

**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

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

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Commonwealth Ombudsman
Level 5, 14 Childers Street
Canberra ACT 2600
Tel: 1300 362 072
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EXECUTIVE SUMMARY

Under Part V of the *Australian Federal Police Act 1979* (the Act) the Ombudsman has oversight 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 its review inspection during the 2011-12 period. The review inspection was conducted at the AFP Professional Standards (PRS) office in Canberra and at the Ombudsman’s office with the use of the AFPNet.¹

The review was conducted in two parts, covering two different time periods. Part 1 covered complaints closed during the period 1 September 2010 to 31 August 2011. Part 2 covered complaints closed during the period 1 September 2011 to 31 December 2011. We conducted the review in two parts to allow us to examine whether changes made to PRS processes had improved its complaint handling. We expected, given the changes made by the AFP to its procedures, that the timeliness of complaint handling for the Part 2 period would be better than for the Part 1 period. We also aimed to provide parliament with current information by including complaints to the end of the most recent calendar year.

We appreciate the assistance provided by PRS management and staff during Review 8 and their willingness to consider issues identified in the review.

Number of complaints examined

The AFP provided the Ombudsman’s office with a spreadsheet containing data of all complaints closed between 1 September 2010 and 31 December 2011 (the review period). There were 1275 closed complaints and an associated 2797 complaint issues.² In the first period

¹ AFPNet was installed in early 2012 and allows direct access to AFP complaint information.

² A complaint may have multiple issues that need to be investigated (such as a complaint about multiple AFP officers involved in one incident). One incident may also involve a complaint about multiple issues, for example, excessive use of force, discourtesy and warrant administration.

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there were 857 closed complaints and 1927 complaint issues and in the second there were 418 closed complaints and 870 complaint issues.

The review team analysed the complaint data and examined in detail a sample of complaints. The sample included both electronic and hardcopy files. In total we examined 132 complaints—92 complaints from the first period and 40 complaints from the second. Case studies provided in this report have been drawn from these samples.

Objective of review

The objective of Review 8 was to assess the comprehensiveness and adequacy of AFP complaint handling in the review period. The Commonwealth Ombudsman’s *Better Practice Guide to Complaint Handling* was used as a reference, and in particular we assessed:

- principles—fairness, responsiveness and efficiency
- the process—acknowledgment, investigation and ongoing communication with the complainant.

The objective of Review 8 was to:

- assess AFP compliance with the requirements under Part V of the *Australian Federal Police Act 1979*
- identify if the findings from the last three reviews were repeated, that is that the AFP’s establishment rate for external complaints was significantly lower than its establishment rate for internal complaints
- look at the timeliness of complaint handling to identify any improvement from Review 7
- identify the establishment rate for use of force complaints
- examine a large proportion of complaints about ACT Policing, particularly those where there were claims of discourtesy or excessive use of force against a person
- identify systemic issues and recommend improvements.

Methodology

In assessing how well the AFP managed its complaints, we analysed and examined all complaints closed in the review periods to determine:

- the target complaint groups to sample. The sample included:
 - complaints about ACT Policing
 - complaints taking more than 12 months to finalise
 - complaints open for longer than 12 months
 - a high proportion of Category 3 and Category 4 (corruption) complaints.³
- the establishment rates for internal and external complaints, especially for serious misconduct issues.

Key findings from Review 8

The findings identified from this review are discussed below.

Timeliness

In the Ombudsman’s last Annual Report to parliament of our activities under Part V (November 2011), we noted that timeliness in resolving complaints across all categories was continuing to deteriorate. This review notes an improvement in timeliness in resolving complaints, suggesting that the processes the AFP implemented in 2011 to improve this situation have been effective.

AFP Professional Standards (PRS) advised that it had 314 complaints that had been open longer than twelve months as at 31 December 2011.

Establishment rates

This review repeats the findings from Reviews 5, 6 and 7 that establishment rates for external complaints are significantly lower than those for internal complaints. The establishment rate for internal complaints in Review 8 was 43% (679 of 1546 complaint issues established). The establishment rate for internal complaints in Review 7 was 60% (139 of 232 complaint issues established).

³ Category 4 complaints about corruption issues are referred to the Australian Commission for Law Enforcement Integrity (ACLEI).

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The establishment rate for external complaints in Review 8 was 11% (140 of 1251 complaint issues established). The establishment rate for external complaints in Review 7 was 7% (30 of 415 complaint issues established).

This office had previously noted that from the commencement of the AFP’s Complaint Recording and Management System (CRAMS) in January 2007, no external complaints about excessive use of force on a person by police have been established. In Review 8 two complaints about excessive use of force were established: one internal and one external.⁴ This office draws no conclusions from this result but highlights this for consideration by the AFP. We examined the records of 26 use of force complaints and did not identify any substantial issues of concern in the conduct of these complaint investigations.

Contact with complaints

There has been some improvement in communication with complainants but this is an area which requires more attention from the AFP. In over 60% of cases in our sample, initial contact was made with the complainant however often this contact did not include explaining the complaint process. Regular contact was maintained with only 20% of complainants in our sample.

ACT Policing

ACT Policing remains a significant focus of our reviews because 30.2% (846) of all 2797 conduct issues examined in Review 8 arose from complaints against the AFP in their ACT Policing role. This is a reduction since Review 7 when ACT Policing accounted for 54% (351 of 651) of the complaint issues. As reported in previous reviews, the number of complaints about ACT Policing is not unexpected given it is the area within the AFP that has the greatest interaction with the public.

Other findings

Other issues noted in our review include:

- the need for conflicts of interest to be identified and managed prior to the start of an investigation

⁴ In its response to our draft report, the AFP noted that complaints about excessive use of force have resulted in established findings for complaints coded as ‘criminal conduct’, rather than ‘excessive use of force against a person’, which may not be reflected in use of force establishment rates.

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- the majority of complaints are about ACT Policing officers’ interactions with members of the public
- the biggest single category of those ACT complaints are about excessive use of force
- the establishment rate for use of force complaints remains negligible
- there is a need for more regular contact with complainants
- there is a need to further improve complaint record keeping.

AFP Response

The AFP’s response to our recommendations from Review 8 is outlined below. The AFP’s response in full is included at Appendix 1.

Recommendations

The recommendations made from Review 8 are directed at improving the timeliness of complaint handling, communication with complainants, quality of investigations, record keeping and training.

Recommendation 1

PRS should consider establishing a separate team to finalise new complaints received within the benchmark period and have other team members concentrate on finalising older complaints as soon as possible. This may allow new complaints to be finalised quickly while work continues on the older complaints.

The AFP accepted this recommendation. The AFP advised that investigators have been tasked on a flexible basis to reduce the backlog while balancing efforts on more recent work. This flexible allocation of resources will allow the focus to remain on priority matters.

Recommendation 2

The AFP should introduce guidelines for when and how contact is made with complainants during an investigation.

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The AFP accepted this recommendation and advised that some steps have already been taken to address it. All Complaint Management Teams (CMTs) have been provided with a complaints investigators’ checklist that includes advice about contacting the complainant to clarify details of the complaint and the desired outcome. The AFP advised that Category 3 and corruption matters are dealt with by PRS in accordance with an investigators’ flow chart which ensures the complainant is contacted at evaluation and investigation stages when appropriate.

Recommendation 3

The Manager of Professional Standards (MPRS) should ensure that all AFP staff understand the importance of ensuring conflicts of interest, or potential or perceived conflicts of interest, in the investigation of complaints are properly identified and managed. This is particularly important for CMT staff.

In response to this recommendation, the AFP stated that the importance of managing conflicts of interest in terms of complaint investigations is current practice and is the subject of constant review, education and improvement.

Recommendation 4

CMTs and PRS should, in evaluating the conduct of complaint investigations—in particular those about excessive use of force—consider whether all potential witnesses and sources of evidence were identified during the investigation and whether these witnesses should be contacted and interviewed or that evidence be obtained. If relevant persons are not interviewed or evidence obtained, the reasons should be documented in the investigation report.

In its response, the AFP did not agree it is necessary to interview every witness to an incident where a complaint arises, but agreed that an appropriate sample of witnesses should be spoken to. The AFP stated that PRS will continue to stress the importance of documenting all decision-making in case note entries in either CRAMS or PRS PROMIS.

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Recommendation 5

PRS should consider including a new field in CRAMS/PROMIS to indicate the date that the notification letter is sent to the complainant.

The AFP agreed with this recommendation in principle. The AFP advised that any amendments to PRS PROMIS and CRAMS are expensive and highly technical, and this recommendation will be implemented as an ongoing project to improve ICT platforms.

Recommendation 6

PRS should conduct a review of systemic issues noted in complaint handling for the past 12 months as a basis to provide specialised training to PRS and CMT staff to assist with their complaint handling methods and practices.

In response to this recommendation, the AFP stated that a record of recommendations from Ombudsman reviews is kept by PRS. The Complaints Coordination Team and relevant CMTs are advised of recommendations made by the Ombudsman in notifications under section 12 of the *Ombudsman Act 1976*.

PART 1—INTRODUCTION

Part V of *Australian Federal Police Act 1979* 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 of the Act.

