



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

FOR THE PERIOD 1 JULY 2013 TO 30 JUNE 2014

February 2015

Report by the Commonwealth Ombudsman, Mr Colin Neave, under
the *Australian Federal Police Act 1979*

**2013-14 Annual Report on the Commonwealth Ombudsman's activities under Part V of
the Australian Federal Police Act 1979**

ISSN 1835-3290

© Commonwealth of Australia 2015

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

With the exception of the Commonwealth Coat of Arms, the Office of the Commonwealth Ombudsman's logo, any material protected by a trade mark, and where otherwise noted, all material presented in this publication is provided under a Creative Commons Attribution 4.0 licence.

The details of the relevant licence conditions are available on the Creative Commons website (creativecommons.org/licenses/by/4.0/deed.en) as is the full legal code for the CC BY 4.0 licence.



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

Source: Licensed from the Commonwealth Ombudsman under a Creative Commons 4.0 licence. This report is available from the Commonwealth Ombudsman website at www.ombudsman.gov.au.

Use of the Coat of Arms

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

Contact us

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

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

CONTENTS

INTRODUCTION.....	1
1. REVIEW OBJECTIVE AND CRITERIA	2
1.1 Review Objective	2
1.2 Review Criteria	2
2. REVIEW DETAILS	4
2.1 Review details	4
3. RESULTS OF THE REVIEW	5
3.1 How has the AFP performed against its internal timeliness benchmarks?	5
3.2 Were category 1 and 2 conduct issues appropriately dealt with?	5
3.3 Were category 3 conduct issues and corruption issues appropriately dealt with?	8
3.4 Were AFP practices issues appropriately dealt with?.....	9
3.5 Were complaints appropriately withdrawn?.....	10
3.6 Were complaints appropriately deleted from CRAMS?	10
3.7 Did the AFP notify the Ombudsman of all category 3 conduct issues raised during the period?.....	10
3.8 Were ministerially directed inquires appropriately conducted?	10
APPENDIX A – DETAILED REVIEW CRITERIA.....	11
APPENDIX B – AFP BUSINESS AREA CONDUCT ISSUES.....	16

INTRODUCTION

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

Information that raises an AFP conduct or practices issue may be given under s 40SA of the Act. Section 4(3) of the Act states that a '*reference in Part V to giving information that raises an AFP conduct or practices issue includes a reference to making a complaint or report that raises an AFP conduct or practices issue*'. The AFP refers to information given under s 40SA of the Act as a 'complaint'.¹

Section 40XA(2) of the Act requires that at least once in each review period, the Ombudsman must inspect the records of AFP conduct issues and AFP practices issues that have been, or are being, dealt with under Part V of the Act during that period.² The purpose of these inspections is to review the AFP's administration of Part V.

Under s 40XB of the Act, the Ombudsman may, at any time, inspect the records of AFP conduct and practices issues for review purposes. This effectively allows the Ombudsman to inspect records that may have been dealt with outside the review period referred to in s 40XA(1). These are referred to as 'ad hoc reviews'.

Section 40XD of the Act requires the Ombudsman to report to Parliament as soon as practicable after 30 June each year on the results of any reviews conducted during the preceding 12 months. This report must include comments on the comprehensiveness and adequacy of the administration of matters under Part V of the Act.

As a result of our reviews, we may make recommendations or suggestions to the AFP to improve its administrative practices.

¹ Section 3 of the *AFP National Guideline on Complaint Management*.

² Section 40XA(1) of the Act defines a review period as the period of 12 months commencing on the day on which the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* commences and each succeeding period of 12 months.

1. REVIEW OBJECTIVE AND CRITERIA

1.1 Review Objective

The objective of this review is to assess the comprehensiveness and adequacy of the AFP's administration of complaints under Part V of the Act. We also assess whether the AFP provides a fair and reasonable complaints management process to both the public and AFP appointees, who may be complainants or the subject of a complaint.

