



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

FOR THE PERIOD 1 JULY 2016 TO 30 JUNE 2017

Report by the Commonwealth Ombudsman  
under the *Australian Federal Police Act 1979*

June 2018

COMMONWEALTH  
**OMBUDSMAN**



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ISSN 1835-3290 - Print  
ISSN 1835-3304 - Online

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## EXECUTIVE SUMMARY

This report presents the results of the Commonwealth Ombudsman's (the Ombudsman) reviews of the Australian Federal Police's (AFP) administration of Part V of the *Australian Federal Police Act 1979* (the Act) for the period 1 July 2016 to 30 June 2017.

The Ombudsman conducted two reviews during the period which covered records of complaints that were finalised between 1 March 2016 and 28 February 2017.<sup>1</sup>

Overall, the records indicated the AFP is investigating matters appropriately and demonstrated the AFP's administration of Part V of the Act, relating to how conduct issues are dealt with, is comprehensive and adequate. However, we identified deficiencies in responding to practices issues. As this has been an ongoing issue, we have made the below recommendation.

### ***Recommendation***

That the Commissioner of the Australian Federal Police ensures appropriate action is taken in response to all identified practices issues, as required by s 40TX(2) of the *Australian Federal Police Act 1979*.

We have also made two suggestions where compliance with the relevant legislation, the AFP Commissioner's Orders, AFP National Guidelines and other instructions made pursuant to those documents could be improved. These suggestions relate to the importance of keeping contemporaneous records when managing a complaint.

At each review, we monitor progress made by the AFP in relation to previous findings. One recommendation and a number of issues were discussed in our previous annual report.<sup>2</sup> We are satisfied the AFP has taken appropriate remedial action for all issues raised in that report, except in relation to appropriate action in response to identified practices and procedures issues. Further details are provided at page 8 of this report.

The AFP's overall adherence to its timeliness benchmarks had decreased slightly from 2015–16. The AFP attempted to address this issue, primarily using the Direct Engagement Investigative Strategy introduced in August 2016.<sup>3</sup> However, at the time of Review Two the effect of this strategy

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<sup>1</sup> See *Introduction*, page 3 for details of the Ombudsman's Part V review periods.

<sup>2</sup> A report on the Commonwealth Ombudsman's activities under Part V of the *AFP Act 1979* (1 July 2015 to 30 June 2016).

<sup>3</sup> The Direct Engagement Investigative Strategy is a proposed streamlined approach for certain investigations. Further details are provided on page 11 of this report.

on its timeliness benchmarks appears negligible. Additionally, the AFP identified software issues within its complaints management system, which resulted in incorrect data regarding the timeliness of investigations. The AFP has since advised a technical solution to the problem has been implemented. Due to the retrospective nature of our reviews, the effectiveness of this solution is unlikely to be seen until 2018. Our office will continue to monitor this issue closely at future reviews.

The AFP advised that the Professional Standards (PRS) Reform Project, which commenced in January 2017, has implemented a number of reforms across PRS, many of which assist in addressing the findings and proposed actions in this report. The AFP advised that Phase 1 of these reforms are in place or due for completion by 30 June 2018. We will monitor the effectiveness of these reforms at future reviews.

Additionally, during 2016–17 we engaged with the AFP to better inform our reviews by:

- participating in PRS induction training for new investigators;
- undertaking a site visit to the Australian Capital Territory (ACT) Watchhouse and discussing procedures with Watchhouse staff; and
- liaising with, and commenting on proposed strategies identified by, PRS.

We positively acknowledge the AFP's cooperation with our Office and its responsiveness to identified issues.

# INTRODUCTION

Part V of the Act prescribes the process for recording and dealing with AFP conduct and practices issues relating to the AFP. An AFP conduct issue relates to whether an AFP appointee has engaged in conduct that contravenes AFP professional standards or has engaged in corrupt conduct. An AFP practices issue relates to an issue that raises concerns about the practices and procedures of the AFP.

Part V of the Act divides conduct issues into four categories, depending on the seriousness of the conduct:

- Category 1 and 2 conduct issues represent less serious conduct such as discourtesy, customer service issues and other conduct that may be regarded as minor misconduct;<sup>4</sup>
- 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; and
- a corruption issue is an issue regarding the engagement or potential engagement of a member of a law enforcement agency in corrupt conduct in the past, present or future (categorised in the AFP's complaint management system as a 'Category 4' issue).