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 their work and activities under Part V, Division 7 of the Act during the preceding 12 months. This report must be prepared as soon as practicable after 30 June each year and 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.

This report covers the work and activities of the Ombudsman for the period 1 July 2011 to 30 June 2012. The review inspection was conducted at the AFP Professional Standards (PRS) office, Canberra and at the Ombudsman’s office using the AFP terminal (AFPNet) installed in early 2012. This review covers all AFP complaint issues closed in the review period, 1 September 2010 to 31 December 2011.

Table 1: Inspections

Review 8	Period of records	Date of inspection	Number of records inspected
Part 1	1 September 2010 to 31 August 2011	17 October 2011 to 16 November 2011	92
Part 2	1 September 2011 to 31 December 2011	20 January 2012 to 18 February 2012	40

PART 2—OBJECTIVE, SCOPE AND METHOD

Objective and scope

The objective of reviews conducted by the Ombudsman under Part V of the Act is to assess the comprehensiveness and adequacy of the AFP complaint handling system. The particular areas of focus for Review 8 were to:

- identify if the findings from the last three reviews that the AFP’s establishment rate for external complaints was significantly lower than its establishment rate for internal complaints, were repeated
- examine the timeliness of complaint handling to identify any improvement from previous reviews
- identify the establishment rate for use of force complaints and examine in more detail a proportion of complaints about ACT Policing, particularly those where there were claims of discourtesy or excessive use of force against a person
- identify systemic issues and recommend improvements.

Method

Review 8 referred to the AFP *Commissioner’s Order on Professional Standards (CO2)*, the AFP *National Guideline on Complaint Management*, the AFP *Commissioner’s Order on Use of Force (CO3)* and the Commonwealth Ombudsman *Better Practice Guide to Complaint Handling*. We also had regard to the AFP *Categories of Conduct Determination 2006* (the Determination) and the requirements under Part V of the Act.

PRS provided aggregate data in the form of a spread sheet of all complaints closed within the review period. From this data, samples for closer inspection were selected. The review team acknowledges the assistance provided by PRS in providing the aggregate data and other assistance provided during the course of the review.

There were 1275 complaints closed within the review period covering 2797 complaint issues (857 cases in Part 1 covering 1927 complaint issues and 418 complaints, covering 870 complaint issues in Part 2). We

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examined 132 complaints in detail (92 complaints from Part 1 and 40 complaints from Part 2) and selected 16 complaints as case studies for Review 8. Ninety-two per cent of the sampled complaints were external complaints, mostly from members of the public.

When examining the complaints, we relied on the electronic information provided in CRAMS and PRS PROMIS (for Category 3 matters). Paper files were viewed where relevant documents could not be located on the electronic records. This decision was made because the majority of information is now loaded into the CRAMS/PROMIS electronic record. It is a more efficient process to rely on these records unless there are reasons to consider that the electronic records may have been incomplete or unreliable. In early 2012, we also gained direct access from our office to the AFPNet records.

PART 3—FINDINGS

The key findings of Review 8 were:

- establishment rates for external complaints are significantly lower than establishment rates for internal complaints
- there continues to be an almost negligible establishment rate for external complaints of excessive use of force against a person
- timeliness of resolving complaints remains a concern but improvements have been made in finalising more recent complaints
- the management of conflicts of interests that may arise when investigating complaints needs attention
- maintaining regular contact with complainants requires improvement.

Analysis of complaint issues

Figure 1 and Table 2 below, show the five AFP functional streams that received the most complaints. ACT Policing receives the most complaints (30.2%). The next most common functional stream for complaints is Aviation Security (22.6%). This is not surprising as these two areas have the most frequent contact with members of the public.

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Figure 1: Analysis by functional stream

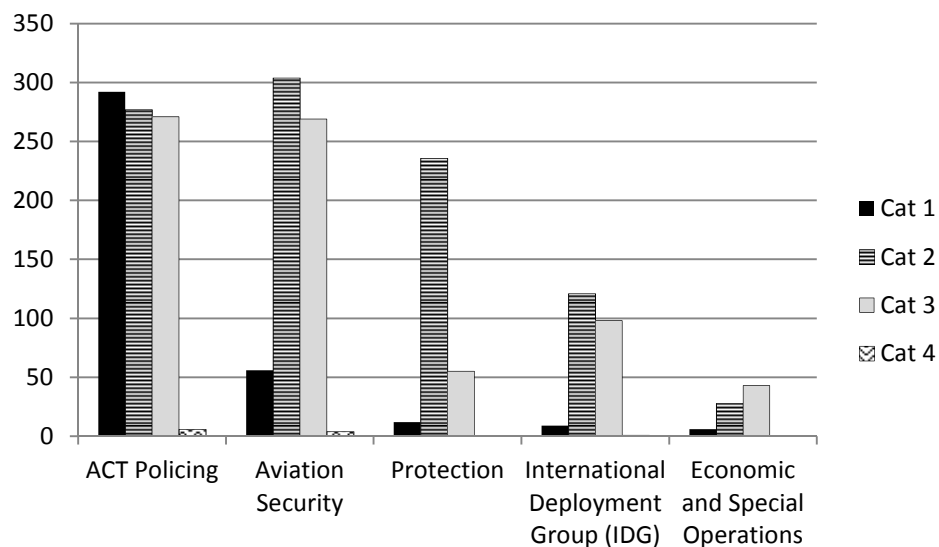


Table 2: Analysis by functional stream⁵

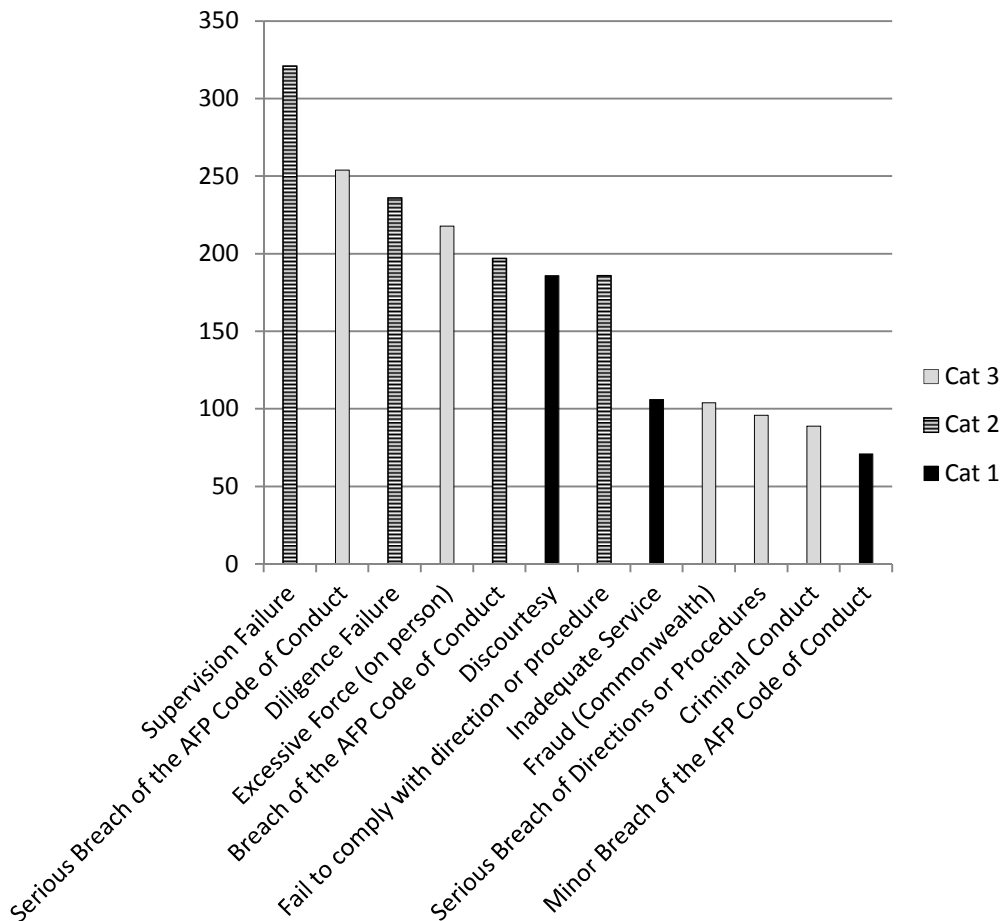
Functional stream	Cat 1	Cat 2	Cat 3	Cat 4	Total
ACT Policing	292	277	271	6	846
Aviation Security	56	304	269	4	633
Protection	12	236	55	0	303
International Deployment Group (IDG)	9	121	98	1	229
Economic and Special Operations	6	28	43	0	77

⁵ Note this table covers a 16 month period (1 September 2010 to 31 December 2011) so care should be taken when comparing to previous reviews.

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Figure 2 and Table 3 provide a summary of the top five complaint issues for each complaint category for all AFP complaints finalised in the review period. Supervision failure, serious breach of AFP Code of Conduct, discourtesy, diligence failure and excessive use of force are key complaint themes.

