



## **Australian Federal Police (Categories of Conduct) Determination 2023**

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We, Reece Kershaw, Commissioner, Australian Federal Police, and Iain Anderson, Commonwealth Ombudsman, make the following determination.

Dated 8 September 2023

Reece Kershaw  
Commissioner, Australian Federal Police

Iain Anderson  
Commonwealth Ombudsman

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## Part 1—Preliminary

### 1 Name

This instrument is the *Australian Federal Police (Categories of Conduct) Determination 2023*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under subsection 40RM(1) of the *Australian Federal Police Act 1979*.

### 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### 5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) category 1 conduct;
- (b) category 2 conduct;
- (c) category 3 conduct;
- (d) Commissioner's Orders;
- (e) duties;
- (f) remedial action.

In this instrument:

*Act* means the *Australian Federal Police Act 1979*.

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**AFP** means the Australian Federal Police.

**AFP appointee** has the same meaning as in the Act.

Note: This definition is included to avoid doubt.

**AFP Code of Conduct** means the AFP Code of Conduct as in force at the commencement of this instrument.

**AFP Core Values** means the AFP Core Values as in force at the commencement of this instrument.

**prescribed information** has the same meaning as in section 60A of the Act.

**sexually harass** has the meaning given by section 28A of the *Sex Discrimination Act 1984*.

Note: Other parts of speech and grammatical forms of “sexually harass” (for example, “sexual harassment”) have a corresponding meaning (see section 18A of the *Acts Interpretation Act 1901*, as that section applies because of paragraph 13(1)(a) of the *Legislation Act 2003*).

## Part 2—Categories of conduct

### 6 Conduct of a kind that raises a corruption issue

Despite anything in section 7, 8 or 9, conduct of a kind that raises a corruption issue is not category 1 conduct, category 2 conduct or category 3 conduct.

Note: Conduct giving rise to a corruption issue is the highest, and most serious, category of conduct (see subsection 40RK(5) of the Act).

### 7 Category 1 conduct

For the purposes of subsection 40RM(1) of the Act, conduct is category 1 conduct if it is described in the following table.

Note: An example in column 2 of the table is not exhaustive and may extend the operation of the provision (see section 15AD of the *Acts Interpretation Act 1901*, as that section applies because of paragraph 13(1)(a) of the *Legislation Act 2003*).

Category 1 conduct		
Item	Column 1 Conduct	Column 2 Examples
1	Customer service issues	<ul style="list-style-type: none"> <li>(a) failure to provide a service or facility in an adequate, professional or appropriate manner;</li> <li>(b) failure to provide appropriate or correct advice;</li> <li>(c) unreasonable delay in dealing with an issue or providing a service;</li> <li>(d) failure to take appropriate action in relation to an issue where action by the AFP appointee was warranted in the circumstances;</li> <li>(e) discourteous behaviour including (but not limited to) rudeness, abruptness, verbal abuse, derisive attitude or behaviour, unreasonableness and lack of respect</li> </ul>
2	Failure to comply with AFP governance, where the failure relates to customer service or involves a minor management issue	<ul style="list-style-type: none"> <li>(a) failure to respond to a query within a time frame specified in AFP governance</li> </ul>

### 8 Category 2 conduct

For the purposes of subsection 40RM(1) of the Act, conduct is category 2 conduct if it is described in the following table.

Note: An example in column 2 of the table is not exhaustive and may extend the operation of the provision (see section 15AD of the *Acts Interpretation Act 1901*, as that section applies because of paragraph 13(1)(a) of the *Legislation Act 2003*).

