Australian Federal Police Categories of Conduct Determination 2006

Australian Federal Police Act 1979

WE, MICHAEL J KEELTY, Commissioner, Australian Federal Police and JOHN McMILLAN, Commonwealth Ombudsman make this Determination under subsection 40RM (1) of the *Australian Federal Police Act 1979*.

Dated 13 December 2006

MICHAEL J KEELTY Commissioner, Australian Federal Police	JOHN McMILLAN Commonwealth Ombudsman

1 Name of Determination

This Determination is the *Australian Federal Police Categories of Conduct Determination 2006*.

2 Commencement

This Determination commences on the day after it is registered.

3 Definitions

In this Determination:

Act means the *Australian Federal Police Act 1979*.

AFP Code of Conduct means the AFP Code of Conduct as published by the AFP on 30 December 2006.

4 Categorisation

For subsection 40RM(1) of the Act, conduct is conduct of a particular category if it is described in a table in the Schedule relating to that category.

Schedule

Table 1 Category 1 conduct issues

Description	Examples
Minor breach of the AFP Code of Conduct	A breach of the AFP Code of Conduct that is minor or customer service related
Discourtesy	Includes rudeness, abruptness, abuse and derisory attitude or behaviour
Inadequate service	Includes failing to provide a service or facility in an adequate, professional or appropriate manner
Advice failure	Includes failing, in the course of duty, to provide appropriate or correct advice
Unreasonable delay	Includes unreasonable delay in dealing with an issue
Failure to act	Includes instances where no action by an AFP appointee is taken and was warranted

Table 2 Category 2 conduct issues

Description	Examples
Breach of the Code of Conduct	A breach of the AFP Code of Conduct that involves inappropriate conduct or unsatisfactory behaviour
Excessive force (on property)	Includes the use of force against property that was not authorised by a warrant or the law
Threat of Force (person)	Includes instances where a threat to use force against a person was not warranted or authorised by a warrant or the law
Fail to comply with direction or procedure	Includes failure to comply with orders, directions, procedures or other requirement with which it was the duty of the AFP appointee to comply but does not include serious breaches of any such requirements
Unwarranted attention	Includes harassing or taking action in relation to a person that was not warranted at all or not warranted at the level which occurred.
Inappropriate behaviour	Includes actions that fail to meet the standards of behaviour reasonably expected of an AFP appointee or of AFP appointees generally
Driving misconduct	Includes driving in an inappropriate manner whilst on duty, or whilst off duty and not in an official vehicle, being under the influence of an intoxicating substance when in control of a vehicle

Federal Register of Legislative Instruments F2006L04145

Description	Examples
Traffic enforcement matters	Includes failing to follow procedures or laws relating to traffic enforcement
Property holding failure	Includes causing or failing to prevent avoidable loss, damage or destruction of property or exhibits held by the AFP
Property accounting failure	Includes failure to return property or exhibits held by the AFP or to account properly for its whereabouts or disposition
Property unauthorised use/removal of	Includes unauthorised or improper use or removal of property or exhibits held by the AFP
Failure to record or report	Includes failing to report or make and retain an adequate, accurate and appropriate record of a matter which the AFP appointee had a duty to record or report
Information misuse (access or inadvertent disclosure)	Includes accidental or unintentional access or disclosure of information which the AFP appointee had a duty not to disclose or should not have had access
Inadequate investigation	Includes failure to conduct an adequate investigation, including in cases where any failure has been identified by court, prosecution or oversight body
Warrant administration	Includes all matters relating to the execution of a warrant and the failure to maintain accurate records relating to the warrant administration
Poor performance	Includes conduct where an AFP appointee's performance is consistently poor and has failed to respond to improvement strategies
Supervision failure	Includes failure by supervisor to provide proper supervision of performance of subordinates
Diligence failure	Includes unauthorised absences, lateness and lack of attention to duties by an AFP appointee

Table 3 Category 3 conduct issues

Description	Examples
Serious Breach of the Code of Conduct	A serious breach of the AFP Code of Conduct
Serious Breach of directions or procedures	Includes serious breaches of any order, direction, procedure or other requirement with which it was the duty of the AFP appointee to comply

Federal Register of Legislative Instruments F2006L04145

Description	Examples
Property Misconduct	Includes tampering with or destroying property or exhibits held by the AFP without authorisation or justification or for any improper purpose
Excessive Force (on person)	Includes using force against a person that was not justified by a warrant or the law
Threat of Force (involving weapon)	Includes threatening to use more force than was warranted or lawful, involving a weapon, against a person
Discharge firearm	Includes any discharge of a firearm except lawful discharge during firearms training, testing, animal destruction or bomb disposal duties
Forgery	Includes counterfeiting or falsifying a document or thing
Fraud - Commonwealth	Includes dishonestly obtaining a benefit or avoiding a liability imposed by a law of the Commonwealth by deception or other means
Criminal conduct	Includes a breach of any criminal law other than Commonwealth fraud
Unlawful Discrimination	Includes breaching any legislative obligation applying to the AFP in relation to discrimination on grounds specified in legislation.
Sexual Harassment	Includes any instances where an AFP appointee sexually harasses another person contrary to legislation
False information/ statement	Includes providing false or misleading information, or swearing to a statement known to be false
Information Misuse	Includes improperly disclosing or failing to protect from improper disclosure, sensitive information held by the AFP
Information Access	Includes unlawfully or improperly accessing AFP information
Death in custody	Includes any circumstances where a person dies while held by or subject to the control or direction of the AFP
Misuse of authority	Includes any use of an AFP appointee's position to improperly obtain advantage, cause detriment or influence others
Neglect of duty	Includes any action or failure to act that constitutes a serious neglect of duty

