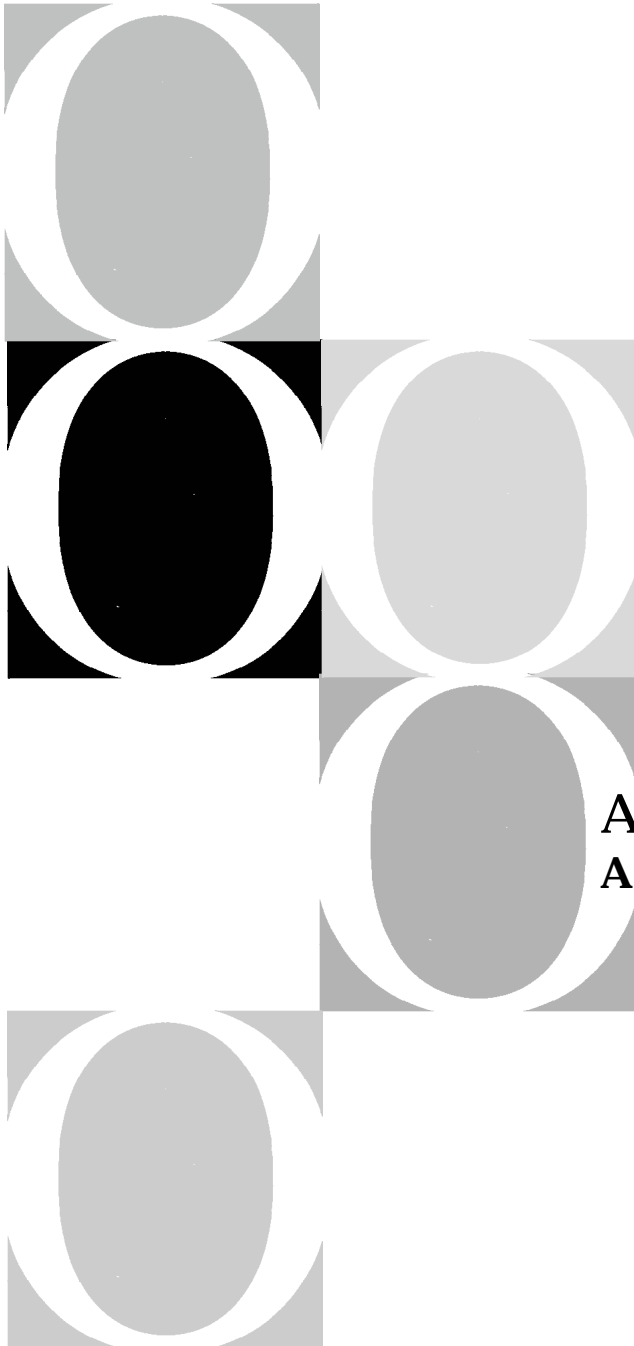




**ACT Ombudsman
Annual Report 1997-98**



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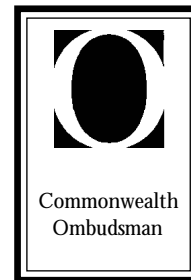
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Designed and produced in the Ombudsman's Office, Canberra

14 September 1998

Mr Gary Humphries MLA
Attorney-General
Australian Capital Territory Legislative Assembly
London Circuit
CANBERRA A.C.T. 2601



A . C . T

Dear Attorney-General,

In accordance with section 21 of the *Ombudsman Act 1989*, I am providing you with the ninth Australian Capital Territory Ombudsman's Annual Report for tabling in the Legislative Assembly. The Report covers the period from 1 July 1997 to 30 June 1998.

I became Ombudsman in February of this year. This report therefore covers two thirds of the year when my predecessor, Ms Philippa Smith, was Ombudsman and the remainder of the year when the Office was my responsibility.