1.2 Review Criteria

After the 2012-13 review, we refined the criteria used to assess the AFP's administration of Part V of the AFP Act in the following ways:

- Category 1 and 2 conduct issues are assessed and reported on separately to category 3 conduct issues and corruption issues to reflect the different complaint management requirements.
- Specific criteria have been included in relation to:
 - withdrawn complaints
 - deleted complaints
 - the AFP's actions in dealing with AFP practices issues, and
 - the AFP's mandatory reporting of category 3 conduct issues to the Ombudsman under s 40TM(1) of the Act.

The following broad criteria were used to assess the AFP's administration of Part V of the Act in this review period:

1. How has the AFP performed against its internal timeliness benchmarks?
2. Were category 1 and 2 conduct issues appropriately dealt with?
3. Were category 3 conduct issues and corruption issues (category 4) appropriately dealt with?
4. Were AFP practices issues appropriately dealt with?
5. Were complaints appropriately withdrawn?
6. Were complaints appropriately deleted from the AFP's Complaints Records and Management System (CRAMS)?
7. Did the AFP notify the Ombudsman of all category 3 conduct issues raised during the period?
8. Were ministerially directed inquiries appropriately conducted?

Appendix A contains the individual criteria we use to assess the broad inspection criteria listed above.

**2013-14 Annual Report on the Commonwealth Ombudsman's activities under Part V of the
*Australian Federal Police Act 1979***

In developing the review criteria we had regard to:

- the requirements under Part V of the Act
- the *AFP Commissioner's Orders on Administration* (CO1)
- the *AFP Commissioner's Orders on Professional Standards* (CO2), AFP internal guidance documents for complaint managers and investigators and relevant standard operating procedures (SOP)
- the *AFP National Guideline on Complaint Management* (NGCM)
- the *Commonwealth Ombudsman Better Practice Guide to Complaint Handling* (Better Practice Guide).³

³ The *AFP National Guideline on Complaint Management* includes the Better Practice Guide as a reference item.

2. REVIEW DETAILS

2.1 Review details

This report details the results of two inspections conducted between 1 July 2013 and 30 June 2014 (the review period). During the inspections we considered AFP complaint records finalised between 1 March and 31 August 2013 (the first inspection) and 1 September 2013 and 28 February 2014 (the second inspection).

Tables 2.1 and 2.2 below details the number of complaint records inspected during the review period.

Table 2.1: Number of finalised complaint records

Overall complaint category	Number of complaints finalised by the AFP	Number of records inspected
First inspection		
Category 1	37	20 (54%)
Category 2	152	30 (20%)
Category 3	102	60 (59%)
Category 4 (corruption issues)	14	14 (100%)
Total – first inspection	305	124 (41%)
Second Inspection		
Category 1	36	15 (42%)
Category 2	134	41 (31%)
Category 3	50	42 (84%)
Category 4 (corruption issues)	5	4 (80%)
Total – second inspection	225	102 (45%)
Total – both inspections	530	226 (43%)

Table 2.2: Number of withdrawn and deleted complaint records

Inspection	Withdrawn complaints	Number of records inspected	Deleted complaints	Number of records inspected
First Inspection	9	6 (66%)	38	38 (100%)
Second Inspection	7	7 (100%)	33	33 (100%)
Total – both inspections	16	13 (81%)	71	71 (100%)

Appendix B contains information on the number of conduct issues for each AFP business area for the complaint records inspected in the review period.

3. RESULTS OF THE REVIEW

Overall, our review found that the AFP's administration of Part V of the Act was comprehensive and adequate. The AFP has a comprehensive administrative framework governing the management of complaints it receives both from members of the public and from AFP appointees, and the AFP administers this framework adequately.

While we noted some issues in relation to the complaint management process for a number of complaints, in our view these issues did not necessarily impact the outcomes of those complaints. We have included in this review a summary of our main findings. Issues of a minor administrative nature were raised with the AFP after each inspection in the review period.

