

OFFICIAL



Annual Report on the AFP's handling of complaints against its officers

April 2024

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

For the period 1 July 2022 to 30 June 2023

ISSN 1835-3290 - Print
ISSN 1835-3304 - Online

© Commonwealth of Australia 2024

The Commonwealth owns the copyright in all material produced by the Ombudsman.

With the exception of the Commonwealth Coat of Arms, the Office of the Commonwealth Ombudsman's logo, any material protected by a trade mark, and where otherwise noted, all material presented in this publication is provided under a Creative Commons Attribution 4.0 licence.

The details of the relevant licence conditions are available on the Creative Commons website (creativecommons.org/licenses/by/4.0/deed.en) as is the full legal code for the CC BY 4.0 licence.



The Commonwealth's preference is that you attribute this report and any material sourced from it using the following wording:

Source: Licensed from the Commonwealth Ombudsman under a Creative Commons 4.0 licence. This report is available from the Commonwealth Ombudsman website at www.ombudsman.gov.au.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are set out on the It's an Honour website www.pmc.gov.au/government/its-honour

Contact us

Inquiries regarding the licence and any use of this report are welcome at:

Commonwealth Ombudsman
Level 5, 14 Childers Street
Canberra ACT 2600
Tel: 1300 362 072
Email: ombudsman@ombudsman.gov.au

Contents

Executive Summary	1
Recommendations and Suggestions	2
Introduction	3
Review Details.....	8
Results of the May 2023 Review	9
Appendix A – Detailed Review Criteria	22
Appendix B – AFP Commissioner's Response to this Report.....	28

Executive Summary

This report, made under section 40XD of the *Australian Federal Police Act 1979* (the Act), summarises the work of the Office of the Commonwealth Ombudsman (the Office), during the period from 1 July 2022 to 30 June 2023, to review the Australian Federal Police's (AFP) administration of Part V of the Act. Part V of the Act sets out arrangements for the AFP's handling of issues and complaints about police conduct.

During the 2022-23 review period, the Office conducted a records review under section 40XA of the Act from 8 to 19 May 2023. This review examined complaints the AFP finalised in the 12 months between 1 March 2022 and 28 February 2023.

At each annual review, we assess progress by the AFP against the Office's findings from previous reviews. We note that the AFP has implemented, or commenced, appropriate remedial action in relation to our previous findings. We acknowledge the remedial work undertaken by the AFP in relation to issues with communication with complainants and the identification and management of conflicts of interest within complaint investigations.

The AFP advised our Office that the Integrated Complaints Management Model came into effect on 1 March 2023, moving the responsibility for the administration of complaints involving Category 1 or 2 conduct issues from Complaint Management Teams to the Workplace Issues and Complaints Resolution Team. Due to the timing of this change, we did not consider any complaints administered under the new structure for the purpose of this review. This will be a focus of future reviews.

During this review, we identified issues with the application of relevant evidence to the outcome reached for 8 complaints, particularly as it related to the establishment of serious misconduct under the Act. We raised concerns about record-keeping practices in circumstances where the AFP exercised their discretion to not investigate complaints where the information provided raised allegations of serious misconduct.

We made **3 recommendations** and **5 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 nonetheless consider the AFP should take action to improve.



Recommendations and Suggestions

Recommendation 1: the AFP review the investigation report for one specific complaint and reconsider the complaint finding of not established and determine the potential application of the *Sex Discrimination Act 1984* (Cth) to the conduct.

Recommendation 2: the AFP ensure that sufficient records are kept detailing the basis for the exercise of discretion under section 40TF of the Act.

And the AFP reconsider if their records support the decision to not investigate one complaint involving the reliability of a witness, and, if not, readminister the complaint, recording in full the reasons for any actions taken.

Recommendation 3: The AFP ensure that views expressed by Judicial Officers on potential conduct and practices issues brought to their attention are consistently and completely categorised and investigated under the Act.

And further, the AFP review 2 complaints including but not limited to their categorisation decision and investigation outcome specifically addressing the views of the Magistrate. This reconsideration should include potential deprivation of liberty offences and practices issues related to training on the core responsibilities under the AFP Code of Conduct.

Suggestion 1: The AFP implement a review mechanism for all non-complaint determinations to ensure information received under section 40SA of the Act, raising conduct and practices issues, is dealt with under the Act.

Suggestion 2: The AFP review 5 specific complaints and reconsider the complaint findings, considering the Ombudsman's observations in each complaint.

Suggestion 3: The AFP review the categorisation decisions made in relation to 4 complaints and 3 informally managed complaints.