Information that raises an AFP conduct or practices issue may be given under s 40SA of the Act. This information may be given by a member of the public and/or by an AFP appointee. The AFP defines the giving of this information as a complaint.

As required by s 40RD of the Act, the Commissioner established PRS, a unit within the AFP which undertakes the investigation of Category 3 conduct issues and corruption issues<sup>5</sup> engaged in by AFP appointees.

## ***The Ombudsman's role***

Under s 40XA of the Act, the Ombudsman must, for the purpose of reviewing the administration of Part V, inspect the records of AFP conduct and practices issues dealt with under Divisions 3 and 4 of Part V of the Act, at least once every 12 months. Additionally, under s 40XB of the Act the Ombudsman may conduct a review at any time, referred to as an *ad hoc* review.

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<sup>4</sup> AFP conduct issues that belong to the two less serious categories (categories 1 and 2) are dealt with managerially and may be addressed by training and development action or remedial action.

<sup>5</sup> Corruption issues may also be investigated by the Australian Commission for Law Enforcement Integrity.

Section 40XD of the Act requires the Ombudsman to report to Parliament as soon as practicable after 30 June each year on review work and activities conducted during the preceding 12 months. The report must include comments as to the comprehensiveness and adequacy of the administration of matters dealt with under Part V of the Act.

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

### ***How we review the AFP***

We have developed review criteria that are based on legislative requirements and best-practice standards in complaint handling. We focus our reviews on issues that may be systemic and have a greater impact on complainants. Our review activities include:

- conducting on-site inspections of physical and electronic records;
- reviewing internal guidance documents and other instructional material;
- interviewing staff from PRS and/or complaint management teams and observing their processes;
- testing the veracity of records and processes; and
- monitoring progress on previous review findings and recommendations.

To ensure the AFP is aware of what we will be assessing, we provide it with a broad outline of our criteria prior to each review. This assists the AFP in identifying the best sources of information to demonstrate how it has conducted its activities. We encourage the AFP to be upfront and self-disclose any issues under Part V to our Office and to inform us of any remedial action taken.

It is also our practice to examine any progress made by the AFP in relation to previous review findings and consider these findings over a long-term period to identify any systemic issues. At the end of each review we discuss our preliminary findings with the AFP so it can take any immediate remedial action, if necessary.

### ***Review objective***

The objective of the review is to assess the AFP's administration of Part V. In doing so, we also assess whether the AFP provides a fair and reasonable complaint management process to both the public and AFP appointees.

We use the following broad criteria to assess compliance:

- How has the AFP performed against its internal timeliness benchmarks?
- Were conduct issues and corruption issues dealt with appropriately?
- Were practices issues dealt with appropriately?
- Were complaints appropriately withdrawn?
- Were complaints appropriately deleted from the AFP's Complaints Records and Management System (CRAMS)?
- Did the AFP notify our office of all Category 3 conduct issues raised during the inspection period?
- Were ministerially directed inquiries appropriately conducted?

In addition to the provisions under Part V, ss 38 and 39 of the Act require adherence to any orders made by the Commissioner of the AFP. For this reason, in developing the review criteria, we also had regard to:

- the *AFP Commissioner's Order on Administration* (CO1);
- the *AFP Commissioner's Order on Professional Standards* (CO2) which establishes the AFP's professional standards and Code of Conduct;
- the *Australian Federal Police Categories of Conduct Determination 2013* which is the legislative instrument jointly drafted by the Commissioner and the Ombudsman in accordance with s 40RM(1) of the Act to determine the category of conduct; and
- relevant standard operating procedures.

We also considered the *AFP National Guideline on Complaint Management* (National Guideline) and the *Commonwealth Ombudsman Better Practice Guide to Complaint Handling* (Better Practice Guide).<sup>6</sup>

A list of our review criteria, and methodology of how we assess the AFP against them, is at [Appendix A](#).

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<sup>6</sup> The National Guideline includes the Better Practice Guide as a reference item.

### ***How we report***

This report covers reviews conducted during the 2016–17 financial year (review period). To ensure procedural fairness the AFP is provided with a copy of this report for comment, prior to the Ombudsman presenting it to the Parliament under s 40XD of the Act.

During a review, there may be a range of issues identified, including minor administrative errors, instances of maladministration and systemic issues. We may make formal recommendations or suggestions if we identify an issue that has not been addressed by the AFP, or if we think it is warranted in the circumstances. We also comment on what we understand of the AFP's policies and procedures supporting its administration of Part V of the Act, based on information provided during the review.

