



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

FOR THE PERIOD 1 JULY 2017 TO 30 JUNE 2018

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

May 2019



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EXECUTIVE SUMMARY

This report presents the results of reviews conducted by the Office of the Commonwealth Ombudsman (the Office) of the Australian Federal Police's (AFP) administration of Part V of the *Australian Federal Police Act 1979* (the Act) from 1 July 2017 to 30 June 2018.

Our Office conducted two reviews during the period which covered records of complaints that were finalised between 1 March 2017 and 28 February 2018.¹

The reviews found the AFP's administration of Part V of the Act to be comprehensive and adequate with matters investigated appropriately. However, we identified some deficiencies in how the AFP responds to practices issues and made several suggestions to improve record-keeping, processes, and adherence to legislative requirements and standard operating procedures (SOPs).

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.² We are satisfied the AFP has taken appropriate remedial action for all issues raised in that report, except in relation to identified practices issues.

Due to the timing of our previous report, the AFP's remedial actions taken in response to practices issues were not implemented until after our reviews. Therefore we were unable to assess the effectiveness of the AFP's remedial action in response to this issue and will instead assess them at our next review in 2018-19. Further details are provided at page 8 and 9 of this report.

During 2017–18, we engaged with the AFP to better inform our reviews by liaising with, and commenting on proposed strategies for improvement identified by the Professional Standards Unit (PRS). This included meeting with the Part V Review Team to discuss the implementation of recommendations made by the AFP Legal Team as a result of its review of the AFP's complaint management processes.

The Part V Review Team advised that the 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 the Legal Team's report. The AFP advised that Phase 1 of these reforms are in place or were due for completion by 30 June 2018.

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

² The report can be accessed at http://www.ombudsman.gov.au/_data/assets/pdf_file/0027/85266/AFP-Part-V-2016-17-Annual-Report-FINAL-PDF-sent-to-printer-A1629898-A1625716.pdf

The AFP also reported an increased use of its Direct Engagement Investigative Strategy which helped to improve the percentage of complaints resolved within the AFP's timeliness benchmarks. While our reviews noted a minor improvement in the AFP's overall performance against this criterion, the number of complaints resolved within the benchmarks remains low. Our Office has considered the AFP's timeliness benchmarks reasonable, in the context of the AFP's operational environment. We suggest the AFP focuses on resolving complaints within its service standards. We will monitor the effectiveness of these reforms and the timely resolution of complaints at future reviews.

INTRODUCTION

Part V of the Act prescribes the process for recording and dealing with conduct and practices issues relating to the AFP. An AFP conduct issue relates to whether an AFP appointee has engaged in conduct that contravenes the 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.
- 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.
- 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 provision of this information as a complaint.

The Complaint Management Team (CMT) manages AFP practices issues and Category 1 and 2 conduct issues. A CMT Chair has responsibility for ensuring that each Category 1 and 2 complaint is referred to the CMT with the relevant area of responsibility and for ensuring it is dealt with appropriately. These complaints are dealt with managerially, and may be addressed by training and development action or remedial action.

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 issues³ engaged in by AFP appointees.

Section 11.4 of the *AFP Commissioner's Order on Professional Standards (CO2)*, which establishes the AFP's professional standards and Code of Conduct, states that

³ Corruption issues may also be investigated by the Australian Commission for Law Enforcement Integrity.

Category 3 conduct issues must be investigated by the PRS Investigations Unit, or in limited circumstances, by the Safe Place Team. The Safe Place Team forms part of the Reform, Culture and Standards function and was established to provide support to complainants, and to investigate sexual harassment and abuse, following an independent review of the organisation by former Sex Discrimination Commissioner, Elizabeth Broderick AO.

The Ombudsman's role

Under s 40XA of the Act, our Office 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. Under s 40XB of the Act, our Office may conduct a review at any time, referred to as an *ad hoc* review.

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 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 Safe Place, and/or complaint management teams and observing their processes
- testing the veracity of records and processes
- monitoring progress on previous review findings and recommendations.

To ensure the AFP is aware of what we will be assessing, we provide 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 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 each 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 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 gave regard to:

- The *AFP Commissioner's Order on Governance (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.
- 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).⁴

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

How we report

This report covers reviews conducted during the 2017–18 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.

⁴ The National Guideline includes the Better Practice Guide as a reference item.

REVIEW DETAILS

Our Office conducted two reviews during the 2017–18 financial year. Review One covered complaints finalised between 1 March and 29 June 2017. Review Two covered complaints finalised between 30 June 2017 and 28 February 2018.

