



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

FOR THE PERIOD 1 JULY 2018 TO 30 JUNE 2019

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

**September 2020**





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# EXECUTIVE SUMMARY

This report presents the work of the Office of the Commonwealth Ombudsman (the Ombudsman) during the period from 1 July 2018 to 30 June 2019 to review the Australian Federal Police's (AFP) administration of Part V of the *Australian Federal Police Act 1979* (the Act). During this period, the Office conducted one review from 1 to 12 April 2019. Our review criteria are provided at Appendix A.

At each review, we monitor and assess the progress the AFP has made against previous findings. A number of our reviews over the past 10 years identified issues around timeliness benchmarks, communication with complainants and conflicts of interest declarations. Despite the AFP taking action to remedy these issues, there has not been substantive improvement in these areas and we identified the same issues during this review.

We identified that the time the AFP took to complete Category 1 and 2 complaints was consistently outside internal timeliness benchmarks. While we concluded that the AFP's handling of Category 3 complaints was adequate, comprehensive, and matters were investigated appropriately, we identified deficiencies in the management of conflicts of interest and how the AFP communicated with parties to complaints.

Overall, our review indicated the AFP's administration of Part V of the Act, which relates to how conduct issues are dealt with, is comprehensive and adequate in relation to Category 3 and 4 complaints. The AFP is considering methods to improve its administration of Category 1 and 2 complaints which we will monitor at future reviews.

In this report we make four recommendations and 10 suggestions to assist the AFP improve management of complaints. While some of these issues relate to the complaint management process, we were satisfied they did not have an adverse impact on the final outcome of associated complaints.

In its response, the AFP acknowledged our recommendations and suggestions and provided details of its action to update guidance material, practices and procedures where appropriate. We will assess and monitor the effectiveness of the AFP's remedial actions at future reviews.

## **Recommendation 1**

The AFP reviews its management and handling of Category 1 and 2 conduct issues to ensure it meets internal timeliness benchmarks.

**Recommendation 2**

The AFP provides targeted training to investigators and decision-makers to ensure their conflict of interest obligations are adequately addressed and recorded in accordance with the instructions set out in ss 13(c) and 14 of the AFP National Guideline on Complaint Management, including in circumstances where a delegate decides, under s 40TF of the Act, not to take further action in relation to a complaint.

**Recommendation 3**

The AFP provides appropriate guidance, training and support for staff to ensure that the communication requirements set out under s 40TA(2) of the Act and paragraph 4.1 of the Better Practice Guide to Complaint Management are consistently met. Particular emphasis should be placed on ensuring that staff acknowledge complaints, explain the complaint process and likely timeframes for completion, and provide regular updates throughout the investigation.

**Recommendation 4**

The AFP provides targeted training to Complaint Management Team investigators about their obligations under the AFP's internal guidelines to ensure that relevant identified witnesses are considered, relevant independent enquires are made and investigation reports indicate if and how relevant evidence was identified and considered.

**Suggestions**

1. The AFP provides targeted training to investigators to ensure complaints are identified and appropriately categorised in accordance with the *Australian Federal Police Categories of Conduct Determination 2013* and section 40RK of the Act.
2. The AFP take steps to ensure that evidence of a decision or endorsement by the appropriate delegate is made on each complaint.
3. The AFP ensures that records adequately outline what decisions were made under s 40TF of the Act, on what specific basis and under what delegated power.
4. The AFP ensures that investigators adequately document any action that is taken or decision made, in relation to conduct or practice issues raised by information provided by a person under s 40SA of the Act.
5. The AFP ensures that a decision or endorsement is made on each complaint, and that records adequately outline what decisions were made and by whom.

6. The AFP ensures that records clearly reflect whether any recommendations made were considered, and details what action was taken.
7. The AFP ensures that any complaints that relate to ongoing investigations are not closed until those investigations are finalised.
8. The AFP provides training and support to investigators to identify and record practice issues. We will follow up on this issue at our next review.
9. The AFP ensures that the correct reasons are recorded when closing a record, provides training and guidance to relevant staff about the meaning of the term 'withdrawn' to ensure that the correct outcome is recorded.
10. The AFP corrects the statistics published in its 2017–18 Annual Report and ensures that the reporting of withdrawn complaints is accurate for its 2018–19 Annual Report.

# INTRODUCTION

Part V of the Act prescribes the process for recording and dealing with conduct and practice 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 practice 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, based on seriousness:

- Category 1 and 2 consists of less serious conduct, such as discourtesy, customer service issues and other conduct that may be regarded as minor misconduct.
- Category 3 consists of issues that represent more serious misconduct, such as an AFP appointee being arrested, summonsed or charged in relation to an alleged criminal offence.
- A corruption issue relates to 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).

A member of the public and/or an AFP appointee may, under s 40SA of the Act, give information to an AFP appointee or the Commissioner that raises an AFP conduct or practice issue. The AFP defines the provision of this information as a complaint.

The Complaint Management Team (CMT) manages AFP practice 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 relevant CMT and is dealt with appropriately. These complaints are dealt with by managers and may be addressed by training and development or another remedial action.

In line with s 40RD of the Act, the Commissioner established AFP Professional Standards (PRS), a unit within the AFP that investigates Category 3 conduct issues and corruption issues<sup>1</sup> engaged in by AFP appointees.