## REVIEW DETAILS

The Ombudsman conducted two reviews during the 2016–17 financial year. Review One covered complaints finalised between 1 March and 29 June 2016. Review Two covered complaints finalised between 30 June 2016 and 28 February 2017.

The below tables provide an overview of records reviewed at the AFP by overall complaint category. Where one CRAMS record referred to multiple complaints finalised during the review period, all complaints within the record were reviewed. For example, one CRAMS record may contain three separate complaints that relate to two AFP appointees.

Review One:

| Overall complaint category        | Number of CRAMS records finalised by the AFP during the review period | Number of records reviewed |
|-----------------------------------|---|----------------------------|
| Category 1                        | 19  | 19 (100%)                  |
| Category 2                        | 82  | 63 (77%)                   |
| Category 3                        | 43  | 40 (93%)                   |
| Category 4<br>(corruption issues) | 3   | 3 (100%)                   |
| <b>Total</b>                      | <b>147</b>  | <b>125 (85%)</b>           |

Review Two:

| Overall complaint category        | Number of CRAMS records finalised by the AFP during the review period | Number of records reviewed |
|-----------------------------------|---|----------------------------|
| Category 1                        | 39  | 28 (72%)                   |
| Category 2                        | 110   | 40 (36%)                   |
| Category 3                        | 109   | 47 (43%)                   |
| Category 4<br>(corruption issues) | 26  | 17 (65%)                   |
| <b>Total</b>                      | <b>284</b>  | <b>132 (46%)</b>           |

## PROGRESS SINCE PREVIOUS REPORT

At each review, we monitor progress made by the AFP in relation to previous findings. A number of issues were discussed in the previous report and we are satisfied the AFP has taken appropriate remedial action for all but one issue.

In our previous annual report we identified deficiencies in recording the consideration of potential conflicts of interest by complaint managers, investigators and adjudicators. As a result, we made a formal recommendation to address this issue:

### **Recommendation**

That the Australian Federal Police demonstrate the consideration of conflict of interest in accordance with the instructions set out in sections 13(c) and 14 of the *AFP National Guideline on Complaint Management*.

Although this issue was again identified in both reviews conducted in 2016–17, there was a considerable reduction in the number of instances where this occurred. This appears to be due to action on the part of PRS in reinforcing the importance of conflict of interest considerations to complaint managers prior to each investigation.

In addition to the above, we made two suggestions where compliance with the relevant legislation, the AFP Commissioner's Orders, AFP National Guidelines and other instructions made pursuant to those documents could be improved. Namely, the inclusion of more information in outcome letters to complainants, and the recording and follow-up of practices issues. The AFP advised that the PRS Reform Project, which commenced in January 2017, provides for a greater focus on practices issues. Focus points of the project with regard to practices issues are detailed under Results of the Review.

During this review period, we were satisfied that outcome letters to complainants contained sufficient information. However, we were not satisfied that appropriate action had been, or was being taken, by the relevant business area to address practices issues. Following our previous annual report, the AFP advised it would issue notifications to business areas and note that a matter would not be closed until a response was received.

## RESULTS OF THE REVIEWS

Overall, the records indicated the AFP's administration of Part V of the Act, relating to how conduct issues are dealt with, is comprehensive and adequate. The AFP has a comprehensive framework governing the management of complaints it receives, both from members of the public and from AFP appointees, and the AFP administers this framework fairly and reasonably. However, we identified deficiencies in responding to practices issues.

We have made one recommendation in relation to dealing with practices issues and two suggestions to assist the AFP to improve its handling of conduct issues. While some of these issues related to the complaint management process, in our view, these did not impact the overall outcomes of any complaints.

The key issues identified during the reviews are set out below.

### **Shortfalls in the recording and implementation of practices issues**

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 through a Category 1 or 2 conduct issue or in a s 40TU report,<sup>7</sup> the Commissioner must ensure appropriate action is taken to deal with the issue.

The AFP's process for addressing this requirement is for the complaint manager/investigator to, firstly, record in CRAMS that a practices issue has been identified; secondly, for PRS to record the issue on its Practices and Procedures Register; and finally, liaise with the relevant business areas to inform them of the practices issue. PRS then await advice from the business area as to what, if any, action has been taken. PRS will then update the register accordingly.

Prior to each review, PRS provided its Practices and Procedures Register for the relevant period. In 13 instances where practices issues had been recorded, the register did not reflect what, if any, action had been taken. There were also six instances where practices issues had been identified in the CRAMS record, but not recorded on the register.