Figure 2: Major issues by category



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Table 3: The top five issues by category for all functional streams

Category	Issues
Category 1	Discourtesy (183) Inadequate service (106) Minor breach of AFP Code of Conduct (63) Failure to act (52) Advice failure (48)
Category 2	Supervision failure (321) Diligence failure (236) Breach of AFP Code of Conduct (194) Fail to comply with direction or procedure (179) Inappropriate behaviour (60)
Category 3	Serious breach of AFP Code of Conduct (255) Excessive force - on person (213) Fraud (Cwlth) (104) ⁶ Serious breach of directions or procedures (92) Breaches of legislation ⁷ (88)
Category 4	Bribery/corruption/blackmail/extortion (31)

Conduct off duty

There were 276 issues (or 9.9% of all issues) relating to the off-duty conduct of AFP officers with 117 (42%) established. Ninety-five issues (35%) were from external complainants and of these 25 (9%) were established. These complaint issues were mainly about breaches of the Code of Conduct relating to the Aviation Security and Protection streams.

Some of these complaints were about misuse of authority, harassment and intimidation, allegations of inappropriate access to Police and Commonwealth Information systems for personal benefit and unwarranted attention by an officer or officers. There was one established case of sexual harassment relating to the Protection stream.

⁶ In its response to our Draft Report, the AFP commented that 94 of the 104 issues of Fraud (Cwlth) related to one complaint, with no criminal fraud detected.

⁷ This issue string is identified in the CRAMS system as 'criminal conduct', but the AFP in its response to our draft report queried this identification.

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One hundred and eighty-one (65%) of these issues were raised by internal complaints and 92 (51%) of these were established, mainly for serious breaches of the Code of Conduct. This is consistent with the overall higher rate of establishment for internal complaints than external complaints.

Arrest issues

Of the complaints closed in the review period, there were 223 issues relating to arrest of individuals and of these, 175 related to ACT Policing and 32 to Aviation Security. One hundred and twenty-eight related to excessive use of force on a person. One hundred and seventy-one arrest issues were complaints from members of the public. Only seven of these were established.

Establishment rates

This review confirms the variation in establishment rates between internal and external complaints but with some changes in the quantum from previous reviews. The overall internal establishment rate was 42% and the external establishment rate was 13%.

The complaints closed in the review period indicate that there has been an increase in the external establishment rate compared to the average external establishment rate for the previous three reviews.

However, there has been a drop in the internal establishment rate of approximately 27% for Part 1 and 13.5% for Part 2 compared to the average internal establishment rate for the previous three reviews. The reasons for this are unknown.

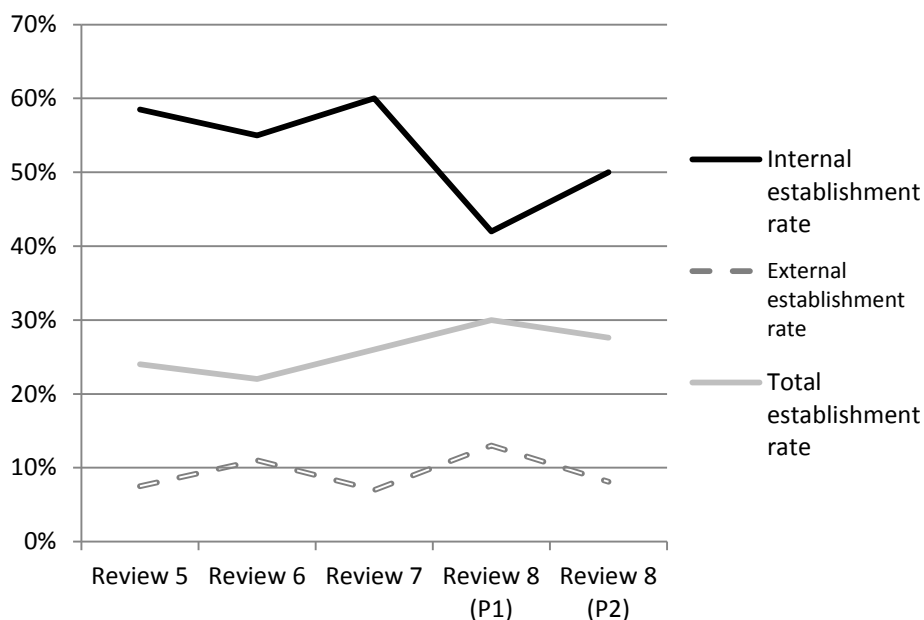
Table 4 and Figure 3 provide a comparison of the internal and external establishment rates for the past four reviews.

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Table 4: Summary of establishment rates (Reviews 5 to 8)

Review	Internal establishment rate	External establishment rate	Total establishment rate
Review 5	58.5%	7.5%	24%
Review 6	55%	11%	22%
Review 7	60%	7%	26%
Review 8			
<i>Part 1</i>	42%	13%	30%
<i>Part 2</i>	50%	8.1%	27.6%

Figure 3: Comparative establishment rates (Reviews 5 to 8)



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Table 5: Findings by category and complaint source

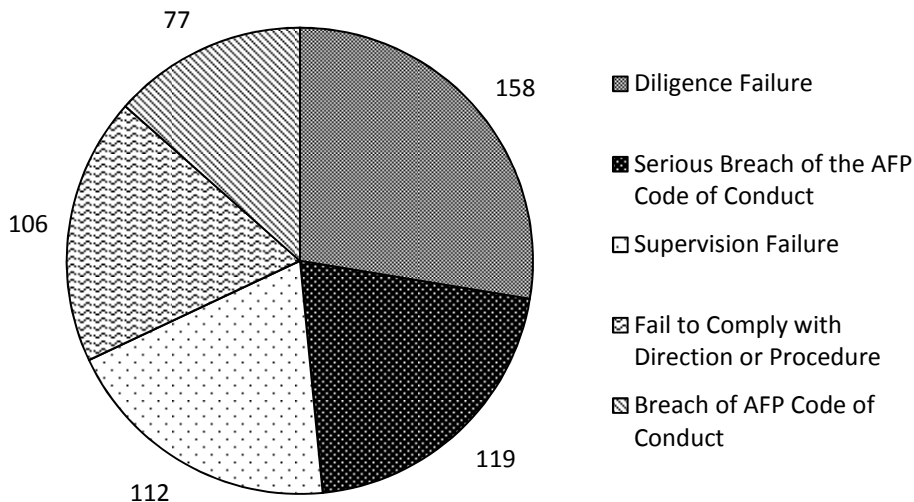
Category and finding	Internal complaints		External complaints		Total
	Part 1	Part 2	Part 1	Part 2	
Category 1	45	19	316	94	474
Discretion not to proceed	8	3	27	41	79
Established	12	10	27	5	54
Not established	24	6	261	48	339
Withdrawn	1	0	1	0	2
Category 2	703	195	266	137	1301
Discretion not to proceed	61	25	24	19	129
Established	341	110	50	17	518
Not established	301	57	179	91	628
Withdrawn	0	3	13	10	26
Category 3	384	183	194	219	980
Discretion not to proceed	146	37	24	24	231
Established	124	82	25	16	247
Not established	114	62	144	175	495
Withdrawn	0	2	1	4	7
Category 4	11	6	8	17	42
Discretion not to proceed	5	1	2	3	11
Established	0	0	0	0	0
Not established	6	5	5	13	29
Withdrawn	0	0	1	1	2
Total	1143	403	784	467	2797

Top five issues established

Figure 4 shows the top five issues that were established (combined for Parts 1 and 2). These top five issues account for 70% of all issues established.

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Figure 4: Top five issues established



It is interesting to note that discourtesy is not one of the top five issues established, although it is one of the top five issues across all complaints and comprises the second largest number of complaints for ACT Policing. It is also an issue which is almost exclusively raised by members of the public.

The functional stream with the largest number of complaint issues was ACT Policing. Seventy-five (8.9%) of the 846 ACT Policing complaint issues were established and 624 (74%) were not established. Thirty eight (51%) of the established ACT Policing complaint issues were external complaint issues and 563 (90%) of the not established complaint issues were external complaint issues.

Use of force complaints

In the review period there were 246 complaint issues coded as use of force, with 218 of these about excessive use of force on an individual—only two were established, one was an internal complaint and one was an external complaint.⁸ The external complaint involved excessive use of force on an individual by a member of Aviation Security. This office considered that the investigation of this complaint was thorough and of a high standard (*Case study 3, Established use of force*).

This office considered that, overall, investigations of complaints about use of force were adequate and that shortcomings of the investigation were generally identified by either a coordinator review or the adjudication process. In many cases we examined there was insufficient evidence available—such as a lack of CCTV footage or a reliable witness being present—for the complaint to be established.

Case study 1 Use of Force complaint

Ms X complained to the AFP that police used excessive force during her arrest.

The CRAMS report for this matter stated that police responded to a disturbance at Ms X’s residence in Canberra’s south and arrived to find Ms X and her partner Mr Y arguing. According to the report, police directed Mr Y to leave the residence and attempted to check on the welfare of the children present. It was reported that Ms X would not allow police near her three-year old child and that she began to act aggressively towards police.

According to the report, Mr Y left the premises and the children were placed in the care of a neighbour.

Ms X was arrested by Constables A and B for a breach of the peace, and placed inside a caged police vehicle. According to the police report, Ms X began hitting her head against the inside of the caged police vehicle and, after ignoring directions to stop, Constable A directed a burst of capsicum (OC) spray into Ms X’s face.