Yours sincerely

R N McLeod
Australian Capital Territory Ombudsman

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The year in review

ACT Government complaint trends

For the first time since self government, complaints to the Ombudsman about the administrative actions of ACT Government agencies have fallen.

complaints service, there has been a decrease of 80 complaints (26 per cent) to the Office. This reduction accounts for over half of the total fall in complaints to the Ombudsman about ACT Government agencies in 1997-98.

Complaints received by the ACT Ombudsman, 1997-98

Jurisdiction	Number of complaints received 1996-97	Number of complaints received 1997-98	% change
ACT Ombudsman			
<i>written</i>	119	81	-32%
<i>oral</i>	637	524	-18%
TOTAL	756	605	-20%
ACT AFP complaints	610	587	-4%
Total received	1366	1192	-13%

During 1997-98, the Ombudsman received 605 new complaints which was a decrease of 151, or almost 20 per cent compared to the previous year. The Office finalised 596 complaints. An analysis of complaint numbers is provided in the Performance Measures section of this report, and a breakdown by agency is at Appendix One.

It is pleasing to note that in the first full year since ACT Housing introduced its Customer Assistance

The improvement by ACT Housing is particularly pleasing because it has been the major source of complaints in recent years. It is also an indication that effective internal complaints systems are likely to reduce the number of clients seeking external review of decisions and actions through the Ombudsman's office.

There was a small increase in complaints about road, traffic and parking matters in 1997-98, while

complaints about most other agencies showed a downward trend.

Some of the complaint statistics are not directly comparable with those from previous years, due to changes in the Ombudsman's complaint database and restructuring within ACT Government. For example, this is the first full year in which our database fully delineated many of the separate functions of the Department of Urban Services (such as Planning and Land Management, Domestic Animal Service and Road User Services).

ACT Community Policing complaint trends

The Ombudsman received 587 new complaints about the ACT Community Policing functions of the Australian Federal Police. This was a reduction of 23 complaints or four per cent less than in 1996-97. Streamlined complaint procedures resulted in 669 complaints about AFP community policing being completed this year.

A number of issues assisted this reduction in new complaints. It is hoped that the extensive interaction between this office and the AFP, particularly in joint training initiatives, and our work with the

AFP in its community policing role contributed to this result.

Improving public administration

The Ombudsman's office seeks to improve public administration by investigating and resolving complaints. The Office regularly recommends improvements in agency practices and procedures as a result of the identification of systemic weaknesses. We also initiate investigation of relevant aspects of administration on an 'own motion' basis.

During the year we finalised an own motion investigation into a range of administrative issues affecting the operations of the Quamby Youth Detention Centre. Following the investigation, senior Ombudsman officers met with senior management of the Children's, Youth and Family Services Bureau and the Department of Education and Community Services to discuss the conclusions and recommendations of the investigation.

The agencies agreed to implement a substantial number of the changes proposed by the Ombudsman, and employed an external consultant to conduct a full performance review of Quamby. That review studied

some of the issues outstanding from the Ombudsman's report as well as personnel matters not within our jurisdiction. The consultant's report has recently been released. It adds further to the process of change and improvement now well underway at Quamby.

At the time of writing, a number of other reports resulting from systemic inquiries were with agencies. The outcomes are yet to be finalised and will be reported on

next year. These investigations cover: tendering and contract procedures; the commercial activities of agencies; and certain weaknesses in the interpretation of changed government policy.

The Ombudsman also contributes to improving public administration through outreach, training and liaison programs which are detailed in the Performance measures section of this report.

Performance measures

Principal performance measures for the ACT Ombudsman function are:

- the number of complaints received;
- the number of complaints finalised;
- the time taken to finalise complaints;
- the degree of satisfaction of the client and agency with the outcome and/or inquiry process;
- training and liaison contacts made by the Office; and
- outreach activities undertaken by the ACT Ombudsman's office.

Complaints received, finalised and time taken

Detailed tables of complaints received and finalised are included within the body of this report and at Appendix One. The major performance measure for complaint handling is whether we were able to finalise 90 per cent of complaints within three months of receipt.