The tables below provide an overview of AFP records reviewed by our Office 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 CRAMS records reviewed
Category 1	19	19 (100%)
Category 2	53	34 (64%)
Category 3	42	28 (66%)
Category 4 (corruption issues)	15	14 (93%)
Total	129	95 (74%)

Review Two:

Overall complaint Category	Number of CRAMS records finalised by the AFP during the review period	Number of CRAMS records reviewed
Category 1	30	2 (7%)
Category 2	133	15 (11%)
Category 3	97	17 (18%)
Category 4 (corruption issues)	10	10 (100%)
Total	270	44 (16%)⁵

⁵ A reduction in the records assessed in Review Two was due to limited systems access being provided to Ombudsman staff at that Review.

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 how the AFP was responding to practices issues. As this had been an ongoing issue, we made the following recommendation to address it:

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*.

The AFP advised that the Professional Standards Reform Project, which commenced in January 2017, provides a greater focus on practices issues, including capture of practices issues. We note that Phase 1 of the PRS Reform Project was due for completion on 30 June 2018 (after the 2017–18 reviews were conducted).

In addition to the above recommendation, 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, to ensure an outcome letter was provided to a complainant and to keep contemporaneous records when managing a complaint. We also suggested the AFP seek legal advice as to whether the Coordinator Professional Standards (CPRS) had the appropriate delegation to finalise complaints under s 40TF.

During this review period, we were satisfied that an outstanding outcome letter from the previous review period was provided to the relevant complainant, and overall, contemporaneous records had been kept. The AFP has advised that it is updating its delegation instrument to remove previous ambiguity around decisions made under s 40TF. This will be followed up at our next review.

RESULTS OF THE REVIEWS

Our reviews 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 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.

We made five 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,⁶ the Commissioner must ensure appropriate action is taken to deal with the issue.

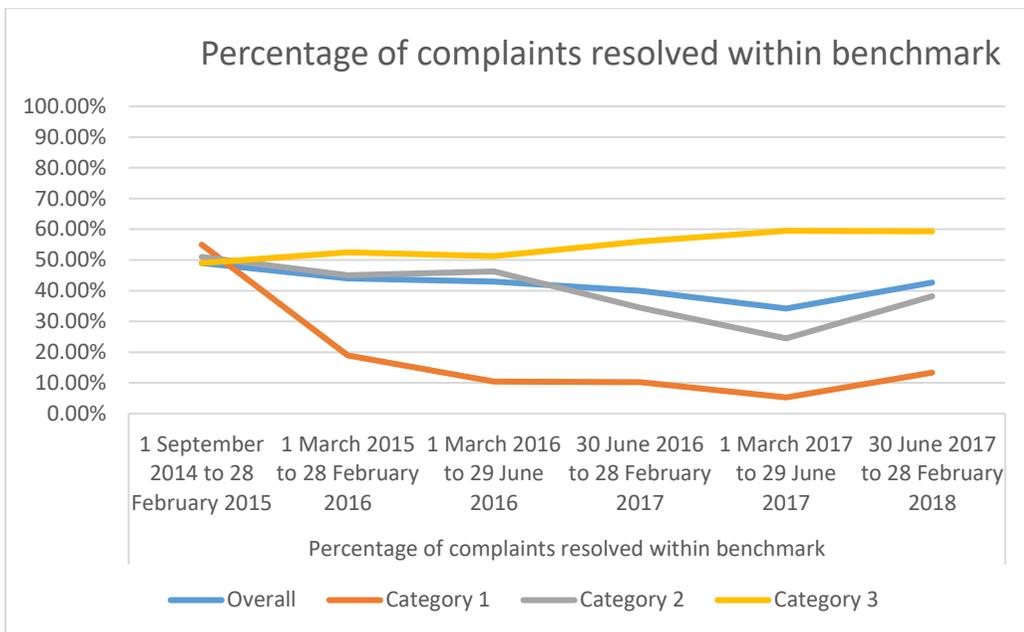
Our understanding of the AFP's processes for addressing this requirement is for the Investigating Officer to firstly record in CRAMS that a practices issue has been identified, secondly for PRS to record the issue on its Practices and Procedures Register, and finally liaise with the relevant business areas to inform them of the practices issue. PRS then awaits what, if any, action has been taken and updates the register accordingly.

Prior to each review, PRS provides our Office with its Practices and Procedures Register for the relevant period. We identified 21 instances where practices issues had been identified in the CRAMS record but not recorded on the register. We note that 11 of these instances were part of a broader ongoing investigation and we are satisfied the AFP is taking action in relation to these issues. No actions, however, were taken in relation to the remaining 10 instances.

AFP's performance against its internal timeliness benchmarks

The graph below demonstrates the AFP's overall performance against Criterion 1 (see Appendix A: detailed Review Criteria) during the two review periods, based on information provided by the AFP.

⁶ 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.