Section 11.4 of the *AFP Commissioner's Order on Professional Standards* (the CO2), which establishes the AFP's professional standards and Code of Conduct, states that Category 3 conduct issues must be investigated by the PRS Investigations Unit, or in certain circumstances, by the Safe Place Team. The Safe Place Team is part of

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<sup>1</sup> Corruption issues may also be investigated by the Australian Commission for Law Enforcement Integrity.

the Reform, Culture and Standards function. The function was established to provide support to complainants and investigate sexual harassment and abuse, following an independent review of the organisation by former Sex Discrimination Commissioner, Elizabeth Broderick AO.<sup>2</sup>

The Act refers to the AFP appointees who are allocated Category 1 and 2 issues as managers and those allocated to investigate Category 3 or corruption issues as investigators. For the purposes of consistency in this report we use the term ‘investigator’ to refer to both roles. AFP appointees who are subject to a complaint are referred to as subject appointees.

### **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 the AFP conduct and practice 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 also 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 the 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.

Based on the results 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, Safe Place and/or complaint management teams and observing their processes
- testing the veracity of records and processes

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<sup>2</sup> See <https://www.afp.gov.au/sites/default/files/PDF/Reports/Cultural-Change-Report-2016.pdf>

- monitoring progress on previous review findings and recommendations.

To ensure the AFP understands what we will be assessing, we provide a broad outline of our criteria prior to each review. This assists the AFP to identify the best sources of information to demonstrate how it conducted its activities.

We encourage the AFP to be transparent and disclose any issues under Part V to our Office and inform us of any remedial action it has taken. It is our practice to examine what progress the AFP has made against our 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 that, if necessary, it can take any immediate remedial action pending our final report.

### **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 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 the AFP to adhere to any orders made by the Commissioner of the AFP. For this reason, in developing our review criteria, we also have 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).<sup>3</sup>

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

## **How we report**

This report covers reviews conducted during the 2018–19 financial year (review period). To ensure procedural fairness, the Ombudsman provides the AFP with a copy of this report for comment prior to presenting it to the Parliament under s 40XD of the Act.

During a review we may identify a range of issues, including minor administrative errors, instances of maladministration and systemic issues. We may make recommendations or suggestions if we identify an issue that has not been addressed by the AFP or we decide 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 we are provided during the review.

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<sup>3</sup> The National Guideline includes the Better Practice Guide as a reference item.

## REVIEW DETAILS

Our Office conducted one review during the 2018–19 financial year, between 1 and 12 April 2019. During this review we examined complaints the AFP finalised between 1 March 2018 and 29 February 2019.

Table 1 provides an overview of the AFP records our Office reviewed, by 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.

Table 1—AFP records reviewed by our Office

Overall complaint Category	Number of CRAMS records finalised by the AFP during the review period	Number of CRAMS records reviewed
Category 1	54	24(44%)
Category 2	164	11 (7%)
Category 3	174	31(18%)
Category 4 (corruption issues)	86	38 (44%)
<b>Total</b>	<b>478</b>	<b>104 (22%)</b>

## PROGRESS SINCE PREVIOUS REPORT

At each review, we monitor progress the AFP has made in relation to previous review findings. At this review, we assessed actions the AFP had taken in response to our 2016–17 annual report.<sup>4</sup>

### ***Appropriate action taken in response to all identified practice issues***

Our 2016–17 annual report included a recommendation that:

The Commissioner of the AFP ensures that appropriate action is taken in response to all identified practice issues, as required by s 40TX(2) of the Act.

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<sup>4</sup> The 2016–17 report was the most recently published report at the time of our review. The Office’s 2017–18 report was published in May 2019.

On 21 March 2019 PRS advised our Office that it had implemented processes for identified practice issues to be tabled and considered by the PRS Oversight Committee (PRS OC). The PRS Operations Committee (OC) Secretariat was to monitor the progress of actions taken in response to practice issues that are accepted and recorded on the practice issues database. The AFP also initiated a project to capture issues identified in the PRS OC meetings, complaint records and past adjudications.

We acknowledge that the AFP has taken steps toward improving its processes for addressing identified practice issues, including the creation of a practice issues register. However, during the review we identified six instances where practice issues were not recorded on the register. These findings are examined below, with a suggestion that the AFP continues to focus on ensuring identified practice issues are added to the register and appropriately actioned.

### ***Outcome letters and adherence to the principles of good complaint handling***

Our 2016–17 annual report also suggested the AFP send outcome letters to complainants as soon as practical, and that it remind investigators of the need to adhere to the principles of good complaint handling and appropriate record-keeping as set out in the National Guideline and the Better Practice Guide.<sup>5</sup> During this review, we identified a number of deficiencies in the AFP’s communication with complainants and made a recommendation related to these findings, detailed below (p. 16-20).

### ***Delegations under s 40TF of the Act***

We made a suggestion that the AFP seek advice about whether the Coordinator Professional Standards had the appropriate delegation to finalise seven complaints under s 40TF of the Act. The AFP has since signed a new instrument of delegation which was created in November 2018. We are satisfied that this resolved any uncertainty about which officers have delegation under s 40TF. After the review the AFP sought advice about the seven complaints.

### ***Consideration of conflict of interest***

In our 2016–17 annual report we acknowledged the progress the AFP had made on a recommendation included in the 2015–16 Annual Report.

The AFP demonstrate the consideration of conflict of interest in accordance with the instructions set out in provisions 13(c) and 14 of the National Guideline.

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<sup>5</sup> The National Guideline includes the Better Practice Guide as a reference item.

PRS advised our Office that it had noted conflicts were being declared as an investigation progresses through relevant stages and built a conflict of interest case note to assist investigators to find the relevant entry. PRS advised that it had drafted a *Better Practice Guide on Conflicts of Interest* and a *National Guideline on Conflicts of Interest*. These documents were not finalised for the current review period and will not have had an effect on the findings identified in this review. We will assess the effectiveness of these guidelines at future reviews.

