to maintaining regular contact with complainants during the course of an investigation and, where a matter will not be finalised within the prescribed benchmarks, provide a report to the complainant that outlines the progress.

Recommendation 4

The AFP should explain the complaints process clearly to a complainant and record this in CRAMS.

Recommendation 5

The AFP should advise the complainant they have the right to complain to the Commonwealth and Law Enforcement Ombudsman who can investigate complaints about the actions of AFP members and about AFP policies, practices and procedures. The complainant should also be advised of how they can contact the Ombudsman.

The above three recommendations were also accepted by the AFP.

Recording information

We noted that information received from the complainant was not uniformly recorded, particularly in PRS PROMIS. We believe that as much complaint information as practicable should be recorded to assist in the administration, investigation and adjudication of complaints. This includes:

- how the complaint was made with the initiating complaint letter or email included in the records
- comprehensive complaint details, as far as possible, in the words of the complainant
- any specific remedy a complainant requested.

We were also of the view that inclusion of a copy of the initiating correspondence from the complainant within the complaint record would remove any doubt as to the content of the complaint and enable the AFP to respond more systematically to the complainant's concerns. In response to our concerns, CRAMS was improved with a 'drop down' box to prompt the member to record how the complaint was received. In Review 5 we noted an improvement in complaint description and also that training conducted by PRS appeared to be having a positive effect.

Deleting Complaints

Under s 40TF of the Act the Commissioner (or his delegate) may decide to take no further action in relation to a complaint for certain reasons – for example, the person became aware of the conduct more than 12 months before making the complaint; 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 or further investigation of the issue was not warranted having regard to all the circumstances).

It will, from time to time, also be necessary to delete complaints from CRAMS to remove duplicate complaints and other matters that have been inadvertently recorded. However, it is important that complaints are not deleted in lieu of utilising the discretion under s 40TF of the Act.

In addition to deleted complaints, Review 4 and 5 revealed a number of complaints that were described as 'Category 0', on the basis that the complaint was withdrawn by the complainant. Section 16 of the AFP

National Guideline on Complaint Management details that the findings that can be applied are: established, not established, withdrawn or discretion to take no further action (s 40TF). In our view it is more appropriate to deal with withdrawn complaints by making a 'withdrawn' finding, rather than categorising them as a Category 0. In addition Part V of the Act does not make provision for a Category 0.

In a previous Ombudsman report the concern was raised 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. That concern remains.

Case study: CRAMS 2532 – Excessive use of force

A complaint of excessive use of force was reported that was later withdrawn but not retracted, then retracted with the complainant apologising for their behaviour. It was the Ombudsman's view that either a 'not established' finding or the exercise of the 'discretion not to proceed' under section 40TF, would have been preferable to deleting the complaint.

Implementation of Outcomes

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.

An Ombudsman review in 2007 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 we remain of the view that such a capability would enhance the accountability of the AFP's complaint handling processes. We raised this issue again in Reviews 4 and 5. It appears that CRAMS or PRS PROMIS does not have the capability to produce reports that track case outcomes.

In relation to the conduct issues we examined where action had been identified as an outcome, it was unclear in a number of cases in both Review 4 and Review 5, if that action had been implemented—because the record did not clearly state the date of implementation; or there was insufficient information to demonstrate implementation; or implementation had been referred to another part of the AFP and there was no notation on the record to show whether or not it occurred.

Use of information

Section 40RI of the Act defines an AFP practices issue as one where a practice or procedure of the AFP has been 'contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, inadequate or otherwise wrong or inappropriate'. For the purposes of recording practice and other systemic issues, a Practices Register has been established.

Centralising the Practices Register is a good initial step towards giving practices issues the attention they require. However, from the records available to us, we could not see that the recognition, reporting and examination of practice issues and systemic issues was well developed. In its comments on the report, the AFP advised that its ICT systems did not capture all of its activity in relation to its use of complaint information which it said had been 'significantly enhanced'. Future reviews will seek wider information on AFP strategies and activities in this regard.

