



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

FOR THE PERIOD 1 JULY 2020 TO 30 JUNE 2021

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

**August 2022**





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## EXECUTIVE SUMMARY

This report summarises the work of the Office of the Commonwealth Ombudsman (the Office), during the period from 1 July 2020 to 30 June 2021, 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 the AFP's handling of issues and complaints about police conduct.

During this period, the Office conducted a records review from 19 to 30 April 2021. This review examined complaints the AFP finalised between 1 March 2020 and 28 February 2021.

At each review, we assess progress by the AFP 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. Our Office acknowledges the structural changes undertaken by the AFP to address these issues (p. 9). The recommendations and suggestions made in this report reflect the ongoing nature of the compliance issues and, to a degree, the retrospective nature of our review.

In total, we made 7 recommendations, 13 suggestions and 3 better practice suggestions (listed below) to assist the AFP to improve its management of complaints.<sup>1</sup> A recommendation reflects a serious compliance issue or an issue on which the AFP has not made sufficient progress following previous inspections. A suggestion reflects less serious and isolated issues where we consider the AFP should take action to improve. Better practice suggestions highlight ways the AFP might refine its practices where an existing practice may expose the agency to a risk of non-compliance.

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<sup>1</sup> As this report summarises the work of the Office during the relevant period, not all suggestions made to the AFP have been included in this report.

## LIST OF RECOMMENDATIONS AND SUGGESTIONS

### **Recommendation 1**

The AFP ensure PRS – as the AFP unit established in accordance with s 40RD(4) of the Act – takes action to meet timeliness benchmarks for the resolution of Category 3 complaints consistently, whether through resourcing or another mechanism.

### **Recommendation 2**

The AFP ensure any updated frameworks for the investigation of Category 1 and 2 complaints are:

- implemented as soon as practicable, and
- sufficient to administer complaints under the Act in accordance with its internal timeliness standards.

### **Recommendation 3**

The AFP provide training to CMT complaint case managers and PRS investigators to ensure they understand (and can demonstrate) their obligations to adequately manage conflicts of interest in accordance with the instructions set out in section 4.2 of the National Guideline.

### **Recommendation 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.

### **Recommendation 5**

The AFP provide appropriate guidance and training for staff to meet communication requirements set out under s 40TA(2) of the Act and paragraph 4.1 of the Office's Better Practice Guide to Complaint Handling (the Better Practice Guide). These requirements include:

- explaining the complaint process to complainants
- providing timely updates to the complainant regarding progress of an investigation
- informing the complainant of the outcome of the investigation, and
- making contemporaneous records before and after communication action.

### **Recommendation 6**

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 s 40RK of the Act. This should include identifying additional conduct issues identified during a complaint investigation.

### **Recommendation 7**

The AFP provide targeted training to case managers and investigators regarding their obligations under the AFP's internal guidelines to ensure that relevant evidence is considered, witnesses are contacted, independent enquiries are made, and investigation reports confirm that all relevant evidence is objectively and adequately assessed and independently determined.

### *Referenced suggestions*

**Suggestion 1:** The AFP amend its National Guideline to remove the definition of conciliate and rely on the term's ordinary meaning.

**Suggestion 2:** The AFP formally engage with the Ombudsman to discuss and consider amendments to the Categories of Conduct Determination.

**Suggestion 3:** The AFP formally request that our Office review the joint obligations under s 40TO(6) of the Act in relation to allocating Category 3 complaints to external persons for investigation.



**Suggestion 4:** The AFP obtain legal advice on the allocation of complaints without consultation with the Ombudsman, as well as the ability to make instruments of allocation with post-dated effect.

**Suggestion 5:** The AFP standardise its instructions when emailing complaint allocations for informal management, to ensure consistent instructions to complete a declaration are given.

**Suggestion 6:** The AFP ensure the outcomes of informally managed complaints are consistently delivered to complainants and include information on what to do if dissatisfied with how their complaint was managed, including how to contact the Ombudsman.

**Suggestion 7:** The AFP implement quality assurance methods to ensure that allegations are appropriately categorised pursuant to the Determination and s 40RK(6) of the Act before referral for informal resolution.

**Suggestion 8:** The AFP reconsider decisions made under s 40TF(2)(a) of the Act when conduct occurred more than 12 months before being reported – but in circumstances where the complainant was not aware of the conduct at that time it occurred – and ensure any future use of this provision is clearly demonstrated in accordance with the Act.

**Suggestion 9:** In circumstances where external persons are engaged to perform actions under Part V of the Act, the AFP ensure the external person follows the terms of reference for the investigation and provides sufficient reasons for their findings.

**Suggestion 10:** The AFP ensure it keeps adequate records detailing all information referred to in an investigation report, actions taken by the investigator during the investigation, and any outcome decisions made.

**Suggestion 11:** We repeat our previous suggestion, that the AFP Practices and Procedures Register (the Practices Register) be regularly updated and reviewed to ensure identified practices issues are listed, monitored and actioned in an effective and timely manner.

**Suggestion 12:** The AFP should implement measures to capture practice issues during the receipt and informal resolution of complaints in accordance with s 40SA and s 40TH(1)(d) of the Act.

**Suggestion 13:** The AFP should ensure investigators are aware of the processes by which a complainant may withdraw a complaint, and the obligation to either obtain written confirmation of the withdrawal or to record any reasons for their inability to obtain written confirmation under section 12 of the National Guideline.

**Better Practice Suggestion 1:** The AFP identify any barriers to making a sexual harassment complaint to PRS and ensure those barriers are removed as far as possible, and complainants are supported.