⁸ In its response to our draft report, the AFP noted that where use of force by an AFP member results in criminal charges, the complaint against the AFP member is coded as criminal conduct rather than excessive use of force.

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The police report stated that the OC spray caused Ms X to stop hitting her head against the inside of the police vehicle. Ms X was then decontaminated by police and escorted to the ACT Watchhouse.

PRS investigated the complaint from Ms X. The investigator interviewed Ms X, who stated that she was unhappy that she was handcuffed and sprayed with OC spray while in the back of the police vehicle.

Ms X told the investigator that she had photographs of bruises caused to her arms during her arrest, and that she would try to provide these photographs to police. It appears that Ms X did not provide the photographs and Ms X did not respond to attempts to contact her.

The investigator also interviewed Constables A and B and reviewed the use of force report for Ms X’s arrest. These interviews and use of force report stated that handcuffs had not been used on Ms X during her arrest but confirmed that a one-second burst of OC spray was used against Ms X to stop her attempts at self-harm while in the caged police vehicle.

The investigation report and the subsequent adjudication report found that the force used by Constables A and B was the minimal amount of force necessary given that Ms X was attempting to self-harm in the caged police vehicle and was being abusive towards police.

In the review period, there were four complaints which involved the use of force against minors. In two of the cases, the use of reasonable force appeared to have been permitted by a court order. While it appears that the AFP’s handling of the complaint in *Case study 2, Excessive use of force involving a minor* was reasonable, it does illustrate the difficulties facing AFP members, and police in general, when they are required to execute court orders involving minors or people who may have mental health issues.

Case study 2 Excessive use of force involving a minor

Mr X complained that he was the subject of excessive use of force at an airport.

Mr X was a 16 year old ward of the state at the time of the incident and has autism. His carer, Ms Y, contacted the State Child Services (SCS) body because she was worried that Mr X was attempting to leave the state to meet with someone whom he had not met before.

The SCS contacted Airport Uniform Police (AUP) to advise that Mr X would be boarding an aeroplane and that he did not have SCS permission to leave the state. According to the report, AUP were made aware of Mr X’s autism.

Airline staff advised AUP that Mr X was attempting to check in to a flight to Sydney. AUP attended and informed Mr X that he was not permitted to travel and that he would be taken to the AUP office and returned to the care of Ms Y. Mr X became violent and aggressive and bit an AUP officer. AUP were forced to restrain Mr X and physically remove him from the terminal.

Ms Y attended AUP offices to collect Mr X and witnessed AUP officers restraining Mr X. Ms Y was of the view that the AUP dealt with Mr X appropriately considering his behaviour and the circumstances.

Case study 3, Established use of force illustrates a comprehensive investigation of a case involving excessive use of force against a person during an arrest. We consider that the investigating officer adequately advised the complainant of the complaint process, kept in contact with the complainant, properly recorded the investigation in CRAMS/PROMIS and finalised it in a timely manner.

Case study 3 Established use of force

Mr X’s complaint stated that he was collecting a client, Mr Y, from an airport and had moved his car into a parking space behind a small bus to wait for another client. Senior Constable (S/C) A and S/C B requested Mr X move his vehicle. Mr X then asked S/C A where he could move his vehicle to.

S/C A asked Mr X for his driver’s license. When Mr X did not provide it quickly enough, S/C A proceeded to handcuff Mr X while he was still in the driver’s seat of the vehicle. S/C B opened the rear driver side door to assist S/C A in removing Mr X from the vehicle.

S/C A squeezed Mr X’s wrist and repeatedly bent his arm to get him out of the vehicle. Mr X was visibly and audibly in pain and was requesting that S/C A stop hurting him. When S/C A pulled Mr X from the vehicle, the vehicle was still running and when Mr X’s foot was removed from the brake, the vehicle rolled toward a nearby car.

The investigation considered statements from witnesses, including Mr Y, and S/C B and photographs of Mr X’s injuries from the incidents.

The investigation established that S/C A used excessive force on Mr X, that his language and demeanour toward Mr X was unreasonable and disrespectful, that he failed to ensure a motor vehicle was stationary prior to removing the driver, that he did not provide his name and identification number to a member of the public who wished to make a complaint, and that he did not set out the full detail of forces used in a use of force report.

Customer service complaints

As noted, the customer service complaint issue of discourtesy is predominantly a complaint from members of the public. There were 186 discourtesy complaint issues (6.5% of all issues) in this review period, with 70% of these being for ACT Policing. The overall establishment rate for discourtesy issues was 4.4% which was consistent with the previous year. Only six (4.6%) of the 129 discourtesy complaints from members of the public were established.

The complaint issue of failure to act (40 issues) had an overall establishment rate of 15%, which was a small increase on Review 7. The issue of unwarranted attention (40 complaint issues) had one

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internal complaint established but none of the 33 external complaint issues were established. For the issue of warrant administration (13 issues), all were external complaints with six being for ACT Policing; none were established.

The following case illustrates the importance of any complaint investigator giving a fair hearing to the complainant, rather than seeking to justify the police actions in the first instance of contact.

Case study 4

Poor communication by investigator

Mr X and his friend Mr Z were inside a Canberra nightclub when Mr Z was pushed by another patron. The night club security staff ejected Mr X and Mr Z from the nightclub. Outside the club, Mr X approached Constables A and B and told them that Mr Z had been assaulted. The officers stated that they would not investigate the matter and told Mr X to leave.

Mr X complained to ACT Policing about the conduct of Constables A and B, and the matter was assigned for investigation. The investigator spoke with Constables A and B, who stated that Mr X and Mr Z had been intoxicated at the time of the incident, and that the large number of intoxicated people outside the nightclub had made maintaining order a challenge for the Constables.

The investigator called Mr X to discuss the complaint. The investigator asked Mr X to explain his complaint, but then proceeded to justify the actions of the officers to Mr X. The investigator told Mr X that the police did not have the resources to investigate Mr X’s allegation of assault, and even if they had, it was unlikely to have proceeded to prosecution. Mr X remained unhappy with the conduct of the officers.

The investigation report stated that Mr X he should have been satisfied with the explanation provided by Constable B. The investigator recorded a finding of not established, because no improper behaviour on the part of police was disclosed by the complainant. The investigator’s approach of justifying police actions to Mr X, rather than impartially investigating the complaint, suggests an inadequate approach to the complaint investigation.

Timeliness of complaint handling

The AFP continues to finalise many complaints outside its own benchmark standards. Prior to 26 July 2012, the benchmarks for which complaints are to be investigated and completed were:

- a) Category 1 complaints – 21 days
- b) Category 2 complaints – 45 days
- c) Category 3 complaints – 180 days.⁸

This office has raised timeliness of resolving complaints as a significant issue in previous reviews. We acknowledge that an adjudication panel was established in early 2010 to address the backlog of Category 3 complaints at the adjudication stage. It appears that the introduction of this panel has started to have an impact in reducing the time taken to finalise these complaints. The AFP also employed a specialist consultant to address the backlog of Category 3 adjudications.

Table 6: Complaint finalisation against service standards

Category	Standard	Finalised within standard—Part 1	Finalised within standard—Part 2
1	21 days	1.4%	2.6%
2	45 days	5.6%	7%
3	180 days	0.2%	3.5%
4	180 days	0%	4.3%

As shown in Table 6 there was a small improvement in the percentages of complaints finalised within standard between Parts 1 and 2.

Complaints open longer than twelve months

PRS advised that it had 356 complaints that had been open longer than twelve months at 31 August 2011. This compares with 311 complaints open longer than 12 months at the end of Review 7 (31 August 2010). Forty-five per cent of these complaints were external complaints and 97% of these were Category 3 and 4 complaints. There were 314

⁸ As at 26 July 2012, the AFP has reviewed and republished its timeliness benchmarks, which can be seen in the AFP response in Appendix 2.

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complaints open longer than 12 months at the end of Part 2 with 29% of these being external complaints and 92% of these being Category 3 and 4 complaints.⁹

Two hundred and one complaints had been open for more than two years at 31 August 2011. The numbers of complaints open for more than two years at 31 December 2011 reduced to 146 which is a sizable decrease in four months. This was partly due to more resources being allocated by PRS to finalise these older complaints. Seventy complaints had been open for more than three years at 31 August 2011 (59 at 31 December 2011), so progress is being made in finalising these older complaints.

Table 7: Complaints open longer than 12 months

Category of complaint	Number of complaints open for more than 12 months (31 Aug. 2011)	Number of complaints open more for than 12 months (31 Dec. 2011)
Category 1	1	1
Category 2	8	24
Category 3	311	248
Category 4	36	41
Total	356	314

Findings from complaint sample

This section outlines the key areas of concern identified in our detailed review of the 132 complaints in our sample.

Explanation of complaint process

Of the complaint records examined, it appeared that the complaint process was explained to the complainant in 5 of the 92 cases (5.4%) for Part 1, and 4 of the 40 cases (10%) for Part 2. This is a reduction from the Review 7 results, where we found that in 12% of cases there was

⁹ In its response to our draft report, the AFP noted that the number of complaints open more than twelve months had been reduced to 153 as at 25 July 2012.