As PRS relies on other units within the AFP to action practices issues, and there appears to be no improvement since raising this issue at previous reviews, we have made the following recommendation:

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<sup>7</sup> Section 40TU of the Act requires that, upon completion by the AFP of a Category 3 or corruption investigation, the AFP must prepare a written report detailing the results of the investigation.

### ***Recommendation***

That the Commissioner of the Australian Federal Police ensures appropriate action is taken in response to all identified practices issues, as required by s 40TX(2) of the *Australian Federal Police Act 1979*.

In order to meet this recommendation, PRS may wish to conduct monthly audits to identify outstanding practices issues and send follow-up emails to responsible units for appropriate action. PRS may also wish to place a prompt on its templates and/or CRAMS to ensure all practices issues are not only identified but are recorded in the register, and circulated to the appropriate unit for actioning.

While PRS has a role to play in relation to this issue, we are of the view that greater responsibility needs to be taken by the AFP as a whole. There may be a need for the AFP to enhance communication across various business areas. This could improve the understanding of the legislative framework of all staff involved in the implementation of changes to practices and procedures, which may increase the likelihood of errors and omissions being identified.

As noted above, in our previous report we identified deficiencies in the AFP taking appropriate action in response to practices issues. As a result, PRS advised our Office it was exploring a replacement records management system to enhance its administration of complaints. We therefore suggested that as part of the preparation of a business case for the replacement system, PRS investigate mechanisms for receiving feedback from AFP business areas on practices issues. PRS agreed with this suggestion and advised it will continue to seek system enhancements to capture and record actions taken for the implementation of recommendations concerning practices issues.

The AFP has advised that the PRS Reform Project, which commenced in January 2017, provides for a greater focus on practices issues, including:

- improvement in the articulation of practices issues in the Investigation Report;
- analysis of practices issues at the PRS Operations Committee (OC) to ensure a more holistic organisational picture;
- implementation of the PRS Panel to ensure consistency in outcomes and sanction implementation of established PRS investigations;
- Chief Operating Officer (COO) advice of identified enterprise level practice issues;

- active management approach with the AFP business area through the PRS OC;
- PRS capture of practices issues and follow up mechanisms through the Manager PRS;
- improved education and awareness strategies, such as refined PRS messaging in induction programs and a PRS communique to the workforce; and
- use of enhanced reporting and data analytics mechanisms through SAS Visual Analytics.

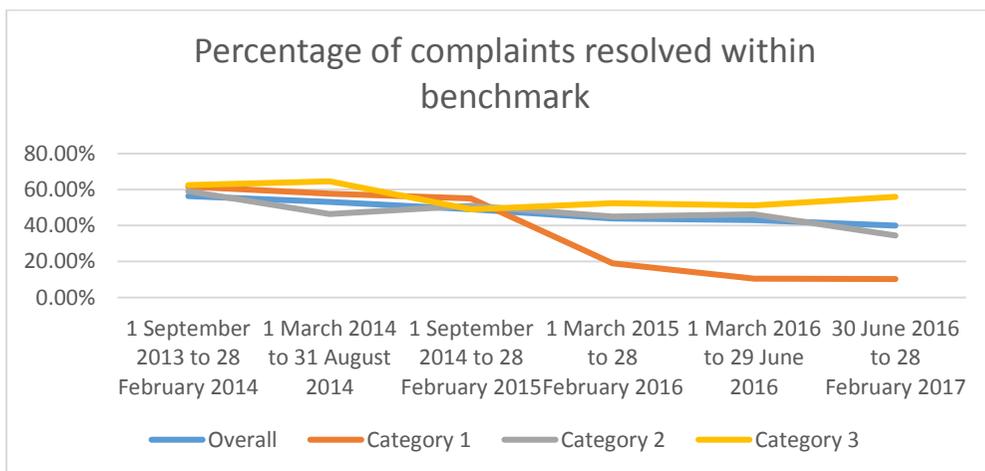
The AFP advised that to better support the above strategies, PRS has refined and developed administrative practices, including:

- the establishment of a specific PRS Secretariat function to support PRS committees, whose scope includes AFP practice issue identification and management;
- business process revision; and
- review and redrafting of PRS governance documents.

We note that Phase 1 of the PRS Reform Project is due for completion by 30 June 2018. We will continue to monitor this issue closely at future reviews.

### AFP's performance against its internal timeliness benchmarks

The below graph demonstrates the AFP's overall performance against Criterion 1 during the two review periods, based on information provided by the AFP.