Suggestion 4: The AFP conduct an evaluation of Category 3 complaints exceeding timeliness benchmarks to identify any systemic issues preventing the resolution of complaints within internal benchmarks.

Suggestion 5: The AFP ensure all declarations are made prior to enquiries being conducted related to the exercise of discretion to take no further action.

Introduction

Government agencies and contractors must deliver high quality programs and services to the Australian community in a way that is fair, transparent, timely, respectful and effective. At the same time, errors, misunderstandings, dissatisfaction and unexpected problems occur in all administrative systems. The question is, how do agencies respond?

Good complaint handling helps organisations meet general principles of good administration, including fairness, transparency, accountability, accessibility and efficiency. As stated in the *Commonwealth Ombudsman Better Practice Complaint Handling Guide*¹, strong systems are:

- underpinned by a commitment from all staff to provide a quality complaints service
- designed and delivered in a way that meets better practice principles, and
- continuously improving.

The relationship between a police force and the general community is extremely important in a functioning and healthy democracy. As such, principles of good complaint handling are highly applicable to the Australian Federal Police as our national policing organisation. The September 2020 *Australian Federal Police Investigations Doctrine*² quotes Sir Robert Peel's Principles of Policing on this point:

"The ability of the police to perform their duties is dependent upon the public approval of police existence, actions, behaviour and the ability of the police to secure and maintain public respect".

¹ Available at https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/290365/Better-Practice-Complaint-Handling-Guide-February-2023.pdf

² Australian Federal Police, September 2020 'Australian Federal Police Investigations Doctrine' Webpage (AFP website, 2 November 2023)

< <https://www.afp.gov.au/sites/default/files/PDF/IPS/AFP%20Investigations%20Doctrine.pdf> >

Part V of the *Australian Federal Police Act 1979* (the Act) prescribes the process for recording and dealing with complaints about 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 section 40SA of the Act, give information that raises an AFP conduct or practices issue to the Commissioner or an AFP appointee. The AFP treats the provision of this information as a complaint.

Until 1 March 2023, geographically dispersed Complaint Management Teams (CMTs) managed complaints involving AFP practices issues and Category 1 and 2 conduct issues. A CMT Chair had responsibility for ensuring that each Category 1 and 2 complaint was referred to the relevant CMT and was dealt with appropriately. These complaints were dealt with by complaint managers in the relevant CMT and, where appropriate, addressed by training and development or another remedial action.

From 1 March 2023, following the introduction of the Integrated Complaints Management Model (ICMM), the AFP replaced individual CMTs with the centralised Workplace Issues and Complaints Resolution (WICR) team, which now provides 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 section 40RD of the Act, a unit within the AFP, being Professional Reporting and Standards (PRS), investigates Category 3 conduct and corruption issues³ involving AFP appointees.

Section 10.3 of the AFP Commissioner's Order on Professional Standards (CO2) states that an AFP appointee may report information regarding a contravention of the AFP professional standards related to sexual assault, sexual harassment, harassment and/or bullying to the Confidant Network and Safe Reporting team within AFP People Command.

The Ombudsman's role

Under section 40XA of the Act, at least once every 12 months the Ombudsman 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 section 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 review, we may make recommendations, suggestions or comments in our annual report about the AFP's administrative practices. To ensure procedural fairness, the Ombudsman provides the AFP with a PDF copy of this annual report for comment on any perceived factual errors. Any comments made by the AFP are considered and, if appropriate, factual corrections are made to the annual report. The response from the AFP Commissioner is provided in **Appendix B**.

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 AFP's administration under Divisions 3 and 4 of Part V of the Act.

³ Corruption issues may also be investigated by the National-Anti Corruption Commission.

To meet the “as soon as practicable” requirement in section 40XD of the Act, our Office endeavours to provide the report to Parliament within 6 months of 30 June each year.

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, section 39 of the Act requires AFP appointees to adhere to any orders made by the Commissioner of the AFP under section 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 section 40RM(1) of the Act to determine the Category of conduct⁴, and
- 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).⁵

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

⁴ The Determination has since been replaced on 8 September 2023 by the *Australian Federal Police Categories of Conduct Determination 2023*.

⁵ Available at https://www.ombudsman.gov.au/__data/assets/pdf_file/0025/290365/Better-Practice-Complaint-Handling-Guide-February-2023.pdf

- 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.

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'.

During the review period the PRS and CMTs use the Complaints Records and Management System (CRAMS) to manage complaints. PRS also uses the PROMIS Integrity case management system (PROMIS) for investigations. Over the course of 2023, a new complaints management system for administration of Category 1 and 2 issues will replace the CRAMS system. All AFP case management systems and governance documents referred to in this report were those in use for the review period between 1 March 2022 and 28 February 2023.