In 1997-98, the Ombudsman received 1192 complaints. Of these, the Ombudsman received 605 complaints about ACT Government

agencies under the *Ombudsman Act 1989*, and the Ombudsman finalised 596 complaint investigations.

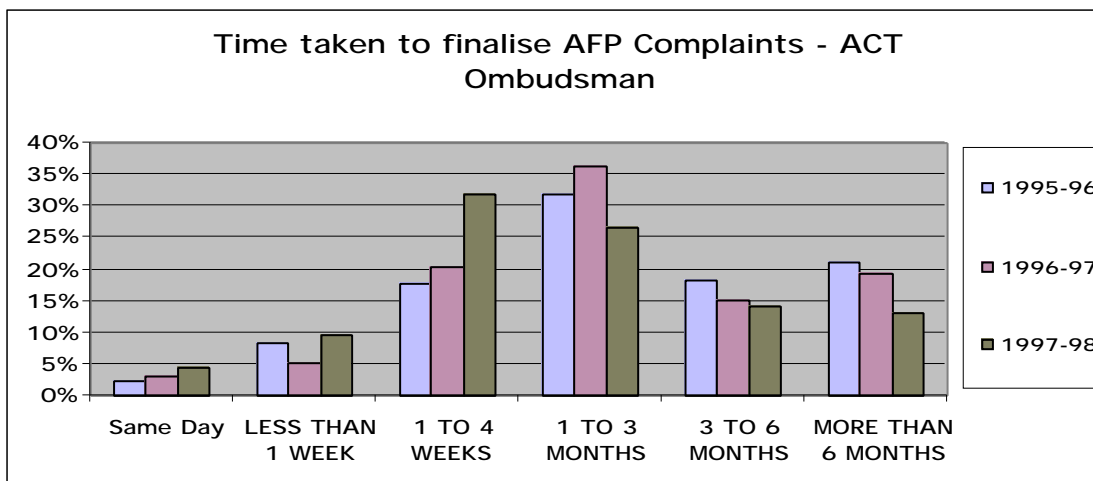
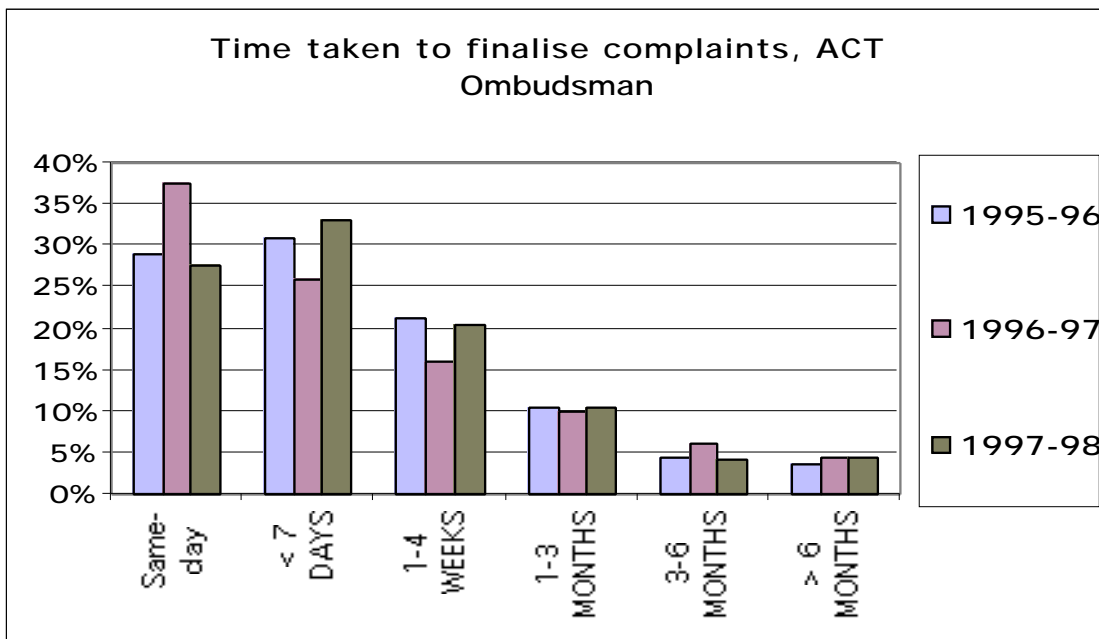
Ninety-two per cent were completed within three months of receipt.