Readers should note that the manner in which a complaint is managed by the AFP will depend upon the overall category of the complaint.⁴

Complaints where the overall classification is category 1 or 2, are managed by Complaint Management Teams (CMTs) within relevant AFP business areas. These conduct issues represent less serious conduct such as discourtesy, customer service issues and other conduct that may be regarded as minor misconduct. The CMTs deal with these conduct issues at a managerial level within the workplace where appropriate.

Complaints where the overall classification is category 3 or 4 (a corruption issue) are managed by the AFP Professional Standards (PRS) which is the unit established under s 40RD of the Act to undertake investigations into such matters. Category 3 conduct issues represent more serious matters of misconduct such as an AFP appointee being arrested, summonsed or charged in relation to an alleged criminal offence, excessive use of force where injury is sustained or serious breaches of *The AFP Commissioners Orders on operational safety* that warrants being dealt with as a category 3 conduct issue.

3.1 How has the AFP performed against its internal timeliness benchmarks?

Based on the information provided by the AFP, its overall performance against this criterion in this review period has improved since the 2012-13 review period. However, we noted a decline in the AFP's overall performance against this criterion between the first and second inspections. The decline in performance occurred for category 1 and 2 complaints. We noted a slight increase in performance in relation to the category 3 complaints.

3.2 Were category 1 and 2 conduct issues appropriately dealt with?

During the review period we inspected 35 category 1 complaint records and 71 category 2 complaint records.

⁴ The overall category of a complaint is the highest category issued to a conduct issue within a complaint. For example, where a complaint record contains a category 1 conduct issue of 'Discourtesy' and a category 3 conduct issue of 'Serious Breach of the AFP Code of Conduct', the overall category of the complaint record will be category 3 and it will be managed by the AFP Professional Standards.

**2013-14 Annual Report on the Commonwealth Ombudsman's activities under Part V of the
Australian Federal Police Act 1979**

Based on the records inspected, overall, we assessed the AFP as having met the requirements of this criterion. We identified several administrative issues during the inspections, the most significant of these issues are discussed below.

3.2.1 Documenting reasons for changing the category of a conduct issue

During the review period, we identified three complaint records where there did not appear to be an adequate explanation for the change of category of a conduct issue from category 3 to category 2.

In response to two of these records, the AFP advised the category of the conduct was not changed, but rather the conduct issues were subject to an initial assessment to determine the most appropriate category to allocate to the conduct, prior to being allocated for investigation.

The AFP considers the determination of an appropriate classification of the conduct to a particular category to be the *initial categorisation* of the conduct, as opposed to the *re-categorisation* of the conduct from category 3 conduct to category 2 conduct.

While we acknowledge the AFP's comments in relation to this matter, in our view, it is good administrative practice to record the reasons for a decision to change a category of conduct, even when this occurs at the initial review phase.

The AFP acknowledged our comments in relation to recording the reasons for these decisions and it will ensure that in future the reasons are documented adequately.

The third record indicated that the complaint was downgraded from category 3 to category 2 due to a lack of available evidence to justify the higher category.

In our view, this decision did not appear reasonable, given the information initially provided by the complainant and because no apparent attempts had been made to determine if the incident had been recorded by CCTV cameras (the use of force report indicated requests had been made by police for the incident to be recorded). Corroboration of this information should have occurred prior to any decision being made to change the category of the conduct issue.

In response to this finding, the AFP noted our concerns and advised that it had made several attempts to obtain further information without success. While we acknowledge the AFP's comments, these factors do not appear to have been relevant as they occurred after the decision to downgrade was made. This record is also referred to in paragraph 3.2.4 below.

3.2.2 Conflict of interest considerations

Of the complaint records inspected in the review period, there was only one, where in our view, there may have been a perceived conflict of interest in the complaint being allocated to a complaint manager.