Provided 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. The AFP may then resolve the complaint without a formal investigation or entry in the CRAMS system. 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 8 to 19 May 2023. This review examined complaints the AFP finalised between 1 March 2022 and 28 February 2023.

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 – Record Review Statistics

Overall complaint Category	Number of records finalised by the AFP during the review period	Number of records reviewed
Category 1	26	18 (69%)
Category 2	70	19 (27%)
Category 3	78	18 (23%)
Category 4 (corruption issues)	49	12 (24%)
Total	223	67 (30%)

Our Office inspected an additional 21 informally managed and 8 formally managed Category 1 complaints, and 17 Category 2 complaints to assess whether conduct issues were appropriately categorised. We also reviewed 50 instances of the AFP determining that information provided did not raise conduct or practices issues, to assess if the AFP had administered all complaints under Part V of the Act.

Results of the May 2023 Review

Progress since previous reviews

Our last annual report, covering the period 1 July 2021 to 30 June 2022, made 3 recommendations, 8 suggestions, and 3 better practice suggestions. We are satisfied the AFP has made satisfactory progress, or commenced progress, toward implementing remedial action in relation to the issues raised.

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

Our last annual report identified a practice where complaints were deleted without first determining whether the complaint raised a conduct or practices issue which is required to be dealt with under the Act. Some complaints were also being incorrectly categorised as informal complaints, which meant the obligations to record and deal with the information in accordance with section 40SC were not being met. We recommended that the AFP ensure that any information received under section 40SA of the Act is administered according to the requirements of the Act.

In response to our recommendation, the AFP advised it would take remedial action through the introduction of the ICMM and steps were in place to review the categorisation of complaints to ensure compliance with the Act. Given our review this year was of records that pre-dated this change, we will assess the effectiveness of these actions at our next reviews.

At this review, we identified that 15 out of 50 complaints should have been administered as complaints but were not. Six (6) of these occurred after the AFP advised our Office that it agreed with our view that any assessment of information provided under section 40SA of the Act should focus on whether the complaint information raises a conduct or practices issue, and not the merits of the complaint.

The AFP advised our Office that these instances likely relate to the timing of remedial action it implemented to prevent further occurrences, and we did not identify any instances after October 2022.

Our review of these instances found that although matters were not treated as complaints, they were referred for managerial action. We note that this is generally



permissible for Category 1 and 2 complaints under the Act. However, Category 1 and 2 complaints are required to be accepted, recorded and administered as a complaint under sections 40SA and 40SC of the Act. The Act requires the AFP to accept information and administer the information as a complaint except for in narrow employment related circumstances. As such, our expectation is that information should be considered a complaint and investigated, unless it falls within those narrow employment related circumstances.

While our Office accepts the advice of the AFP that it has ceased the practice, to avoid recurrences of this issue we suggest (**Suggestion 1**) the AFP implement a review mechanism for all non-complaint determinations to ensure information received under section 40SA of the Act, raising conduct and practices issues, is dealt with under the Act.

In relation to the second issue, we found that 3⁶ out of 21 informally managed complaints we reviewed contained information that related to a higher category of conduct than Category 1. We remain concerned that this is a serious issue as some information is still not correctly categorised and investigated. We have made further findings in relation to complaint categorisation in this report and include this issue in suggestion 3 at page 19.

Investigations of complaints involving sexual abuse or sexual harassment

AFP 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).⁷ The AFP advised our Office that in September 2019 it moved the sexual harassment complaint investigation role from AFP Safe Place back to PRS, and that support to complainants was now provided by the Confidant Network and Safe Reporting team.

Following the AFP's advice that it had moved the sexual harassment complaint investigation role back to PRS, our Office expressed concern about the potential impact of this change and how it aligned with recommendations made in the Broderick Report.

⁶ Informally managed reference numbers 119087, 120474, 119393

⁷ See <https://www.afp.gov.au/sites/default/files/PDF/Reports/Cultural-Change-Report-2016.pdf>

We made 3 better practice suggestions based on the previous suggestions in the Broderick Report.

Our last annual report referenced an older complaint that was partially administered by Safe Place, prior to the shift in investigative responsibility. Our report recommended that 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 advised our Office that a reporting function specific to our recommendation was expected to commence in June 2023. We will confirm this at our next 2024 review.