**Better Practice Suggestion 2:** The AFP ensure that when workplace issues are brought to Safe Place and a person chooses not to pursue a complaint through PRS, the reasons for this are recorded and monitored. This will ensure the AFP understands and can respond to these reasons.

**Better Practice Suggestion 3:** The AFP take steps to ensure all staff who are administering and investigating sexual harassment and sexual abuse allegations are provided with sufficient support and specific training to fulfil the requirements of Recommendation 17(a) of the Broderick Report.<sup>2</sup>

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<sup>2</sup> *Culture Change: Gender Diversity and inclusion in the Australian Federal Police*, Elizabeth Broderick & Co., 2016. Available at <https://www.afp.gov.au/sites/default/files/PDF/Reports/Cultural-Change-Report-2016.pdf>.

## 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 4 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.
- The highest, and most serious, is conduct giving rise to 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 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 issues<sup>3</sup> involving AFP appointees.

### **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

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<sup>3</sup> Corruption issues may also be investigated by the Australian Commission for Law Enforcement Integrity (ACLEI).

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.

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

Based on the results of our reviews, we may make recommendations and suggestions to the AFP about its administrative practices.

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 under Divisions 3 and 4 of Part V of the Act.

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

We developed our review criteria based on legislative requirements and best practice standards in complaint handling. Our review criteria and the methodology for how we assess the AFP is at **Appendix A**.

In addition to the provisions under Part V, s 39 of the Act requires AFP appointees to adhere to any orders made by the Commissioner of the AFP under s 38 of the Act. For this reason, in developing our review criteria, we also consider:

- 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* (the Determination), 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 AFP's National Guideline and the Office's Better Practice Guide.<sup>4</sup>

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<sup>4</sup> On 23 February 2021, our Office published an updated version of our previous Better Practice Guide (published in 2009). Except for a five-day period, the review period occurred before the new guide was published. As a result, all references in this report are to the previous guide.

To ensure the AFP understands what we will assess, we provide its staff with an outline of our criteria prior to each review. This helps the AFP to identify the best sources of information to demonstrate how it conducted its activities.

We focus our reviews on issues that may be systemic and have a significant 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
- monitoring improvement against our previous review findings and recommendations.

We encourage the AFP to continue to be transparent and disclose to our Office any issues it identifies with its activities under Part V and inform us of any remedial action it takes.

As part of our reviews, we examine what progress the AFP made to address our previous review findings and consider these findings over time to identify any systemic issues. Our previous report made 20 suggestions to help the AFP improve its management of complaints. This report references the progress made by the AFP in relation to previous findings where it assists to explain the context of our findings.

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.

### **How we report**

This report covers our review conducted during the 2020–21 financial year (the review period).

To ensure procedural fairness, the Ombudsman provides the AFP with a review report outlining our findings, recommendations, suggestions and better practice suggestions and invites the AFP to provide any comments on the review report. The review report, informed by our consideration of the AFP's comments, forms the basis of this annual report.

## Terminology

The Act refers to 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 the subject of a complaint are referred to as subject appointees. The Professional Standards (PRS) unit and Complaints Management Team (CMT) use the Complaints Records and Management System (CRAMS) to manage complaints. PRS also uses the PRS PROMIS case management system (PROMIS) for investigations.

Provided that certain criteria are met, the Act permits the AFP to administer Category 1 conduct or practices issues without the requirement to record the details of the information provided, and deal with the information in accordance with the Commissioner's orders about how AFP conduct or practices issues are dealt with. These instances are referred to in this report as informally managed complaints.

## REVIEW DETAILS

Our Office conducted our review from 19 to 30 April 2021. This review examined complaints the AFP finalised between 1 March 2020 and 28 February 2021.

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 3 separate complaints about 2 AFP appointees, in which case we would consider all 3 complaints.

**Table 1**

<b>Overall complaint Category</b>	<b>Number of CRAMS records finalised by the AFP during the review period</b>	<b>Number of CRAMS records reviewed</b>
Category 1	89	31 (35%)
Category 2	79	16 (20%)
Category 3	128	38 (30%)
Category 4 (corruption issues)	39	13 (33%)
<b>Total</b>	<b>335</b>	<b>98 (29%)</b>

## **Progress since previous inspection**

The AFP advised our Office of several reforms it took to address the issues raised by our Office in previous reports. This includes, but is not limited to:

- Reforming complaint-handling for Category 1 and 2 complaints (discussed below at p. 12)
- Formalising a trial of ACT Policing Category 1 and 2 complaints to complaint investigators at the management level into standard practice
- Ongoing workplace training for PRS and CMT members
- Appointing a National Team Leader within PRS to perform project work focused on resolving compliance issues within PRS and CMT teams
- Permanently appointing a PRS complainant liaison officer
- Ongoing use of the Direct Engagement Investigative Strategy, which the AFP advised has continued to reduce the time taken to resolve Category 3 complaints
- Implementing a process to consider previous related conduct of an appointee subject to a complaint.

Some of the AFP's planned reforms are ongoing. Although we noted repeated compliance issues again in this year's review, we appreciate the significant reforms and projects advised by the AFP that are intended to have a longer-term impact on the agency's administration of Part V. We will continue monitoring the development, implementation and outcomes of the AFP's reforms at future reviews.

