



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

FOR THE PERIOD 1 JULY 2019 TO 30 JUNE 2020

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

January 2021



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EXECUTIVE SUMMARY

This report summarises the work of the Office of the Commonwealth Ombudsman (the Ombudsman), during the period from 1 July 2019 to 30 June 2020, to review the Australian Federal Police's (AFP) administration of Part V of the *Australian Federal Police Act 1979* (the Act). Part V of the Act sets out arrangements for handling conduct issues and conduct complaints.

During this period, the Office conducted an ad hoc review from 21 to 23 October 2019 and a scheduled records review from 22 to 26 June 2020.

At each review, we assess the AFP's progress against the Office's previous findings. Our reviews over the past 10 years commonly identified issues related to meeting timeliness benchmarks, communication with complainants and declaring conflicts of interest that might impact staff's ability to investigate a complaint. Despite the AFP's actions to remedy these issues, there has not been substantive improvement in these areas and we identified the same issues during our reviews this year.

These issues largely related to the AFP's handling of Category 1 and 2 matters, which involve less serious conduct and are generally handled at a local level. However, we concluded the AFP's handling of Category 3 and 4 complaints, which allege serious misconduct or corruption, was comprehensive and accurate.

The AFP is considering methods to improve its administration of Category 1 and 2 complaints. We will monitor the effectiveness of these at future reviews.

As a result of our reviews during 2019–20, we made 20 suggestions to assist the AFP to improve its management of complaints.

Suggestion 1: The AFP reform the current resourcing model for the investigation of Category 1 and 2 complaints, taking into account different approaches required to handle internal and external complaints in these categories. Ensure the selected model is appropriately resourced and controlled, and consider whether dedicated staffing resources for secretariat and complaint handling would provide more timely results.

Suggestion 2: The AFP review its resourcing of Professional Standards (PRS) to ensure timeliness benchmarks for the resolution of Category 3 complaints are met.

Suggestion 3: The AFP provide training to CMT complaint case managers, PRS investigators and decision-makers to ensure they understand their obligations to adequately manage and demonstrate the management of conflicts of interest in accordance with the instructions set out in sections 13(c) and 14 of the AFP National Guideline on Complaint Management.

Suggestion 4: The AFP undertake quality assurance measures to ensure that conflict of interest declarations are made consistently and contemporaneously on all complaint records requiring investigation or a decision under s 40TF of the Act.

Suggestion 5: The AFP provide appropriate guidance and training 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* (the Better Practice Guide) are adhered to. Specifically, ensuring that:

- a full explanation of the complaint process is given to complainants
- timely updates to the complainant on the progress of an investigation are provided and the complainant is informed of the outcome of the investigation
- investigators make contemporaneous records after each of these actions is taken.

Suggestion 6: The AFP provide training to investigators, complaint managers and CMT secretariats to ensure the fairness principles outlined under paragraph 2.1 of the Better Practice Guide are adhered to when communicating outcomes to complainants.

Suggestion 7: The decision to downgrade one complaint from a Category 3 to a Category 2 conduct issue be reconsidered, taking into account the identified evidence and antecedents not made available to the original decision maker.

Suggestion 8: In relation to the decision to categorise one complaint involving allegations of excessive use of force as a Category 2 complaint, the categorisation decision should be reconsidered taking into account all relevant alleged facts and antecedents identified by the review.

Suggestion 9: In relation to one complaint where an additional allegation was not identified, the complaint be reopened to consider the additional allegation by the complainant.

Suggestion 10: That PRS engage with the managers of AFP appointees subject to complaints involving similar recurrent conduct issues, particularly in circumstances of alleged inappropriate use of force, to ensure the risk of further conduct is managed appropriately.

Suggestion 11: That the AFP provide 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.

Suggestion 12: That the AFP consider amending the PRS Investigations workflow, Case Managers Standard Operating Procedure (CMT SOP) and CMT Investigators Checklist, to ensure all relevant information, antecedents and evidence for each conduct issue is provided to decision makers in investigation reports.

Suggestion 13: In relation to one complaint, the outcome should be reconsidered taking into account relevant audio evidence identified by this review.

Suggestion 14: The AFP provides targeted training to case managers and investigators about their obligations under the AFP's internal guidelines to ensure that relevant evidence is considered, witnesses are contacted, independent enquires are made and investigation reports indicate that all relevant evidence was objectively and adequately addressed.