Our last annual report also suggested the AFP require investigators to keep appropriate records demonstrating the administration of sexual abuse or sexual harassment complaints was victim-focused. We were satisfied that appropriate records were kept in 5 of the 6 records we inspected at this review. In relation to the one instance that did not keep records, the AFP confirmed with the investigator that action was taken to provide support to the victim. While we were satisfied with the description of actions taken, it would have been preferable for records to have been kept, as we had previously suggested: contemporaneous records provide a higher level of assurance on the actions taken. We will continue to monitor this issue at future reviews.

Complainant communication issues

Issues affecting communication with complainants has been a repeat finding, made 11 times across previous reviews since the 2007– 08 period, leading to 4 previous recommendations.

Most of our previous findings have concerned either a failure to keep records demonstrating that complainants were contacted and received an explanation of the complaint process or an update on the progress of their complaint, or the quality of information provided to complainants regarding the outcome of their complaint. We made no findings related to these issues at our review and are encouraged that this positively reflects reforms the AFP has made over previous years to address these issues.

Findings on the complaint process: engaging with evidence-based decision making, recording clear decisions and ensuring records are kept of what occurred

In response to our previous reports, the AFP provided targeted training to case managers and investigators over the course of 2022–23 regarding their obligations under the AFP’s internal guidelines covering:

- relevant evidence is considered
- witnesses contacted
- independent enquiries made, and
- investigation reports confirm all relevant evidence is objectively and adequately assessed and independently determined.

We confirmed delivery of the training, however we will continue to assess the translation of this training into systemic improvement. Nevertheless, this review identified further compliance issues in the fields covered by the training.

Our review work will continue to monitor and evaluate the effect of the training in compliance outcomes.

Finding: Complaint investigation reports did not demonstrate that all relevant evidence was objectively considered when finding that a complaint was not established.

We identified instances where investigation reports were unable to demonstrate that all relevant evidence was objectively considered when explaining why alleged conduct was not established. This included the following Category 3 serious misconduct complaints.

- A sexual harassment complaint was determined to be Category 2 inappropriate misconduct on the basis that the ‘intentional, deliberate or grossly negligent’ elements of Category 3 serious misconduct could not be determined due to the subject’s intoxication at the time of the alleged conduct and shock upon being informed of the conduct.

We do not consider the investigation report adequately justified why the subject's level of intoxication and shock were appropriate considerations when determining if the conduct was serious or inappropriate misconduct.

While commentary was provided on the possible application of legislation to the conduct, the investigation report omitted any decision about whether the conduct could be established as a breach of that legislation and this conduct issue remains to be determined.

We make the following recommendation:

Recommendation 1: the AFP review the investigation report for this specific complaint and reconsider the complaint finding of not established and determine the potential application of the *Sex Discrimination Act 1984* (Cth) to the conduct.

- Two complaints where the alleged conduct, which was not in dispute, did not amount to Category 3 serious misconduct under the AFP Code of Conduct but may have constituted a Category 2 minor or inappropriate misconduct under the Act.

In one of these instances, relevant evidence was not considered in determining a fact in issue, namely their own admission that their conduct did not uphold the Core Values of the AFP. This evidence was available and stated in the investigation report, but not specifically referenced in deciding whether there was a breach of the AFP Code of Conduct.

In the other, the investigation report did not address that the AFP Handbook on the Use of Social Media specifically excludes the circumstances that a member is not on duty or does not identify as a member of the AFP as relevant factors to upholding the AFP Code of Conduct while AFP members are online. Instead, the report considered these factors as relevant in determining the complaint as not established.

- We also identified one Category 2 complaint where the investigation report did not provide sufficient explanation for how the balance of probabilities was applied to not establish the alleged workplace bullying conduct. In this instance, witness accounts of the conduct appear to have been given less weight than the denials of the subject and persons who were not witness to the events.

While we are not satisfied with the AFP's consideration of relevant evidence in the above complaint outcomes, we note the training provided to AFP investigators is ongoing and will consider the need for further remedial action at future reviews. Nevertheless, we suggest **(Suggestion 2)** the AFP review the identified complaints and reconsider the complaint findings, considering the Ombudsman observations in each complaint.

Finding: Insufficient records of the 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 the 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 one instance where a decision was made not to investigate a complaint of alleged serious and corrupt conduct due to concerns about the reliability of a witness. We were unable to see any records detailing how these concerns were weighed against the seriousness of the allegations.
- We identified another decision based on the AFP having conducted 'relevant checks' that did not establish a link between the subject and the complainant, without recording what inquiries were conducted or relevant evidence was obtained. While the AFP advised us of what action occurred, there was no record of this information being available to the decision-maker.