In addition, the Ombudsman received 587 complaints about the ACT community policing function of the Australian Federal Police under the *Complaints (Australian Federal Police) Act 1981*, and the Ombudsman finalised 669 complaint investigations. Of these, 73 per cent were completed within three months of receipt. The time taken to finalise AFP complaints is extended because investigations are undertaken primarily by the Internal Investigations area of the AFP rather than by Ombudsman staff directly. AFP complaints by their nature have always tended to take longer to resolve than ACT Government complaints. However, the Office's performance in settling police complaints over the past three years has progressively improved. More details about the handling of AFP complaints are included in the ACT Community Policing section of this report.

Comparative times taken to finalise complaints are illustrated in the following charts:

Time taken to finalise complaints, ACT Ombudsman

Jurisdiction	Same-day	Less than 7 days	1-4 weeks	1-3 months	3-6 months	More than 6 months
ACT	28%	33%	20%	11%	4%	4%
ACT AFP	4%	10%	32%	27%	14%	13%



Training and liaison contacts

The Office assists agencies with staff training about administrative review, complaint systems and the role of the Ombudsman. The Office also conducts numerous meetings and has many informal discussions with agency staff at all levels. Specific activities during 1997-8 included:

Seminars and external training

- Presentation to ACT Corrective Services induction training course for court transport staff on administrative law, administrative review and the role of the Ombudsman.
- Presentation on accountability to the Children's, Youth and Family Services Bureau's management development program.
- Presentation on quality of service to ACT Government senior managers' breakfast.
- Continued support of the interagency integrity investigations courses jointly presented by the AFP and the Ombudsman. Three courses were held during the financial year.
- Four presentations to ANU Legal Workshops — half day sessions

on administrative review and the role of the Ombudsman, as well as two specialised presentations on handling of complaints about AFP.

- A model mediation and role play as part of the ANU Law School training for lawyers and others involved in alternative dispute resolution.
- Three seminars for newly arrived migrants as part of the Canberra Institute of Technology (CIT) new settlers' program.
- Placement of a secondary student under the Student to Industry program.
- Placement and research sponsorship of a CIT student researching social support available to Canberra people cut from Commonwealth social security and income support programs.
- Presentations at schools and colleges including the launch of the Canberra High School Student Behaviour Management policy.

Working parties and committees

- ACT Council on the Ageing — legal issues for older people.

- ACT Free Legal Advice Forum.
- Freedom of Information Practitioners' Forum.
- Public Interest Disclosure Network.

Submissions

- Submission to and appearance before the ACT Legislative Assembly Standing Committee on Social Policy Inquiry into Services for Children at Risk in the ACT.
- Submission to the Department of Health and Community Care on provision of services for people with a mental dysfunction.
- Submission to ACT Corrective Services Stakeholder Survey on institutions, programs and performance.
- Advice to the Department of Urban Services on the taxi accreditation scheme.

Liaison with ACT Government agencies

- Regular visits to work sites and meetings with contact staff in agencies including: ACT Corrective Services; ACT Housing; Children's Youth and Family Services Bureau; Department of Urban Services; and ACT Legal Aid Office.

- Assistance with recruitment at several agencies, including provision of officers to participate in staff selection interviews.
- Assistance and advice on establishing and developing internal complaints and review programs at ACT Housing and Children's Youth and Family Services Bureau.
- Advice and input into the Information Handbook for New Settlers produced by the Office of Multicultural and International Affairs.

