



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

FOR THE PERIOD 1 JULY 2021 TO 30 JUNE 2022

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

May 2023



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CONTENTS

Executive Summary.....	1
List of recommendations and suggestions	2
Introduction	4
Review details	7
Results of the May 2022 review	9
Appendix A – detailed review criteria.....	22

EXECUTIVE SUMMARY

This report summarises the work of the Office of the Commonwealth Ombudsman (the Office), during the period from 1 July 2021 to 30 June 2022, 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 under section 40XA of the Act from 16 to 27 May 2022. This review examined complaints the AFP finalised between 1 March 2021 and 28 February 2022.

At each review, we assess progress by the AFP against the Office's previous findings. We were satisfied that the AFP had implemented, or commenced, appropriate remedial action in relation to our previous findings. We acknowledge the work undertaken by the AFP in relation to issues that have been the subject of previous recommendations and suggestions across multiple review periods, including, but not limited to:

- the timeliness of complaint administration
- communication with complainants, and
- the identification and management of conflicts of interest.

While the impact of structural changes, such as the introduction of the Integrated Complaints Management Model (ICMM), for lower categories of conduct may take several review periods to be realised, our Office is encouraged that the AFP has made significant progress toward systemic improvement in relation to these issues.

At our May 2022 review, we identified issues with complaints not being administered in accordance with Part V of the Act. This included information pertaining to an AFP conduct or practices issues not being deemed a complaint, and the informal complaints management process being incorrectly utilised for complaints involving more serious conduct issues. We also held concerns with how a complaint involving allegations of sexual harassment was administered.

We made 3 recommendations, 8 suggestions and 3 better practice suggestions (listed below) to assist the AFP with improving its management of complaints. 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.

LIST OF RECOMMENDATIONS AND SUGGESTIONS

Recommendation 1: The AFP ensure that any information received under s 40SA of the Act is administered according to the requirements of the Act.

Recommendation 2: The AFP review the administration of a complaint involving sexual harassment to identify systemic or residual risks that require improvement with its current administration of sexual abuse and sexual harassment complaints, and to consider providing feedback to affected parties on how the complaint was administered.

Recommendation 3: For complaints involving sexual abuse or sexual harassment, the AFP implement quarterly reporting from the head of Professional Reporting and Standards (PRS) to the AFP Commissioner to ensure that any barriers to the effective administration of complaints can be identified and remedied.

Suggestion 1: In support of Recommendation 1, the AFP should ensure that the assessment of information provided under s 40SA is focused on determining whether the complaint raises conduct or practices issues, and not the merits of the complaint.

Suggestion 2: The AFP regularly review informally managed complaints to ensure they were categorised in accordance with the Act. Complaints identified as incorrectly administered should be re-opened and administered as required by the Act.

Suggestion 3: The AFP require investigators to keep appropriate records demonstrating the administration of sexual abuse or sexual harassment complaints was victim-focussed.

Suggestion 4: The AFP regularly reviews the category of complaints under investigation to ensure that the conduct issues are accurately identified, categorised and, where appropriate, amended according to the *Australian Federal Police Categories of Conduct Determination 2013* (the Determination) and s 40RK(6) of the Act.

Suggestion 5: In circumstances where conduct may apply to more than one category, and the category may change under s 40RK(7) of the Act, the AFP ensure that appropriate records are maintained on decisions made regarding categorisation.

Suggestion 6: The AFP ensure outcome letters provide the recipient with correct details and explanation of processes applied in reaching the outcome of a complaint.

Suggestion 7: The AFP finalise its review of the AFP Practices and Procedures Register and implement regular maintenance to ensure that identified practices issues are listed, monitored and actioned in an effective and timely manner.

Suggestion 8: The AFP consider if the potential practices issues identified by our review constitute practices issues under s 40SA of the Act.

Better practice suggestion 1: The AFP ensure that quality controls it has implemented to ensure conflict of interest declarations are appropriately made are retained on any new complaint management system introduced through the ICMM.