Suggestion 15: That the AFP ensure that records adequately outline what decisions were made, on what specific basis and under what delegated power.

Suggestion 16: That the AFP ensure it keeps adequate records detailing all information referred to in an investigation report and actions taken by the case manager or investigator during the investigation.

Suggestion 17: That the AFP reform the PROMIS case management system to ensure the instrumented investigator is clearly recorded for each investigation.

Suggestion 18: That the AFP ensure that the decision or endorsement of complaints by a CMT Quorum under provision 22 of the National Guideline is consistently made and adequately recorded.

Suggestion 19: That the AFP provide training and support to investigators to identify and record practices issues.

Suggestion 20: That the AFP Practices and Procedures Register (the Practices Register) be managed to ensure that identified practices issues are listed, monitored and actioned. And that PRS ensure adequate records detailing the actions taken are made.

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 involves information that an AFP appointee may have engaged in conduct that contravenes the AFP professional standards or engaged in corrupt conduct. An AFP practices issue relates to concerns about the practices and procedures of the AFP.

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

- Categories 1 and 2 reflect less serious conduct, such as discourtesy, customer service issues and other matters that may be considered minor misconduct.
- Category 3 includes issues that represent more serious misconduct, such as an AFP appointee being arrested, summonsed or charged in relation to an alleged criminal offence.
- Category 4 is a corruption issue that 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 that raises an AFP conduct or practices issue. 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 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 issues¹ involving 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 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 the Reform, Culture and Standards function and was established, following an

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

independent review of the organisation by former Sex Discrimination Commissioner, Elizabeth Broderick AO,² to provide support to complainants and investigate sexual harassment and abuse.

The Act refers to AFP appointees who are allocated Category 1 and 2 issues as case 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 the subject of a complaint are referred to as subject appointees. PRS and CMT use the Complaints Records and Management System (CRAMS) to manage complaints. PRS also uses the PRS PROMIS case management system (PROMIS) for investigations.

The Ombudsman's role

Under s 40XA of the Act, at least once every 12 months 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, referred to as a records review. 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 reviews and activities the Office conducted during the preceding 12 months. The report must include comments about 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 about its administrative practices.

How we review the AFP

We have developed our 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

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

- testing the veracity of records and processes
- monitoring improvement against our previous review findings and recommendations.

To ensure the AFP understands what we will assess, we provide its staff with 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 continue to be transparent and disclose any issues under Part V to our Office and inform us of any remedial action it has taken. As part of our reviews we examine what progress the AFP has made to address our previous review findings and consider these findings over time 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 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 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 consider the National Guideline and the Better Practice Guide.³

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 2019–20 financial year (the 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 think it is warranted in the circumstances.

We also comment on what we understand of the AFP's policies and procedures which support its administration of Part V of the Act, based on information available during the review.

³ The National Guideline includes the Better Practice Guide as a reference item.

REVIEW DETAILS

Our Office conducted an *ad hoc* review during 2019–20, from 21 to 23 October 2019. The purpose of the *ad hoc* review was to discuss with the AFP its strategies for addressing issues identified across consecutive review periods, namely:

- adherence to internal timeliness benchmarks for handling complaints
- the identification and management of conflicts of interest
- communication with complainants.

Our Office conducted one records-based review during 2019–20, from 22 to 26 June 2020. This review examined complaints the AFP finalised between 1 March 2019 and 29 February 2020.

Table 1 provides an overview of the records our Office reviewed, by complaint Category. Where one CRAMS record referred to multiple complaints finalised during the review period, we reviewed all complaints within the record. (For example, one CRAMS record may contain three separate complaints about two AFP appointees, in which case we would consider all three complaints.)

Table 1

Overall complaint Category	Number of CRAMS records finalised by the AFP during the review period	Number of CRAMS records reviewed
Category 1	59	6 (10%)
Category 2	105	10 (9.5%)
Category 3	141	15 (10%)
Category 4 (corruption issues)	55	14 (25%)
Total	360	45 (12.5%)

PROGRESS SINCE PREVIOUS REPORT

At each review, we monitor progress the AFP has made in relation to previous review findings. At the time of our 2019–20 reviews, the 2017–18 annual report was the most recent report published, so we assessed the AFP’s progress against the findings in that report.

The 2018–19 annual report was published in September 2020 and the AFP’s progress against that report will be included in our 2020–21 annual report.