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clear evidence that the complaint process was explained to the complainant.¹⁰

One of the first steps in any complaint management process should be clearly explaining the process to complainants. This explanation should include:

- what will (or will not) be investigated
- who will be investigating
- how long the investigation might take
- when the complainant should expect to hear from the investigation officer.

This contact should be noted in the CRAMS/PROMIS record. An example of this contact with the complainant is illustrated in *Case study 5, Complaint process explained*.

Case study 5 Complaint process explained

In October 2010, an ACT Policing officer attended a local school as part of the Crime Prevention debates. A complaint was made to the AFP by the father of one of the female debating students and the Principal of the school. The complaint stated that the police officer made comments that *‘reduced one of their top students to tears’*.

The father had stated that *‘a police officer should not be engaging in the public humiliation of a 15 year-old’*. This office found that the ACT Complaint Management Team (CMT) explained to the Principal and the student’s father how the complaint process worked.

The complaint was established and the police officer was counselled over the incident.

We considered that the investigation was conducted appropriately.

We noted that an acknowledgment letter is sent to a complainant when they first contact PRS. This is good practice but we consider the letter would be more useful to the complainant if it also referred the

¹⁰ A small part of this difference may be due to the fact that the recording of this contact might be greater in hard-copy files than in the electronic CRAMS/PRS PROMIS records. In Review 8 we examined fewer hard copy files than in Review 7.

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complainant to the AFP website that explains the complaint process. Alternatively, the Complaint Management Team (CMT) or PRS could include a brochure with the acknowledgement letter that explains the complaint process.

Contact with complainants

In general, the review found that initial contact with complainants has improved since Review 7. The sample analysis indicated that the investigators were contacting the complainant and effectively capturing the complainant’s concerns in 53% (49 out of 92) of cases for Part 1 and 52% of cases (21 out of 40) for Part 2. These numbers were 45% in Review 7 and less than 30% in Reviews 5 and 6.

The results showed that there was more contact made by PRS staff (Categories 3 and 4) than by investigators for the CMT (Categories 1 and 2); this is a result that could be expected given the differences in the level of work involved in the different categories.

It is recognised that there are instances where contact is either not required or not necessary. An example noted during the review was where a complainant did not wish to assist the AFP with the investigation of the complaint. Other instances included those where the complainant’s contact details had changed or where complaints were made anonymously.

It is acknowledged that if a complaint is anonymous, contact with the complainant may either be impossible or quite difficult to arrange even when the complainant may be willing to discuss the matter in private. In addition, we note that in some instances, complaints are generated internally by PRS, and that some complaints are referred to PRS by other law enforcement agencies.

In the remaining cases we examined, it was either not clear from the complaint record whether the complainant had been contacted but the contact had not been recorded in CRAMS/PROMIS, or if the complainant had not been contacted. In some cases there was little evidence that investigators asked complainants what ‘outcome’ they were seeking from the initial contact so the investigator could determine if it was possible to achieve such an outcome or whether the expectations of the complainant were unrealistic. This information may be helpful in managing complainant expectations.

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Regular contact throughout the investigation

Of the 132 cases in the sample, the records indicated that investigating officers contacted complainants regularly in approximately 20% of cases. In these cases the regularity of contact varied between once every month to once every two months.

A review of the records suggests that in some cases many months passed without the investigator contacting the complainant. Whether this is due to a lack of recording such contact in CRAMS/PROMIS or actual lack of contact is difficult to assess.

Our analysis indicated that there was a difference between the contacts made by the investigators assigned by the CMT and by PRS staff in relation to external complainants. For cases in Part 1, PRS staff kept in contact on a more regular basis than the CMT staff whereas for cases in Part 2, the CMT staff made more regular contact with the members of the public, based on our sample results. These figures may have been different if the whole population of complaints had been reviewed.

This office noted that in some cases several attempts were made to contact complainants without success, but this appears to depend more on the investigating officer’s individual work methods and is not consistent practice by all officers.

We note that the AFP brochure (available online), indicates that the AFP will keep complainants informed of progress but it does not give any indication of how often complainants will be contacted. This office considers that regularly updating a complainant is good practice.¹¹ The AFP should consider introducing minimum standards for frequency of contact with complainants during the complaint investigation process.

Case study 6, Complainant not kept informed is an example of where a complainant was not informed of the complaint process or kept informed of progress over a long period.

¹¹ *Better Practice Guide to Complaint Handling, Better Practice Guide 1*, April 2009, Commonwealth Ombudsman, page 31.

Case study 6 Complainant not kept informed

This complaint was from a member of the public who claimed that members of the AFP were providing information about her to a known felon. The complaint was received by the AFP in September 2008, the adjudication was dated in May 2011, and the complaint was finalised in CRAMS in June 2011.

The complaint record did not indicate that the investigating officer explained the complaint process to the complainant. The record also did not indicate that the complainant was contacted at all during the investigation. The electronic record indicated that there was no notification letter or outcome letter provided to the complainant.

Comments on the electronic record, stated that the *‘matter was not actioned immediately due to higher priorities’*. There was no other explanation for the delay and lack of communication with the complainant. In our view this lack of contact and delay was unreasonable.

Conflict of interest

Members of the public who make a complaint to the AFP, and AFP officers who may be the subject of a complaint, expect the AFP to investigate their complaints in an objective and unbiased manner.

In five of the cases examined in the sample we identified a conflict of interest or potential conflict of interest in the complaint investigation. Such conflicts can compromise the AFP’s handling and proper investigation of a complaint. It is important that officers can identify an actual, or potential or perceived, conflict of interest in dealing with a complaint, and that they notify their supervisor and either be removed from the investigation or have appropriate arrangements put in place to manage the conflict of interest.

Case study 7, Conflict of interest is an example of an investigation officer recognising a conflict of interest and taking appropriate steps to resolve the matter, contrary to the direction of a senior officer.

Case study 7 Conflict of interest

Mr Z caused a disturbance at a medical centre. Sergeant A and Constable B attended the matter. When Mr Z attempted to walk away from the incident, Sergeant A placed her hand on his arm and told him to wait until police had resolved the matter. Mr Z complied. Mr Z later complained that Constable B had spoken to him disrespectfully and grabbed him by the arm for no reason.

The Complaint Management Team (CMT) allocated Mr Z’s complaint to Sergeant A for investigation. Sergeant A advised the CMT leader that she should have been the subject of the complaint, not Constable B. In addition, Sergeant A raised her concerns with the CMT leader that there would be a conflict of interest if she were to investigate the complaint. The CMT leader directed Sergeant A to proceed with the investigation.

Sergeant A believed it was inappropriate for her to investigate the complaint given that she was the subject of the complaint, and she referred the matter back via the CRAMS system to the CMT. The complaint was then allocated to another investigation officer.

Although the outcome of not established in *Case study 8, Unreasonable complainant and conflict of interest* does not appear unreasonable, it highlights the importance of appointing an independent investigator. It also highlights the need for investigators to remain impartial when dealing with complainants exhibiting difficult or unreasonable behaviour.

As a result of a separate complaint investigated by our office, ACT Policing reviewed its handling of conflicts of interest and complaint management. We were advised that no matters are to be assigned to members for investigation who have had any involvement in the original incident unless the involvement was supervisory in nature and any conflict of interest is identified and can be reasonably managed. ACT Policing has advised that any variation to this policy can only be approved at Deputy Chief Police Officer level.

Case study 8 Unreasonable complainant and conflict of interest

ACT Policing received a call from Mr A, who was driving from NSW to the ACT. Mr A stated that another driver was tailgating his vehicle and had followed him into a service station and yelled at Mr A before returning to his vehicle and again tailgating Mr A. ACT Policing advised Mr A to continue driving to the nearest ACT police station, where police met with both drivers.

Mr A went inside the police station while Constable A and Sergeant B remained outside with the second driver, Mr B. Mr B told the officers that he had followed Mr A because he suspected that Mr A was driving under the influence of drugs, and he was attempting a citizen’s arrest of Mr A. The officers advised Mr B that there was insufficient evidence to establish that Mr A had committed any offence in the ACT or NSW.

The following day, Mr B contacted the ACT police station and stated the he wished to make a complaint about his treatment by police. Mr B spoke to Sergeant C and stated that he was unhappy that Constable A and Sergeant B had not acted on his allegations that Mr A had committed a criminal offence. Sergeant C advised Mr B of the jurisdictional and legislative requirements for the offences. Mr B stated he did not want to make a complaint and ended the call.

Four days later, Mr B wrote to AFP Professional Standards complaining about the conduct of Constable A and Sergeants B and C. The Complaint Management Team assigned Sergeant C as the investigator for the complaint, despite Sergeant C having been named in Mr B’s complaint.

The CRAMS record states that the investigator spoke with Constable A and Sergeant B, and used this information in combination with his own interactions with Mr B to find the complaint not established. Sergeant C referred to Mr B’s argumentative nature during their conversation in his not established decision, and concluded that Mr B had resisted police attempts to explain the situation due to mental health issues.

It was inappropriate for Sergeant C to be appointed to investigate Mr B’s complaint, as Sergeant C was named in the complaint and therefore had a clear conflict of interest.