Better Practice Suggestion 2: The AFP amend its s 40TF delegate briefing to make clear that the delegate is exercising their discretion, irrespective of supporting a recommendation.

Better Practice Suggestion 3: The AFP ensure appropriate outcome letter templates transition into the ICMM.

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 Teams (CMTs) manage 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 complaint managers and may be addressed by training and development or another remedial action. The AFP advised that it intends to replace individual CMTs with the ICMM in 2023, with a dedicated Workplace Issues and Complaints Resolution team providing a single-entry point for all complaints. The AFP advised our Office that the ICMM aims to be people focused, to enhance communication and timeliness, and to promote transparency and consistency in decision making.

In line with s 40RD of the Act, the Commissioner established a unit within the AFP, being PRS, that investigates Category 3 conduct and corruption issues¹ involving AFP appointees.

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

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, to provide support to complainants and investigate sexual harassment and abuse (the Broderick report).² The AFP advised our Office that in September 2019 it moved the sexual harassment complaint investigation role back to PRS, and that Safe Place continues providing support to complainants.

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 the 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.

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, suggestions or better practice suggestions to the AFP about its administrative practices. 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 that report. The review report and our consideration of the AFP's comments about that report, forms the basis of this annual report.

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.

To meet the as soon as practicable requirement of the Act, our Office endeavours to provide the report to Parliament within 6 months of 30 June each year where possible. Our Office was not able to meet this aim for this report due to delays

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

finalising our review report, which was not provided to the AFP for comment until January 2023.

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 on Complaint Management (the National Guideline) and the Office's Better Practice Complaint Handling Guide (Better Practice 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, and
- monitoring improvement against our previous review findings and recommendations.

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

Our reviews 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 7 recommendations, 13 suggestions, and 3 better practice suggestions to help the AFP improve its management of complaints. This report references the progress made by the AFP in relation to previous findings.

At the end of each review, we discuss our preliminary findings with the AFP so that, if necessary, the AFP can take immediate remedial action pending our final review 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 PRS and CMT’s 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 to 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’. Our Office and the AFP refer to complaints dealt with under Division 3 of Part V of the Act as ‘formally managed complaints.’

REVIEW DETAILS

Our Office conducted our review from 16 to 27 May 2022. This review examined complaints the AFP finalised between 1 March 2021 and 28 February 2022.

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 – review statistics

Overall complaint Category	Number of records finalised by the AFP during the review period	Number of records reviewed
Category 1	36	12 (33%)
Category 2	71	13 (18%)
Category 3	124	28 (23%)
Category 4 (corruption issues)	44	16 (36%)
Total	275	69 (25%)

In addition to the above inspection statistics, our Office also inspected 9 out of 168 (5%) ‘informally managed’ Category 1 complaints, and 26 out of 109 (24%) instances where information provided was determined to not be a complaint. In both instances, these records were not required to be administered under Divisions 3 or 4 of Part V of the Act (exceptions discussed below at pp. 9-10 below). Our Office thanks the AFP for their transparency in making these records available for our review.

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:

- Continued development of the ICMM, which commenced on 1 March 2023, to address many of the issues identified in relation to Category 1 and 2 complaints, such as timeliness of complaint administration.
- Delivered training and guidance on several issues, in particular conflict of interest obligations and complaint categorisation.
- Introduced a customer service form for complaint handlers to complete for informally managed Category 1 complaints.
- Created a working group responsible for the management of the AFP Practices and Procedures Register.

Our Office is encouraged by the attempts made by the AFP to address previous issues. Some of the findings made in this report reflect the ongoing nature of the compliance issues and, to a degree, the retrospective nature of our review. We will continue monitoring the development, implementation, and outcomes of the AFP’s reforms at future reviews.

RESULTS OF THE MAY 2022 REVIEW

Complaints not administered under Division 3 of Part V of the Act

Section 40SA of the Act allows a person to give information to the Commissioner or an AFP member raising an AFP conduct or practices issue. Unless particular circumstances apply, s 40SC(1) of the Act requires the recipient of the complaint to record the details of the complaint and deal with the information in accordance with the Commissioner's Orders issued for the purposes of s 40TA(1) of the Act (located within Division 3 of Part V of the Act).