We make the following recommendation:

Recommendation 2: the AFP ensure that sufficient records are kept detailing the basis for the exercise of discretion under section 40TF of the Act.

And further, that the AFP reconsider if their records support the decision to not investigate the identified complaint involving the reliability of a witness and, if not, readminister the complaint, recording in full the reasons for any actions taken.

Finding: Consideration of judicial identification of conduct and practices issues arising from unlawful arrest

We reviewed 2 complaints that were administered at Category 2 following comments from an ACT Magistrate that the use of force by ACT Policing members was excessive.

Since 28 September 2021, ACT Policing Judicial Operations have a responsibility to assess matters that may be the subject of media reporting or commentary from members of the ACT judiciary, the ACT Office of the Director of Public Prosecutions, and defence solicitors. ACT Policing Judicial Operations undertakes a preliminary assessment of such commentary to decide if conduct and practices issues are identified and a referral to PRS would be appropriate in the circumstances. The PRS Operations Committee will then decide on the category of conduct.

The below complaints were categorised as Category 2 complaints by the AFP which resulted in an investigation by CMTs and not PRS. Our review of each complaint concluded that the categorisation decision was incorrect, as both complaints involved an alleged use of force which caused potential injury. In our view, the investigation into this complaint would have been suited to an investigation into potential serious misconduct by PRS.

- One Category 2 complaint was referred from ACT Policing Judicial Operations following comments from an ACT Magistrate that AFP members had engaged in the excessive use of force during an unlawful arrest. In determining that the conduct was not established, the investigation report referred to the views of the Magistrate as subjective, based on opinion, and not compelling to the deliberation of the conduct. The investigation report did not adequately address how the investigator formed their assessment of the compellability of the Magistrate's views, particularly as the Magistrate had viewed the same body worn camera footage. The Magistrate further raised a potential AFP practices issue in their comments.

- In the second complaint, an ACT Magistrate found the arrest was unlawful and expressed concerns that the use of force during the unlawful arrest appeared to be inconsistent with the AFP Commissioner's Order on the use of force. While the investigator requested the court transcript of the Magistrate's remarks, the investigation report was finalised before receiving the court transcript. The report concluded the complaint was not established. Our Office has reviewed the court transcript, and while the Magistrate did not express a view on whether the use of force was excessive, in our view, the transcript was relevant information that should have been obtained and assessed prior to the categorisation of the complaint and completing the investigation report.

Both complaints were also not correctly categorised at the highest possible level of seriousness for the alleged conduct in accordance with section 40RK(6) of the Act; see further the finding "Correctly identifying and categorising conduct issues".

We make the following recommendation:

Recommendation 3: The AFP ensure that views expressed by Judicial Officers on potential conduct and practices issues that are brought to their attention are consistently and completely categorised and investigated under the Act.

And further that, the AFP review the 2 identified complaints including but not limited to the categorisation decision and investigation outcome specifically addressing the views of the Magistrate. This reconsideration should include potential deprivation of liberty offences and practices issues related to training on the core responsibilities under the AFP Code of Conduct.

We will continue to monitor this issue at upcoming reviews.

Finding: identifying and categorising complaints at a lower category than required under the Act

We identified a number of instances of complaints not being correctly categorised or the conduct being incorrectly identified.

Section 40RK(6) of the Act states that if conduct would otherwise belong to more than one category, it is taken to belong to the higher or highest of those categories. The Explanatory Statement to the Determination states that categorisation is for the purpose of investigation and oversight and is based on the conduct as characterised when it comes to the attention of the AFP, not on how it was or might be characterised following investigation.

- The 2 complaints involving comments of judicial officials, while administered as Category 2 complaints, should have been administered at Category 3 as the application of force resulted in injuries to members of the public.

In one instance, the CMT manager requested that it be investigated by PRS; this request was declined by PRS. Due to the nature of these allegations section 40RK(6) of the Act required they be dealt with by PRS as a complaint at Category 3.

- One complaint involving 5 Category 2 conduct allegations that should have been administered as Category 3 under the Determination due to the multiple allegations of Category 2 conduct.
- One complaint administered at Category 1 where the subject had 7 prior instances of Category 1 conduct. This complaint should have been administered as Category 2 under the Determination.
- One complaint was downgraded from Category 3 to Category 2 without records retained of the basis of the decision.
- We further observed 3 informally resolved complaints which were incorrectly categorised.

We suggest (**Suggestion 3**) the AFP review the categorisation decisions made in relation to these complaints.