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Case study 9, Conflict of interest is another example where a conflict of interest in the investigation of a complaint was not initially identified.

**Case study 9
Conflict of interest**

Mr C complained that ACT Policing officers had driven slowly behind him while he was walking down a laneway. He then stated that the police vehicle had bumped into him. Mr C turned around and put his hands on the bonnet of the police vehicle which continued to move forward and as a result, Mr C was forced backwards. He also stated that the police officers swore at him and that an AFP member did not provide his name and badge number when Mr C asked.

The complaint was reviewed by the PRS Operations Committee (PRSOC) which downgraded it to a Category 2 use of force matter. The PRSOC’s reasoning was that the police were trying to get a person who was obstructing a roadway to move. The PRSOC also noted that the police could have dealt with the situation more appropriately. This does not appear to us to be a reasonable explanation for the downgrading of the category of the complaint.

ACT Policing Complaint Management Team (CMT) allocated the complaint to an investigation officer (IO) who witnessed the incident in the first instance. This IO advised the CMT of this, but was told to proceed with the investigation.

During the quality assurance process, PRS raised this issue with the ACT Policing CMT and the matter was reallocated for investigation by another IO. It is the view of this office that upon initial notification of a possible conflict of interest, it would have been appropriate for the ACT Policing CMT to have appointed another IO.

Obtaining complainant’s version of events

It is important that the complainant’s views are sought before those of the involved AFP member(s) so the process appears to be unbiased in the eyes of the complainant and that the investigating officer is not unduly influenced by the officer’s views prior to hearing from the complainant.

We found that the records indicated that in only 37% of cases (34 of 92 cases) in Part 1 and 57% of cases (23 of 40 cases) for Part 2, the

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investigator spoke with the complainant prior to speaking with the AFP member being investigated.

As previously mentioned, there are reasons why contact with a complainant may not be necessary in all cases. However, we highlight this issue because it is important that an investigation is impartial and seen to be impartial.

Witnesses and evidence

Previous reviews indicated that not all of the witnesses who were reasonably available were interviewed.

In the Review 8 sample, we looked at whether all witnesses that may have been present at an accident, incident or event were identified and whether these witnesses were interviewed or contacted as part of the investigation by either the CMT or PRS. In many of the cases we examined, it was not readily apparent from the complaint records that there were witnesses present to be identified. It is acknowledged that sometimes witnesses may not wish to assist in an investigation. However, there were examples where the complaint records showed that there may have been a witness to an incident but attempts were not made to identify and interview them as shown by *Case study 10, Independent witnesses not interviewed*.

**Case study 10
Independent witnesses not interviewed**

Ms X was transported to a hospital by ACT Police for a psychiatric assessment due to her behaviour the previous night. She was compliant during the transfer. Ms X had a history of mental illness and there were many incidents and convictions recorded against her name in the police records.

At the hospital, Ms X was asked by a medical staff member to remove some personal items due to the risk of self-harm. Ms X refused to remove her watch. Despite a period of negotiation, the medical staff requested the police assist with the removal of the watch. While the watch was being removed, Ms X’s head hit the ground and her nose bled. During the investigation by PRS of her subsequent complaint, Ms X claimed that a wardman witnessed the incident.

The investigator’s view was that Ms X became aggressive towards police and the wardman when they tried to remove the watch.

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The police present claimed that approved ‘take-down’ techniques were used but Ms X’s own actions in resisting caused her head to hit the floor and her nose to bleed.

In this case the PRS adjudicator made the comment that if the wardman had been interviewed, he would have provided ‘support’ to the actions of the police officer.

Unfortunately, CCTV footage was not available. In this case the police officers involved were interviewed but Ms X and the known witness, the wardman, was not. The complaint outcome was not established.

The **hospital** wardman should have been interviewed soon after the event so that all evidence could have been considered. In our view it was also inappropriate for the adjudicator to comment that if the wardman had been interviewed, this would have provided support to the police officers, as this indicates a bias towards the views of officers.

Case study 11, Inadequate investigation 1 also demonstrates the importance of utilising external sources of evidence, such as obtaining witness statements from third parties or viewing CCTV footage, as the absence of independent sources of evidence may undermine the veracity of an investigation outcome.

Case study 11 Inadequate investigation 1

Mr Z had parked illegally outside the emergency department of a hospital while dropping off his father, when Constables A and B arrived. Constable A approached Mr Z about his vehicle’s position because the vehicle was partially obstructing traffic. Ms X, an employee of the hospital, came over to the vehicle and told Mr Z to move the vehicle and return to see his father. Constable A told Ms X that he was dealing with the situation and he asked Ms X to leave.

A short time later, Constables A and B were inside the emergency department when Ms X approached Constable A and asked to speak with him privately about the parking incident. Constable A accompanied Ms X into the emergency department visitor’s room where Ms X began criticising Constable A for his manner in dealing with her during the earlier parking incident. It was alleged by Constable A that Ms X shouted at him, that he left the visitor’s room but was followed by Ms X who then loudly asked Constable A to return to the room.

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Constable A stated that he returned to the visitor’s room with Ms X who resumed shouting at him and he again left the room. Ms X asked for the name of Constable A’s Sergeant, which Constable A provided. This exchange was witnessed by Mr Y who had been speaking to the Constables in the emergency department prior to Ms X approaching Constable A.

Ms X lodged a complaint with PRS stating that Constable A had acted unprofessionally, misused his power, and intimidated Ms X. The investigator interviewed Ms X and obtained details about the incident at the hospital from Constables A and B and determined that Constable A had acted in accordance with AFP policies and procedures.

From our review of the records it appears that the investigator did not contact Mr Y. The record also indicated that the investigator did not review any CCTV footage from the hospital on the day of the incident.

The investigator also made unnecessary and inappropriate criticisms in the investigation report about Ms X’s conduct during the incident. These comments included a statement that Ms X’s involvement in the parking matter was inappropriate, and a statement about Ms X’s reluctance to acknowledge contributing to the incident.

In Part 1 of the Review, we concluded that in 96% of the sample, all witnesses available to be identified were identified and 75% of these were interviewed. In Part 2, we also found that in 95% of the sample, all witnesses were identified and 67% were interviewed. It is understandable that if a potential witness is affected by alcohol or drugs (a reason often given for not interviewing), the police may decide not to interview this person either at the time of the incident or subsequent to it as their evidence may not be credible.

There are still instances we found where witnesses may have been present and were not affected by alcohol or drugs but were still not interviewed either at the time of the event or later. *Case study 12, Inadequate investigation 2* illustrates this.

Case study 12 Inadequate investigation 2

A youth services worker, Ms X, made a complaint to PRS on behalf of two young Sudanese men, Mr Y and Mr Z. Ms X complained that, while breaking up a disturbance in a Canberra park, Constable A had directed racist slurs and other offensive comments towards Mr Y and Mr Z.

The complaint was assigned to an investigator as an alleged breach of the AFP Code of Conduct. The investigator contacted Ms X to discuss the complaint. Ms X stated that audio from part of the incident had been recorded and Mr Y and Mr Z could be heard asking why someone was being racist. However, Ms X stated that the police officers attending the disturbance could not be heard during the recording.

The investigator then spoke with Constable A and Senior Constable B about the incident. Both officers denied that any racist or offensive comments were made by police during the disturbance. The investigator chose to finalise the matter as not established as he determined that there was insufficient evidence to support the complaint. However, during the investigation, the investigator failed to speak to either Mr Y or Mr Z, as he believed that they would provide a version of events similar to Ms X’s account.

The decision by the investigator not to interview Mr Y or Mr Z, and the failure to attempt to identify any other witnesses, was unreasonable and it significantly undermined the outcome of not established, irrespective of whether Constable A had made any racist or offensive comments.

PRS record keeping practices

This review has concluded that the general recording of complaint issues by PRS in its CRAMS and PROMIS systems is of a good standard.

In a small number of cases, it was necessary for us to refer to the paper files because important documents such as the Final Investigation Report or notification letters to the complainants were not available in the CRAMS/PROMIS system. It is important that all important documents are stored in either CRAMS or PRS PROMIS.

We also have some concern over how the finalisation of complaints is made in the CRAMS/PROMIS systems. In numerous cases we found that the date indicated for complaint finalisation was many months after the complainant was sent the notification letter by PRS. For the

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complainant, this is the date of finalisation. For AFP reporting purposes however, the complaint is not finalised until all related action is undertaken including advice from line managers regarding the implementation of recommendations.

PRS may wish to consider changing this practice because it has the effect of not clearly identifying how long it has taken to deal with the complaint. This would require a new section in CRAMS/PROMIS and the recording of the date of notification letter so it can be used for reporting purposes.

Quality assurance processes

Investigations of Category 1 and 2 conduct and practice issues are normally completed by regional CMTs whereas Category 3 and 4 conduct and practice issues are investigated by PRS, as required in the *AFP National Guideline on Complaint Management*. There is a formal quality assurance (QA) process undertaken by the CMTs and PRS prior to an investigation being finalised which is designed to ensure all required procedures were correctly followed. This includes a coordinator review and an adjudication process.¹³

The review found that in a small number of cases there were concerns about the initial investigation by PRS or the CMT. However, these were generally detected in either the coordinator review or adjudication phases of the complaint management process and required no further action from us. This observation reinforces the value of the coordinator review and the adjudication process.