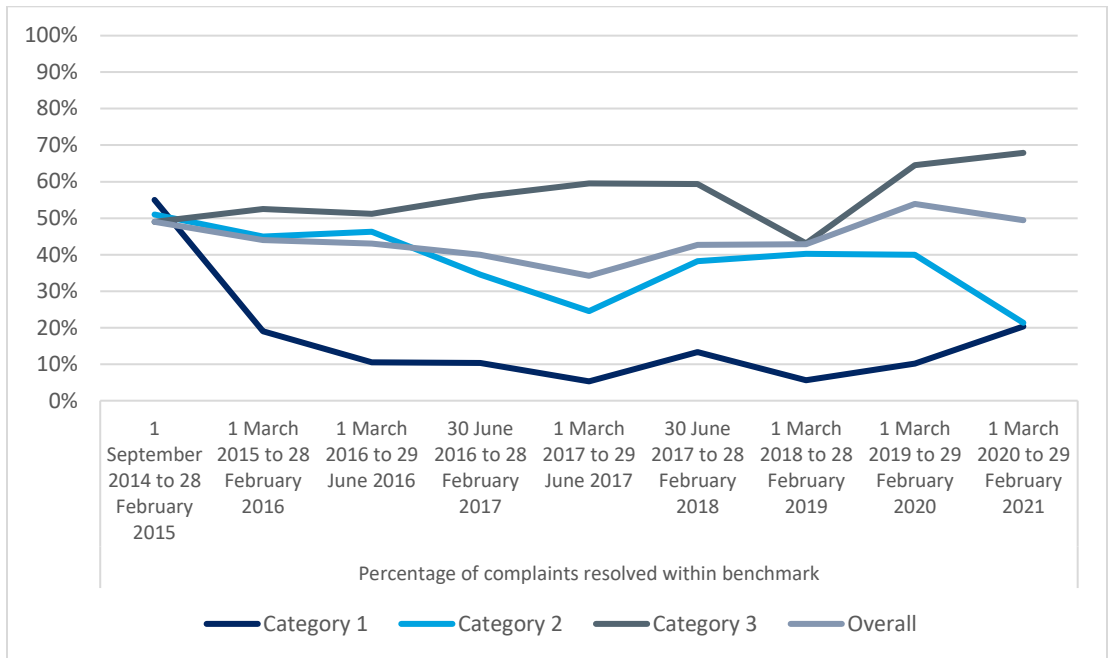
## **RESULTS OF THE APRIL 2021 REVIEW**

### **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 (see **Appendix A**).

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 timeliness 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 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.

The AFP’s performance against its internal timeliness benchmarks has been a subject of repeat findings and recommendations since our first review in the 2007– 08 period and identified as an issue in 12 review periods with 3 previous recommendations.

We identified an overall decrease in the timely resolution of complaints within benchmarks compared with our previous inspection. Our review found that 49.5% of complaints were resolved within the benchmark, down from almost 54% resolved within benchmarks in 2019–2020. In individual complaint categories for the 2020–21 review period, we found:

- 20% of Category 1 complaints were resolved within the benchmark, an improvement of 10% compared to the 2019–20 review period.



- 20% of Category 2 complaints were resolved within the benchmark, a decrease in performance by 20% compared to the 2019–20 review period.
- 68% of Category 3 complaints were resolved within the benchmark, an improvement of 3.5% compared to the 2019–20 review period.

### *Category 3 complaints*

Our Office engaged with PRS about further impediments to the timely resolution of Category 3 complaints, noting the timeliness of resolution has improved slightly. These impediments included:

- COVID-19 related impacts on the ability to perform investigations over the course of the review period
- staffing changes within PRS
- the resolution of older complaints raised before the review period.

We acknowledge these issues and our Office confirmed the 6 oldest Category 3 complaints (dating from 2011–2016) were resolved during the review period.

To support further improvements to resolution timeliness for Category 3 complaints, we recommended:

#### **Recommendation 1**

The AFP ensure PRS – as the AFP unit established in accordance with s 40RD(4) of the Act – takes action to meet timeliness benchmarks for the resolution of Category 3 complaints consistently, whether through resourcing or another mechanism.

In response, the AFP advised it took actions resulting in a marked decrease in the number of active investigations, in particular Category 3 investigations. The AFP also advised our Office of additional action it taken, including, but not limited to:

- The PRS Operations Committee undertaking further due diligence inquiries before a matter is accepted as a Category 3 investigation, resulting in an overall reduction.
- Created and resourced additional positions within PRS to address identified issues.

Our Office will assess the effectiveness of these measures at future reviews.

### *Category 1 and 2 complaints*

Our Office engaged with the ACT CMT, as the CMT responsible for the highest number of complaints, to discuss the timely resolution of Category 1 and 2 complaints. We were advised that a review identified 2 issues contributed to the increase in the time required to complete complaint investigations. However, ACT CMT advised this additional time resulted in improvements elsewhere in the complaint process.

The first issue relates to the recently formalised practice of allocating complaint investigations to managers. While the time to complete investigations increased due to this practice, ACT CMT advised that investigations were more thorough and comprehensive as a result.

The second issue relates to the new National Guideline. Since 29 October 2020, the National Guideline requires CMT complaints to be subject to a 'natural justice loop', where the CMT provides 7 days for an AFP appointee subject to a complaint to respond to the investigation findings. This resulted in extended delays in resolving Category 2 complaints due to the unavailability of subjects to a complaint to participate in the process. However, ACT CMT also received positive feedback regarding this process.

The AFP advised it was commencing a reform project in July 2021 for the handling of Category 1 and 2 complaints. However, we remain concerned that adherence to timeliness benchmarks for Category 1 and 2 complaints fell below 50% in the period ending 28 February 2016 and has not risen beyond this benchmark since that time. While we acknowledge this reform is a significant undertaking by the AFP, the time taken to instigate and implement improvements (more than 5 years) is significant.