AFP’s performance against its internal timeliness benchmarks

Our 2017–18 annual report found that the percentage of complaints the AFP resolved within the timeliness benchmarks had remained low across consecutive review periods, particularly in relation to Category 1 complaints. Our report noted that the AFP’s Direct Engagement Investigative Strategy (DEIS), implemented in August 2016, may have resulted in a moderate improvement and we would closely monitor this at future reviews.

The AFP’s performance against its internal timeliness benchmarks, particularly for Category 1 and Category 2 complaints, continues to be an area of concern. We have discussed these findings below (p. 14-16).

No record to demonstrate how perceived conflict of interest was 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.

In our 2017–18 annual report we identified one instance where there was no record demonstrating how the AFP managed the involvement of an investigator, after the investigator recorded a perceived conflict of interest. The AFP advised that a conversation had occurred regarding the perceived conflict of interest and a written report was not created.

Our 2017–18 annual report suggested that the AFP remind team leaders that if a conflict of interest is identified, they should make a written record of how that conflict will be managed and that, if resources allow, better practice would be for a new investigator to be assigned.

In 2019–20 we identified another instance where an investigator declared a conflict and it was not appropriately managed. There were also several other instances where we identified issues that affected the AFP’s management of conflicts of interest. These are detailed in the findings below (p. 16-18).

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 the AFP takes 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.

Our 2017–18 annual report commented on three instances where there was no record of outcome letters being sent to complainants and identified six outcome letters to complainants that did not contain sufficient detail about how the investigator reached their decision. In a further instance, an outcome letter omitted the primary reason why a complaint about a subject appointee’s conduct was ‘not established.’ We suggested the AFP could have improved its communication to the complainant by providing clear and complete reasons for the outcome.

Our 2017–18 annual report noted that the level of detail provided to complainants in outcome letters had improved and advised we would monitor the reasons provided to complainants, particularly members of the public who may be unfamiliar with the investigation process. In 2019–20 we again identified instances where outcome letters contained insufficient or incorrect explanations, as well as instances where there was no record that an outcome letter was sent. This is detailed in the findings below (p. 18-21).

Shortfalls in the recording and implementation of practices issues

The AFP utilises its Practices Register to meet the requirements under s 40TX(2) of the Act which 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,⁴ the Commissioner must ensure appropriate action is taken to deal with the issue. Our 2017–18 annual report detailed 21 instances where practices issues were identified in the CRAMS record but not recorded on the Practices Register. Of these, in 10 instances we were not satisfied the AFP had taken appropriate action to respond to the practices issues identified.

During the June 2020 annual review, we made further findings in relation to the recording of practices issues. We discuss these findings below (p. 27).

⁴ 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.

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, of the AFP's progress in dealing with a conduct or practices issue. The complainant must also be advised of any action that the AFP takes 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) of the Act, an investigator must ensure the AFP appointee has an adequate opportunity to be heard in relation to the conduct issue. Under the CMT SOP, as part of the investigation, investigators are required to identify relevant witnesses and attempt to contact them.

Our 2017–18 annual report included three instances where the AFP did not keep any records that would enable us to be satisfied the legislative requirements for conducting investigations were satisfied. In particular, we highlighted communication issues with both complainants and subject appointees, and questioned whether all relevant witnesses were identified and all relevant evidence was considered. We suggested the AFP remind its investigators of the importance of keeping contemporaneous records to demonstrate that investigations are conducted in accordance with legislative requirements and relevant SOPs.

During the June 2020 annual review, we identified issues affecting communication with complainants and subject appointees, as well as with the consideration of relevant evidence. We discuss these findings below (p. 18-21 and p. 23-24).

Unclear categorisation of conduct issue in adjudicator's report

Under s 40RK(7) of the Act, the Category to which a complaint is assigned may change as more information is obtained in relation to the conduct. Where a Category of conduct is changed, we would expect to see a record on file that includes a reasonable explanation.

Our 2017–18 annual report noted one instance where a minute on file and an adjudicator's report stated that the complaint involved Category 3 conduct, but the record stated it was an established Category 2 complaint. We suggested the AFP review this complaint to ensure that its records were accurate and reflected the appropriate Category for the conduct.

During the June 2020 annual review, we identified further issues with decisions to categorise conduct. We discuss these findings below (p. 21-23).

Investigator 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 SOP 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 their recommended findings and notify the complainant of the outcome in writing.