The complaint contained an allegation of unnecessary use of force during an arrest. The complaint manager to whom the complaint was allocated for investigation had previously reviewed the Use of Force Report for the arrest that was the subject of the complaint.

The complaint manager did not include a case note on the complaint record indicating what consideration had been given to a possible, perceived or actual conflict of interest in

**2013-14 Annual Report on the Commonwealth Ombudsman's activities under Part V of the
Australian Federal Police Act 1979**

their managing this complaint. We noted that the complaint manager stated in the complaint investigation report:

'I was aware of the initial job from vetting the write off and the [Use of Force] report which I was satisfied with at the time'.

In signing off on the original Use of Force Report, and stating in the final complaint investigation report that they were satisfied with the actions of the AFP appointees at the time, it may be perceived that the complaint manager was not approaching this complaint with an open mind, and a bias could be perceived.

The AFP advised that it was debatable whether the complaint manager had a conflict of interest in this matter and that if there was a conflict of interest, there was no indication to suggest that it influenced the investigation.

3.2.3 Explaining the complaints process to complainants

There were twelve complaint records where we did not locate evidence that the complaint process had been explained to the complainant when it would have been appropriate to do so.

In making this assessment we are not stating that the complaint managers did not explain the complaint process to the complainant rather that the record did not indicate that it was explained.

3.2.4 Obtaining information to assist investigations

We acknowledge that the types of enquiries that a complaint manager may make during an investigation will vary depending on the nature and complexity of the complaint. However, we identified the following two complaint records where it may have been appropriate for additional information to be sought or further enquiries to have been made.

The first record did not indicate whether the complaint manager attempted to identify witnesses to an incident, nor whether the incident had been captured on CCTV cameras.

For the second record the complaint manager did not speak with the relevant state police officers who were involved in the incident leading to the complaint. By interviewing these officers, the complaint manager would have had additional evidence which may have corroborated the AFP appointees' account of events.

3.2.5 Advising complainants of the outcome of the investigation

Section 40TA(2)(b) of the Act provides for complainants to be advised of any action taken in relation to an AFP conduct issue. Additionally, paragraph 4.5 of the Better Practice Guide states that when a complaint investigation is completed, the complainant should be advised of the particulars of the investigation, including any findings or decision reached.

We take these two factors to mean that at a minimum, the AFP should advise the complainant of the outcome of the investigation, and provide details of the investigation undertaken. The amount of detail provided to the complainant will vary depending on the subject matter of the complaint and the complexity of the investigation. In assessing this criterion we consider the reasonableness or otherwise of the complaint outcome letters.

There were two complaint records where we considered the outcome letters to complainants did not meet this minimum standard.

3.3 Were category 3 conduct issues and corruption issues appropriately dealt with?

We inspected 102 category 3 complaints records and 18 complaints containing corruption issues.

Based on the records inspected, overall we assessed the AFP as having met the requirements of this criterion. We identified several administrative issues during the inspection with the most significant of these issues discussed below.

3.3.1 Categorising conduct at the higher or highest category

We identified four complaint records where conduct was classified at category 3 by the AFP despite notifications being sent to Australian Commission for Law Enforcement Integrity (ACLEI) which would warrant a classification at category 4. This issue was noted in a previous review and the AFP advised at that time of the steps it had taken to address it.

For another complaint, the AFP had classified the conduct as category 3, when in our view it would have been appropriate to classify the conduct as corruption (category 4). Although the record indicated that no notification of a corruption issue had been sent to ACLEI, we formed this view based on the information contained in the original complaint, as well as records of correspondence with ACLEI contained on the record.

The AFP did not agree with our view on this matter and advised that it had determined that this was not a corruption issue. Therefore the highest category it could be classified at was Category 3.

3.3.2 Conflict of Interest Declarations

Section 14 of the NGCM requires PRS investigators to whom a complaint has been allocated for investigation to complete a Conflict of Interest Declaration. Additionally, the AFP has advised that investigators who conduct preliminary investigations are also required to complete a Conflict of Interest Declaration. In assessing this criterion we look for a Conflict of Interest Declaration completed by each investigator for each complaint record.