## Part 2 Categories of conduct

### Section 8

<b>Category 2 conduct</b>		
<b>Item</b>	<b>Column 1 Conduct</b>	<b>Column 2 Examples</b>
1	Breach of Commissioner's Orders that does not, and could not, result in a breach of operational or national security, harm to an individual or reputational damage to the AFP	(a) failure to apply sound security practices within the AFP appointee's role and duties as required by Commissioner's Orders dealing with security; (b) breach of Commissioner's Orders dealing with operational safety that does not relate to any physical injury being sustained by an individual
2	Breach of Commissioner's Orders dealing with operational safety where the breach relates to a weapon, and: (a) the weapon is not a firearm; and (b) the weapon is not used against a person or animal; and (c) the unauthorised use of the weapon does not, and could not, result in harm or danger to a person or animal	(a) the AFP appointee discharges a conducted energy weapon while in the process of loading the AFP appointee's utility belt
3	Unauthorised departure from an AFP National Guideline or AFP Practical Guide that does not, and could not, result in a breach of operational or national security, harm to an individual or reputational damage to the AFP	(a) failure to comply with obligations relating to secondary work that are set out in AFP National Guidelines and AFP Practical Guides
4	Failure to comply with the Code of Conduct that results in a failure to meet the standards of behaviour reasonably expected of an AFP appointee, and goes beyond a minor management or customer service issue, but does not, and could not, result in a breach of operational or national security, harm to an individual or reputational damage to the AFP	(a) failure to adequately or appropriately supervise another AFP appointee who is within the AFP appointee's line of responsibility as a supervisor; (b) repeated category 1 conduct that amounts to a failure to comply with the AFP Code of Conduct because of its repeated nature
5	Failure of due care or diligence that does not, and could not, result in a breach of operational or national security, harm to an individual or reputational damage to the AFP	(a) failure to correctly enter or record information in a policing database
6	Administrative failure relating to a warrant, or an authorisation under an Act, where the failure does not amount to a breach of privacy	(a) failure to adequately execute a warrant or an authorisation; (b) failure to maintain accurate and adequate records relating to the administration of a warrant or an authorisation
7	Sexual harassment against another AFP appointee or a member of the public, where: (a) the alleged victim wants the matter dealt with informally; and	(a) inappropriate sexual comments that are not repeated, and are suitable to be dealt with through remedial action (such as conciliation)

## Section 8

<b>Category 2 conduct</b>		
<b>Item</b>	<b>Column 1 Conduct</b>	<b>Column 2 Examples</b>
	(b) the conduct does not constitute criminal conduct and is not otherwise of such a serious nature as to require formal intervention	
8	Discriminatory conduct (other than sexual harassment) against another AFP appointee or a member of the public, where: (a) the alleged victim wants the matter dealt with informally; and (b) the conduct does not constitute a breach of law	(a) discriminatory statements that are not repeated and are suitable to be dealt with through remedial action (such as conciliation); (b) other discriminatory conduct that is not repeated and is suitable to be dealt with through remedial action (such as conciliation)
9	Workplace bullying or harassment (other than sexual harassment) where: (a) the alleged victim wants the matter dealt with informally in the workplace; and (b) the conduct does not constitute a breach of law	(a) conduct that constitutes workplace bullying or harassment and is suitable to be dealt with through remedial action (such as conciliation)
10	Traffic misconduct that would not result in criminal charges	(a) traffic matters, on or off duty, that result in a requirement to appear in court as a defendant (other than in a criminal matter)
11	Misconduct relating to the handling and management of property or exhibits held by the AFP	(a) causing, or failing to prevent, avoidable loss, damage or destruction of property or exhibits held by the AFP; (b) failure to return property or exhibits held by the AFP or to account properly for the whereabouts or disposition of property or exhibits held by the AFP; (c) unauthorised or improper use or removal of property or exhibits held by the AFP
12	Failure to comply with AFP governance, including National Guidelines and Better Practice Guides, relating to an actual, perceived or potential conflict of interest that does not, and could not, affect: (a) a decision-making process; or (b) the functions and interests of the AFP	(a) failure to put in place appropriate mechanisms to mitigate conflicts arising from an actual or perceived conflict of interest; (b) failure to put an appropriate management plan in place where the AFP appointee is supervising a family member; (c) failure to provide updates as required by mechanisms to mitigate an actual, perceived or potential conflict of interest that the AFP appointee has reported
13	Failure to report an actual, perceived or potential conflict of interest that does not, and could not, affect: (a) a decision-making process; or (b) the functions and interests of the AFP	(a) failure to report an intimate relationship with another AFP appointee for whom the AFP appointee has managerial responsibility; (b) verbally advising a supervisor of a