In our 2018–19 report we detailed one instance where a case note on file indicated the investigator informed the complainant that no further action would be taken in a matter, five months before the CMT quorum endorsed that decision. We suggested that PRS remind the investigator not to inform a complainant of their investigation findings, in accordance with the AFP's procedures.

During the June 2020 annual review we identified one instance where an investigator provided the outcome to a complainant without a CMT quorum endorsement. However, we are satisfied this was an isolated incident and did not reflect usual practice. We consider the Investigator's Checklist is sufficient to prevent further instances of this issue occurring.

HISTORICAL CONTEXT

In our 2018–19 annual report we included a comparative analysis of all findings the Office has made since its first review in the 2007–08 review period, which identified three main issues that were the subject of repeated findings and recommendations. These issues were also the subject of findings and recommendations in our 2019–20 reviews.

In our reports since 2007–08:

- internal timeliness benchmark issues were mentioned 11 times and were the subject of three recommendations
- issues affecting communication with complainants were mentioned in every reporting year and were the subject of three recommendations
- conflicts of interest were commented on in eight reviews and were the subject of three recommendations.

RESULTS OF THE JUNE 2020 REVIEW

At each review we assess the AFP's progress against our previous findings. At the June 2020 records review (the June 2020 review), we identified that many of the issues we previously found were present in its handling of more recent complaints. However, because we provided the 2018–19 annual report to the AFP in August 2020, after the June 2020 review, we did not make any additional recommendations about those issues.

The AFP acknowledged our findings and advised it would take appropriate action to address them.

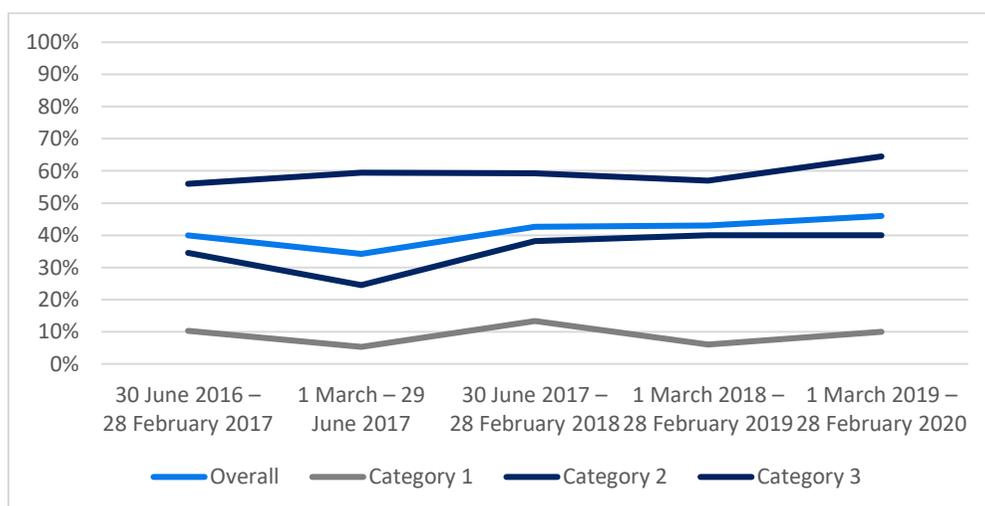
These findings and suggestions largely relate to the AFP's handling of Category 1 and Category 2 complaints. Our review concluded that the AFP's administration of Category 3 complaints is comprehensive and adequate.

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 benchmarks



Resolving complaints in a timely manner is vital in ensuring the effectiveness of a complaint management system, raising conduct and practices issues for resolution, and building public trust. The AFP Service Charter for the Australian Community states a commitment 'to fair, and where possible, timely complaints resolution and adherence to laws and standards which govern the handling of complaints.' There

is a risk that the AFP's persistent low adherence to timeliness benchmarks for resolving complaints may undermine this commitment and negatively impact the way the AFP's administration of Part V of the Act is perceived.

Our Office has commented in consecutive annual reports on the AFP's low adherence to its internal timeliness benchmarks, as well as its strategies for improvement in this area.

Our June 2020 review found that since our last annual review the AFP had improved its adherence to internal timeliness benchmarks overall. Across all Categories, the AFP resolved an average of 46 per cent of complaints within the relevant benchmarks. Notably, there was an improvement for Category 3 complaints. These results indicate that the reform project is having a positive impact by assisting the AFP to meet its benchmark. Despite this improvement, we note that 36 percent of Category 3 complaints were not resolved within the AFP's benchmarks.