Deleted complaints

Provision 13 of the National Guideline states that an authorised AFP appointee may approve the deletion of a complaint from CRAMS if it is deemed to be not a complaint or a non-complaint.

In our inspection of 26 deleted complaints, we identified 9 instances where a person gave information that raised an AFP conduct or practices issue, and the complaint was not administered in accordance with Division 3 of the Act. In each instance, the AFP determined after preliminary investigations that the information was not a complaint and deleted the complaints from the CRAMS pursuant to the National Guideline.

We identified the AFP's determinations focused on the merits of the complaints based on information compiled during the preliminary investigations, rather than determining whether the complaint raised a conduct or practices issue which is required to be dealt with in accordance with Division 3 of Part V of the Act. The high percentage of instances we inspected indicates that this was a systemic issue affecting the administration of Part V of the Act.

Incorrectly categorised complaints informally managed

Under s 40SC(2) of the Act, the requirement to record the details of the complaint and deal with the information in accordance with the Commissioner's Orders does not apply if the information provided relates to a Category 1 conduct issue or a practices issue, and:

- 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 is satisfied that giving an explanation or taking any other action is likely to resolve the issue within a reasonable period.

Of the 9 informally managed complaints we inspected, we identified 3 instances where the details of the complaint were required to be recorded and administered under Division 3 of the Act. This is because the information provided did not relate to Category 1 conduct issues under the Determination. Specifically, these instances concerned alleged conduct associated with excessive use of force, a failure to act with due care or diligence, and/or a failure to meet the standards of behaviour reasonably expected of an AFP appointee, all of which must be at least Category 2 conduct under the Determination. While only 3 of 9 instances were identified, the high percentage indicates a potential systemic non-compliance risk affecting the AFP's administration of the Act.

Along with not being compliant with the Act, the above 2 issues risk removing records from the oversight of the Commonwealth Ombudsman under s 40XA(2) of the Act as they are not categorised as records of AFP conduct or practices issues that have been dealt with under Division 3 of Part V of the Act during the relevant review period.

We made the following recommendation and suggestions to the AFP:

Recommendation 1: The AFP ensure that any information received under s 40SA of the Act is administered according to the requirements of the Act.

Suggestion 1: In support of **Recommendation 1**, the AFP should ensure that the assessment of information provided under s 40SA is focused on determining whether the complaint raises a conduct or practices issue, and not the merits of the complaint.

Suggestion 2: The AFP regularly review informally managed complaints to ensure they were categorised in accordance with the Act. Complaints identified as incorrectly administered should be re-opened and administered as required by the Act.

In relation to the deleted complaints, the AFP advised our Office that it agreed that any assessment of information provided under s 40SA of the Act should be focused on the complaint information and not the merits of the complaint. The AFP advised it will ensure this information is distributed and explained to all the relevant areas within PRS. The AFP further advised that its National Guideline would be updated to clarify the circumstances surrounding determination that information given is not a complaint, which it anticipates coming into effect with the launch of the ICMM.

In relation to the informally managed complaints, the AFP advised with the introduction of the ICMM that CMTs will no longer be responsible for handling

informal complaints, with steps in place to review the categorisation of complaints to ensure compliance with the Act.

Investigation of complaints involving sexual abuse or sexual harassment

We reviewed 1 complaint administered by Safe Place prior to the change in investigative responsibility in September 2019, that was subsequently finalised by PRS, and which is the subject of findings of this report. We also reviewed 2 complaints involving sexual abuse or sexual harassment administered solely by PRS and did not identify any serious concerns. Despite this change of responsibility, the findings we have made in respect of this record remain applicable as learnings for the AFP's administration of complaints involving sexual abuse or sexual harassment.