Case study 13, Quality control of investigations highlights where PRS quality assurance processes found weaknesses in the investigation process and the use of force reports.

We note in this case that the adjudicator recommended that a de-identified version of the case be used in PRS Awareness and Prevention training on improving the quality of use of force reports by all AFP members.

¹³ The coordinator review is a formal part of the quality assurance processes. The PRS Investigations complaint and workflow process provides for a Coordinator’s Review after the Investigation Report is submitted and prior to adjudication.

Case study 13 Quality control of investigations

This case was a complaint about excessive use of force against a minor during an arrest in March 2009. The complaint was submitted by the ACT Children and Young People Commissioner on behalf of the minor.

The PRS Coordinator Review of the initial investigation report raised concerns that the PRS investigation officer did not appear to have adhered to the original investigation plan, that no independent witnesses were interviewed, and there was no proper investigation into how the minor had obtained certain injuries. However, the coordinator considered an adequate explanation was provided about what led to the young person becoming aggressive and the decision to use force on him. In this case no ambulance or medical treatment was required. Specific mention was made of the lack of detail in the use of force reports completed by the officers involved in the arrest.

The Coordinator Review recommended that further investigation be undertaken. The AFP members and the young person were interviewed by PRS.

The investigation report indicates that while independent witnesses were identified, they declined to assist with the investigation.

The use of force complaint was not established. However, diligence failure was established in this case due mainly to the lack of diligence in completing the use of force reports.

Quality of final reports

Our review identified that in 95% of the cases we examined, the final reports were based on the evidence available. We also found that in 96% of the cases we examined, the outcome was reasonable and balanced. This reflects an improvement from previous reviews. It is pleasing to see that steps have been taken to ensure that the majority of complaint investigations are being carried out in a robust and comprehensive manner.

As previously noted, there are exceptions to this as *Case study 14, Adjudication error* illustrates.

Case study 14 Adjudication error

Mr X complained that he had been assaulted and sworn at by Constable A while camping in the ACT. Mr X was camping in Canberra in 2010 when Constable A and Constable B attended Mr X’s campsite in response to reports about the use of illegal fireworks.

According to the report, Mr X and his friends, Mr W, Mr Y and Mr Z had been drinking, and when the officers arrived, the group was shouting. Constable A attempted to quieten the group, during which Constable A allegedly swore at Mr X and Mr W. Mr X stated that Constable A grabbed him around the throat and Mr X said *‘I don’t give you permission to touch me’*. Constables A and B determined that Mr X’s group was not responsible for the fireworks and left.

Mr X complained to PRS about Constable A assaulting and swearing at him. PRS investigated the matter and interviewed Mr X, Mr W and Mr Y, but were unable to contact Mr Z. PRS also interviewed Constables A and B.

When interviewed, Mr X stated that Constable A had grabbed him by the throat, and Mr W stated that Constable A had grabbed Mr X half on the shoulder and half on the throat. Constables A and B both stated that Constable A had grabbed Mr X on his upper arm only.

The investigation determined that the accounts of Constables A and B were more reliable because Mr X and his friends had been drinking at the time of the incident. PRS determined that Constable A had been rude and discourteous to Mr X but had not used force against him.

When the investigation was adjudicated, the adjudicator attributed evidence given by Constable B to Mr W. This meant that, rather than considering Mr W’s statement that Constable A had half grabbed Mr X’s throat, the adjudicator stated (in the report) that Mr W’s account was that Constable A placed his hand on Mr X’s bicep.

The adjudication report for this complaint found the use of force not established. We consider that this was partly based on an incorrect version of events.

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Reviewing complaint handling for continuous improvement

Continual review of the outcomes and handling of complaints will provide both PRS and the CMTs with valuable information on where improvements can be made to the administration of complaints.

ACT Policing

Complaint issues relating to ACT Policing were once again considered separately because they represent the largest single number of complaints received by the AFP (refer *Table 2*).

Of the 2797 complaint issues in the review period, 846 (30.2%) related to ACT Policing, which is a significant reduction from Review 7 where 54% (351 of 651) of all complaint issues related to ACT Policing.

Of the 846 complaint issues relating to ACT Policing, 163 (19.3%) were complaints about excessive use of force on members of the public. Only one was established. There were 131 (15.5%) complaint issues about discourtesy. Ninety-five percent of these were external complaints, five of which were established. There were 41 (4.8%) complaints about a breach of the AFP Code of Conduct. Eighty percent of these were external complaints; three (7.3%) of these were established.

ACT Policing’s overall internal establishment rate for Review 8 was 28% (37 of 130 complaint issues established) and for Review 7 it was 62% (26 of 43 complaint issues established).

The overall external establishment rate was 5.3% (38 of 716 complaint issues established) and for Review 7 it was 7% (21 of 308 complaint issues established). *Table 8* shows the findings.

Table 8: Findings for ACT Policing complaints

Issue finding	Internal complaints	External complaints	Total
Discretion not to proceed	32	94	126
Established	37	38	75
Not established	61	563	624
Withdrawn	0	21	21
Total	130	716	846

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Only one complaint—an internal complaint—about excessive use of force by ACT Policing was established as illustrated in *Case study 15, Excessive use of force*.

Case study 15 Excessive use of force

The CRAMS record indicates that in March 2008, Mr X was taken into custody for breaching the peace at an ACT nightclub and transported to the ACT Watchhouse for processing. Mr X was intoxicated. The record states that he acted aggressively while he was being searched and said he would do anything to avoid being touched. Capsicum (OC) spray was deployed by a Watchhouse officer. The CRAMS record indicated that Mr X said *‘you missed me’*.

The officer sprayed Mr X again. Mr X was then searched by officers before being placed in a padded cell.

After an internal complaint was made, the AFP investigation found that the use of the OC spray was warranted the first time but not the second time because Mr X had not displayed any heightened level of aggression after the first round of OC spray. The investigation concluded that further negotiation with Mr X could have been made after the first round of spray in order to get Mr X to cooperate.

A subsequent investigation by our office arising from a complaint also found that the action of the Watchhouse officer to use the OC spray in the first instance was not unreasonable but the second use of the OC spray was unreasonable.

Case study 15 is also an example of an excessive delay. The AFP investigation took over three years to be finalised—the Manager of PRS made its finding in April 2009 but the adjudication was not completed until April 2011.

Aviation Security

Aviation Security accounted for 633 (22.6%) of all complaint issues, which is an increase from the 18% (115 of 651 complaint issues) recorded for Review 7. The overall internal establishment rate for Aviation Security in Review 8 was 25% (111 of 445 complaint issues established) while in Review 7 it was 60% (40 of 67 complaint issues established), which is a large decrease. The external establishment rate

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for Review 8 was 18% (34 of 188 issues established) while in Review 7 it was 2% (1 of 48 complaint issues established), so conversely, there has been a significant increase in the establishment rate for complaints from members of the public.

Table 9: Findings for Aviation Security complaints

Issue Finding	Internal Complaints	External Complaints	Total
Discretion not to Proceed	148	11	159
Established	111	34	145
Not Established	185	143	328
Withdrawn	1	0	1
Total	445	188	633

International Deployment Group (IDG)

We examined the data for all 87 complaints (comprising 229 complaint issues) from the International Deployment Group (IDG).

Seventy-three (84%) of the 87 complaints were either self-reported complaints or complaints from other AFP members about the conduct of colleagues. Fourteen (16%) complaints were from members of the public.

Table 10: Findings for IDG complaints

Issue finding	Internal complaints	External complaints	Total
Discretion not to Proceed	17	3	20
Established	103	4	107
Not Established	75	26	101
Withdrawn	1	0	1
Total	196	33	229

Of the 107 established complaint issues from the IDG, the majority were coded as minor misconduct, for example the misuse of an official AFP vehicle. Other breaches of the AFP Code of Conduct included inappropriate behaviour while under the influence of alcohol and in one case a member was suspected of cannabis use. There was one case established of serious misconduct relating to fraternisations by Regional Assistance Mission Solomon Islands (RAMSI) staff with a local person. In addition, there were four complaints relating to excessive use of force

against a person. An example is demonstrated in *Case study 16, Use of force by IDG member*.

Case study 16

Use of force by International Deployment Group (IDG) member

PRS received a complaint that an IDG member, Senior Constable (S/C) A, used excessive force against a Solomon Islands resident in May 2009. The complaint was made by IDG member, Sergeant B. Sergeant B was told about the incident by a New Zealand police officer, Constable C, who had witnessed the incident.

S/C A was acting as a RAMSI supervisor to Royal Solomon Islands Police Force (RSIPF) officers who were responding to a report of males armed with knives threatening locals. The RSIPF officers arrested a suspect, Mr X, who was handcuffed and placed in the back of a caged police vehicle to be transported to Honiara Central Police Station.

When placing Mr X in the caged vehicle, he became abusive and pushed against S/C A, who pushed Mr X against the cage. Although S/C A discussed the incident with Sergeant B, he did not complete a use of force report about the incident.