We emphasised to AFP the risk posed by the delayed resolution of serious complaints. In particular, we highlighted the recurrence of allegations against subject appointees already under an existing investigation for similar conduct. In these circumstances a delayed investigation potentially increased the risk associated with each subject appointee continuing in their normal duties.

We will continue to monitor this issue at future reviews.

We are also concerned that the AFP's adherence to internal timeliness benchmarks for Category 1 and 2 complaints remains low. A focus of the October 2019 *ad hoc* review was to gain a deeper understanding of how the AFP intends to address this performance. The AFP advised our Office it had commenced projects to address issues in the management of Category 1 and 2 complaints, both at the national level and within ACT Policing. We will monitor the outcomes and impact of these projects at future reviews.

Our 2018–19 report included the following recommendation on this issue:

2018–19 Recommendation: The AFP reviews its management and handling of Category 1 and 2 conduct issues to ensure it meets internal timeliness benchmarks.

To assist the AFP to work toward implementing the 2018–19 recommendation, we make the following suggestions:

Suggestion 1: The AFP reform the current resourcing model for the investigation of Category 1 and 2 complaints, taking into account different approaches required to handle internal and external complaints in these categories. Ensure the selected

model is appropriately resourced and controlled, and consider whether dedicated staffing resources for secretariat and complaint handling would provide more timely results.

Suggestion 2: The AFP review its resourcing of PRS to ensure timeliness benchmarks for the resolution of Category 3 complaints are met.

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

Management of conflicts of interest

When considering the AFP's performance against 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) before they commence an investigation.

During the June 2020 review, we made findings regarding conflicts of interest for 16 complaints, which accounts for approximately 35 per cent of the complaints we reviewed. This represents a 17 per cent increase in findings on this issue, when compared to our 2018–19 annual report.

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

Completing a declaration helps the investigator consider whether there is an actual or perceived conflict for them in investigating a particular 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 is declared, a record (namely a declaration or like document) is made to demonstrate how the conflict was managed.

During the June 2020 review we identified:

- two instances where there were no declarations recorded on the file
- two instances where a declaration was incomplete
- one instance where a declared conflict was not approved by a CMT Chair.

We also identified 10 instances where declarations were not made at the time the investigation commenced. Completing declarations before undertaking any action

in relation to an investigation greatly reduces the risk that the involvement of an investigator who has an actual or perceived conflict of interest might compromise the integrity of an investigation.

In response to our findings the AFP noted that PRS processes and conflict of interest requirements have changed significantly over the periods during which some of the investigations we reviewed were active and, in some instances, were not reflective of current processes.

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 a member of PRS who is 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, they should draft an email to the delegate to ask them to review the complaint. Before performing such a review the delegate should complete a declaration.

In our 2018–19 annual report, we noted the AFP's advice that it had introduced a requirement to record a declaration in the minutes of meetings where a decision under s 40TF of the Act is made and inserted a checkbox for this issue into relevant templates. During our June 2020 review, in one instance we were unable to locate a declaration by a s 40TF delegate.

Our 2018–19 report included the following recommendation on the issue of management of conflicts of interest:

2018–19 Recommendation: 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.

We will monitor the AFP's progress against this recommendation at our next review in April 2021. To assist the AFP to work towards implementing this recommendation, we make the following suggestions:

Suggestion 3: The AFP provide training to CMT complaint case managers, PRS investigators and decision-makers to ensure they understand their obligations to adequately manage and demonstrate the management of conflicts of interest in accordance with the instructions set out in sections 13(c) and 14 of the AFP National Guideline on Complaint Management.

Suggestion 4: The AFP undertake quality assurance measures to ensure that conflict of interest declarations are made consistently and contemporaneously on all complaint records requiring investigation or a decision under s40TF of the Act.

Communication with complainants and subject appointees

The following findings relate to communication with complainants and subject appointees, acknowledging complaints, explaining the complaint process, providing updates on the progress of any investigation and clearly communicating complaint outcomes.

During the records based review, we made findings about communication with complainants and subject appointees for 17 complaints, which accounts for approximately 38 per cent of the total number of complaints the Office reviewed.

No record of 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 the name of a contact person.

Where possible, the acknowledgement should explain 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 because they are reliant on the AFP to explain how the complaint process is managed.