Federal Register of Legislative Instruments F2006L04145

Description	Examples
Intimidation	Includes any use of an AFP appointee's position or powers to unlawfully or improperly threaten, harass, intimidate or vilify another person
Drug Misconduct	Includes returning a positive drug test or screening, refusing a drug test or screening or tampering with a drug test or screening of any sample
Driving misconduct	Includes serious breaches by an AFP appointee of any traffic legislation and includes being under the influence of an intoxicating substance when in control of any AFP vehicle

Federal Register of Legislative Instruments F2006L04145

EXPLANATORY STATEMENT

Issued by the authority of Commissioner of the Australian Federal Police and the Commonwealth Ombudsman

Australian Federal Police Act 1979

Determination 2006/ to determine AFP Categories of Conduct

Purpose of Determination 2006/

Complaints about the conduct of Australian Federal Police appointees are dealt with in Part V of the *Australian Federal Police Act 1979* (the Act). Section 40RH of the Act stipulates that an AFP conduct issue is an issue of whether an AFP appointee has engaged in conduct that contravenes the professional standards of the AFP, or engaged in corrupt conduct.

The Determination stands on its own – it does not affect, and is not affected by, other systems for characterising conduct or actions that may be used by the AFP or the Ombudsman's office. The Commissioner pursuant to section 40RC of the Act independently establishes the professional standards of the AFP to which all AFP appointees must comply. Any breach of the professional standards of the AFP by an AFP appointee may lead to a complaint being dealt with pursuant to Part V of the Act. This Determination does not incorporate references to specific AFP orders, guidelines or directions, other than the AFP Code of Conduct which is publicly available. Conduct which breaches those other instruments would be likely to fall within one or more of the categories, depending on the circumstances of the individual case, for the purpose of the Determination or the Act.

The category into which a particular piece of conduct falls determines how it will be dealt with by the AFP, the Ombudsman's office and the Australian Commission for Law Enforcement Integrity. The four categories represent matters which must be dealt with under the Act.

The 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 Categories of Conduct in the Determination

Categories 1, 2 and 3 relate to general conduct and category 4 relates to corruption issues. The Determination between the Commissioner and the Ombudsman relates only to categories 1, 2 and 3. Sections 40RK, 40RN, 40RO, 40RP and 40RQ of the Act establish that there are four categories of conduct with the following characteristics:

- Category 1 conduct which is the least serious class of conduct which relates to minor management matters or customer service matters; or reveals a need for improvement in the performance of the AFP appointee concerned; and does not warrant being treated as category 2 or category 3 conduct.

- Category 2 conduct is minor misconduct by an AFP appointee; or inappropriate conduct that reveals unsatisfactory behaviour by an AFP appointee; and conduct of that kind

would otherwise be category 1 conduct; and warrants, because of its repeated nature, being treated as category 2 conduct for the purposes of this Act; and conduct of that kind does not warrant being treated as category 3 conduct for the purposes of this Act.

- category 3 conduct is serious misconduct by an AFP appointee; or raises the question whether termination action should be taken in relation to an AFP appointee; or involves a breach of the criminal law, or serious neglect of duty, by an AFP appointee; and conduct of that kind does not raise a corruption issue; and

- category 4 conduct is conduct that gives rise to a corruption issue.

The articulation of what makes up each Category of conduct in this determination is based on an assessment of the gravity of the conduct should it occur and whether that particular conduct relevantly fits the description of Category 1,2 or 3 conduct as defined in the Act.

Categories are not comprehensive or fixed:

- If there is no category specified for a type of conduct it falls into category 3;

- If conduct could fall under two or more categories, it falls under the higher or highest of them. For example, conduct that may otherwise be category 2 would be category 4 if it involved a corruption aspect;

- A single action may fall within more than one class within a category (for example, a false statement may also amount to an offence) and within classes in different categories (for example, unwarranted attention in category 2 may also be unlawful discrimination in category 3)

- The category for a matter may change up or down as more information becomes available.

Consultation

Under s40RM(1) of the Act, and having been satisfied in terms of s40RN, s40RO and s40RP of the Act, the Commonwealth Ombudsman and the Commissioner of the Australian Federal Police agree as provided in this Determination.

AFP Appointees have been advised of the context, scope and impact of this Determination as it relates to the handling of breaches of the professional standards of the AFP. The Commissioner and Commonwealth Ombudsman have sole responsibility for jointly agreeing to the categorisation of conduct which breaches the professional standards of the AFP.