During the review, we identified a number of instances where conflict of interest declarations were either not attached to complaint records, not signed and/or dated prior to the commencement of an investigation. We also identified issues with the handling of conflicts of interest. As a result we made a recommendation related to these findings, detailed below (p. 14-17).

## **HISTORICAL CONTEXT OF THE REVIEW**

When considering the findings identified during the 2019 review, we conducted a comparative analysis of all findings that the Office has made since its first review in the 2007–08 review period. We found that:

1. Internal timeliness benchmark issues were mentioned ten times and were the subject of three recommendations across the reviews.
2. Issues affecting communication with complainants were mentioned in every reporting year and were the subject of three recommendations.
3. Conflicts of interest were commented on in seven reviews and were the subject of three recommendations.

These three issues are also the subject of three of the four recommendations by our Office in this report and the AFP's progress in addressing these issues will continue to be a focus at future reviews.

## **RESULTS OF THE REVIEW**

Overall, our review indicated the AFP's administration of Part V of the Act, which relates to how conduct issues are dealt with, is comprehensive and adequate in relation to Category 3 complaints.

The AFP is actively progressing work to improve its administration of Category 1 and 2 complaints which we will monitor at future reviews.

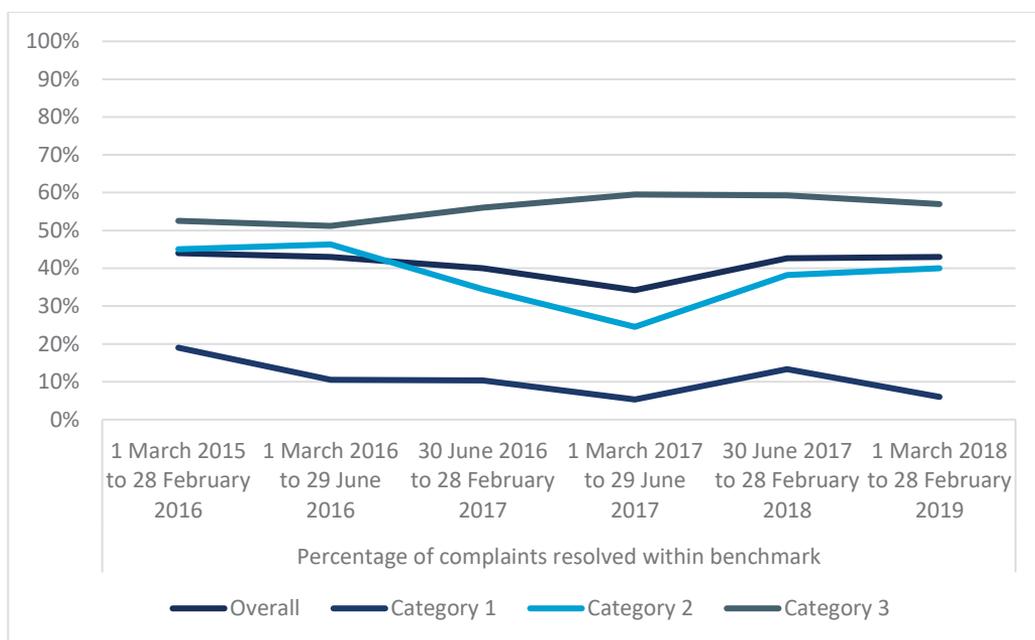
We made four recommendations and ten suggestions for improvement. The main issues identified during the review are detailed below.

### The AFP’s Performance against its internal timeliness benchmarks

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

Figure 1 demonstrates the AFP’s overall performance against Criterion 1 (see [Appendix A](#): detailed Review Criteria) during the review periods, based on information provided by the AFP.

Figure 1—Percentage of complaints resolved within benchmark



In the period since March 2015 there has been insufficient improvement in the resolution of complaints within timeliness benchmarks. Our 2015–16 Annual report saw a significant and marked drop in the resolution of Category 1 complaints from previous years. The average resolution of complaints in that year dropped from 49 per cent to 44 per cent, which has continued.

In our 2016–17 review we found that the AFP’s adherence to its internal timeliness benchmarks had decreased again. In order to address this issue the AFP introduced the Direct Engagement Investigative Strategy (DEIS) in August 2016 and identified software issues in CRAMS, which resulted in incorrect data about the timeliness of its investigations.

In our 2017–18 review we found the AFP’s adherence to its internal timeliness benchmarks remained low and that the AFP was attempting to address the issues by using the DEIS and making changes recommended by the PRS reform project (the reform project) that commenced in January 2017. The DEIS was implemented across all complaint categories, whereas the reform project specifically addressed Category 3 complaints handled by PRS.

Table 2 outlines how the AFP performed against its benchmarks for the current review period, as well as for records finalised in the review period which were received after the introduction of the reform project.

Table 2—Finalised complaint performance against benchmark

Category	Finalised within benchmark for review period	Finalised within benchmark post reform project & DEIS
1	6%	6%
2	40%	40%
3	57%	75%
<b>Overall</b>	<b>43%</b>	<b>47%</b>

The resolution times of Category 1 and 2 complaints remain consistently outside timeliness benchmarks and appear unaffected by the DEIS.

In each review since the 2015–16 review period, Category 1 complaints finalised within internal timeliness benchmarks has been below 20 per cent. For the 2018–19 review period the AFP finalised six per cent of Category 1 complaints within its benchmark standards. Category 2 complaints resolved within the internal timeliness benchmark has remained below 50 per cent since the 2015–16 review period and was only a slight improvement on the 2014–15 review period.

As most of these complaints would have been received after the introduction of the DEIS, we were unable to determine that the DEIS has been an effective measure to help the AFP adhere to its internal timeliness benchmarks for Category 1 and 2 complaints.