The AFP’s overall performance against this criterion improved between Review One and Review Two, however the percentage of complaints resolved within benchmarks remains low, particularly in relation to Category One complaints. 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. While at the time of Review One this strategy did not appear to have assisted the AFP to meet its internal benchmarks, by the time of Review Two it appeared to have improved the AFP’s overall performance against this criterion. We will continue to monitor this issue closely at future reviews.

Unclear categorisation of conduct issue in adjudicator’s report

Under s 40RK(7) of the Act, the Category to which conduct belongs may change as more information is obtained in relation to the conduct. Provision 15 of the National Guideline states ‘an Adjudication Panel member may also decide to downgrade the conduct from Category 3 should it be deemed appropriate’. Where a Category of conduct has changed, we expect to see a reasonable explanation for the change on record.

In one instance, the record indicated the complaint related to Category 2 conduct and no change of Category was recorded. However, a minute on file to the appointee’s National Manager stated that a breach of Category 3 conduct occurred. Furthermore, the adjudicator’s report stated that the conduct fell within the

Category 3 definition of serious misconduct, but subsequently advised that a breach of Category 2 conduct was established. This was reiterated in the outcome letter to the appointee, which stated that a breach of Category 2 conduct was established.

As we were unable to determine whether the adjudicator had, in fact, downgraded the conduct, on what basis, we suggested the AFP review this complaint to ensure all relevant records are accurate and reflect the appropriate categorisation of conduct. We will follow this issue up at our next review.

Shortfalls in investigative practices

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 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.

Under s 40TH(1)(a)(i), an Investigating Officer must ensure the AFP appointee has an adequate opportunity to be heard in relation to the conduct issue. Under the CMT SOPs, as part of the investigation, Investigating Officers are required to identify relevant witnesses and attempt to contact them.

During this review period, we identified three complaints where no records were on file to demonstrate that the above mentioned requirements for conducting investigations were satisfied. The reasons we were unable to determine compliance varied between each complaint, including whether:

1. the complainant had been kept informed of the progress of the investigation or had been advised of the outcome of the investigation.
2. the appointee had an adequate opportunity to be heard in relation to the conduct issue.
3. all relevant witnesses were identified and all relevant evidence considered by the Investigating Officer.

We suggest the AFP remind its Investigating Officers of the importance of keeping contemporaneous records to demonstrate that investigations are conducted in accordance with legislative requirements and relevant SOPs.

Investigating Officer advised complainant of outcome before CMT quorum endorsed the recommendation

Provision 13 of the National Guideline states that the CMT Chair has responsibility for ensuring each complaint is dealt with appropriately. This includes communicating final outcomes to the complainant. The Investigator's Checklist in the CMT SOPs specifically instructs investigators not to inform the complainant of their investigation findings. These procedures state that an investigator can only inform the complainant that they will submit their final report to the CMT quorum (a three member panel of senior CMT members), who will decide whether or not to endorse the findings recommended. The CMT will notify the complainant of the outcome in writing.

We identified one instance where a case note on file indicated the Investigating Officer had informed the complainant that no further action would be taken in a matter, five months prior to the endorsement of the decision by the CMT quorum, which was 79 days over the AFP's timeliness benchmark for a Category 1 conduct issue.

In this instance, it appears the AFP's procedures were not followed as the Investigating Officer communicated the outcome of the investigation to the complainant five months prior to endorsement by the CMT quorum. Based on the records made available during the review we were unable to identify the reasons for the significant delay in this instance.

We suggest PRS remind the Investigating Officer not to inform a complainant of their investigation findings, in accordance with the AFP's procedures.

No record of outcome letter to complainant or letter contained limited information

Section 40TA of the Act states the Commissioner must, so far as practicable, ensure the complainant is advised of any action taken in relation to a conduct issue. The Better Practice Guide states when a complaint investigation is completed, the complainant should be told the particulars of the investigation, including any findings or decision reached.

Providing a full explanation of an outcome to complainants improves the transparency of the investigation process and demonstrates the actions taken by the AFP in investigating the complaint. We acknowledge the amount of detail included in individual letters will vary depending on the circumstances of each investigation.

In three instances, there was nothing on file to indicate that an outcome letter was sent to the complainant. Subsequent to Review Two, the AFP advised that in one instance a complaint letter was sent to the complainant. The AFP is yet to advise our Office of actions taken in relation to the other two instances. We will follow up these remaining instances at our next review scheduled for 2019.

In a further six instances, the outcome letter provided to a complainant who was a member of the public was a brief standard response. In one of these instances, the letter to the appointee who was the subject of the complaint contained more detail than the letter to the complainant about what was taken into consideration to arrive at the decision not to establish the complaint.