Establishment Rates

Ombudsman staff analysed all finalised complaints during the period 1 February to 31 July 2009 (Review 5). Outcomes by complaint category and complainant (made by someone external to the AFP or made internally by an AFP member), are provided below in Table 3:

Table 3: Analysis of Closed Complaints – Review 5

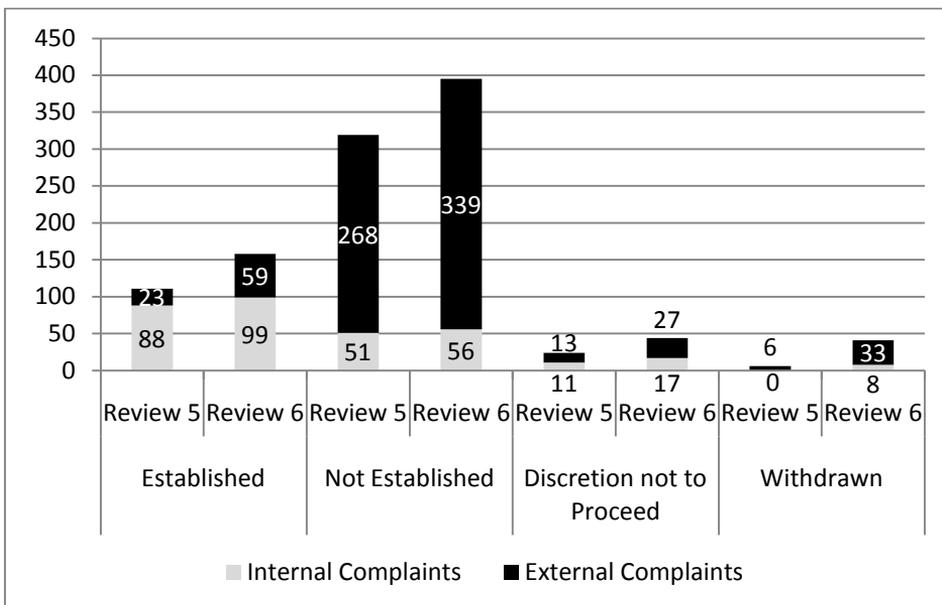
	Cat 1		Cat 2		Cat 3	
	Internal	External	Internal	External	Internal	External
Established	4 (50%)	9 (8%)	69 (57%)	14 (8%)	15 (52%)	0
Not Established	3 (38%)	101 (86%)	45 (37%)	158 (86%)	3 (41%)	9 (100%)
S 40TF	1 (12%)	5 (4%)	8 (6%)	8 (4%)	2 (7%)	0
Withdrawn	0	3 (2%)	0	3 (2%)	NA	NA
TOTAL	8	118	122	183	20	9

After analysing that data, we decided to conduct an 'ad hoc' review (Review 6) under s 40XB of the Act, in order to see if the low establishment rate for external complaints was consistent and if so, to look for reasons why.

Table 4: Analysis of Closed Complaints – Review 6

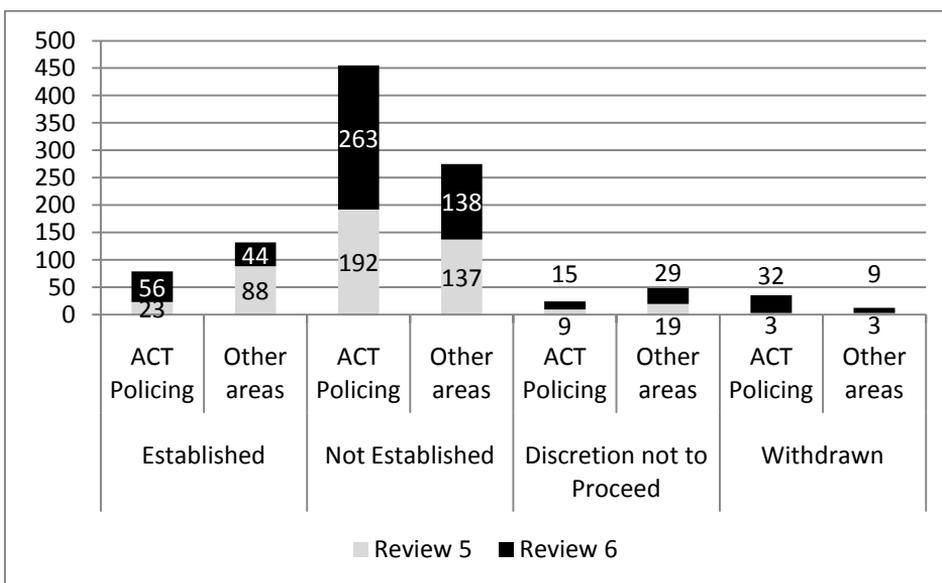
	Cat 1		Cat 2		Cat 3	
	Internal	External	Internal	External	Internal	External
Established	8 (45%)	26 (11%)	67 (57%)	30 (13%)	24 (53%)	3 (4%)
Not Established	6 (33%)	194 (79%)	34 (29%)	179 (79%)	16 (36%)	62 (75%)
S 40TF	2 (11%)	9 (4%)	14 (12%)	11 (5%)	1 (2%)	7 (8%)
Withdrawn	2 (11%)	15 (6%)	2 (2%)	7 (3%)	4 (9%)	11 (13%)
TOTAL	18	244	117	227	45	83