The AFP's overall performance against this criterion has declined since the previous report. A Direct Engagement Investigative Strategy was introduced

in August 2016 to provide a mechanism for certain investigations to proceed down a shortened path, where there was a high prospect of the subject of the complaint admitting to the conduct issue. However, at the time of Review Two, this strategy did not appear to have assisted the AFP to meet its internal benchmarks. Another contributing factor affecting the AFP's ability to meet its timeliness benchmark was a technical error identified by the AFP associated with the timer for the duration of active complaints.

Subsequent to Review Two, the AFP advised a technical solution to the problem has been implemented to rectify the issue.

In addition, under the scope of the PRS Reform Project, the AFP has advised that it is taking active steps to address timeliness issues. Commencing with PRS investigations, the AFP advised that a number of enhancements have been made to improve timeliness. These include:

- business process revision, including a renewed focus of administrative law investigations rather than criminal level investigations;
- reviewed governance and practice, with updates occurring to the Investigator's toolkit and creation of best practice guides;
- addressing reporting and data analytics shortfalls to ensure reporting captures accurate and relevant information; and
- addressing complaint management data integrity and user experience through a Technology and Innovation portfolio led remediation of CRAMS.

Due to the retrospective nature of our reviews, the effectiveness of this solution is unlikely to be seen until 2018. We will continue to monitor this issue closely at future reviews.

### **Complainant kept informed of an investigation**

Section 40TA of the Act states the Commissioner must, so far as is practicable, ensure the complainant is informed as frequently as is reasonable, and to the extent that is reasonable, in the circumstances, of progress in dealing with an AFP conduct or practices issue, and is advised of any action taken in relation to the issue. The National Guideline includes the Better Practice Guide as a reference item. 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.

In two instances, there were no records on file to indicate the complainant was kept informed of progress during the investigation. This is normally

demonstrated by a file note or copy of a letter indicating the complainant was contacted by telephone or in writing.

In relation to one of these instances, there were no records on file to indicate the complainant had been advised of the outcome or any action taken in relation to the complaint. At the time of our review we suggested the AFP should send an outcome letter to the complainant as soon as practicable. The AFP has since advised that an outcome letter was sent to the complainant and was subsequently attached to the relevant file. This will be confirmed at our next inspection.

Despite these instances, we are satisfied the AFP has sufficient processes in place to communicate appropriately with complainants and to achieve compliance with the Act.

### **All parties had opportunity to be heard in relation to the conduct or corruption issue**

Section 40TQ(2)(a) of the Act states that when investigating an issue, the investigator must ensure the AFP appointee and the complainant (if any) have, subject to the requirements of the investigation, an adequate opportunity to be heard in relation to the issue.

In one instance, there was no record on file to indicate the investigator ensured the complainant or the appointee had an adequate opportunity to be heard in relation to the issue. In this instance it appears the AFP did not meet the requirements of s 40TQ(2)(a) of the Act.

The AFP noted our finding and advised that it will follow this matter up and take appropriate remedial action. We will follow up the AFP's progress on this at our next review.

### **Complaint acknowledged and complaint process explained to complainant**

Paragraph 4.1 of the Better Practice Guide states:

A complaint must be acknowledged quickly so as to reassure the client that their complaint is receiving attention. The acknowledgement should outline the complaint process and provide contact details and preferably the name of a contact person. As far as possible, it should also note how long it is likely to take to resolve the complaint and when the complainant will next be contacted.

In one instance, there were no records on file to indicate the AFP acknowledged the complaint or that the complaint process was explained to

the complainant. In two further instances, although the AFP acknowledged the complaint by a notification letter, there were no records on file to indicate the complaint process had been explained to the complainant. This is normally demonstrated by a file note indicating the complainant was contacted by telephone or by a copy of a letter. In the absence of such records we cannot provide assurance that these actions occurred.

The AFP advised that it agrees with our finding and will address this issue through enhancements arising from the PRS Reform Project. We suggest the AFP remind investigators of the need to adhere to the principles of good complaint handling and to keep appropriate records.

### **Decisions to take no further action under s 40TF without delegation**

Section 40TF of the Act provides that the Commissioner may exercise discretion to take no further action in relation to a complaint in certain circumstances. The Commissioner has delegated this power to specific positions within the AFP according to the complaint category. The delegations as outlined in the *Commissioner's Orders 1* stipulate that s 40TF can only be applied to Category 1 and 2 matters by the Deputy Commissioner, Chief Operating Officer, Chief Capability Officer, National Manager People, Safety & Security and the Manager Professional Standards or the complaint manager.