We made the following recommendation to help the AFP improve the timeliness of its complaint resolution for Category 1 and 2 complaints:

#### **Recommendation 2**

The AFP ensure any updated frameworks for the investigation of Category 1 and 2 complaints are:

- implemented as soon as practicable, and
- sufficient to administer complaints under the Act in accordance with its internal timeliness standards.

The AFP advised that, in response to our recommendation, a new complaints management model was expected to launch in July 2022.

We will continue to monitor the resolution of complaints within the AFP's timeliness benchmarks at future reviews.

### **Complaint conciliation of Category 1 conduct issues**

Under s 40SC(1) of the Act, the recipient of a complaint about conduct or practices issues must record the details of the information and deal with it in accordance with the Commissioner's orders about how AFP conduct or practices issues are to be dealt with. As per s 40SC(2) of the Act, this requirement is not applicable for Category 1 issues if:

- the recipient is satisfied the issue arose due to a misunderstanding of facts, the law or practices or procedures of the AFP, or
- is otherwise appropriate for informal resolution, and the recipient can give an explanation or take any other action that is likely to resolve the issue within a reasonable period.

The Determination states that Category 1 matters may be conciliated within 5 days of receipt without being recorded in CRAMS, which we take to be the reasonable period referred to within s 40SC(2) of the Act. During the review period, the AFP extended its timeframe for informal conciliation of Category 1 complaints from 5 days to 10 business days. This change took effect from 29 October 2020 under the revised National Guideline, however it was inconsistent with the Determination.

As a result of the changes made by the AFP, we were advised that 55 Category 1 complaints that were conciliated were not resolved within 5 days. The AFP advised us that it is not practicable for CMTs to manually enter the identified complaints conciliated outside the 5-day period into CRAMs, and formal recording in such circumstances would unfairly impact complaint subjects. We subsequently reviewed a sample of 14 of those complaints, the results of which are referenced throughout this report.

We also identified the changes to the National Guideline expanded the definition of the term 'conciliate' to no longer require the consent of the complainant to finalise the complaint. Our Office did not consider this change to be within the ordinary meaning of the term, and this may lead to outcomes that are inconsistent with the intent of the Act.

We suggested (**Suggestion 1**) the AFP amend the National Guideline to remove the definition of conciliate from the National Guideline and rely on the term's ordinary

meaning. In response, the AFP advised it had removed the definition of conciliate from the National Guideline.

Our Office acknowledges the views expressed by the AFP that the 5-day period for conciliation is not practicable for existing CMT capabilities, and consider that a 10-day timeframe would be more appropriate and realistically attainable within the operational environment of the AFP's complaints system. We suggested **(Suggestion 2)** the AFP formally engage with the Ombudsman to discuss and consider amendments to the Categories of Conduct Determination, which has since commenced.

### **Allocation of complaints**

Under s 40TO(6) of the Act, prior to allocating a Category 3 conduct issue for investigation outside the AFP, the Ombudsman must be consulted on the choice of person to whom the issue is to be allocated. Our Office identified 2 complaints where investigations of Category 3 conduct issues were allocated to an external person with no record of consultation with the Ombudsman. We also identified instances where instruments of allocation were post-dated to come into effect during the allocated investigation period.

Our Office suggested **(Suggestion 3)** the AFP formally request our Office review the joint obligations under s 40TO(6) of the Act in relation to allocating Category 3 complaints to external persons for investigation. We also suggested **(Suggestion 4)** the AFP obtain legal advice on the allocation of complaints without consultation with the Ombudsman, as well as the ability to make instruments of allocation with post-dated effect.

The AFP advised our Office it operated on an understanding of terms of agreement previously being in place for allocations, but noting our advice the AFP has undertaken to engage with our Office to review the obligations.

The AFP also informed our Office it obtained advice on the instruments of allocation that were post-dated. We will review the advice in the context of the records and continue to engage with the AFP on this issue at our next review.

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

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.

When considering the AFP's performance against these criteria we take into account Provision 4.2 of the National Guideline, which requires all AFP appointees involved in the assessment, review or investigation of a conduct issue to make a Conflict of Interest Declaration (a declaration) at the time of first contact with the matter, and record this in official records. Completing a declaration helps an investigator consider whether there is an actual or perceived conflict prior to commencing an investigation.

The AFP's management of conflicts of interest has been a subject of repeat findings and recommendations since the first review in the 2007–08 period, identified as an issue 9 times and as the subject of 3 previous recommendations.

Our 2019–20 annual report made 2 suggestions to help the AFP to implement a recommendation from our 2018–19 annual report that 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 the AFP's National Guideline. These suggestions included that the AFP undertake quality assurance measures to ensure conflict of interest declarations are made consistently and contemporaneously on all complaint records requiring investigation or a decision under s 40TF of the Act.

We identified instances where conflict of interest declarations were missing, not signed, or not dated at the beginning of an investigation in approximately 17% of the formally managed complaints we reviewed. This is an 18% improvement on the number of records we found had similar issues in our last review and reflects the AFP's continuing work to improve the procedures and staff awareness of their obligations to identify, report and manage conflicts of interest.

Examples we identified included:

- A period of 2 years and 7 months between the assignment of an investigator and the completion of their conflict of interest declaration, during which significant actions were undertaken progressing the investigation.
- Following the completion of an investigation, instructions from the CMT Secretariat to investigators to complete a declaration and backdate it to the commencement of an investigation.

In addition, in 12 of the 14 informally managed complaints we reviewed, conflict of interest declarations were either missing or incomplete. This included one instance where a complaint was reallocated due to a potential conflict of interest, however reallocation did not prompt a new conflict of interest declaration to be made.