We identified the following issues with the complaint administration:

- An investigation was undertaken despite the complaint record stating the complainant wanted the matter to remain confidential, with no records demonstrating that the consent of the complainant had been obtained. We considered the record did not demonstrate adherence to Recommendation 17 of the Broderick Report, in that the complaint was not victim-focused in circumstances where the complainant did not want a formal investigation.
- No records were maintained detailing what action, if any, was taken to protect the complainant and two other AFP appointees identified as being subjected to the alleged conduct, against possible reprisal action once the subject appointee was made aware of the allegations. We did not see any information or record that the investigator considered other investigative means to obtain the evidence that would not risk disclosing the identity of the complainant. In our view, the record did not demonstrate adherence to Recommendation 17 of the Broderick Report in that the AFP did not provide holistic support to complainants.
- Deficiencies in communication with the complainant, including delays notifying the complainant that an investigation had commenced, keeping the complainant informed of the progress, and not notifying the complainant of the outcome.
- Issues with timely administration of the complaint, including a period between January 2019 and June 2021 where records indicate no action was taken. The AFP advised our Office in May 2019 of several issues affecting the complaint, including a shortage of staff that was impacting the timeliness of the investigation. Following our May 2022 review, the AFP advised that staff shortages and other Safe Place investigational

priorities, combined with the resignation of the subject appointee, resulted in further action being delayed and the matter being overlooked during the handover of responsibility from Safe Place to PRS.

Our previous review report made a better practice suggestion that the AFP take steps to ensure all staff (Safe Place and PRS) administering and investigating sexual harassment and sexual abuse allegations be provided with sufficient support and specific training to fulfil the requirements of Recommendation 17 of the Broderick Report. During the May 2022 review, the AFP advised our Office of several steps it was taking to implement our better practice suggestion, and that the administration of this complaint pre-dated several of these changes. The administration of this complaint illustrated a significant risk to the confidence in the AFP to appropriately handle complaints involving sexual abuse and sexual harassment.

Recommendation 17 of the Broderick Report requires quarterly updates be provided to the AFP Commissioner on sexual harassment and sexual abuse cases. We did not see in the records we reviewed that this regular reporting to the AFP Commissioner exists. In our view, such reporting would enhance oversight of complaint management and assist to avoid recurrence of the issues raised in this report.

We made the following recommendations and suggestion to the AFP:

Recommendation 2: The AFP review the administration of the complaint referenced in this report to identify systemic or residual risks that require improvement with its current administration of sexual abuse and sexual harassment complaints, and to consider providing feedback to affected parties on how the complaint was administered.

In response, the AFP advised our Office that it had reviewed the administration of the complaint and consideration was being given to providing feedback to affected parties. Our Office will confirm the outcome of this recommendation at the next review.

Recommendation 3: For complaints involving sexual abuse or sexual harassment, the AFP implement quarterly reporting from the head of the PRS to the AFP Commissioner to ensure that any barriers to the effective and timely administration of complaints can be identified and remedied.

The AFP noted our recommendation, advising that reporting to the Commissioner would not ordinarily be referenced, recorded, or uploaded to a complaint file. The AFP also advised that PRS provide weekly briefings on complaints to the Deputy

Commissioner Operations, and a monthly briefing to the Commissioner that may involve these complaints. The AFP advised that it would ensure that the ICMM implements appropriate quarterly reporting. Our Office will confirm the outcome of this recommendation at the next review including that records are kept around reports provided.

Suggestion 3: The AFP require investigators to keep appropriate records demonstrating the administration of sexual abuse or sexual harassment complaints was victim-focused.