**Recommendation 1**

The AFP review its management and handling of Category 1 and 2 conduct issues to ensure that timeliness benchmarks are met.

There are likely many factors that contribute to the AFP's low adherence to internal timeliness benchmarks and we acknowledge that it may not be possible to finalise some complaints within the benchmarks due to particular complexities or sensitivities.

However, we identified administrative issues that contributed to benchmarks not being met, as well as complaints not being promptly allocated for investigation. During the review we identified a technical issue that affected three online complaints with 'On Behalf Of' forms that were delayed in being allocated for investigation. The AFP advised it had identified a total of 36 complaints that were affected by the same issue over a period of 11 months and it had taken corrective action by contacting all affected complainants to explain the delay. We suggest that in future the AFP ensures that all complaints affected by such technical issues include a file note detailing what occurred for future reference and accountability.

Table 2 shows that the percentage of Category 3 complaints finalised within internal timeliness benchmarks improved after the introduction of the reform project, with an increase from 57 per cent to 75 per cent. This is a positive improvement. We note that at the time of the review there were some Category 3 complaints that the AFP had received after the introduction of the reform project and were not yet finalised at the time of our review. As such, we will continue to assess the effectiveness of these reforms at future reviews.

We identified administrative issues which prolonged the time taken to complete Category 3 and 4 complaints. Two complaints were only closed on the PRS case management system and not closed on the CRAMS until a year later, due to an administrative oversight. In these circumstances we suggest the AFP remind its PRS staff to ensure they manage their investigations across both case management systems.

We identified two complaints where the AFP stated that a period of 80 days elapsed without action due to an administrative oversight associated with a high case load and approximately 60 days elapsed due to a lack of resources. Section 40RD(4) of the Act states that, 'In determining and varying the establishment of the unit, the Commissioner must ensure, so far as it is practical for the Commissioner to do so, that the staffing of the unit is adequate to enable the unit to perform its functions under this Part effectively.'

We suggest the AFP ensure staff handling Category 1 and 2 complaints are appropriately resourced to adequately and comprehensively manage complaints within internal timeliness benchmarks. The AFP advised it is exploring this issue as part of its reform project on management of Category 1 and 2 complaints.

## **AFP's performance in dealing with conduct issues accurately and according to the correct procedure**

### ***Management of conflicts of interest***

In considering these criteria we take into account Provisions 13 and 14 of the National Guideline, which require the investigator to whom a complaint has been allocated to complete a Conflict of Interest Declaration (a declaration).

In making the below recommendation, we acknowledge that the AFP has given consideration to improving the procedures and obligations on identifying, reporting and managing conflicts of interest during the review period and it is currently developing draft documents for both a *National Guideline on Conflicts of Interest* and *Better Practice Guide on Conflicts of Interest*.

We made findings in relation to conflicts of interest in relation to 19 complaints, which accounts for approximately 18 per cent of the total number of complaints the Office reviewed.

#### *Conflict of interest declarations not stating the name of members of the public (civilian complainants)*

At the time of the review, conflict of interest declarations did not capture the names of civilian complainants. Requiring the names of a civilian complainant on the form ensures that all person/s have been considered in the declaration. When we raised this finding with the AFP it took action to update its declaration forms to include the names of civilian complainants. We are satisfied with the action AFP took in response to this issue.

#### *Conflict of interest declarations missing, not signed, or not dated at the beginning of an investigation*

Completing a declaration helps an investigator consider whether there is an actual or a perceived conflict in investigating a complaint and/or misconduct issue. Managing conflicts of interest helps to ensure the integrity of investigations and investigation staff.

Our understanding of AFP processes is that, where a conflict of interest has been declared, there will be a record (namely a declaration or like document) to demonstrate how this conflict has been managed.

Our annual report covering the activities between 1 July 2015 and 30 June 2016 included a recommendation that:

The AFP demonstrate consideration of conflict of interest in accordance with the National Guideline.

During this review we identified five complaints where the AFP had insufficient records to demonstrate that a declaration was made where one should have been. We note that four of these complaints were submitted to the AFP after the recommendation in our 2015–16 annual report was published.

Specific instances identified by the review included:

- a declaration was on the record but not signed by the investigator
- no declarations were included from officers involved in assisting the investigation by performing information gathering and drug testing tasks
- an administrative error resulted in declarations appearing to have been completed prior to the complaint being submitted
- a declaration was made when only the first name of a subject appointee was known
- four instances where declarations were completed after the relevant investigations commenced.

In relation to the last four instances, it is important to note that completing declarations before undertaking any action in relation to an investigation greatly reduces the risk of commencing an investigation where an actual or perceived conflict of interest exists. It also reduces the risk of the impartiality of an investigation being called into question.

#### *Conflicts of Interest Declarations not completed by delegated AFP complaint decision makers*

Section 40TF(2) of the Act provides that the Commissioner may exercise their discretion not to take 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.

Provision 14 of the National Guideline requires an AFP appointee instrumented to conduct an investigation to complete a declaration. The AFP's internal procedure recommends that, where a member is of the view that a s 40TF outcome is

appropriate, an email should be drafted to the delegate to review the complaint and, in making a determination, complete a declaration.

We identified complaints during the review which were decided under s 40TF and did not include a declaration. The decision of an AFP decision-maker to not take further action in relation to an AFP appointee is one that will be subject to a high level of scrutiny. In the absence of clear records to the contrary, it may pose a risk that the decision-maker is perceived to have a conflict of interest. Requiring delegated decision-makers to complete a declaration would ensure consistency across all complaints made under Part V of the Act.

Subsequent to the review, the AFP advised our Office that conflicts are also recorded on the OC minutes and it has recently included a checkbox on the OC template. The AFP proposed related updates for its draft National Guideline. We will continue to monitor the progress of this issue at future reviews.