Our Office identified the 3 CMTs responsible for the informally managed complaints we reviewed had different conflict of interest instructions for complaint recipients, including one that failed to reference the requirement to complete a declaration. We suggested (**Suggestion 5**) the AFP standardise its instructions when emailing complaint allocations for informal management, to ensure consistent instructions to complete a declaration are given, which the AFP accepted.

We acknowledge the AFP's improvement in compliance with this criterion, and previous steps it has taken to address non-compliance in this area. However, due to the above findings and past recommendations about this issue, we made the following recommendations aimed at continuing that progress:

### **Recommendation 3**

The AFP provide training to CMT complaint case managers and PRS investigators to ensure they understand (and can demonstrate) their obligations to adequately manage conflicts of interest in accordance with the instructions set out in section 4.2 of the National Guideline.

### **Recommendation 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.

In response to our recommendations, the AFP provided our Office with a suite of documents and descriptions of educational activities that address conflict of interest obligations for complaint recipients. The AFP also advised our Office of quality assurance arrangements, and enhancements made to CRAMS to create a checklist to prompt the investigator to ensure conflict of interest declarations have been completed.

## **Communicating with complainants**

Issues affecting communication with complainants have been a subject of repeat findings and recommendations since the first review in the 2007–08 period, identified as an issue 9 times and as the subject of 3 previous recommendations.

Our 2019–20 annual report made 2 suggestions to help the AFP implement a recommendation from our 2018–19 annual report that the AFP provide appropriate guidance, training, and support for staff to ensure the communication requirements under s 40TA(2) of the Act and paragraph 4.1 of the Better Practice Guide to Complaint Management are consistently delivered.

During this review, our Office identified issues with the AFP's communication with complainants in 52 formally managed complaints, which accounts for approximately 48% of the total number of complaints the Office reviewed. This is an 8% increase since our previous review.

In relation to informally managed complaints, we identified issues with complainant communication in 7 of the 14 complaints reviewed.

#### *Complaint acknowledgement and 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.

We identified 14 instances where the complaint acknowledgement email did not explain the complaint process. We acknowledge that updated letter templates in use by PRS and ACT CMT for part of the records period acknowledged the complaint with a high standard of information on the complaint process provided to the complainant.

Of the 14 informally managed complaints we reviewed, we identified:

- 1 complaint where no acknowledgement occurred.
- 3 complaints where an insufficient information was provided. The correspondence did not include an explanation of the complaint process, contact details for the agency handling the complaint, or anticipated timeframes.
- 2 complaints where the complainant was contacted but there was no record that the complaint process, or conciliation process, was explained.
- 1 instance where the complaint was acknowledged after a second complaint was lodged by the complainant.

### *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 in the circumstances, of the AFP's progress in dealing with a conduct or practices issue. The complainant must also be advised of any action the AFP takes about the issue.

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 considered 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 the 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.

During our review we identified:

- 21 complaints where the outcome letter did not provide a sufficient explanation of the complaint itself or sufficient reasons for the outcome.
- 1 complaint where the complainant was not advised of a decision made under s 40TF of the Act to take no further action.
- 1 complaint in which the outcome letter addressed 2 of the 7 allegations made, without reference to how the remaining 5 allegations were addressed.
- 1 outcome letter that included information inconsistent with previous information provided to the complainant.

In relation to outcome letters without sufficient explanation of reasons for the outcome, we found these primarily lacked detail explaining why the particular outcome was reached. For example, in one outcome letter, there was no mention that body camera footage was reviewed which did not corroborate the complaint.

The AFP advised our Office that in some circumstances the recipient of outcome letters may not have a vested interest in the outcome of the complaint. For example, an AFP member may lodge a complaint on becoming aware of information in the course of their duties, or in other circumstances a sufficient



explanation was provided after the complainant contacted the investigator. We acknowledge the circumstances of each complaint are not uniform. However, this does not change the need to maintain a consistent objective standard for outcome letters to provide a sufficient explanation to the complainant about the reasons for an investigation outcome.

We also identified 1 instance where a complainant, self-identified as vision impaired, nominated their preferred method of contact as via telephone. However, the complainant was informed of the outcome via letter, with no record indicating the outcome was also communicated by telephone. We were unable to determine why the preferred method of contact was not used and consider that, if a decision is made to vary contact with the complainant, for example due to difficulties contacting the complainant via their preferred method, the reasons for using an alternate method should be recorded.

In relation to informally managed complaints, we identified:

- In all but 1 instance, the complainant was not provided the contact details of the Ombudsman for any further approach. In the 1 instance where details were provided, this was in relation to a decision that the information provided was not a complaint.
- 1 instance where records indicated the complainant was provided with the outcome of their complaint, however the AFP was unable to locate a record of what was said or written.

To help the AFP address issues with complainant communication, we recommended:

#### **Recommendation 5**

The AFP provide appropriate guidance and training for staff to meet communication requirements set out under s 40TA(2) of the Act and paragraph 4.1 of the Better Practice Guide. These requirements include:

- explaining the complaint process to complainants
- providing timely updates to the complainant regarding progress of an investigation
- informing the complainant of the outcome of the investigation, and
- making contemporaneous records before and after communication action.

In response to our recommendation, the AFP advised our Office of several actions it took, including updates to guidance materials and templates. Our Office notes this occurred in November 2020 and during the review we observed several examples of good practice for records where the updated templates were used. The AFP also advised our Office of updates to its investigation workflow and process, as well as targeted training and staff engagement, to address complainant communication issues.