Mr X confirmed to PRS that he was pushed into the caged vehicle but he did not recall being poorly handled by the police officers. PRS found that there were 25 locals who witnessed Mr X’s arrest, and none had made any complaints about mistreatment of Mr X by the police.

The investigation determined that there was insufficient evidence to establish that S/C A had used excessive force against Mr X. However, in failing to complete a use of force report, Senior Constable A had not complied with AFP *Commissioner’s Order 3*. It was recommended that S/C A be formally counselled about his obligations to comply with Commissioner’s Orders.

Conclusion

Review 8 shows that the AFP is still consistently not meeting its own benchmarks for finalising complaints and that establishment rates for internal and external complaints remain significantly different. The AFP’s initiatives to address timeliness problems appear to be having some impact. Nevertheless, it is important that the backlog of old complaints is

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eliminated so resources can be devoted to improving timeliness for new complaints.

AFP staff need to be made aware of the importance of properly identifying and managing actual and perceived conflicts of interest.

APPENDIX 1

AFP response to draft Review 8 report

Draft report on a review of the AFP administration of Part V of the Australian Federal Police Act 1979

Thank you for the opportunity to provide comment about your draft report on the review of the AFP’s administration of Part V s.40XA of the Australian Federal Police Act 1979 (8th Review). Your draft report contains useful information and analysis which will assist in the ongoing process of improving how the AFP manages complaint handling. Your report raises a number of valid issues and please be assured that I take these matters most seriously.

I note that the 8th Review addressed conduct issues completed in the period 1 September 2010 to 31 December 2011 and focussed on whether changes made to Professional Standards (PRS) processes had improved complaint handling timeliness. Other areas of focus included whether the establishment rate for external complaints continued to be lower than for internal complaints, the establishment rate for use of force complaints and the examination of complaints about ACT Policing, especially discourtesy and excessive use of force.

Analysis of Complaint Issues

I wish to clarify some raw data provided in Table 3 of your document titled *The top five issues by category for all functional streams*. Of the 104 reported category 3 *Commonwealth Fraud* issues, 94 related to the one complaint (CRAMS 1866). This complaint was raised in December 2007 after a review of use of AFP corporate credit card by a particular work area. No criminal fraud was detected and each of these matters

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was dealt with under section 40TF of the *Australian Federal Police Act 1979*. The complaint was administratively finalised in July 2011.

The title of *Criminal Conduct* in this table is also somewhat misleading as it includes issues such as failure to provide badge number and unauthorised use of property. The 88 issues noted in the table related to 70 separate complaints and of these, 21 were established.

Timeliness

Your draft report makes comparisons in regard to complaints open for more than 12 months. Using the figures available at the time of your review, it is fair to reflect that only ‘some’ improvement in timeliness had been achieved. However as you are aware, strategies to deal with the backlog of complaint matters can take time to have an effect due to the number and age of matters involved. To highlight this point, whilst your report notes a reduction in the number complaints open for more than 12 months from **356** as at August 2011 to **314** as at 31 December 2011, more recent figures from 25 July 2012 show a further substantial reduction to **153** complaints open in excess of 12 months. Whilst it is accepted that more work is needed, these latest figures show clear evidence that strategies are taking effect.

On 26 July 2012, the timeliness benchmarks were reviewed and republished as:

- a) Category 1 complaints (informally managed): 5 days
- b) Category 1 complaints (formally recorded): 42 days
- c) Category 2 complaints: 66 days
- d) Category 3 complaints: 256 days

The change was driven by the need to set reasonably achievable timeframes. The revised benchmarks accurately represent the reality of the current complaint investigation environment and have been compared, where possible, with other Commonwealth and State law enforcement agencies.

The AFP acknowledges further work can be done to improve timeliness of category 2 complaints and Professional Standards will continue working with the AFP Complaint Management Teams to address this issue.

Conflicts of Interest

Conflicts of interest are matters the AFP takes seriously and your comments are valuable in this regard. Your report does not distinguish between categories of conduct and issues relating to conflict of interest. I note that conflict of interest has not otherwise previously been raised as an issue by your office in relation to category 3 serious misconduct investigations. As you may be aware, PRS investigators are required to

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complete a Conflict of Interest Declaration Form prior to commencing an investigation. The declaration is reviewed by PRS management to provide the right level of assurance and I am satisfied that conflicts of interest are well managed when it comes to serious misconduct investigations.

Since having this issue originally brought to the AFP’s attention by your office regarding a category 2 matter, the issue of conflicts of interest in category 1 and 2 matters was discussed at length during the Complaints Management Team (CMT) forum held in July 2011. As a result, on 3 August 2011, all CMTs were sent a Conflicts of Interest Guide which was developed to address the issues raised. The guide was also copied to your Senior Assistant Ombudsman at that time. This was reinforced with further correspondence to all CMTs on 26 September 2011. In the CMT forum held on 26 July 2012 the importance of consideration of conflict of interest when allocating category 1 and 2 investigations was again discussed at length.

To improve understanding within the broader workforce, on 23 July 2012 the National Guideline on Conflicts of Interest was revised. It now includes the identification of actual, perceived and potential conflicts of interest at all levels. This includes personal, organisational and operational conflicts of interest.

On 9 July 2012, the National Guideline on Complaint Management was amended to include the requirement for CMT members to complete a Conflict of Interest Declaration Form prior to initiating an investigation.

The AFP seeks to balance the need to empower supervisors to deal with minor misconduct in the workplace with potential conflicts of interest where the supervisor may have some connection with the complaint. This balance is sometimes difficult to resolve and the AFP will continue to work with your office to achieve this balance.

Establishment rates

The 8th review repeats the findings of reviews 5, 6 and 7 that there are differing establishment rates for internally and externally generated complaints. As previously stated, whilst there are a number of likely explanations, this would need to be the subject of closer scrutiny in order to identify potential causes before any conclusions can be drawn or inferred.

Your review also identifies there were two established Use of Force complaints during the review period. It should be clarified that matters where use of force results in criminal charges are coded as ‘criminal conduct’ rather than as excessive use of force. For example, there were 8 established matters of this nature in 2007 against a single member. It is not correct to suggest that no external complaints about excessive

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use of force on a person by police have been established since the commencement of CRAMS.

I note your commentary that no issue could be identified in the investigation of the excessive use of force complaints reviewed. I am comforted by the fact that the explanation for the low establishment rate is not found to be as a result of insufficient or biased investigations.

Contact with Complainants

The AFP acknowledges that contact with complainants requires more attention from the AFP. Some steps have already been taken to address this.

With regard to category 1 and 2 matters, all Complaint Management Teams (CMTs) have been provided with a CRAMS category 1 & 2 complaints investigators’ checklist which includes, in step 1, the need to contact the complainant to clarify details of the complaint and the desired outcome. This has also been discussed in the CMT annual forum held in July 2012, emphasising the need to ensure this step is recorded in CRAMS.

Category 3 and corruption matters dealt with through Professional Standards are also subject to an investigators’ flow chart. This flowchart ensures the complainant is contacted at both evaluation and investigation stage when appropriate. Professional Standards will ensure these contacts are recorded in PRS PROMIS as a case note entry.

ACT Policing

A process for dealing with category 1 customer service complaints was agreed by the Commonwealth Ombudsman’s office in 2011. This approach takes into account the desire to provide satisfaction to complainants whilst being fair to members in the most efficient way possible. Instead of an investigation being undertaken, the complainant would receive notification from the AFP acknowledging the receipt of the complaint and advising them of its recording and use as a training tool for improvement of service. The letter would provide advice on how to take the matter further if the proposed resolution was not satisfactory to the complainant.

Recommendation 1 – addressing backlog of complaints

Accepted - This recommendation has been implemented. Investigators have been tasked on a flexible basis to reduce the backlog whilst balancing efforts on more recent work. This flexible allocation of resources will continue so the focus remains on priority matters.

Recommendation 2 – contact with complainants

Accepted - This is current practice for category 1, 2 and 3 complaints and corruption matters as discussed above.

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Recommendation 3 – conflicts of interest

The importance of managing conflicts of interest in terms of complaint investigations is current practice and is the subject of constant review, education and improvement.

Recommendation 4 - witnesses

Whilst the AFP does not agree it is necessary to interview every witness to an incident where a complaint arises, it is agreed that an appropriate sample of witnesses should be spoken to. PRS will continue to stress the importance of documenting all decision-making in case note entries in either CRAMS or PRS PROMIS.

Recommendation 5 – amendments to CRAMS/PROMIS PRS

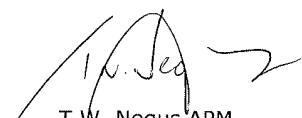
Agreed in principle, however any amendments to PRS PROMIS and CRAMS are expensive and highly technical. This recommendation will be implemented as an ongoing project to improve ICT platforms.

Recommendation 6 – record of systemic issues

A record of recommendations from Ombudsman’s review is kept by PRS. The Complaints Coordination Team and relevant CMTs are advised of recommendations from s12 notifications.

Should you wish to clarify any matters arising from the 8th Review please contact Commander Ray Johnson, Manager Professional Standards.

Yours sincerely



T.W. Negus APM
Commissioner