Internal AFP guidance material prompts investigators to provide this information to complainants at their initial contact.

The June 2020 review identified four instances where the complaint was acknowledged, but there were no records to indicate that the complaint process was explained to the complainant. We note that three of these complaints were made by telephone and it is possible an officer involved explained the complaint

process verbally at that time. However, in the absence of a record of this, we were unable to determine that the AFP explained the process to the complainants.

In its response to our findings the AFP noted that in one instance the complainant did not respond to multiple telephone contact attempts and officers did not have the opportunity to provide an explanation of the complaint process. While we acknowledge these difficulties, we consider it was open to the AFP to write to the complainant to provide this information.

Complainant not kept informed of investigation and actions taken

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, of the AFP's progress in dealing with a conduct or practices issue. The complainant must also be advised of any action that the AFP takes in relation to the issue.

We identified five complaints where periods of between two and six months lapsed without an update to the complainant. This included two instances where no contact occurred at all and three instances where a singular contact occurred before the final outcome letter was sent to the complainant.

We also identified instances where better record keeping or processes would have clearly identified who the complainants were and how they wished to be contacted. In one instance, two complainants made separate complaints about the same subject and course of conduct and both indicated they wished to be kept informed of the investigation. However, only one complainant was updated during the course of the investigation, following which outcome letters were sent to each complainant separately.

In another two instances there was ambiguity about who the complainant was, due to unclear records. This created difficulty for us in assessing compliance in these instances.

Explanation of complaint outcomes insufficient, incorrect or not provided

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 that when a complaint investigation is completed, the complainant should be told the particulars of the investigation, including any findings or decision reached.

Complainants should be given explanations that are easy to understand and deal with each concern or grievance that was raised in the complaint. The outcome

letter sent to the complainant should describe the nature of the enquiries made during the investigation and the factors that were considered in reaching an outcome. The outcome letter should also provide the complainant with information about how to seek a review if they are dissatisfied.

Providing a full explanation of the outcome to a complainant 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, which is an important procedural fairness requirement, 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 but without the need to first seek an internal review.

During the records review we identified:

- one instance where the AFP did not send an outcome letter
- one instance where we could not locate the outcome letter provided to the complainant
- one instance where a complaint was finalised under s 40TF of the Act but this outcome was not advised to the complainant.

In response to our findings the AFP noted that the last instance was an isolated case and did not reflect current processes.

We also identified four instances where outcome letters did not use objective language. For example, one outcome letter informed the complainant they had wrongly interpreted the subject appointee as being rude. This wording questioned the personal view and credibility of the complainant rather than explaining the evidence that determined the outcome.

In our 2018–19 annual report we recommended:

2018–19 Recommendation: 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 will monitor the AFP's progress against this recommendation during the next review period. To assist the AFP to work toward implementing this recommendation, we make the following suggestions:

Suggestion 5: The AFP provide appropriate guidance and training 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 are adhered to. Specifically, ensuring that:

- complainants are provided with a full explanation of the complaint process
- complainants are provided with timely updates about the progress of an investigation and informed of the outcome of the investigation
- investigators make contemporaneous records to demonstrate each of these actions has been taken.

Suggestion 6: The AFP provide training to investigators, complaint managers and CMT secretariats to ensure the fairness principles outlined under paragraph 2.1 of the Better Practice Guide are adhered to when communicating outcomes to complainants.

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 also sets out that the category to which conduct belongs may change as more information is obtained.

During the June 2020 review we identified several instances where conduct issues were not correctly identified and categorised, including:

- one instance where there was no record that antecedent complaints against a subject appointee and an audio recording of the conduct involved in the complaint were considered when determining the category of conduct
- one instance where a complaint with multiple allegations of excessive use of force occasioning injury was categorised as a Category 2 conduct issue. The legislative instruments explicitly state that a Category 3 complaint includes any complaint regarding excessive use of force where an injury is sustained
- one instance where an allegation that formed part of the complaint was not identified or categorised and therefore not investigated.

We made the following suggestions to the AFP:

Suggestion 7: The decision to downgrade one complaint from a Category 3 to a Category 2 conduct issue be reconsidered taking into account the identified evidence and antecedents not before the original decision maker.

Suggestion 8: In relation to the decision to categorise one complaint involving allegations of excessive use of force as a Category 2 complaint, the categorisation decision should be reconsidered taking into account all relevant alleged facts and antecedents identified by the review.