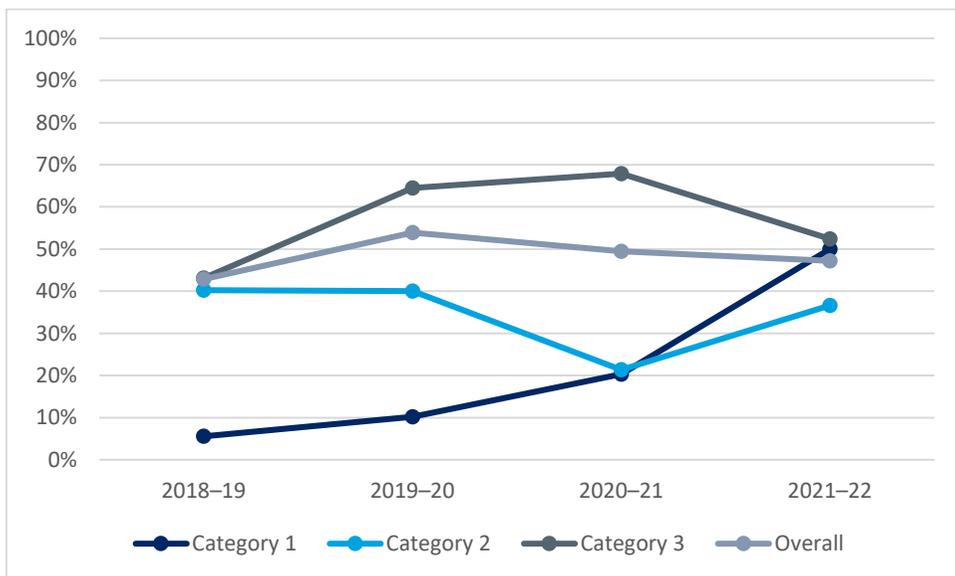
The AFP advised of training it has conducted, and will continue to deliver, with investigators on sexual abuse and sexual harassment investigations, with a continued focus on record keeping.

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 delivery of an effective complaint management system, redressing conduct and practices issues, 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 on the public confidence in the AFP’s administration of Part V of the Act.

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, with 5 previous recommendations being made by our Office across 12 previous reviews.

We identified an overall slight decrease in the resolution of complaints, with 47% resolved within their respective benchmarks, down from 49% in 2020–2021.

- 50% of Category 1 complaints were resolved within the benchmark of 42 days, an improvement of 30% on 2020–2021.
- 37% of Category 2 complaints were resolved within the benchmark of 66 days, an improvement of 15% on 2020–2021.
- 54% of Category 3 complaints were resolved within the benchmark of 256 days, a decline of 16% on 2020–2021.

We acknowledge the improvement of adherence to timeliness benchmarks for Category 1 and 2 complaints. The AFP advised of impacts COVID-19 and other matters had on timely resolution of Category 3 complaints and the ability to perform investigations.

Our previous review recommended that the AFP ensure PRS takes action to meet timeliness benchmarks for the resolution of Category 3 complaints. In response, the AFP advised that its actions resulted in a marked decrease in the number of active investigations breaching these benchmarks, particularly in Category 3 investigations. The AFP advised additional action was being taken, including, but not limited to:

- PRS undertaking further due diligence inquiries before a matter was accepted as a Category 3 investigation.
- Creating and resourcing additional positions in PRS to address identified issues.

Due to the timing of our previous report, the impact of changes post-dated the finalisation of most records that fell within this review period. We will assess the effectiveness of these measures at our next review, acknowledging that the ICMM will replace the CMT model.

Management of conflicts of interest

Provision 4.2 of the AFP National Guideline on Complaint Management (National Guideline) 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 their first contact with the matter. This declaration is recorded in official records.

The AFP's management of conflicts of interest has been a subject of repeat findings 10 times since the first review in the 2007–08 period, with 5 previous recommendations being made by our Office.

Our 2020–2021 report made two recommendations to help the AFP manage conflicts of interests. This included the AFP providing training to the CMTs, complaint case managers and PRS investigators to ensure they understand and demonstrate their obligations to adequately manage conflicts of interests. We also recommended the AFP undertake steps to quality assure conflict of interest declarations are made consistently and contemporaneously on all complaint records requiring investigation or a decision under s 40TF of the Act.

At this review, we identified:

- 4 instances where investigator declarations were made after the investigation had commenced.
- 2 instances where no declarations were retained on the complaint record.
- 2 instances where declarations were completed after the investigation was finalised.
- 2 instances where declarations from CMT members were not made, and one instance where a declaration from a CMT member was not made in relation to all subjects of the complaint.