In relation to informally managed complaints, we suggested (**Suggestion 6**) the AFP ensure the outcomes of informally managed complaints are consistently delivered to complainants and include information on what to do if dissatisfied with how their complaint was managed, including how to contact the Ombudsman. The AFP has since introduced an informal complaint customer service form requiring the complaint handler to contact the complainant, and to provide contact details for the Ombudsman should they be dissatisfied with how the complaint was handled. We are satisfied the AFP has taken appropriate action to address the suggestion.

### **Correctly identifying and categorising conduct issues**

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.

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 highest of those categories. Section 40RK of the Act also sets out the category to which conduct belongs may change as more information is obtained. The identification of different types of conduct and their levels of seriousness is vital to ensuring allegations are appropriately investigated.

Our 2019–20 annual report made 6 suggestions concerning the correct identification and categorisation of conduct issues. We again identified issues with categorisation at this review, including:

- 2 instances for formal complaint investigations where allegations were not identified or categorised.
- 3 instances for informally managed complaints where we considered that Category 1 allegations should have been categorised as Category 2 and formally managed.
- 1 instance where an allegation of assault occasioning actual bodily harm was categorised without reference to available information related to the

allegations, specifically photographs supplied by the person subject to the alleged use of force (this person was not the complainant).

- 1 instance where there was inconsistency across an investigation as to the conduct issues identified and investigated. The AFP acknowledged that further enquiries should have been conducted to determine if there was medical evidence linked to injuries alleged as being caused by a use of force, and these should have formed part of the investigation report.

Our Office recommended:

#### **Recommendation 6**

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 s 40RK of the Act. This should include identifying additional conduct issues identified during a complaint investigation.

In response to our recommendation, the AFP advised of action it is taking including targeted training, quality assurance reviews of investigation reports, and updates to guidance materials and the investigation workflow and process.

We also suggested (**Suggestion 7**) the AFP implement quality assurance methods to ensure that allegations are appropriately categorised pursuant to the Determination and s 40RK(6) of the Act before referral for informal resolution. The AFP advised it has circulated updated guidance to all CCT members and met with relevant staff to discuss informal complaint categorisation requirements.

#### **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 and attempt to contact them, conduct relevant independent enquiries, and produce investigation reports demonstrating that relevant evidence was adequately considered.

In relation to Category 3 and 4 complaint investigations, our understanding is that, under the PRS Evidence Matrix, an investigator should obtain sufficient evidence during the 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), an explanation for this decision should be recorded on file.

The AFP's administrative investigator training modules instruct complaint investigators to conduct an impartial investigation and support all parties involved.

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 taken in relation to conduct or practices issues raised by information provided by a person under s 40SA of the Act.

Our 2019–20 annual report made 6 suggestions to help the AFP implement a recommendation from our 2018–19 annual report. The recommendation was for the AFP to:

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

We identified the following issues at this review.

#### *Consideration of information*

We identified 1 instance where the investigation of a Category 2 use of force allegation did not consider whether security camera footage was available, in circumstances where it appeared to be a relevant consideration. In the absence of attempting to obtain footage, or engage with any other witnesses, it did not appear reasonable to us that the complaint was determined to be 'not established' at the point the investigation ceased.

In another complaint, the investigator relied on watch house footage, amongst other evidence, to determine the complaint. It appeared that relevant footage leading up to the incident was not requested or viewed. We considered the complaint should not have been determined without consideration of this earlier footage.

#### *Exercise of a discretion to take no further action under s 40TF of the Act*

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 delegated this power to specific positions within the AFP according to the complaint category.

In 1 complaint, a decision to take no action under s 40TF(2)(a) of the Act was made on the basis the alleged conduct occurred more than 12 months before being reported. However, s 40TF(2)(a) of the Act provides for no further action to be taken in circumstances where the information given under s 40SA of the Act was known to the complainant for more than 12 months before being reported. In this complaint, the information was known to the complainant for less than one month before being reported.

We suggested (**Suggestion 8**) the AFP reconsider decisions made under s 40TF(2)(a) of the Act when conduct occurred more than 12 months before being reported – but in circumstances where the complainant was not aware of the conduct at that time it occurred – and ensure any future use of this provision is clearly demonstrated in accordance with the Act. The AFP advised our Office it agreed with our view in relation to the decision made and issued an amended outcome letter to the complainant. The AFP advised it identified a further 3 instances affected, and the alternate delegate reviewing the complaints had endorsed the decisions made.

We also identified:

- 1 instance where the CMT Chair exercising s 40TF of the Act did not particularise a specific reason for their decision in the decision record. Draft outcome letters stated that ‘appropriate action had already been taken’, however we were not able to determine what occurred.
- 1 instance where photos and an email provided to the AFP were not considered in the investigation report and not before the decision-maker when they determined the outcome.

*Record-keeping: Sufficient records to demonstrate all matters investigated and evidence considered in investigation report*

We identified 1 complaint with several record-keeping issues, including:

- an investigation report addressing 2 conduct issues that differed to the original 3 conduct issues referred for investigation, where the record did not demonstrate or explain how these changes occurred or if there was oversight of the changes during the investigation process
- the record of outcome provided to the subject appointee did not include all annexures to the investigation, indicating a potentially incomplete outcome which could not be fully considered

- the record of interview with subject appointee and complainant was a minimal annotated interview plan; no other record was identified by our Office
- the investigation report, which referred to accessing copies of footage from a body worn camera, closed-circuit television (CCTV) watch house footage and radio transmissions, did not refer to any information obtained from these sources or relied on for the determination, and
- the investigation report was missing Annexure F (the minute providing further information from the subject member) which was referred to in the findings on the investigation report but not seen on the record.