Suggestion 9: In relation to one complaint where an additional allegation was not identified, the complaint be reopened to consider the additional allegation by the complainant.

Suggestion 10: That PRS engage with the managers of AFP appointees subject to complaints involving similar recurrent conduct issues, particularly in circumstances of alleged inappropriate use of force, to ensure the risk of further conduct is managed appropriately.

Suggestion 11: That the AFP provide 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.

Suggestion 12: That the AFP consider amending the PRS Investigations workflow, CMT SOP and CMT Investigators Checklist, to ensure all relevant information, antecedents and evidence for each conduct issue is provided to decision makers in investigation reports.

In response to our findings, the AFP provided further information about how antecedent allegations are considered in the complaint process, which has assisted our understanding of this issue. The AFP advised it updated the PRS Investigations workflow to require antecedents to be considered when determining sanctions for established Category 2 conduct issues. The AFP further advised that, as of November 2020, it has incorporated guidance about reviewing the established complaint history of subject appointees into its internal reference guides.

We will consider these changes in future reviews.

Complaint investigations and processes: Evidence based decision making, clear decisions and record keeping

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 enquiries and produce investigation reports demonstrating that relevant evidence was adequately considered.

For Category 3 and 4 complaint investigations reviewed by our Office, we understand that, under the PRS Evidence Matrix, an investigator should obtain sufficient evidence during their investigation of the conduct issue to establish the outcome. Where an investigator decides not to pursue a particular course of enquiry (for instance, not interviewing a particular witness), there should be an explanation for this decision on the record.

Our records review identified four instances where the investigation report did not include sufficient consideration of all of the available evidence. Three of these complaints were also identified and summarised as conduct issues that we considered were not correctly categorised. In relation to one of these instances, we consider audio evidence not considered by the investigator should have been included in the investigation (this complaint is subject to suggestion 13 below).

In one of these instances, the investigator did not contact a potential civilian witness to a serious allegation of assault occasioning harm.

In the fourth instance, the investigator did not interview an identified potential witness in a complaint that involved allegations of excessive use of force. A case note on the investigation file indicated that it may be necessary to interview the

potential witness but there were no further notes to explain why this did not occur.

The AFP advised that, in relation to this fourth instance, the possible interview was a consideration, not a requirement of the investigation. We acknowledge this but consider the circumstances of the complaint meant the reasons for the investigator's decision not to speak with this person should have been clearly recorded.

In response to these findings the AFP also provided further information about the consideration of antecedents during a complaint investigation and by the PRS Panel when determining sanctions. We will consider this information in the context of future reviews.

We also identified three instances where the language in investigation reports submitted to decision-makers was not sufficiently impartial. Paragraph 2.1 of the Better Practice Guide states that complaint handling staff should not be defensive about their agency or its staff. A complaint should be treated on its merits. There should be a full and objective evaluation of the facts or evidence provided in support of a complaint. Contrary evidence provided by agency staff should not be given added weight or be presumed to be correct. If one version of events is preferred over another, there should be good reasons for doing so.

We accept that, in some instances, complaint investigators will need to assess the parties' credibility to determine how to weigh the evidence they provide. However, in our view the language used in three records did not present an objective evaluation of the facts or evidence provided in support of a complaint. Specifically:

- one instance where a team leader expressed personal views about the parties to a complaint in a report recommendation
- one instance where the investigation report referenced hearsay of the subject appointee that the complainant had a medical condition and was vexatious
- one instance where an investigation report included unsubstantiated subjective observations about the complainant and a witness.

The language used in these instances, while not provided to the complainants or subject appointees and not appearing to affect the final outcome, did not present an objective evaluation of the facts or evidence in support of a complaint.

Exercise of a discretion to take no further action under Section 40TF

Section 40TF(2) of the Act provides that the Commissioner may exercise a 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.

We identified one complaint where a decision made under s 40TF of the Act was recorded without the delegated person's specific position being clearly stated on the decision record. In addition, the decision-maker stated their support for the decision under s 40TF, rather than stating that they were making the decision as the delegated decision-maker.

In response to this finding the AFP updated relevant templates to include the rank and specific position of decision makers.

Information not held on complaint record or not adequately recorded

Section 40WA of the Act requires the Commissioner to ensure 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 practices issues raised by information provided by a person under s 40SA of the Act.