In another instance, the outcome letter to the complainant omitted what appeared to be the primary reason why the matter was 'not established'. In this instance, the reason provided in the outcome letter was that the appointee described by the complainant who allegedly used force was unable to be identified. The primary reason however that the complaint was recorded as 'not established' was that the AFP member involved in the interaction with the complainant did not use excessive force. We suggest that in this instance, the AFP could have improved its communication to the complainant by providing all reasons for the outcome.

In previous reviews, we suggested PRS provides guidance on giving an appropriate level of detail regarding an investigation without breaching the privacy of the AFP appointee, witnesses or the complainant. Overall, we are satisfied that there has been an improvement in the level of detail provided to complainants in outcome letters. However, we will continue to monitor the reasons provided to complainants in outcome letters, particularly members of the public who may be unfamiliar with an investigation process.

Conflict of Interest Declarations missing, not signed or not dated at beginning of investigation

Provisions 13(c) and 14 of the National Guideline require the complaint manager or the Investigating Officer to whom a complaint has been allocated to complete a Conflict of Interest Declaration.

Completing a Conflict of Interest Declaration helps an Investigating Officer turn their mind to whether or not there is an actual or perceived conflict in investigating a complaint and/or misconduct issue. Managing conflicts of interest helps sustain the integrity of an investigation.

Our annual report covering the review period 1 July 2015 to 30 June 2016 made a formal recommendation that the AFP demonstrate the consideration of conflict of

interest in accordance with the National Guideline. During 2017–18, we noted an improvement in the consideration of conflict of interest on file.

In six instances, we could not locate a Conflict of Interest Declaration on file. The AFP subsequently advised that two of these instances pre-dated our recommendation and had been re-opened for administrative purposes during the review period.

In one instance, a Conflict of Interest Declaration was on file, but the date the declaration had been signed was near the completion of the investigation.

In another instance, a Conflict of Interest Declaration was on file, however, the date on the form preceded the allocation of the complaint to the Investigating Officer and was not signed by the Investigating Officer.

We acknowledge the continued efforts of PRS in reinforcing the importance to Investigating Officers of signing a Conflict of Interest Declaration prior to undertaking an investigation and will continue to monitor this issue at future reviews.

No record to demonstrate how perceived conflict of interest was managed

The management of conflicts of interest, including perceived conflicts, is important. This is particularly the case for the AFP, where members are conducting internal investigations on AFP members. Our understanding of AFP processes is that where a conflict of interest has been declared, there will be a record on file to demonstrate how this conflict has been managed.

In one instance, pre-dating our 2016–17 recommendation, an Investigating Officer recorded a perceived conflict of interest on their Conflict of Interest Declaration form. However, we were unable to locate any explanation on file showing how the perceived conflict of interest was managed.

As the record indicated that the Investigating Officer proceeded to investigate the complaint, this issue was followed up with the PRS area at the review. PRS stated that there had only been a verbal conversation regarding the perceived conflict of interest and no written report had been created.

We suggest that PRS remind team leaders that if a conflict of interest is identified, they should make a written record of how that conflict will be managed. We also suggest that, if resources allow, better practice would have been for a new Investigating Officer to have been assigned.

No record of appointee's delegation to take no further action under s 40TF(2)

Section 40TF(2) 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.

In one instance, it was unclear which AFP member made the decision to take no further action under s 40TF(2). In the absence of such records, we were unable to determine whether the AFP appointee who made the decision under s 40TF(2) held the appropriate delegation. The AFP has advised that it is currently updating its delegation instrument to remove ambiguity around decisions made under s 40TF. We will follow this issue up at our next review.

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 (Schedule of Delegations issued under the *Australian Federal Police Act 1979* and *Australian Federal Police Regulations 1979* as attached to *Commissioners Order on Administration*).
- 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 CMT quorum either endorsed the recommendations or applied new findings, and reasons for new findings were recorded (provision 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 (provision 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 (Schedule of Delegations issued under

the *Australian Federal Police Act 1979* and *Australian Federal Police Regulations 1979* as attached to *Commissioners Order on Administration*).

- 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).
- 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 the Act and provision 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) 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?

Provision 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 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)?

Provision 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 National Manager Reform Culture and Standards, MPRS or a PRS Coordinator (Table of Authorisations contained within the *AFP Commissioner's Order on Professional Standards*).

The Complaints Coordination Team SOP requires that, prior to deleting a matter, an email must be sent to the PRS Coordinator Operations Monitoring Centre (COMC) requesting the deletion. Once the COMC has approved the request by return email, the matter can be deleted. In instances where a decision has been made at the PRS Operations Committee (PRSOC) to delete the matter, this should be clearly recorded on the PRSOC decision template. In assessing this criterion we have regard to these emails and decision templates.

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 Governance (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*.