## Part 2 Categories of conduct

### Section 9

Category 2 conduct		
	Column 1	Column 2
Item	Conduct	Examples
		conflict of interest, but failing to adequately report the conflict as required by AFP governance relating to actual, perceived or potential conflicts of interest

### 9 Category 3 conduct

For the purposes of subsection 40RM(1) of the Act, conduct is category 3 conduct if it is described in the following table.

Note: An example in column 2 of the table is not exhaustive and may extend the operation of the provision (see section 15AD of the *Acts Interpretation Act 1901*, as that section applies because of paragraph 13(1)(a) of the *Legislation Act 2003*).

Category 3 conduct		
	Column 1	Column 2
Item	Conduct	Examples
1	Serious breach of law	(a) driving over the prescribed concentration of alcohol; (b) being arrested, summonsed or charged in relation to an alleged criminal offence (other than a traffic offence) in any jurisdiction (including court attendance notices); (c) victimisation contrary to section 40YA of the Act; (d) giving false information in relation to an AFP conduct or practices issue contrary to section 40YB of the Act; (e) any other breach of the Act
2	Breach of Commissioner's Orders and instructions that results, or could result, in a breach of operational or national security, harm to an individual or reputational damage to the AFP	(a) failure to report misconduct that relates to the AFP appointee or another AFP appointee; (b) serious breach of the Commissioner's Financial Instructions (CFI) or the <i>Public Governance, Performance and Accountability Act 2013</i> ; (c) unwarranted attention, in the course of, or in connection with, the AFP appointee's duties, towards a person who is not an AFP appointee, including harassment or conduct that is inappropriate, unreasonable or unjustified
3	Breach of Commissioner's Orders dealing with operational safety where the breach	(a) unauthorised discharge of a firearm; (b) use of force where non-approved

## Section 9

<b>Category 3 conduct</b>		
<b>Item</b>	<b>Column 1 Conduct</b>	<b>Column 2 Examples</b>
	relates to: (a) a firearm; or (b) the use of a weapon (other than a firearm) against a person or animal; or (c) the use of a weapon (other than a firearm) in circumstances that result, or could result, in harm or danger to a person or animal; or (d) the use of excessive force against a person or animal; or (e) harm or danger to an individual or animal	methods or accoutrements are used to affect the force applied; (c) excessive use of force against a person or animal; (d) threatening to use excessive force against a person; (e) failure to secure ammunition or accoutrements, where the failure poses potential danger to the public or may damage the reputation of the AFP; (f) deliberately preventing the provision of adequate medical attention, or decontamination treatment, following use of chemical munitions
4	Serious failure to comply with the AFP Code of Conduct or the AFP Core Values	(a) multiple failures to comply with the AFP Code of Conduct that, on their own, would constitute category 2 conduct but due to their repeated nature amount to serious misconduct; (b) failure to comply with the AFP Code of Conduct or the AFP Core Values while deployed overseas that may damage the reputation of Australia or the AFP
5	Unauthorised departure from an AFP National Guideline or AFP Practical Guide that results, or could result, in a breach of operational or national security, harm to an individual or reputational damage to the AFP	(a) failure to display red and blue flashing lights or to sound an alarm when priority driving; (b) failure to take reasonable care, having regard to hazards, as set out in the National Guideline on Priority Driving
6	Failure to comply with AFP governance, including National Guidelines and Better Practice Guides, relating to an actual, perceived or potential conflict of interest that affects, or could affect: (a) a decision-making process; or (b) the functions and interests of the AFP	(a) continuing involvement in an investigation regarding a family member; (b) inappropriate relationships with victims of crime or suspects which may involve a power imbalance between the individuals involved or otherwise give rise to an actual or perceived conflict of interest
7	Failure to report an actual, perceived or potential conflict of interest that affects, or could affect: (a) a decision-making process; or (b) the functions and interests of the AFP	(a) failure to report a personal interest in a procurement process
8	Sexual harassment where: (a) the alleged victim wants the matter dealt with formally; or (b) the conduct is of such a serious nature (e.g. constitutes criminal conduct) as to	(a) repeated inappropriate sexual comments; (b) sexual harassment involving physical contact where the alleged victim wants the matter dealt with formally, but not as a criminal matter