Graph 3: Overall establishment figures



Review 6 highlighted the significance of ACT Policing in the conduct system. Of all conduct issues in the review period, 62% were about ACT Policing. The overall establishment rate for ACT Policing was 12%; for other streams of the AFP it was 37%.

Graph 4: Establishment figures ACT Policing vs other areas of AFP



The customer service complaint of Discourtesy is predominantly a complaint from members of the public. In Review 6, the overall internal establishment rate for the issue of Discourtesy was 20% and the external establishment rate was 9%. In Review 5, the external establishment rate for this issue was just 1.3%.

Excessive use of force complaints

We also examined all 254 conduct issues for excessive use of force, comprising 109 cases, recorded from the commencement of Part V of the Act to November 2009. There were 80 complaints from members of the public. In a period of almost three years, none of the complaints from a member of the public about the use of force by police were established.

The use of force case studies which we examined demonstrated that little evidence came from the members involved to show that they had taken steps to de-escalate or effectively negotiate an outcome before employing force, contrary to AFP Commissioner's Order on Use of Force (CO3). We also found that the Operational Safety *Use of Force Report* was not always completed by the officer that used the force and that the information contained in reports was not always sufficient.

Recommendation 6

The AFP should improve the standard of the recording of information in Operational Safety Use of Force Reports, consistent with the requirements of CO3. Particular attention should be paid to informing supervisors of their responsibilities in signing off of Use of Force Reports.

The AFP accepted this recommendation.

Recommendation 7

Investigations and adjudications of complaints of excessive Use of Force should overtly demonstrate that the CO3 requirements of negotiation and de-escalation have been fully considered. Members using force should be required to demonstrate that they appropriately employed or discarded these strategies based upon the circumstances which were present at the incident.

Recommendation 8

The Operational Safety Use of Force Report should be amended to include a section requiring the member to set out full details of the member's attempts to negotiate and de-escalate the situation, or to set out full details of why this was not appropriate in the circumstances.

The above two recommendations were accepted in principle by the AFP. The AFP said it had impressed upon investigators that they should attempt to negotiate and resolve conflict while investigating and that this should be articulated in the final report. Further, that adjudications would also reflect this. However the AFP did not agree to amend the Use of Force Reports.

Investigation issues

Ten of the 43 cases which we examined in detail had some significant deficiencies in the overall adequacy of the final report or in the decision making for the finding.

In just over a quarter of the case studies, not all of the witnesses reasonably available to the investigation were interviewed. Further, possible evidence was not always obtained or considered. For example, some elements of the complainant's evidence were not considered, or other evidence (such as possible closed circuit television evidence) was not sought.

We expressed the view that where there were two versions of events and the evidence was not conclusive—either because of the circumstances of the case or corroborating evidence was not pursued—investigators invariably accepted the version of the officer who was the subject of the complaint.

Recommendation 9

Complaint investigations should seek to resolve differences between the evidence of complainants and members, particularly for more serious conduct issues, by seeking corroborating evidence wherever this is reasonable to achieve. This should include other forms of evidence such as CCTV records.