After our review, the AFP provided further information to our Office, and we were satisfied in relation to the handling of the conduct issues in this complaint. However, given the gaps in the investigation record, we consider there is a risk the outcome was determined on insufficient information.

In 2 other complaints, we were unable to identify contemporaneous records that detailed action taken by investigators considering evidence, which was later referenced in the investigation reports.

#### *Insufficient detail in a written report of investigation*

In 1 complaint investigated by an external party, a ‘practices advice letter’ (the letter) was provided to the AFP with an outcome and findings of the investigation. We do not consider the letter provided sufficient detail of the evidence considered and the reasoning behind the outcome. It advised of a conclusion without describing the investigation process or method undertaken, identifying any contested facts or gaps in the evidence, or providing an assessment of the facts in issue on the balance of probabilities.

In our view, the terms of reference provided to the external party were not closely followed in relation to this investigation. We suggested (**Suggestion 9**) in circumstances where external parties are engaged to perform actions under Part V of the Act, the AFP ensure the external party follows the terms of reference for the investigation and provides sufficient reasons for their findings. The AFP advised our Office it noted and supported our suggestion.

#### *Opportunity to be heard and evidence appropriately considered: Informally managed complaints*

In reviewing the informally managed complaints during the period, we considered whether both the complainant (if any) and the AFP appointee had an adequate

opportunity to be heard in relation to the conduct issue, pursuant to s 40TH(1)(a) of the Act. We identified:

- 1 complainant was not contacted by the complaint recipient, even though the complainant asked to be contacted in their online complaint lodgement form.
- 1 subject appointee was not contacted until after the complaint was conciliated, the complainant received an apology and the complaint was finalised.
- 1 complainant was informed the subject appointee would be spoken to and provided a summary of the complaint but there was no record to indicate this occurred.

Based on the findings made by our Office, we recommended:

#### **Recommendation 7**

The AFP provide targeted training to case managers and investigators regarding their obligations under the AFP's internal guidelines to ensure that relevant evidence is considered, witnesses are contacted, independent enquiries are made, and investigation reports confirm that all relevant evidence is objectively and adequately assessed and independently determined.

We also suggested (**Suggestion 10**) the AFP ensure it keeps adequate records detailing all information referred to in an investigation report, actions taken by the investigator during the investigation, and any outcome decisions made. The AFP advised our Office of action it was taking to address this suggestion, including individual feedback and targeted training with case managers and investigators.

#### **Safe Place Investigations**

Section 10.3 of the AFP Commissioner's Order on Professional Standards (CO2) states that an AFP appointee reporting information regarding a contravention of the AFP professional standards may disclose that information to Safe Place. Safe Place was established following an independent review of the organisation by former Sex Discrimination Commissioner, Elizabeth Broderick AO,<sup>5</sup> to provide support to complainants and investigate sexual harassment and abuse (the Broderick report).

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<sup>5</sup> See <https://www.afp.gov.au/sites/default/files/PDF/Reports/Cultural-Change-Report-2016.pdf>

Safe Place advised us in September 2019 that the AFP moved the sexual harassment complaint investigation role back to PRS. Safe Place continues providing support to complainants. Our Office expressed concern about the potential impact of this change, and how it aligned with previous recommendations in relation to the AFP by the Broderick Report. Safe Place expressed a view that the structural circumstances relevant to the Broderick Report had changed. In our view, the AFP should monitor and address any barriers specific to sexual harassment complaints if the agency makes changes to its complaint handling process.

Our Office made better practice suggestions to the AFP based on the previous suggestions of the Broderick Report and in light of sexual harassment complaint investigations being moved to PRS. This included that the AFP:

- identify any barriers to making a sexual harassment complaint to PRS and ensure those barriers are removed as far as possible, and complainants are supported (**Better Practice Suggestion 1**).
- ensure that when workplace issues are brought to Safe Place and a person chooses not to pursue a complaint through PRS, the reasons for this are recorded and monitored. This will ensure the AFP understands and can respond to these reasons. (**Better Practice Suggestion 2**).
- take steps to ensure all staff who are administering and investigating sexual harassment and sexual abuse allegations are provided with sufficient support and specific training to fulfil the requirements of Recommendation 17(a) of the Broderick Report (**Better Practice Suggestion 3**).

In response to our better practice suggestions, the AFP advised our Office of action it was taking, including in relation to barriers identified in the Broderick Report, and in the context of a review of its complaint handling framework, and the development of its complaint form and reporting capabilities. The AFP advised our Office that its review of its complaint handling framework also includes the engagement of the AFP–Australian Human Rights Commission Partnership Team.

We will continue engaging with the AFP on its administration of sexual harassment complaint investigations at future reviews.

### **Consideration of AFP Practices Issues**

#### *Formally managed complaints*

Section 40TH(1)(d) of the Act 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) of the Act requires the complaint manager to bring the issue to the attention of an appropriate AFP appointee.

Section 40TQ(2)(b) of the Act 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 the information raises a practices issue, s 40TW(2) of the Act requires the investigator to identify practices issues in the report, including any recommendations they consider appropriate to address the practices issue. The AFP records identified practices issues on its Practices Register.

We identified 1 complaint where the investigator informed the complainant that their complaint identified an AFP practices issue and communicated an intention to forward recommendations internally. We were unable to identify the issue on the Practices Register or what, if any, action was taken about the practices issue.

We also identified in all 14 informally managed complaints reviewed there was no prompt or option for practices issues to be considered or recorded. This included where we identified 1 potential practices issue with the handling of complainant information.