We noted 20 complaint records which did not contain a Conflict of Interest Declaration completed by the investigator who finalised the investigation report. In inspecting these records we did not note any instances where there appeared to have been a conflict of interest in the investigator managing the complaint.

3.3.3 Explaining the complaints process to complainants

We noted 21 complaint records which did not indicate that the complaints process was explained to the complainant when it would have been appropriate to do so.

As mentioned in paragraph 3.2.3 above, we are not stating that the complaint process was not explained to the complainant, but rather that the record did not indicate that it was explained.

3.3.4 Consideration of relevant evidence

We identified one complaint record where the reasons provided for not interviewing a potential witness did not appear reasonable.

The reason given for not conducting an interview was:

'it was determined that [he] would have a form of loyalty toward [the appointee] and may not provide accurate or truthful responses to PRS.'

In this case we formed the view that it may have been appropriate for the investigator to have contacted the potential witness to obtain information relating to the complaint. The investigator could then have indicated in their investigation report what weight was given to the information provided.

In response to this, the AFP advised that the investigator clearly recorded the decision not to interview the witness. It was open to the reviewing Superintendent and the adjudicator to require the investigator to interview the potential witness had either of them not been satisfied with the available evidence.

We also identified another complaint record where we formed the view that that the investigation and adjudication reports did not appear to give consideration of whether alternative negotiation or de-escalation techniques could have been utilised by an AFP appointee prior to a decision to use force against the subject.

We acknowledge that in some situations, events unfold so quickly that negotiation and de-escalation techniques cannot be effectively utilised. However, given the circumstances of this incident, it is our view that the investigation and adjudication reports should have given consideration as to whether alternative negotiation and de-escalation techniques could have been considered.

In our report to Parliament for the 2009-10 review period we made a recommendation that included *'...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'*. The AFP accepted this recommendation in principle at the time.⁵

3.3.5 Notifying ACLEI of corruption issues

We noted one complaint record where it appeared that the AFP did not formally notify ACLEI of a corruption issue. The AFP acknowledged that as the complaint was classified at category 4, a notification of the matter should have been provided to the Integrity Commissioner.

3.4 Were AFP practices issues appropriately dealt with?

We considered the action taken by the AFP to address practices issues raised in four individual complaints. Based on the information provided by the AFP we were satisfied that the AFP had taken appropriate action to ensure that the practices issues raised in these complaints were being appropriately dealt with.

⁵ *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 June 2010*, page 20.

3.5 Were complaints appropriately withdrawn?

The data provided by the AFP indicated that 16 complaints were withdrawn. We considered all 16 complaints and assessed two as not being withdrawn in accordance with the NGCM and the relevant SOP.

3.6 Were complaints appropriately deleted from CRAMS?

The data provided by the AFP indicated that 71 complaints were deleted. We considered all 71 complaints and assessed 33 as not being appropriately deleted in accordance with the NGCM and the relevant SOP.

After our first inspection, the AFP took steps to address certain aspects of the deletion process. We noted an improvement in relation to this aspect of the deletion process in the second inspection.

3.7 Did the AFP notify the Ombudsman of all category 3 conduct issues raised during the period?

Based on the data provided there were 188 category 3 conduct issues for which the AFP should have notified the Ombudsman under s 40TM(1) of the Act. We did not locate notifications for 39 of these issues.

In some cases the notifications did not appear to have been provided to our office as the category of the conduct had been changed. In relation to this issue, the AFP advised that the classification of a complaint to a particular category may be changed a number of times for the time it is submitted to when it is accepted for investigation. During this period, the use of categories is no more than an administrative process until a PRS Coordinator endorses a particular category. The AFP advised that it will notify our office of all category 3 conduct issues once they have been appropriately endorsed by a PRS Coordinator. We will consider this in our future reviews.