Despite these instances, we are satisfied that the AFP is improving its management of declarations. The AFP provided our Office with a suite of documents and educational activities that address conflict of interest obligations for complaint recipients. The AFP also advised that quality assurance arrangements have been

included with enhancements to CRAMS, whereby the investigator is prompted to complete the conflict of interest declaration.

Table 2 details the ongoing reduction in findings over the previous 3 reviews:

Table 2 – conflict of interest declaration findings per review

Review	% of reviewed complaints with identified issues with declarations
2019 –20	35%
2020–21	17%
2021–22	16%

In addition, all but 3 of the 11 findings made at this review related to complaints received prior to our previous inspection in April 2022, indicating that some of the findings may be the result of legacy practices. We encouraged the AFP to continue to work towards greater compliance with completion of declarations and made the following better practice suggestion:

Better practice suggestion 1: The AFP ensure that the quality controls it has implemented to ensure conflict of interest declarations are appropriately made are retained on any new complaint management system introduced through the ICMM.

The AFP advised our Office that the complaints management system utilised for the ICMM will require a declaration to be made to permit further access to the complaint. The system also incorporates a process for a delegate to review declarations made.

Correctly identifying and categorising conduct issues

We identified the following instances with complaint categorisation:

- An AFP appointee who was a subject of the complaint did not have their conduct categorised.
- An instance of a Category 1 complaint concerning the excessive use of force, which under the Determination should be at least Category 2.
- An instance of a Category 2 complaint concerning injury sustained due to the excessive use of force, which under the Determination should be Category 3 conduct.

We made the following suggestion to the AFP to address these issues:

Suggestion 4: The AFP regularly reviews the category of complaints under investigation to ensure that the conduct issues are accurately identified and categorised according to the Determination and s 40RK(6) of the Act.

Where a complaint or subsequent investigation receives information of a conduct issue that attracts a higher category to the original assigned category, it is important that records are kept that transparently document any decision to retain the lower category. We identified one instance where a recommendation by an investigator to upgrade a conduct issue from Category 2 to Category 3 was declined with no record as to the decision not to accept the recommendation. While during our review we were satisfied with the AFP's explanation for retaining the lower category, the justification of this decision was not evident from the record, and we made the following suggestion:

Suggestion 5: In circumstances where conduct may apply to more than one category, and the category may change under s 40RK(7) of the Act, the AFP ensure that appropriate records are maintained on decisions made regarding categorisation.

We also observed good practices across other complaints of appropriate categorisation, including one instance where additional conduct was identified and recorded after the commencement of the investigation, which we encourage the AFP to continue. We acknowledge that the categorisation of complaints has been a focus of recent training delivered by the AFP.

The AFP advised our Office it anticipates that the introduction of the ICM will deliver improvements and consistency around the categorisation of conduct issues in Category 1 and 2 complaints.

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

Referencing AFP internal guidance documents, we identified instances where records indicate that the investigative process did not adhere to best practice.

- In one case a complainant was represented by an adult guardian and there were no records indicating that the complainant was offered an opportunity to be heard. Limited recording of considerations to determine whether camera footage existed when investigating a complaint. While the AFP confirmed that there was no camera footage from the time of the alleged conduct available, we consider it better practice that records

clearly identify potential sources of evidence and demonstrate if they are available to the investigator.

- A complaint investigation that made a series of references to the credibility of the complainant, rather than the merits of their complaint. While the investigation report contained appropriate details weighing the evidence in relation to the allegations, the presence of information on the complainants' motivations, knowledge and judgement risks undermining any consideration, on the balance of probabilities, of whether the alleged conduct was established.

Our previous report recommended 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, that investigation reports confirm that all relevant evidence is objectively and adequately assessed and independently determined. Due to the timing of this review and the previous report, remedial action undertaken by the AFP, including individual feedback and training with case managers and investigators, occurred after the finalisation of the above complaints. We will assess the impact of the training and feedback at future reviews.

Exercise of a discretion to take no further action under section 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 can delegate this power to specific positions within the AFP according to the complaint category.