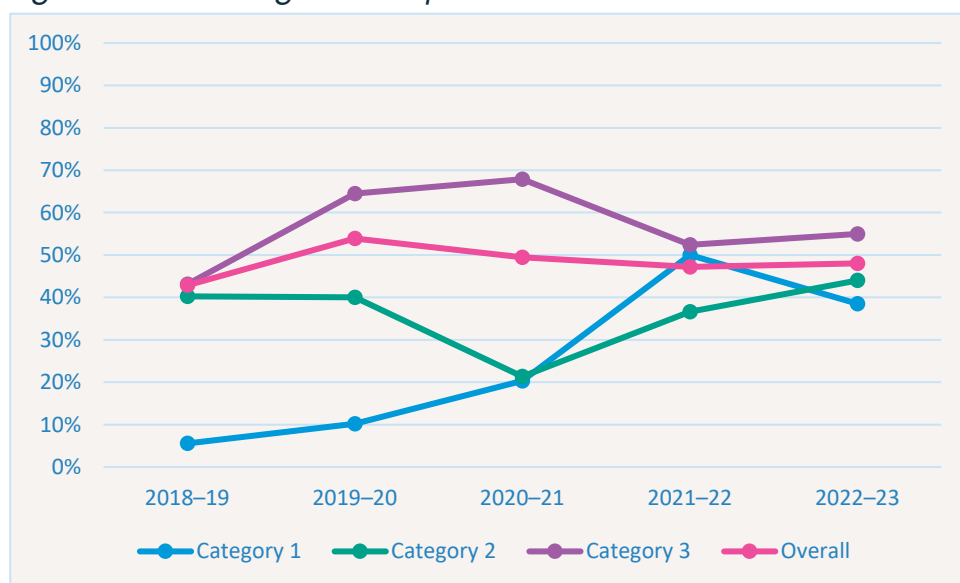
Our last annual report made 2 suggestions that the AFP undertake regular reviews of complaint categorisation and that appropriate records are maintained on decisions regarding categorisation in circumstances where conduct may apply to more than one category. The above examples occurred prior to the making of these suggestions and we will continue to monitor the AFP’s implementation at future reviews.

Finding: The AFP is not meeting its internal timeliness benchmarks

Our annual review assessed whether the AFP finalised complaints in accordance with its internal timeliness benchmarks (see **Appendix A**).

Based on information provided by the AFP, Figure 1 demonstrates the AFP’s overall performance against Criterion 1 (see **Appendix A**: detailed Review Criteria) during the previous 5 review periods.

Figure 1—Percentage of complaints resolved within timeliness benchmarks



Resolving complaints in a timely manner is part of an effective complaint management system, redressing conduct and practices issues, and building public trust. The AFP Service Charter for the Australian Community commits ‘to fair, and where possible, timely complaints resolution and adherence to laws and standards which govern the handling of complaints.’ Persistent low adherence to timeliness benchmarks for resolving complaints undermines this commitment and negatively impacts on public confidence in the AFP’s administration of Part V of the Act.

The AFP's performance against its internal timeliness benchmarks has been the subject of repeat findings and recommendations since our first review in the 2007–08 period. We have made 5 previous recommendations across 13 previous reviews.

We identified no real change in the resolution of complaints, with 48% resolved within their respective benchmarks, up from 47% in 2021–2022.

- 38% of Category 1 complaints were resolved within the benchmark of 42 days, a decline of 12% on 2021–2022.
- 44% of Category 2 complaints were resolved within the benchmark of 66 days, an improvement of 7% on 2021–2022.
- 55% of Category 3 complaints were resolved within the benchmark of 256 days, an improvement of 1% on 2021–2022.

While Category 1 and 2 complaints have consistently remained under 50%, we acknowledge the AFP is attempting to address these timeliness benchmarks through the ICMM. We will assess the effectiveness of this reform at future reviews.

In relation to Category 3 complaints, performance has remained above 50% for the past four years, reaching as high as 68% resolved within benchmark in 2020–21. This above 50% adherence coincides with both the resolution of a significant number of aged complaints, and an overall decrease in Category 3 complaints finalised from 174 complaints in 2018–19 to 78 complaints in 2022–23.

Our August 2022 report recommended that PRS 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 that it had reduced the number of Category 3 investigations and resourced additional positions in PRS.

Whilst the additional positions in PRS is positive, the reduction in number of Category 3 investigations could, at least in part, be attributed to the incorrect determination of complaints as described in our finding related to Suggestion 1 in this report. Furthermore, our analysis of information provided by the AFP indicates that the AFP is not yet trending toward greater adherence to Category 3 benchmarks.