We identified three complaints where information was not held on a complaint record or not adequately recorded:

- one instance where the digital record of interview was removed
- one instance that made reference to a defence brief which was not attached to the record and could not be located
- one instance where an email to the complainant was not on the record.

We also identified that the AFP did not consistently update the AFP PROMIS case management system when complaints were assigned or reassigned to PRS investigators. In some complaints this issue affected our ability to determine the instrumentation of PRS investigators and assess the completion of conflict of interest declarations.

In response to these findings the AFP advised it was taking remedial action to address the identified instances and provided sufficient records for us to be assured that appropriate action had been taken in relation to the missing email.

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 five complaints where, due to members changing, the CMT Quorum that considered the complaint did not constitute the same membership as the CMT members who subsequently signed off the complaint outcome. We could not determine if the replacement CMT members in each complaint had read or considered the complaint or the previous assessment of the original CMT Quorum.

In one instance, which we were satisfied was an isolated occurrence, the complainant and subject appointee were informed of the outcome without the CMT Quorum having endorsed the findings. The complaint remained open and was later resolved by a decision pursuant to s 40TF of the Act.

In response to our findings about the CMT quorum endorsement, the AFP advised it had updated CMT guidelines to address this issue. We will confirm this action at our next review.

We have not made any recommendation to the AFP in this report as our previous annual report made the following recommendation to the AFP:

2018–19 Recommendation: The AFP provides targeted training to CMT investigators about their obligations under AFP’s internal guidelines to ensure that identified relevant witnesses are considered, that relevant independent enquires are made and investigation reports indicate that relevant evidence was adequately considered.

We will monitor the progress the AFP makes in response to this recommendation at our next review in April 2021. To assist the AFP to work toward implementing this recommendation and to address the issues raised in this report we make the following suggestions:

Suggestion 13: In relation to one complaint, the outcome should be reconsidered taking into account relevant audio evidence identified by this review.

Suggestion 14: The AFP provides targeted training to case managers and investigators about their obligations under the AFP’s internal guidelines to ensure that relevant evidence is considered, witnesses are contacted, independent enquires are made and investigation reports indicate that all relevant evidence was objectively and adequately addressed.

Suggestion 15: The AFP ensure that records adequately outline what decisions were made, on what basis and under what delegated power.

Suggestion 16: The AFP ensure it keeps adequate records detailing all information referred to in an investigation report and actions taken by the case manager or investigator during the investigation.

Suggestion 17: The AFP reform the PROMIS case management system to ensure the instrumented investigator is clearly recorded for each investigation.

Suggestion 18: The AFP ensure that the decision or endorsement of complaints by a CMT Quorum under provision 22 of the National Guideline is consistently made and adequately recorded.

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 practices issue. If the complaint manager is satisfied the information does raise a practices issue, s 40TK(2) requires the complaint manager to bring the issue to the attention of an AFP appointee.

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 practices issue. If the investigator is satisfied that the information raises a practices issue, s 40TW(2) requires the investigator to identify practices issues in the report, including any recommendations they consider appropriate to address the practices issue.

We identified one instance where an identified practices issue was not noted and recorded on the Practices Register. This was in relation to a lack of information about when particular weapons were authorised for use.

We also performed a spot check of the Practices Register and identified historical practices issues added since 2015 had not been updated since their initial listing.

We commonly identify issues during our reviews about AFP members identifying, recording and monitoring practices issues and make the following suggestions:

Suggestion 19: The AFP provide training and support to investigators to identify and record practices issues.

Suggestion 20: The Practices Register be managed to ensure that identified practices issues are listed, monitored and actioned, and that PRS ensure adequate records detailing the actions taken are made.

Administrative outcome of withdrawn unclear

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. A request from the complainant to withdraw their complaint does not prevent the matter being investigated if the complaint manager or responsible CMT considers there is merit in doing so.

We identified one complaint that was marked as withdrawn but also recorded as having been resolved under s 40TF of the Act. After the review the AFP advised that the complaint had been withdrawn and the reference to a resolution under s 40TF was made in error. We were able to confirm the AFP subsequently informed the complainant that their complaint had been withdrawn in accordance with their request.

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

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, is a duplicate of another complaint or is 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 made no findings about the AFP's deletion of complaints.

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 it did not conduct any ministerially directed inquiries 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.

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(1)(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)).
- 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 Standard Operating Procedure.

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 Standard Operating Procedure 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 National Guideline and the *Commonwealth Ombudsman Better Practice Guide to Complaint Handling*.