This recommendation was accepted in part by the AFP but it disagreed with our view that investigators tended to prefer the evidence of AFP members over that of complainants.

In circumstances where there is little or inconsistent evidence, an investigator should consider the complaint history of the member who is the subject of the complaint, particularly where the member has a significantly higher than expected frequency of related complaints. The complaint history could be examined for similarities in the nature of the complaints presented, and for similarities in that member's responses to problems they encounter in interacting with members of the public, or in dealing with provocation from members of the public.

We understand that a member's complaint history may be considered as part of the adjudication process (when considering what action may be taken on an established complaint). In our view it is preferable that the investigator, who is making a recommendation, have access to all the relevant evidence and that an adjudicator rely on that same evidence in making a determination.

A complaint investigation is not a criminal investigation and the findings of the investigator and decisions of adjudicators are not akin to a verdict in a criminal trial. A complaint should generally be dealt with by way of an administrative investigation where the standard of proof is on the balance of probabilities, not beyond reasonable doubt. In that context it may be appropriate and necessary to consider the antecedents of the person complained about, in order to make a decision about what had occurred.

CRAMS 1903 - Complaint of assault by police during a traffic stop

A number of ACT Policing vehicles followed and stopped an unregistered car which had false plates. The police suspected the vehicle might have been stolen. The driver, Mr X, complained that excessive force was used to remove him from the vehicle. Mr X claimed his vehicle was 'stormed' by police, two of whom he said had their guns drawn.

Senior Constable Y (SC Y) said he believed the car was stolen. SC Y gave three loud verbal instructions within a few seconds to take the

ignition keys out and throw them out the window. The driver did not comply so SC Y directed him to place his hands out of the open window but again the driver failed to comply. Senior Constable Y then reached in through the window, grabbed hold of Mr X's wrist and, removed the keys from the ignition. While SC Y was instructing Mr X to undo his seat belt he saw what he thought was a knife in Mr X's pocket. Senior Constable Y was assisted by other police and they moved Mr X out of the car and handcuffed him. Mr X described his knife as a work tool he used to remove paint. Senior Constable Y stated that Mr X yelled '*I hate police*' and that his manner was aggressive.

Mr X initially complained that he was unfairly treated by the arresting officer when the handcuffs drew blood. Several days later Mr X added that when he was stopped by police, they 'stormed the vehicle and the police officer from the vehicle attempted to drag him out of the window. This member then undid Mr X's seatbelt and twisted his arm behind his back'. Mr X said he was not resisting police and he asked why the officer had handcuffed him and was told it was because they had seen a weapon in his trouser pocket. When Mr X was contacted by PRS again the next month, he added that after he stopped, at least two officers had their firearms drawn and aimed at him. Mr X said he only has an issue with the one member who pulled him from the car as he thinks this was done too aggressively.

The Use of Force Report (UoF Report) was not completed by SC Y who had used force to restrain and then remove the motorist from the vehicle. The UoF Report was completed in general terms only, stating '*police did this*' rather than '*SC Y did this or that*'.

Inconsistencies in the various versions of events were not addressed. Senior Constable Y stated he had grabbed hold of the motorist and then saw the handle of the 'knife'. The UoF Report reported that police saw the knife and then used force. This error, that a knife was seen and force applied, was repeated in the Coordinator's review of the investigation and in the final adjudication. Mr X has also provided his view that the paint scraper was in his trouser pocket and would not have been visible to police until after he was forcibly removed from his vehicle.

The investigation and adjudication did not consider Mr X's claim that two members had drawn their weapons. CO3 states at 2.2 '**Reporting Use**

of Force *In all cases where an AFP employee or special member uses force, he or she must as soon as practicable, submit an AFP Operational Safety Use of Force Report ... This includes a situation where he or she: Uses a firearm.* 'Use, in relation to a firearm' is defined in CO3 as 'drawing; aiming; or discharging the firearm or chemical agent.' As Mr X has alleged that two police officers had their weapons drawn and aimed at him, this should have been investigated further.