**Part 2** Categories of conduct

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<b>Category 3 conduct</b>		
<b>Item</b>	<b>Column 1 Conduct</b>	<b>Column 2 Examples</b>
	require formal intervention	
9	Discriminatory conduct (other than sexual harassment) against another AFP appointee or a member of the public, where: (a) the alleged victim wants the matter dealt with formally; or (b) the conduct is of such a serious nature (e.g. constitutes a breach of law) as to require formal intervention	(a) repeated failures to afford training opportunities to an AFP appointee on the basis of sex, age, religion, race or other discriminatory grounds
10	Workplace bullying or harassment (other than sexual harassment) where: (a) the alleged victim wants the matter dealt with formally in the workplace; or (b) the conduct is of such a serious nature (e.g. constitutes a breach of law) as to require formal intervention	(a) repeated unreasonable, belittling or aggressive behaviour towards an AFP appointee
11	Domestic and family violence	(a) domestic and family violence, including domestic and family violence that may not or does not result in criminal charges
12	Accessing pornographic images	(a) viewing or disseminating pornographic images at work or while undertaking official duties, including on a personal device, unless such access is related to official duties; (b) storing or accessing pornographic images, on an AFP device, that are not related to official duties
13	Misuse or mishandling of prescribed information	(a) unlawfully or improperly accessing, using or disclosing prescribed information; (b) improperly disclosing prescribed information obtained as a result of an investigation under Part V of the Act; (c) failing to protect prescribed information
14	Misconduct relating to intoxication (because of alcohol or otherwise)	(a) being intoxicated at work or on duty; (b) inappropriate behaviour, off duty, while intoxicated that is not in accordance with the AFP Core Values and could damage the reputation of the AFP
15	Drug misconduct	(a) abuse of prescription medication, including taking prescription medication not prescribed to the AFP appointee; (b) using medication that is banned in Australia (including in a place outside Australia where the medication is not banned); (c) a failure to submit a change of health

## Section 9

<b>Category 3 conduct</b>		
<b>Item</b>	<b>Column 1 Conduct</b>	<b>Column 2 Examples</b>
16	Serious traffic misconduct	<p>form relating to prescription medication that could interfere with the AFP appointee's duties;</p> <p>(d) unlawful drug activities, whether on or off duty;</p> <p>(e) returning a positive test or screening for unlawful drugs, refusing a test or screening for unlawful drugs, or tampering with a test or screening</p> <p>(a) serious traffic matters, on or off duty, that may result in criminal charges;</p> <p>(b) serious breach by the AFP appointee of any traffic legislation, including being under the influence of an intoxicating substance when in control of any AFP vehicle;</p> <p>(c) serious driving misconduct, on or off duty, that may damage the reputation of the AFP or is not in accordance with the AFP Core Values</p>

## Part 3—Application and transitional provisions

### 10 Transitional provision—repeal of the *Australian Federal Police Categories of Conduct Determination 2013*

Despite the repeal of the *Australian Federal Police Categories of Conduct Determination 2013* (the **old determination**) by Schedule 1 to this instrument, the old determination as in force before the commencement of this instrument (the **commencement time**) continues to apply, on and after the commencement time, in relation to conduct engaged in before the commencement time.

## **Schedule 1—Repeals**

### *Australian Federal Police Categories of Conduct Determination 2013*

#### **1 The whole of the instrument**

Repeal the instrument.