We suggest that the AFP ensures that all declarations, including those recorded in the OC Minutes are recorded in relevant case management systems.

#### *Conflicts of interest not appropriately managed*

The management of conflicts of interest, including perceived conflicts, is essential to maintaining the integrity of an investigation. This is particularly the case when members are conducting internal investigations of other AFP members.

Specific instances identified during the review included:

- A declaration named only the complainant and not the subject appointee. The investigator in this case was named in the log entry detailing the incident, while their own notes stated that they had attended the incident and had recorded comments about the complainant's behaviour. In our view, the investigator's attendance at the incident should have been disclosed and the AFP should have recorded steps to manage any actual or perceived conflict the investigator may have held.
- An investigator made a declaration that they had a prior relationship with an AFP subject appointee who was the subject of the complaint. The investigator was permitted to peer review the investigation report. Approximately ten months after the investigator peer reviewed the report, the AFP identified that the report had not been finalised and the investigator should not have been permitted to review the report.

- There was no declaration on the record in circumstances where a professional relationship existed between the subject appointee and the investigator.

As a consequence of the above findings we make the following recommendation:

### **Recommendation 2**

The AFP provide targeted training to investigators and decision-makers to ensure their conflict of interest obligations are adequately managed and demonstrated in accordance with sections 13(c) and 14 of the AFP National Guideline on Complaint Management, including in circumstances where a decision is made by a delegate under s 40TF of the Act to take no further action in relation to a complaint.

Notwithstanding the above issues, we noted one complaint which demonstrated good practice regarding conflict of interest procedures. In this complaint an AFP member was asked to provide quality assurance on a decision. The member disclosed that they had previously worked with the subject and proposed not to review the complaint. These events were all recorded on the complaint file.

We acknowledge the continued efforts of PRS and CMTs in reinforcing the importance of signing a Conflict of Interest Declaration prior to undertaking an investigation to investigators.

The AFP acknowledged this recommendation and advised it has taken action to address this issue, including finalising and publishing policy documents and training modules for its staff about managing conflicts of interest. It expects to run this training annually. We will assess the effectiveness of this remedial action at our next review in 2021.

### ***Communication with complainants and subject appointees***

The following findings relate to communication with complainants and/or subject appointees such as complaint acknowledgment, explanation of the complaint process, updates on the progress of any investigation and clear communication of complaint outcomes. These findings inform Recommendation 3 of this report.

We identified issues with communication on 32 complaints, which accounts for approximately 31 per cent of the total number of complaints we reviewed.

*No record of the complaint being acknowledged or the provision of an explanation of the complaint process*

Paragraph 4.1 of the Better Practice Guide states that '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, provide contact details and preferably the name of a contact person.

If possible, it should also note how long it is likely to take to resolve the complaint and when the complainant will next be contacted. This is particularly important where the complainant is not an AFP appointee, as they are reliant on the AFP providing an explanation of how the complaint process is managed.

During the review we identified two complaints which did not contain a record of the complaint being acknowledged or the provision of an explanation of the complaint process.

We also identified nine complaints where the complaint was acknowledged, but there were no records to indicate that the complaint process was explained to the complainant. We note that four of the identified complaints were made by telephone or in-person at a Police station. In such circumstances it is possible that an officer involved spoke with the complainant directly and explained the complaint process. However, in the absence of a clear record of what action was taken, such as contemporaneous notes, we were unable to determine that the AFP provided an explanation to the complainants.

#### *Complainant not kept informed of investigation and actions taken*

Section 40TA of the Act states the Commissioner must, so far as practical, 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 practice issue and is advised of any action taken in relation to the issue.

We identified good practice across some complaints, such as one where an initial letter acknowledged the complaint, explained the complaint process and was followed up with monthly updates during the investigation.

However, we also identified nine complaints which contained inadequate or no records of such contact. For example, in one instance a person who self-identified as a complainant was not kept informed on the basis that the AFP had identified them as also being a witness. The complainant was not informed of this decision and as a consequence, was not informed of the outcome of the complaint.

PRS advised that this issue may have resulted from two complaints being merged together. The AFP since advised it reopened the complaint to address the issue

and sent an outcome letter to the complainant. We will follow this up at our next review.

The AFP acknowledged our findings regarding communication delays in Category 1 and 2 complaints. It undertook to ensure that for future complaints, if delays occur, the complainant is updated and details of the delay and any contact or attempted contact are recorded.

#### *Explanation of complaint outcomes insufficient, incorrect or not provided*

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

Explanations given to complainants should be easy to understand and deal with each concern or grievance raised in the complaint. The outcome letter sent to the complainant should describe the nature of enquiries made during the investigation, what factors were taken into account in reaching an outcome, and provide the complainant with information about how to seek a review if they are dissatisfied.

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 the investigation.

We apply the above considerations when assessing outcome letters sent to both complainants and AFP subject appointees. We also test whether the information provided about a subject appointee's review rights is correct.

Provision 24 of the National Guidelines states that AFP appointees who are the subject of a complaint involving a Category 1 or 2 conduct issue may seek an internal review of the decision. Provision 25 states that an appointee who is not satisfied with the final outcome after a Category 1 or 2 internal review may contact our Office, while appointees subject to a Category 3 conduct issue may also contact our Office.

Across the complaints we reviewed, we noted a range of information that was omitted from outcome letters.