Outreach activities

Although the Office has no specific funding for liaison staff or outreach activities within the ACT, it endeavours to maintain a program of outreach to inform the public and community agencies about the role and services of the Ombudsman. Activities this year included:

- Visits to community groups and institutions to meet staff and explain Ombudsman complaint handling procedures including:
 - Welfare Rights and Legal Centre;
 - University of Canberra;

- Australian National University;
 - Canberra Institute of Technology;
 - Belconnen Remand Centre; and
 - Quamby Juvenile Justice Centre.
- An ongoing program of visits to indigenous community groups and regional councils in the ACT region to explain the services of the Ombudsman and obtain feedback on issues of relevance to Aboriginals.

Freedom of Information

Under section 53(3) of the *Freedom of Information Act 1989*, the Ombudsman is required to report on complaints about the handling of Freedom of Information (FOI) requests by ACT Government agencies.

In 1997-98, the Office received eight new complaints from individuals claiming that there had been defective handling of their FOI applications. The Ombudsman finalised nine complaints, including one received in the previous financial year.

Of the nine complaints completed, the Ombudsman decided not to investigate two cases because the clients had not sought internal review by the agency concerned.

Two clients withdrew their complaints to pursue other options, and in three cases the Office determined that there had been no defective administration by the agency.

The remaining two complaints resulted in outcomes favourable to the clients.

In one case, an agency had deferred action on an FOI request, in the public interest, on grounds that the subject matter was before a Coroner's inquest. However, after the Ombudsman's office obtained written confirmation from the Coroner that release of the information would not hinder his inquiry, the agency agreed to release a substantial number of documents to the client. In the other matter, intervention by the Ombudsman resulted in immediate release by an agency of documents which had been delayed by a few days beyond the statutory deadline.

Public interest disclosures ('whistleblowing')

In accordance with the provisions of the *Public Interest Disclosure Act 1994*, whistleblowers may make a public interest disclosure in certain ways, including a notification to the Ombudsman.

The Ombudsman has policy guidelines for handling whistleblowing. These guidelines relate to receiving disclosures, assisting and providing information to the person making a disclosure, protecting the person who makes a disclosure from unlawful reprisal, and acting on public interest disclosures. Because the core business of the Ombudsman is the investigation of complaints from the public, public interest disclosures are essentially dealt with within the same complaint handling procedures outlined in Appendix Two.

During 1997-98, the Ombudsman received two public interest disclosures. The first related to a

contractor who was allegedly deliberately performing sub-standard work, but being paid full rates by the agency concerned. The other disclosure concerned a public servant who was allegedly engaging in unauthorised paid work while on paid leave from an ACT Government agency.

In both cases, after discussion with Ombudsman staff, the people making the complaints opted for the matters to be investigated by the chief executive officer of the relevant agency, as provided for by the public interest disclosure legislation. The Office was informed of the outcomes of those investigations and determined that no further action was required.

Major agencies and significant issues

ACT Government Service complaint record 1997-98

Area	Number of complaints received*	Number of complaint issues identified	% of total complaints received under the Ombudsman Act 1989	% change from 1996-97	Most complained about issues
ACT Housing (Dept of Urban Services)	222	244	37%	-26%	# home maintenance # placement priorities # allocation of properties, collection of arrears and calculation of rent
ACT Road User Services (Dept of Urban Services)	85	90	14%	+ 9%	# fines and parking infringement notices # licence cancellations
ACT Corrective Services	54	79	9%	+20%	# quality of decisions and actions # behaviour towards other prisoners
Dept of Urban Services	36	41	6%	-46%	# dog control # infrastructure management
Other	208	234	34%	-21%	# quality of decisions and actions
Total	605	688	100%	-20%	

* Refers to all complaints made to the Ombudsman, including those where discretion was exercised not to investigate.