Additionally, the AFP advised that it has reviewed and amended its processes to ensure appropriate notifications are made to the Ombudsman's office under s 40TM(1) of the Act.

3.8 Were ministerially directed inquiries appropriately conducted?

The AFP advised that no ministerially directed inquiries were conducted or finalised during the review period. Therefore no assessment has been made under this criterion.

Colin Neave
Commonwealth Ombudsman

APPENDIX A – DETAILED REVIEW CRITERIA

Below are details of the individual criteria that form the broad review criteria detailed in paragraph 1.2 above.

During the course of an inspection we may note issues of administration that are indirectly related to the inspection criteria detailed below. Given the broad scope of our inspection powers under s 40XA(2) of the Act, we may comment on such issues if we deem it appropriate to do so.

1. How has the AFP performed against its internal timeliness benchmarks?

Under this criterion we assess whether the AFP finalised complaints in accordance with its internal timeliness benchmarks (benchmarks).

The AFP's benchmarks indicate the number of days within which complaints of a particular overall category should be finalised.⁶ New benchmarks came into effect at the end of August 2012. The previous benchmarks still apply to complaints submitted prior to the end of August 2012.

Table A1 below outlines the previous and amended benchmarks. There is no specific benchmark for complaints containing corruption issues given that such complaints are referred to, and may be investigated by, the Australian Commissioner for Law Enforcement Integrity.

Table A1: AFP benchmarks

Overall complaint category	Benchmark prior to, and including, 31 August 2012 (days)	Benchmark after 31 August 2012 (days)
1	21	42
2	45	66
3	180	256

2. Were category 1 and 2 conduct issues appropriately dealt with?

Under this criterion we have regard to the following:

- whether all conduct issues were identified and were categorised in accordance with the 2006 Determination or 2013 Determination
- where a conduct issue may belong to more than one category, the conduct issue was taken to belong to the higher or highest category (s 40RK(6) of the Act)
- the category to which conduct belongs may change as more information is obtained in relation to the complaint (s 40RK(7) of the Act). If the category to which

⁶ The overall category of a complaint is the highest category issued to a conduct issue within a complaint. For example, where a complaint record contains a category 1 conduct issue of 'Discourtesy' and a category 3 conduct issue of 'Serious Breach of the AFP Code of Conduct', the overall category of the complaint record will be category 3 and the relevant benchmark will apply.

**2013-14 Annual Report on the Commonwealth Ombudsman's activities under Part V of the
Australian Federal Police Act 1979**

conduct belongs changed, there was a reasonable explanation for the change on the record.

- where appropriate, the AFP acknowledged the complaint and explained the complaint process to the complainant (paragraph 4.1 Better Practice Guide; AFP internal guidance documents for complaint managers)
- the complainant was kept informed of the progress of the complaint as frequently as reasonable, and to the extent that was reasonable, in the circumstances (ss 40TA(2) and 40TA(3) of the Act)
- both the complainant (if any) and the AFP appointee had the opportunity to be heard in relation to the conduct issue (s 40TH(1)(a) of the Act)
- the complaint manager identified relevant witnesses and attempts were made to contact them, and relevant independent enquires were made (AFP internal guidance documents for complaint managers)
- the investigation report indicated that relevant evidence was adequately considered (AFP internal guidance documents for complaint managers)
- where a recommendation was made to take no further action in relation to a complaint under s 40TF(2) of the Act, the recommendation was not unreasonable and was made by a delegated person (CO1 Delegations)
- the complaint manager determined what action, if any, was to be taken in relation to s 40TI or s 40TJ of the Act regarding established conduct (s 40TH(1)(c) of the Act)
- the complaint manager gave consideration to whether the complaint, or information obtained in the course of dealing with the conduct issue, raised an AFP practices issue (s 40TH(d)(i) and (ii) of the Act) and if so, brought the practices issue to the attention of an appropriate AFP appointee (s 40TK(2) of the Act)
- upon completion of an investigation, the CMT quorum either endorsed the recommendations or applied new findings, and reasons for new findings were recorded (s 22 NGCM)
- the AFP advised the complainant of the outcome(s) of the complaint investigation and provided reasons for the outcome(s) (s 40TA(2)(b) of the Act and paragraph 4.5 of the Better Practice Guide)
- the complaint record contained all relevant information referred to in the investigation report and details of action taken during the investigation (ss 40WA(1) and (2) of the Act).