In Category 1 and 2 complaints:

- Two outcome letters were sent to complainants that did not explain if or how supplementary information they provided to the investigation was acted on or considered in the outcome.
- Two outcome letters were sent to complainants that did not sufficiently explain the final decision. As an example, one outcome letter detailed that a review of the matters raised had been conducted and that an evidence-based decision was made to take no further action due to insufficient evidence to prosecute. This letter could have included more information about the matters raised, what steps were taken in the complaint process and what factors were taken into account in reaching the decision and the basis of that decision.
- Two outcome letters were sent to subject appointees that did not include sufficient internal review information. In one of these complaints, an internal review was later undertaken and the decision changed, and the outcome letter subsequent to that review did not explain the reasons why the decision had changed.
- An outcome letter was sent to a subject appointee that omitted specific reasons for why the complaint was established, and did not detail whether further action was recommended or would be taken.

In Category 3 and 4 complaints:

- An AFP appointee acting on behalf of a complainant was not notified of the outcome.
- A complainant provided information to a PRS member which was then investigated. An outcome letter was not provided to the complainant. The AFP has acknowledged that in this case it may have been appropriate to provide an outcome letter to the AFP member.
- Two outcome letters lacked a sufficient explanation of a decision not to take further action under s 40TF of the Act.
- An outcome letter sent to an external agency did not provide sufficient information about the outcome of the investigation.
- Two outcome letters sent to subject appointees did not provide sufficient detail about how the outcome was reached. In one of these instances, the letter did not reference that the appointee's natural justice response had been taken into consideration. The AFP advised our Office that it has since made changes to its processes to ensure that a natural justice response is

now included in their templates, and that subjects are provided a final copy of the investigation report.

- An outcome letter sent to a subject appointee did not adequately detail how the allegations were dealt with.
- An outcome letter to a subject appointee could not be located, so we were unable to determine if the letter was provided and/or contained adequate information.

As a consequence of the above findings we make the following recommendation:

### **Recommendation 3**

The AFP provide appropriate guidance, training and support for staff to ensure that the communication requirements set out under s 40TA(2) of the Act and paragraph 4.1 of the *Better Practice Guide to Complaint Management* are consistently delivered. Specifically in relation to ensuring that complaints are acknowledged and that the acknowledgement is recorded, with a full explanation of the complaint process given (and recorded) to complainants and providing timely updates to the complainant on the progress of an investigation.

We acknowledge the ongoing work of PRS and the CMTs to improve their communication with parties to a complaint, and will continue to monitor progress at future reviews.

### ***Consideration of information provided by complainants***

The following findings relate to how the AFP considers information provided by complainants and informs Recommendation 4 of this report.

According to the AFP's internal guidance documents for complaint managers and the CRAMS Category 1 and 2 Complaints Investigation Checklist, an investigator should identify relevant witnesses, make attempts to contact them, conduct relevant independent enquires and produce investigation reports demonstrating that relevant evidence was adequately considered.

In relation to Category 3 and 4 complaint investigations reviewed by our Office, the AFP's approach to considering information provided by a complainant was generally of a high standard and we did not make any findings during the review. All findings in relation to this issue were in relation to investigations of Category 1 and 2 complaints.

We identified five complaints in which we consider the investigator should have pursued further enquiries prior to finalising their investigation and determining an

outcome. In all five complaints there was no record of such enquiries. Where these enquiries are not made, the investigator runs the risk, whether real or perceived, of making a decision without all the relevant information.

In three of these complaints, witnesses who were either identified by the complainant or identifiable in the information provided were not contacted by the investigator. In one complaint, at least one other AFP appointee was potentially present at an incident, but only the subject appointee was questioned. The complaint was not established, on the basis that the complainant and the subject appointee held different versions of events. Alternatively, if the investigator considered these witnesses were not relevant, they should have recorded reasons why they held this view.

Subsequent to our review, the AFP acknowledged that a reference to consideration of other witnesses would provide clarity of the matters considered by the investigator and a more accurate final report.

In two complaints it was identified that security footage was not sought or reviewed. The investigators did not document any reason for the decision not to attempt to view the footage. Subsequent to the review, the AFP provided an explanation as to why the investigator declined to view the footage, but it remained that the investigators did not make a contemporaneous record. In one of the complaints the AFP explained the investigator did not consider the footage, as an admission had already been obtained by the subject appointee.

Nevertheless, we consider the seriousness of allegations made in the complaints should have alerted the investigators to the need to sufficiently document the reasons not to obtain further evidence, even with the benefit of an admission.

As a consequence of the above findings we make the following recommendation:

**Recommendation 4**

The AFP provides targeted training to CMT investigators about their obligations under the AFP's internal guidelines to ensure that relevant identified witnesses are considered, relevant independent enquires are made and investigation reports indicate if and how relevant evidence was identified and considered.

In addition to the four recommendations above, we make a number of further suggestions to the AFP to improve its processes.

### ***Conduct issues correctly identified and categorised***

Under s 40RM of the Act, the Commissioner and the Ombudsman may jointly determine, by legislative instrument, the kind of conduct that comprises the categories of conduct referred to in the Act. Due to the age of complaints that were finalised within the review period, we had regard to both the *Categories of Conduct Determination 2006* and the *Categories of Conduct Determination 2013* (the legislative instruments).

Section 40RK of the Act sets out the categories of conduct to be determined in relation to complaints, including that if conduct would otherwise belong to more than one category, it is taken to belong to the higher or highest of those categories. It sets out that the category to which conduct belongs to may change as more information is obtained.

We identified one complaint in which a single allegation was categorised while other allegations were overlooked. In this instance, all allegations should have been considered when categorising the complaint to ensure it appropriately represented the most serious of the allegations.

We identified four complaints categorised by PRS as Category 3 complaints referring to 'non-significant corruption'. The term 'non-significant corruption' is not referenced in the legislative instruments. These complaints should have been categorised with reference to the legislative instruments, such as a breach of the AFP Code of Conduct or the AFP National Guidelines.