ACT Housing

The Ombudsman received 222 complaints about ACT Housing in 1997-98 which was a 26 per cent decrease compared to last year. The Office finalised 221 complaints, of which 121 required investigation. In the previous year we conducted 186 investigations of housing complaints, meaning that matters requiring investigation fell by 35 per cent. This pleasing result is probably due to a range of factors including the success of the ACT Housing Customer Assistance complaints service, improvements in staff training and customer service, and the ongoing successful

liaison between our agencies, which included placement of an officer from ACT Housing in our complaint investigation team for eight months last year. ACT Housing has continued to provide our office with prompt service, which has allowed quick and appropriate outcomes to complaints.

Most housing complaints continue to relate to:

- property maintenance;
- recovery of debts and arrears; and
- issues surrounding eligibility or priority for public housing allocations.

Following are a few case studies illustrating typical complaints finalised during the year.

Case studies

- A family from a non-English speaking background with six children were delighted to be allocated a large new house by ACT Housing. However, when they arranged to have the telephone connected they were puzzled to be asked by Telstra to pay an extra \$173 for 'cabling'. They complained to the Ombudsman. ACT Housing quickly checked and found that the building contractor had failed to install the cables as required. They arranged for the family to forward the bill to ACT Housing for payment.
- A woman complained that although she and another tenant had made an arrangement for a mutual transfer, ACT Housing had refused to approve the swap. ACT Housing advised that one of the tenants was in arrears by over \$700 from a tenancy some three years before. They agreed that the debt had not been actively pursued for some time, but when the tenant entered into an arrangement to pay \$50 per fortnight the swap was approved and the tenants exchanged homes.
- A tenant complained that although the Housing Review Committee had overturned a decision to evict her over arrears of just over \$200, she was required to repay at a rate of \$66 per fortnight plus 30 per cent of her gross income. Our inquiries found that this was a misunderstanding based on correspondence which was not totally clear. The tenant was required to repay the arrears at a rate not exceeding 30 per cent of her gross income. The tenant was able to enter into a suitable arrangement to repay the ar-

rears, and ACT Housing agreed to revise the wording of its letters to avoid similar misunderstandings in future.

ACT Corrective Services

ACT Corrective Services is responsible for a range of programs, including community service orders, periodic detention and custody of persons on remand.

As in previous years, most complaints about Corrective Services were received from inmates of the Belconnen Remand Centre. This year, 56 complaints were finalised and it is significant to note that only 27 of these required investigation and that there were only seven complaints where significant actions were necessary to remedy problems.

Most complaints related to allegations about the actions of custodial staff toward remandees or decisions made about conditions for inmates. The following case study illustrates one such complaint.

Case study

- Two female detainees complained about problems arising from 'lockdowns' which they said were caused by staff shortages. They claimed that they were only allowed one hour per day in an exercise yard and could not make personal calls. Corrective Services agreed that there was a temporary problem in relation

to exercise time and privileges for the three female inmates (out of 42 detainees) during a period of some staff shortages. While recruitment was underway, they agreed to ensure that the female detainees would retain their rights and privileges and be allowed at least two hours each day in the main exercise yard, as well as access to the smaller common area outside their cells.

Department of Urban Services

The Department of Urban Services delivers a wide range of services and programs. This year complaint numbers have declined, however, exact comparisons are not possible due to changes in our database brought about by agency restructuring. We received a diverse range of complaints including a number of complaints related to waste management, planning and land management, road user services and domestic animal services. The following case studies are examples of complaints received about the major operations of Urban Services in Road User Services and Planning and Land Management.

Case study: Road User Services

At the beginning of the year we received several complaints from motorists who claimed they had received renewal notices for registrations or driving licences only a day or two before the due dates.

While the motorists accepted that it was their responsibility to renew on time, they claimed that the short notice made the substantial amounts involved difficult to pay. ACT Road User Services agreed that there had been problems with issue of renewals due to the gazetting of increased charges only four days before they came into force. However, they were prepared to enter into temporary arrangements to 'tide over' arrangements for any motorist who was financially embarrassed, including a seven day temporary vehicle registration at a cost of \$16. They also highlighted other options including six month renewals. Road User Services agreed to send renewal notices by courier delivery during the interim period, and to revise policies and procedures so that future changes were gazetted well before higher charges took effect.