Table 2 provides an overview of the percentage of complaints that are exceeding the benchmark by less than 128 days (i.e., 150% of benchmark), and demonstrates that the share of complaints moving closer to the benchmark is not increasing.

Table 2 – Category 3 timeliness statistics

Review period	Total Category 3 exceeding benchmark	Total Category 3 exceeding benchmark by less than 128 days
2022-23	35	13 (37%)
2021-22	59	25 (42%)
2020-21	42	20 (48%)
2019-20	50	20 (40%)
2018-19	75	27 (36%)

We suggest (**Suggestion 4**) the AFP conduct an evaluation of Category 3 complaints exceeding timeliness benchmarks to identify any systemic issues preventing the resolution of complaints within internal benchmarks.

Finding: Conflicts of interest declarations not recorded

Provision 5.2 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 11 repeat findings and 5 previous recommendations since the first review in the 2007–08.

We identified 2 instances where no declarations were recorded for AFP appointees involved in conducting enquiries prior to the exercise of discretion to take no further action in relation to a complaint.

Our last annual report noted improvements made by the AFP in its management of declarations in complaint records across recent review periods. Table 3 details the ongoing reduction in findings over the previous 4 reviews:

Table 3 – Reduction in findings on complaints with identified issues with conflict of interest declarations

Review	% of reviewed complaints with identified issues with declarations
2022-23	3%
2021-22	16%
2020-21	17%
2019-20	35%

We are encouraged by this significant improvement and acknowledge the work undertaken by the AFP to address what was a systemic issue affecting its administration of complaints.

However, we reiterate our previous concerns in relation to repeat findings on this issue and suggest (**Suggestion 5**) the AFP ensure all declarations are made prior to enquiries being conducted related to the exercise of discretion to take no further action.

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.

Table 4 below outlines the current investigation timeframe benchmarks. There is no specific benchmark for complaints containing corruption issues given such complaints are referred to, and may be investigated by, the Australian Commission for Law Enforcement Integrity.

Table 4 – AFP investigation timeframe benchmarks

Overall complaint Category	Benchmark (days)
Category 1	42 days
Category 2	66 days
Category 3	256 days

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 (section 40RK(6) of the Act).
- The Category to which conduct belongs may change as more information is obtained in relation to the complaint (section 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 (sections 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 (section 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 section 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 section 40TI or section 40TJ of the Act regarding established conduct (section 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 (section 40TH(1)(d)(i) and (ii)) of the Act and, if so, brought the practices issue to the attention of an appropriate AFP appointee (section 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) (section 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 (sections 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 (section 40RK(6) of the Act).
- The Category to which conduct belongs may change as more information is obtained in relation to the complaint (section 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 (sections 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 (sections 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 (section 40TQ(2)(a) of the Act).
- The investigator complied with directions given by the Commissioner or the Commander (CPRS) or the Manager (MPRS) of AFP Professional Standards as to the way the investigation was to be conducted (sections 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 section 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 (section 40TR of the Act).
- The investigator considered whether the complaint or information obtained during the investigation raised AFP practices issues (section 40TQ(2)(b) of the Act) and, if so, the investigator identified the practices issue in the section 40TU report (section 40TW(2)(a) of the Act).
- The investigator prepared and submitted a written report of the investigation to the CPRS/MPRS (section 40TU(1) of the Act).
- There was sufficient evidence to show that recommendations in the section 40TU report were fully considered and appropriate action was taken in relation to the issue (section 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 (section 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 (sections 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 section 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, or

- it is deemed to be a non-complaint.

The National Guideline further provides that only authorised appointees may delete a complaint from CRAMS. The specified authorised appointees are the Deputy Commissioner, Head of the Unit, Chief of Staff (COS), Assistant Commissioner People and Culture (ACPC), CPRS, MPRS, Coordinator/Superintendent Professional Standards, and Team Leader Professional Standards Complaints Coordination Team (PRS CCT) (Table of Authorisations contained within the *AFP Commissioner's Order on Professional Standards (CO2)*).

The Complaints Coordination Team Standard Operating Procedure requires that, prior to deleting a matter, an email must be sent to an authorised appointee (usually Team Leader Complaints Coordination Team (TL CCT) or PRS Coordinator Complaints and Quality Assurance (CCQA) requesting the deletion. Once the authorised appointee 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 section 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.