We identified 3 instances where records did not clearly state that a decision was made by the delegate to take no further action under s 40TF of the Act. In these instances, the delegates supported a recommendation to take no further action based on a briefing from the investigator, rather than exercising their discretion under the Act. We made the following suggestion to the AFP:

Better practice suggestion 2: The AFP amend its s 40TF delegate briefing to make clear that the delegate is exercising their discretion, irrespective of supporting a recommendation.

The AFP advised that it has updated the wording and communicated with delegates the preferred wording to be used when decisions are made under s 40TF of the Act.

Communicating with complainants

Where possible, complaint acknowledgements 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, as they are reliant on the AFP to explain how the complaint process is managed. Internal AFP guidance material (consistent with s 40TA(2) of the Act) prompts investigators to provide this information to complainants at their initial contact.

Issues affecting communication with complainants has been a repeat finding 10 times across previous reviews since the 2007–08 period, leading to 4 previous recommendations.

We identified the following issues in communications with complainants:

- An informally managed complaint was closed without confirmed contact with the complainant, who later contacted the AFP to obtain an update and was advised that their complaint had been closed.
- A complainant had no contact for a period of approximately three months as an investigator went on leave. Prior to this, the last record of contact with the complainant stated that they could expect to be contacted again within 10 days.
- An outcome letter was not sent to the person who provided the information to the AFP as the complainant, but to the person who was affected by the alleged conduct. The complaint record referenced that the person who was the subject of the alleged conduct did not want any involvement in the AFP's administration of the complaint, and better practice would have been to provide the information to the complainant, enabling them to communicate with the affected party.

Since the AFP's implementation of a new outcome letter template in November 2020, we have seen an overall improvement with the explanation of complaint outcomes. We identified instances in this review where the information provided in outcome letters could be improved:

- An outcome letter did not include explanation of the complaint to the AFP appointee who was the subject of the complaint. We were unable to ascertain from the complaint record if the subject was previously aware of the complaint, and the outcome letter may not have provided sufficient transparency to the subject about the complaint.

- An outcome letter to the subject of a complaint referenced that no further action would be taken as appropriate action had already been taken in relation to the conduct. However, the letter could have stated what the appropriate action was to ensure the subject has this in writing.
- An outcome letter did not provide information on the reason for exercising discretion to take no further action in relation to one subject of the complaint in the outcome letter to the complainant.
- An outcome letter did not provide any detail as to how the case manager decided on the balance of probabilities that the conduct did not occur.

Despite these findings, we were satisfied with the appropriateness of communication across other records we reviewed, and, unlike previous review periods, we do not believe there are systemic issues that require addressing. We made the following suggestions to assist the AFP improve the quality of outcome letters:

Suggestion 6: The AFP ensure outcome letters provide the recipient with correct details and explanation of processes applied in reaching the outcome of a complaint.

Better practice suggestion 3: The AFP ensure appropriate outcome letter templates transition into the ICMM.

The AFP advised our Office of additional updates to its outcome letter templates. We will continue to monitor this issue at future reviews.

Consideration of AFP Practices Issues

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 (the Register).

We identified 2 complaints where a practices issue was not noted or recorded on the Register, and a further 2 instances where consideration should have been given to whether the information provided raised a practices issue.

A spot check conducted of the Register identified several fields containing no information, or information which had not been updated. Our previous 2 review reports suggested that the Register be maintained regularly to ensure that identified practices issues are listed, monitored, and actioned in an effective and timely manner. The AFP previously advised that a review of the Register would occur, and that a working group had been established for its management.

We made the following suggestions to the AFP:

Suggestion 7: The AFP finalise its review of the Register and implement regular maintenance to ensure that identified practices issues are listed, monitored and actioned in an effective and timely manner.

The AFP advised our Office of progress it had made reviewing the Register, and we will confirm these actions at our next review.

Suggestion 8: The AFP consider if the potential practices issues identified by our review constitute practices issues under s 40SA of the Act.

The AFP advised our Office that it had completed this consideration, and we were satisfied with the information provided detailing what issues were, or were not, practices issues.

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 (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 19.4 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)).

- 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 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).
- 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 12 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 13 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.