Noting these issues, we repeat our previous suggestion (**Suggestion 11**) that the AFP Practices and Procedures Register (the Practices Register) be regularly updated and reviewed to ensure identified practices issues are listed, monitored and actioned in an effective and timely manner. The AFP advised that a review of the Practices Register would occur, and a working group responsible for its management has been established.

We also suggested (**Suggestion 12**) the AFP implement measures to capture practices issues during the receipt and informal resolution of complaints in accordance with s 40SA and s 40TH(1)(d) of the Act. The AFP advised our Office of several actions it took, including updating guidance materials and templates.

### **Withdrawn complaints**

Section 12 of the National Guideline states that where a complainant indicates a desire to withdraw a complaint, the request should be provided in writing and articulate the reasons for the withdrawal. Should the complainant refuse or fail to provide the request in writing after being requested to do so, the investigator should record this within the relevant case.

Such a request from the complainant does not preclude investigation of the matter if the PRS Coordinator, PRS Superintendent or responsible CMT Chair considers the investigation should proceed based on specific criteria.

We identified 3 complaints where oral requests for the withdrawal of complaints were not confirmed in writing. This included 1 instance where communication records indicated the investigator obtained oral agreement from the complainant to withdraw 2 allegations. No written record of this agreement was sought or provided from the complainant at the time. In an email received 3 months after the date of this agreement, the complainant advised that the reason for her agreement was that she was unable to prove the allegations.

There is no evidential burden on a complainant to prove complaints. The record was not clear that the complainant understood the circumstances or reasons for withdrawing their complaints, and no record of the investigator correcting the understanding of the complainant or of any reconsideration of the complaints which were withdrawn. As a result, we suggested (**Suggestion 13**) the AFP should ensure investigators are aware of the processes by which a complainant may withdraw a complaint, and the obligation to either obtain written confirmation of the withdrawal or to record any reasons for their inability to obtain written confirmation under section 12 of the National Guideline. The AFP advised of action it took about this suggestion, including the circulation of information and updates to guidance materials.

## 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 applied 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 considered 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 Act).
- The Category to which conduct belongs may change as more information is obtained in relation to the complaint (s 40RK(7) of the Act). If the Category to which conduct belongs changed, there was a reasonable explanation for the change on the record.

- The complaint manager recorded conflict of interest considerations and any potential or actual conflicts of interest were appropriately managed (Provision 4.2 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, AFP internal guidance documents for complaint managers).
- The complainant was kept informed of the progress of the complaint as frequently as reasonable, and to the extent that was reasonable in the circumstances (ss 40TA(2) and 40TA(3) of the Act).
- Both the complainant (if any) and the AFP appointee had an adequate opportunity to be heard in relation to the conduct issue (s 40TH(1)(a) of the Act).
- The complaint manager identified relevant witnesses and attempts were made to contact them and relevant independent enquires were made (AFP internal guidance documents for complaint managers).
- The investigation report indicated that relevant evidence was adequately considered (AFP internal guidance documents for complaint managers).
- Where a recommendation was made to take no further action in relation to a complaint under s 40TF(2) of the Act, the recommendation was not unreasonable and was made by a delegated person (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 of the Act regarding established conduct (s 40TH(1)(c) of the Act).
- The complaint manager considered 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)) of the Act and if so, brought the practices issue to the attention of an appropriate AFP appointee (s 40TK(2) of the Act).
- Upon completion of an investigation, the CMT quorum either endorsed the recommendations or applied new findings and reasons for new findings were recorded (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 the Act and paragraph 4.5 of the Better Practice Guide).

- The complaint record contained all relevant information referred to in the investigation report and details of action taken during the investigation (ss 40WA(1) and (2) of the Act).

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

Under this criterion we considered 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) of the Act).
- The Category to which conduct belongs may change as more information is obtained in relation to the complaint (s 40RK(7) of the Act). If the Category to which conduct belongs changed, there was a reasonable explanation for the change on the record.
- The Category 3 conduct issue or corruption issue was allocated to an appropriate person for investigation (ss 40TN and 40TP of the Act).
- The investigator completed a Conflict of Interest Declaration form (provision 4.2 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) of the Act).
- Both the complainant (if any) and the AFP appointee had an adequate opportunity to be heard in relation to the conduct or corruption issue (s 40TQ(2)(a) of the Act).
- The investigator complied with directions given by the Commissioner or the Manager of AFP Professional Standards (MPRS) as to the way the investigation was to be conducted (ss 40VB(3) and (5) of the Act).
- The investigator obtained sufficient evidence during the investigation (AFP internal guidance documents for investigators).
- Where a recommendation was made to take no further action in relation to a complaint under s 40TF(2) of the Act, the recommendation was not

unreasonable and was made by a delegated person (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 of the Act).
- The investigator considered whether the complaint or information obtained during the investigation raised AFP practices issues (s 40TQ(2)(b) of the Act) and if so, the investigator identified the practices issue in the s 40TU report (s 40TW(2)(a) of the Act).
- The investigator prepared and submitted a written report of the investigation to the MPRS (ss 40TU(1) of the Act).
- 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) of the Act and paragraph 4.5 of the Better Practice Guide).
- The complaint record contained all relevant information referred to in the investigation report and details of action taken during the investigation (ss 40WA(1) and (2) of the Act).

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

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

We may also consider a sample of practices issues to determine whether the AFP took 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 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 is 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 approves the request by return email, the matter can be deleted. In instances where a decision is 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 considered 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) of the Act requires the head of PRS to notify the Ombudsman of Category 3 conduct issues.

In assessing this criterion, we considered 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 considered provisions under Division 4 of Part V related to Ministerially directed inquiries.

#### **Additional documents considered**

In developing the review criteria, we also considered:

- 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 determined 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*.