During Review One, we identified seven Category 1 and 2 complaints that were finalised under s 40TF by the Coordinator Professional Standards (CPRS). After reviewing AFP governance documents, there is ambiguity as to whether CPRS can finalise a complaint under s 40TF. Due to this ambiguity, we suggested the AFP seek legal advice as to whether CPRS had the appropriate delegation to finalise the seven complaints under s 40TF.

Subsequent to the review, PRS advised it would be updating relevant documents relating to the s 40TF delegation to remove any ambiguity.

Michael Manthorpe PSM  
Commonwealth Ombudsman

## APPENDIX A – DETAILED REVIEW CRITERIA

### 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.

The AFP's benchmarks indicate the number of days within which complaints of a particular overall category should be finalised. 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.

The below table outlines the current investigation timeframe benchmarks. There is no specific benchmark for complaints containing corruption issues given such complaints are referred to, and may be investigated by, the Australian Commission for Law Enforcement Integrity.

| Overall complaint category | Benchmark (days) |
|----------------------------|------------------|
| 1                          | 42               |
| 2                          | 66               |
| 3                          | 256              |

### 2. Were Category 1 and 2 conduct issues dealt with accurately and according to the correct procedure?

Under this criterion we have regard to the following:

- whether all conduct issues were identified and categorised in accordance with the *Australian Federal Police Categories of Conduct Determination* 2006 or 2013
- 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 *Australian Federal Police Act 1979* (the Act))
- the category to which conduct belongs may change as more information is obtained in relation to the complaint (s 40RK(7)). If the category to which conduct belongs changed, there was a reasonable explanation for the change on the record

- the complaint manager recorded conflict of interest considerations and any potential or actual conflicts of interest were appropriately managed (PRS Disclosure of Conflict of Interest Flowchart: 2014–15 Ombudsman annual report paragraph 3.2.1)
- 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))
- 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))
- 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), 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 regarding established conduct (s 40TH(1)(c))
- 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)) and if so, brought the practices issue to the attention of an appropriate AFP appointee (s 40TK(2))
- upon completion of an investigation, the Complaint Management Team (CMT) quorum either endorsed the recommendations or applied new findings, and reasons for new findings were recorded (s 22 of the National Guideline)
- 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 Part V 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)).

### **3. Were Category 3 conduct issues and corruption issues (Category 4) dealt with appropriately?**

Under this criterion we have regard to the following:

- whether all conduct issues were identified and 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))
- the category to which conduct belongs may change as more information is obtained in relation to the complaint (s 40RK(7)). 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)
- the investigator completed a Conflict of Interest Declaration form (s 14 of the National Guideline)
- 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))
- 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))
- 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))
- 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), the recommendation was not

unreasonable and was made by a delegated person (CO1 Delegations)

- where a 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)) and if so, the investigator identified the practices issue in the s 40TU report (s 40TW(2)(a))
- the investigator prepared and submitted a written report of the investigation to the MPRS (ss 40TU(1) and (3))
- there was 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 Part V and s 15 of the National Guideline)
- the AFP advised the complainant of the outcome of the complaint investigation and provided reasons for the outcome (s 40TA(2)(b) of Part V 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)).

#### **4. Were AFP practices issues dealt with appropriately?**

Section 40TX(2) 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 s 40TU report, the Commissioner must ensure 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 deal with those AFP practices issues.

#### **5. Were complaints appropriately withdrawn?**

Section 17 of the National Guideline 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 standard operating procedure (SOP).

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

The PRS SOP requires that, prior to deleting a matter, an email must be sent to the PRS Operations Monitoring Centre (PRS OMC) requesting the deletion. Once the PRS OMC has approved the request by 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) 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.

### **Additional documents considered**

In developing the review criteria, we also had regard to:

- the AFP Commissioner's Order on Administration (CO1)
- the AFP Commissioner's Order on Professional Standards (CO2), which establishes the AFP's professional standards and internal guidance documents for complaint managers and investigators
- the *Australian Federal Police Categories of Conduct Determination 2013*, which is the legislative instrument jointly drafted by the AFP Commissioner and the Ombudsman in accordance with s 40RM(1) of the Act
- relevant standard operating procedures.

We also considered the *AFP National Guideline on Complaint Management* and the *Commonwealth Ombudsman Better Practice Guide to Complaint Handling*.