#### **Suggestion 1**

The AFP provides targeted training to investigators to ensure complaints are identified and appropriately categorised in accordance with the *Australian Federal Police Categories of Conduct Determination 2013* and section 40RK of the Act.

The AFP advised it has implemented a record keeping mechanism to capture decisions about complaints and categorisation. It is also working with an external stakeholder to strengthen its administrative practices when handling Category 3 matters. We will assess the effectiveness of these changes at our next review in 2021.

### ***Complainant incorrectly identified as a witness***

Section 40SA(3) of the Act defines a complainant as a person that expressly indicates they have made a complaint or the manner in which the person gives the information necessarily implies that they wish to be kept informed of the action taken in relation to the issue.

The complaint mentioned above (page 17) in which a complainant expressly identified themselves as a complainant in their online report to the AFP, but was instead treated as a witness, was also handled in contravention of this specific requirement. As noted above, the AFP has since advised this may have occurred through an administrative error in the merging of complaint files and that it has reopened the complaint to address the issue. We will follow this up at our next review.

### ***Exercise of a discretion to take no further action under section 40TF***

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. The delegations are outlined in Attachment 1 of the Commissioner's Order on Administration.

In two complaints we were unable to determine if a s 40TF decision was made by a delegate. Following the enquiries we made of the AFP, we are satisfied that the ACT CMT Chair is now aware that evidence demonstrating their decision-making must be recorded.

### **Suggestion 2**

The AFP take steps to ensure that evidence of a decision or endorsement by the appropriate delegate is made on each complaint.

Section 40TF(2) requires that for a decision to take no further action, the Commissioner must be satisfied that one of the bases for the exercise of discretion applies.

We identified one complaint where a decision was made to exercise the discretion, on the basis that the giving of the information was frivolous or vexatious (s 40TF(2)(e)) and further investigation was not warranted in all the circumstances (under s 40TF(2)(k)). The decision recorded by the delegate did not appear to take into account the information the complainant had provided.

Following discussions with the AFP, we were satisfied that appropriate consideration was given to the information provided by the complainant. We considered the contextual information provided verbally to our Office should have been recorded to ensure that the reasons for exercising discretion were appropriately captured.

We note the complainant was informed of the decision to take no further action under s 40TF(2)(k) of the Act; however the record was unclear as to the subsection under which this decision was made.

### **Suggestion 3**

The AFP ensures that records adequately outline what decisions were made under s 40 TF of the Act, on what specific basis and under what delegated power.

### ***Information not held on complaint record or not adequately recorded***

Section 40WA of the Act requires that the Commissioner ensures that adequate records are kept for the purposes of Part V of the Act. This includes any action that is taken in relation to conduct or practice issues raised by information provided by a person under s 40SA of the Act.

The review identified seven instances of non-compliance with record-keeping requirements. In three of the instances we were satisfied with the remedial action that the AFP took to rectify the complaint records.

In three complaints the record-keeping issue was not able to be rectified with clearer content. These included dates, times and details of events not being recorded, inaccurate references to gender and vague terminology used to describe events such as 'spoken to by police'.

In one complaint we were not able to identify if a natural justice response from a subject appointee was taken into account in the outcome. The AFP has advised that there was nothing documented regarding the response. In the absence of evidence that the response was reviewed, we suggest the complaint be reopened so the response can be considered. In response to this finding the AFP advised that the statement of reasons is now included in the investigation report template, to ensure consideration of this document is recorded and similar issues do not arise in future investigations. We will follow up on this issue at the next review.

### **Suggestion 4**

The AFP ensures that investigators adequately document any action that is taken or decision made, in relation to conduct or practice issues raised by information provided by a person under s 40SA of the Act.

### ***CMT quorum endorsement of investigation***

Provision 22 of the National Guideline states that a CMT Quorum must either endorse the findings recommended by the complaint manager or apply new findings to each conduct issue within a complaint.

We identified one complaint where there was no record to demonstrate that the CMT quorum endorsed the findings, as the endorsement occurred via email threads that were not uploaded by the CMT. When it was informed of this issue, the AFP uploaded these emails to complete the record. On another complaint we identified that a system issue had prevented an original decision-maker from endorsing the complaint investigation finding.

#### **Suggestion 5**

The AFP ensures that a decision or endorsement is made on each complaint, and that records adequately outline what decisions were made and by whom.

#### ***Investigator's recommendation not implemented***

Section 40TR of the Act states that if an investigator is satisfied on reasonable grounds that an AFP appointee has engaged in Category 3 or corrupt conduct, the investigator may recommend certain action be taken in relation to that appointee.

We identified one complaint where there was insufficient information on record to confirm that s 40TR recommendations from the investigator were implemented. The AFP advised that the sanctions were delivered to the responsible area but had not been implemented. Subsequent to the review, the AFP advised our Office that this information has been added to the record.

#### **Suggestion 6**

The AFP ensures that records clearly reflect whether any recommendations made were considered, and details what action was taken.

#### ***Complaints finalised while external agency investigation still in progress***

We identified four complaints that were finalised while an external agency investigation was still in progress. Once this action is taken, the complaints are records of AFP conduct issues that have been dealt with and consequently fall within the review period under section 40XA of the Act. This action created difficulty for our review, as the AFP were not able to provide our inspecting staff with access to all relevant information and documents for the complaints, as required under s 40XC of the Act. The AFP successfully negotiated with the external agency to provide us access to the relevant records, however this occurred after the review.

**Suggestion 7**

The AFP ensures that any complaints that relate to ongoing investigations are not closed until those investigations are finalised.