Appendix B – AFP Commissioner's Response to this Report



AFP

OFFICIAL

COMMISSIONER

Our reference: EC23-004357

22 January 2024

Mr Iain Anderson
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Via email: Iain.Anderson@Ombudsman.gov.au

Dear Mr Anderson *Iain*,

Commonwealth Ombudsman's report on the Australian Federal Police's administration of complaints under Part V of the Australian Federal Police Act 1979

Thank you for your letter dated 24 November 2023, providing the Australian Federal Police (AFP) with your Report on the AFP's administration of complaints under Part V of the *Australian Federal Police Act 1979*. I note this report relates to the review conducted between 8 and 19 May 2023, examining complaints finalised by the AFP between 1 March 2022 and 28 February 2023.

I would like to extend my appreciation for the opportunity to comment on your findings and highlight any sensitive content that should not be made public.

I am pleased to note your acknowledgment of the AFP's progress in implementing remedial actions to address the findings made in the 2021-22 Report. I am also pleased to see the significant improvements in relation to communication with complainants and management of conflicts of interest, as a result of the remedial work and positive reforms undertaken by the AFP.

Recommendations, suggestions and findings continue to be addressed and implemented as part of the regular work of the Professional Standards (PRS) Command. In addition, PRS continues to work closely with the Workplace Issues and Complaints Resolution team who, from 1 March 2023, under the Integrated Complaints Management Model now accept receipt and undertake the initial triage of all AFP complaints, along with the management and investigation of Category 1 and Category 2 complaints.

Your report contained three recommendations and five suggestions. The AFP has considered each of these carefully, along with the related findings, with a focus on compliance and continuous improvement. The formal response is provided at **Attachment A**.

OFFICIAL

POLICING FOR A SAFER AUSTRALIA

afp.gov.au



OFFICIAL

OFFICIAL

Additionally, further information relating to the Report's recommendations and findings is provided in **Attachment B**. Please note this attachment is for the information of your Office only as it contains sensitive content, such as privacy considerations, and should not be made public.

The AFP values the independent review and observations of your agency, and considers your oversight to be an important factor in ensuring the AFP has a robust integrity regime.

Should you wish to discuss any aspect of this response, please do not hesitate to contact Acting Commander PRS, Peta Maddigan, at Peta.Maddigan@afp.gov.au or on 02 5126 2232.

Yours sincerely



Reece P Kershaw APM
Commissioner

/ Address: GPO Box 401 Canberra ACT 2601 Australia
/ Telephone: +61 2 5127 4100
/ Email: Office-of-the-Commissioner@afp.gov.au

OFFICIAL

POLICING FOR A SAFER AUSTRALIA

 afp.gov.au



Attachment A:

Australian Federal Police (AFP) response to:

Commonwealth Ombudsman's report on the Australian Federal Police's administration of complaints under Part V of the Australian Federal Police Act 1979 for records finalised between 1 March 2022 and 28 February 2023

Recommendation/Suggestion	Response
Recommendation 1	The AFP notes the recommendation and undertakes to review the relevant Investigation Report. The AFP further commits to extracting the lessons learnt and presenting these, along with the Ombudsman's findings and observations, to investigators as a learning and continuous improvement opportunity.
Recommendation 2	The AFP accepts the recommendation to ensure sufficient records are kept detailing the basis for the exercise of discretion under section 40TF of the Act. Further enquiries have been conducted on the referenced case, and the AFP is satisfied no further action is required. The AFP will undertake to review the case to ensure appropriate records are kept.
Recommendation 3	The AFP undertake to ensure that all relevant information is obtained and assessed prior to categorisation being considered and applied. The AFP agrees with the findings in relation to categorisation of the two referenced complaints. On the face of the allegations, and having regard to the Categories of Conduct Determination 2013, the AFP agree these matters should have been categorised as Category 3 conduct. The AFP notes the recommendation and undertakes to review the relevant Investigation Reports. The AFP further commits to extracting the lessons learnt and presenting these, along with the Ombudsman's findings and observations, to investigators as a learning and continuous improvement opportunity.
Suggestion 1	The AFP accepts this suggestion.
Suggestion 2	The AFP notes the suggestion and undertakes to review the relevant Investigation Reports. The AFP further commits to extracting the lessons learnt and presenting these, along with the Ombudsman's findings and observations, to investigators as a learning and continuous improvement opportunity.
Suggestion 3	The AFP agrees with the suggestion to review the categorisation decisions for the matters identified.
Suggestion 4	The AFP accepts this suggestion.
Suggestion 5	The AFP accepts this suggestion.

In relation to recommendations/suggestions regarding reconsideration of complaint findings/outcomes, this raises some legal complexities on which the AFP will need to seek legal advice. Accordingly, the AFP neither accepts nor rejects this aspect of the relevant recommendations/suggestions at this point in time.