3. Were category 3 conduct issues and corruption issues (category 4) appropriately dealt with?

Under this criterion we have regard to the following:

- whether all conduct issues were identified and were categorised in accordance with the 2006 Determination or the 2013 Determination
- where a conduct issue may belong to more than one category, the conduct issue was taken to belong to the higher or highest category (s 40RK(6) of the Act)
- the category to which conduct belongs may change as more information is obtained in relation to the complaint (s 40RK(7) of the Act). If the category to which conduct belongs changed, there was a reasonable explanation for the change on the record.
- the category 3 conduct issue or corruption issue was allocated to an appropriate person for investigation (ss 40TN and 40TP of the Act)
- the investigator completed a Conflict of Interest Declaration form (s 14 NGCM)
- where appropriate the AFP acknowledged the complaint and explained the complaint process to the complainant (paragraph 4.1 Better Practice Guide)
- the complainant was kept informed of the progress of the complaint as frequently as reasonable, and to the extent that was reasonable, in the circumstances (ss 40TA(2) and (3) of the Act).
- both the complainant (if any) and the AFP appointee had the opportunity to be heard in relation to the conduct or corruption issue (s 40TQ(2)(a) of the Act)
- the investigator complied with directions given by the Commissioner or the Manager of AFP Professional Standards (MPRS) as to the manner in which the investigation was to be conducted (ss 40VB(3) and (5) of the Act)
- the investigator obtained sufficient evidence in the course of the investigation (AFP internal guidance documents for investigators)
- where a recommendation was made to take no further action in relation to a complaint under s 40TF(2) of the Act, the recommendation was not unreasonable and was made by a delegated person (CO1 Delegations)
- where category 3 conduct or a corruption issue was established, the investigator recommended appropriate action be taken in relation to the AFP appointee (s 40TR of the Act)
- the investigator gave consideration to whether the complaint or information obtained during the investigation raised AFP practices issues (s 40TQ(2)(b) of the Act) and if so, the investigator identified the practices issue in the s 40TU report (s 40TW(2)(a) of the Act)
- the investigator prepared and submitted a written report of the investigation to MPRS (ss 40TU(1) and (3) of the Act)

**2013-14 Annual Report on the Commonwealth Ombudsman's activities under Part V of the
Australian Federal Police Act 1979**

- sufficient evidence to show that recommendations in the s 40TU report were fully considered and appropriate action was taken in relation to the issue (s 40TV of the Act and s 15 NGCM)
- the AFP advised the complainant of the outcome of the complaint investigation and provided reasons for the outcome (s 40TA(2)(b) of the Act and paragraph 4.5 of the Better Practice Guide)
- The complaint record contained all relevant information referred to in the investigation report and details of action taken during the investigation (ss 40WA(1) and (2) of the Act).

4. Were AFP practices issues appropriately dealt with?

Section 40TX(2) of the Act provides that where an AFP practices issue is present in a complaint, or is brought to the attention of an AFP appointee either during the course of dealing with a category 1 or 2 conduct issue or in a section 40TU report, the Commissioner must ensure that appropriate action is taken to have the issue dealt with. In assessing this criterion, we have regard to the AFP's procedures for dealing with AFP practices issues that are identified in complaint investigations.

We may also consider a sample of practices issues to determine whether the AFP has taken appropriate steps to have those AFP practices issues dealt with.