The AFP has advised our Office that it has ceased this practice. We will monitor this issue at future reviews.

***Unable to apply review criteria***

Section 40TN of the Act provides that the Head of PRS generally allocates Category 3 conduct issues and corruption issues for investigation. However, under s 40TP, the issue may only be allocated if the person has appropriate qualifications or experience to investigate the issue.

Based on our assessments at previous reviews, we are satisfied that the AFP has appropriate procedures in place to ensure that investigators have appropriate qualifications, experience and training. At previous reviews we routinely assessed the instruments of transfer to ensure that investigators are appropriately instrumented to conduct investigations. Unfortunately the manner in which the records were provided to our Office during the review inhibited these assessments.

Instead, we held process discussions and sought written advice from PRS to better understand the instrumentation process. While we were unable to make an assessment on individual records, we are satisfied that, on the basis of our process discussion, PRS had procedures in place for investigators to be instrumented during the period reviewed.

***Consideration of practices issues***

Section 40TH(1)(d) states that, for Category 1 and 2 conduct issues, complaint managers must consider whether the information given or obtained raises a practice issue. If the complaint manager is satisfied the information does raise a practice issue, s 40TK(2) requires the complaint manager to bring the issue to the attention of an AFP appointee.

We identified one Category 2 complaint which raised a potential practice issue that was not identified by the complaint manager. We acknowledge that PRS considered the issue did not meet the threshold of a practice issue as procedures were in place to address the issues arising from to the complaint. In our view, further enquiries could have been undertaken by the AFP to determine whether the appointee's actions were reasonable in the circumstances or if a practice issue was apparent.

Section 40TQ(2)(b) states that, for Category 3 conduct issues or corruption issues, an investigator must consider whether the information given or obtained raises a practice issue. If the investigator is satisfied that the information raises a practice issue, s 40TW(2) requires the investigator to identify practice issues in the report, including any recommendations that they consider appropriate to address the practices issue.

We identified three complaints where there was no record on file to indicate the investigator considered practice issues during the investigation. All three complaints related to allegations that AFP members had failed to properly acquit expenses on corporate credit cards. After the review the AFP advised that the practices issues had been identified during these investigations and were referenced in adjudicators' reports.

### **Suggestion 8**

The AFP provides training and support to investigators to identify and record practice issues. We will follow up on this issue at our next review.

### ***Taking action to address practices issues***

Section 40TX(2) of the Act provides that where an AFP practice 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 an investigator's report (s 40TU report), the Commissioner must ensure appropriate action is taken to deal with the issue.

We identified six complaints where identified practice issues were not recorded in the AFP's internal practice issues register. Subsequent to the review, the AFP advised that these issues have been added to the register. We will follow this up at our next review.

Our Office acknowledges that the AFP has taken significant steps to improve its processes for addressing identified practice issues. We encourage the AFP continue to make staff aware of the Commissioner's obligations under the Act to identify practice issues, ensure they are added to the register, and appropriately actioned in accordance with s 40TX(2) of the Act.

### ***Complaints marked as 'withdrawn' correctly***

Provision 17 of the National Guideline states that where a complainant wishes to withdraw a complaint, the complaint manager or responsible CMT must ask the complainant to provide a written request detailing the reasons for the withdrawal. Such a request from the complainant does not preclude investigation of the matter

if the complaint manager or responsible CMT is of the view that there is merit in investigating the complaint.

We identified ten complaints that were administratively closed and marked as 'withdrawn' without any accompanying request by the complainant. In these complaints an administrative decision to select the 'withdrawn' field resulted in an incorrect categorisation of what occurred for each breach; the correct outcome being a finding of not established or a decision to take no further action.

In response to these findings, the AFP advised that it had brought this issue to the attention of all PRS Investigation Coordinators and Team Leaders, and intends to raise the issue at a PRS Process and procedure committee meeting.

### **Suggestion 9**

The AFP ensures that the correct reasons are recorded when closing a record, provides training and guidance to relevant staff about the meaning of the term 'withdrawn' to ensure that the correct outcome is recorded.

The number of withdrawn complaints is reported publically in the AFP Annual Report. Eight of the above records were finalised within the period between 1 July 2017 and 30 June 2018, falling within the 2017–18 Annual Report signed by the Commissioner on 5 October 2018.

### **Suggestion 10**

The AFP corrects the statistics published in its 2017–18 Annual Report and ensures that the reporting of withdrawn complaints is accurate for its 2018–19 Annual Report.

## **Complaints appropriately deleted from the AFP's Complaints Records and Management System (CRAMS)**

### ***Deletion not authorised***

Provision 18 of the National Guideline states that a complaint which has been entered into CRAMS may only be deleted if it was entered in error, a duplicate of another complaint or deemed to be a non-complaint. Only authorised AFP appointees may delete a complaint from CRAMS, in accordance with Attachment 1 of the AFP Commissioner's Order on Professional Standards.

We identified one instance where a complaint was deleted as a result of the incorrect CRAMS number being referenced in an email from the finalising officer.

We are satisfied this was an isolated administrative error and make no suggestions in relation to this finding.

**AFP notification of the Ombudsman of Category 3 conduct issues raised during the period**

Under s 40TM(1), the head of PRS must notify the Ombudsman of all Category 3 conduct issues.

We are satisfied the AFP notified our Office of Category 3 conduct issues raised during the review period.

**Ministerially directed inquiries conducted appropriately**

The AFP advised that no ministerially directed inquiries were conducted during the review period.

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.

Table 3 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.

Table 3—Current investigation timeframe benchmarks

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 (by 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 practice 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 changes, 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 practice issues (s 40TQ(2)(b)) and if so, the investigator identified the practice 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 practice 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 practice 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 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*.