The adjudication noted that *'further enquiries could have been conducted to obtain evidence from other Police'* and that because of the amount of time since the incident they did not intend to request further enquiries. The complaint was made in December 2007, the Final Report was completed in March 2008, was reviewed by a Coordinator in January 2009 and adjudicated in September 2009.

The complaint history of the member using force was not evaluated as he was not initially linked to the complaint as the ACT Policing records were incomplete. Ombudsman staff obtained a list of SC Y's complaint history which showed 16 complaints in a two year period from 2007 to 2009; and nine CRAMS complaints prior to this one. We noted from an earlier complaint, that this member had been issued with a voice recorder due to the number of complaints ACT Policing had then received.

The adjudication stated *'I also accept that sighting of the paint scraper which was not inappropriately believed by SC Y to be a knife significantly impacted on the police response to the incident'*. In our view SC Y had already used force by grabbing hold of Mr X and restraining him. The 'knife' was found after SC Y had committed himself to the option of force and control.

Recommendation 10

Investigators and decision-makers should consider a member's complaint history when conducting a complaint investigation and making a decision whether or not to establish a complaint.

The AFP did not accept this recommendation.

We intend to undertake further analysis of the way that complaints about excessive use of force are investigated in the coming years. One method under consideration is 'real time' oversight of sample of such investigations as they are undertaken.

Other themes which arose from the case studies were AFP members and complaint investigators characterising the behaviour of members of the public as 'anti-police' and on that basis, devaluing their version of events or not seeking it and instances where the discourteous behaviour of the complainant was used to justify the discourteous behaviour of an AFP member.

CRAMS 3353 – Complaint of discourtesy to a cyclist

ACT Policing members stopped a man, Mr X, on a bike at night with no helmet or lights. Mr X was dressed in dark clothing in an area where many burglaries had occurred. Mr X admitted to having a criminal history and was searched under the belief that he may be doing burglaries. Mr X complained that the police were rude and swore at him. Mr X complained that he was treated as a 'common criminal'.

The investigating Sergeant (Sgt Y) contacted both AFP members who provided statements of the events of the night and of their actions. Both denied abusing Mr X and said Mr X was verbally aggressive. There were no other witnesses.

Sgt Y later called Mr X to obtain his version of events. When Mr X raised being called a 'common criminal' Sgt Y pointed out the extent of Mr X's criminal history. Sgt Y told Mr X that he was 'extremely anti police'. Sgt Y then told Mr X that she knew her staff and that these staff would not swear at Mr X. Mr X responded that there was no point in complaining to the police about the police.

From the evidence it was open to Sgt Y to recommend a finding of not established.

However, we were concerned that an investigator formed a view that a complainant was 'extremely anti police' and then used this as a justification for the outcome with the complainant.

CONCLUSION

In the previous report, the Ombudsman concluded that the AFP was making commendable progress in improving its complaint management practices and procedures. The report noted though that timeliness was a considerable issue. This office once more acknowledges that the AFP is making efforts to improve its complaint handling systems. And we recognise that implementing a new and contemporary complaints management system in an organisation as large and complex as the AFP will take considerable time.

However, we are three and a half years down this track and there are still significant areas of complaint management to be addressed as we continue to work with the AFP.

We note that timeliness in resolving complaints has worsened since we last reported to Parliament. There has not been a great deal of progress in monitoring the implementation of changes in complaint procedures, or in documenting outcomes.

The AFP needs to demonstrate how it is using the information which can be gleaned from complaints—an invaluable source of intelligence for improving training, systems and procedures. Responding to and communicating with complainants could also be improved.

This office's first report to Parliament stated that the AFP still had some way to go in accepting that resolving a complaint is different to solving a crime, where the objective is to find the person responsible.

At the time, that concern went to the issue of the way that the complainant was treated and the impediment of such an approach to the AFP acknowledging that the organisation as a whole may be responsible for the circumstances giving rise to the complaint. After these reviews I am also concerned that this 'criminal investigation of an individual' approach is affecting the timeliness and quality of complaint examination and ultimately the outcomes. These issues go to the heart of how successful Part V has been in achieving its principal aim which is to implement a modern managerial approach to the work of AFP members; particularly in its response to complaints made about those members.