5. Were complaints appropriately withdrawn?

Section 17 of NGCM provides that where a complainant indicates a desire to withdraw a complaint, the complaint manager or the responsible CMT shall request the complainant provide a written request to withdraw the complaint which details the reasons for the withdrawal. This process is also detailed in the PRS SOPs.

We acknowledge that it is not within the AFP's power to compel the complainant to put their request to withdraw a complaint in writing. Therefore, our main consideration when assessing this criterion is that the record as a whole indicates that the complainant requested the withdrawal of the complaint either verbally or in writing, prior to the complaint being withdrawn by the AFP.

6. Were complaints appropriately deleted from the AFP's Complaints Records and Management System (CRAMS)?

Section 18 of the NGCM provides that a complaint which has been entered into CRAMS may only be deleted if:

- it was entered in error, including where another form of reporting is more appropriate
- it is a duplicate of an existing complaint
- it is deemed to be a non-complaint

The NGCM further provides that only authorised appointees may delete a complaint from CRAMS. Within PRS, this is MPRS or the Coordinator of Investigations (Table of Authorisations contained within the AFP Commissioner's Orders on Professional Standards).

**2013-14 Annual Report on the Commonwealth Ombudsman's activities under Part V of the
*Australian Federal Police Act 1979***

The PRS SOPs requires that prior to deleting a matter, an email must be sent to the PRSCOMC requesting the deletion and once the PRSCOMC has approved via return email, the matter can be deleted. In assessing this criterion we have regard to these emails.

7. Did the AFP notify the Ombudsman of all category 3 conduct issues raised during the period?

Section 40TM(1) of the Act requires the AFP to notify the Ombudsman of category 3 conduct issues.

In assessing this criterion, we have regard to s 40TM(1) notifications contained on records within the Ombudsman's office and in AFP administrative files.

8. Were ministerially directed inquiries appropriately conducted?

In assessing this criterion we have regard to provisions under Division 4 of Part V of the Act.

APPENDIX B – AFP BUSINESS AREA NUMBER OF CONDUCT ISSUES

A complaint record may contain more than one conduct issue against more than one AFP appointee. In cases where a complaint record relates to multiple AFP appointees, the appointees may belong to different AFP business areas. Tables B1 and B2 below detail the number of conduct issues contained within the complaints records inspected in the review period, and the business area to which the AFP appointee who was the subject of the conduct issue belonged to.

Table B1: First inspection sample - Number of conduct issues by AFP business area

AFP Business Area	Number of conduct issues in sample	Percentage of total conduct issues
ACT Policing	106	44.92%
Aviation Security	26	11.02%
Crime Operations	23	9.75%
Protection	18	7.63%
International Deployment Group	14	5.93%
Unknown	12	5.08%
Human Resources	7	2.97%
Forensic and Data Centres	6	2.54%
Operations Support	6	2.54%
Counter Terrorism	4	1.69%
Intelligence	4	1.69%
Serious and Organised Crime	4	1.69%
High Tech Crime Operations	3	1.27%
Information Services	2	0.85%
Financial and Commercial	1	0.42%
Total	236	100%

Table B2: Second inspection sample – Number of conduct issues by AFP business area

AFP Business Area	Number of conduct issues in sample	Percentage of total conduct issues
ACT Policing	79	42.25%
Protection	19	10.16%
Aviation Security	17	9.09%
Unknown	13	6.95%
International Deployment Group	12	6.42%
Crime Operations	8	4.28%
Serious and Organised Crime	8	4.28%
Forensic and Data Centres	7	3.74%
Human Resources	5	2.67%
Information Services	5	2.67%
High Tech Crime Operations	4	2.14%
Operations Support	4	2.14%
Financial and Commercial	3	1.60%
Counter Terrorism	1	0.53%
Intelligence	1	0.53%
Not Function Specific	1	0.53%
Grand Total	187	100%