Case study: Planning and Land Management

An enthusiastic amateur radio operator complained about procedures followed by Planning and Land Management (PALM) which resulted in a refusal to approve installation of a retractable six metre radio antenna to replace an existing fixed structure. PALM had approached the man's neighbours who were concerned that the antenna might affect their television or radio reception, but had then failed to make any decision on his application. He was then told that because a statutory 45 day time limit had expired, his application was deemed to have been refused. The man supplied technical reports indicating that the antenna would have no effect on neighbouring properties, and a clearance from ACTEW. When we contacted PALM they agreed that they had the statutory power to approve the application even after the

expiry of the 45 day period. After a further clearance was obtained from the Australian Communications Authority, PALM gave its approval and the client was able to install the new antenna.

ACTION and ACTEW

We received 35 complaints about ACTION and ACTEW which covered a diverse range of issues. The following are a few examples:

Case studies: ACTION

- A bus passenger complained of unfair treatment after being issued with an infringement notice for 'interfering with the operation of an omnibus'. He said that an inspector had boarded a bus and asked to see all tickets. Because the man had bought a paper ticket on the bus and had crumpled it in his pocket, the inspector asked him to flatten it out. The man then asked the inspector if he should 'iron' it as well, and the inspector then issued a \$50 infringement notice. The passenger subsequently wrote to the Chief Executive of ACTION, and then complained to the Ombudsman when he did not receive a reply from ACTION. After we contacted ACTION, they apologised for the delay and agreed to withdraw the fine.
- A mother complained about overcrowding on school bus services originating in Fadden, Chisholm and Gowrie, and claimed that students were sometimes left behind at stops because buses were full. The mother

also claimed that affected schools had complained to ACTION, but that there had been no improvements in the service. When we contacted ACTION, they advised that they were aware of the problems and were about to implement a new service on a trial basis to cope with unexpected increases in demand for students attending schools in these areas. A week later, both ACTION and the woman agreed that the service was working well. Its continued operation was confirmed.

Case studies: ACTEW

- An elderly woman said that she had had problems rebuilding and tending to her garden after a burst water main carried away most of the top soil and plants, and damaged her garage. She was having difficulty finding out whether ACTEW would assist her with the cost of restoration, which was not covered by insurance. After we contacted ACTEW, they arranged for an inspector to call and assess the damage, following which they agreed to meet all costs of restoration on an ex-gratia basis.
- An electricity consumer complained that her account was excessive because ACTEW had failed to disconnect the power as agreed at a property which she was vacating. ACTEW checked and found that a mistake had occurred, resulting in the consumer being overcharged for a period of around four months. ACTEW apologised for the problem and credited the consumer's account with \$114 to cover the overcharge.

ACT Community Policing

The Ombudsman's role under the Complaints Act

The Ombudsman's police jurisdiction comes from the *Complaints (Australian Federal Police) Act 1981* (the Complaints Act). The Ombudsman's role under the Complaints Act is quite different to the role and jurisdiction under the *Ombudsman Act 1989*.

Under the Complaints Act the Ombudsman is jointly responsible with the AFP for handling police complaints. Under this arrangement the AFP's Internal Investigations is generally responsible for the initial investigation of complaints. The Ombudsman then reviews those investigations and decides whether the AFP has taken adequate action. If the Ombudsman is dissatisfied with the internal investigation he can require the AFP to investigate the matter further or he can reinvestigate the complaint in his own right.

The Ombudsman also has the power to investigate complaints about AFP practices and procedures. Over the past year there have been a number of

investigations which the Ombudsman has initiated, both in relation to practices and procedures and other wider issues. These investigations have generally been conducted under the Ombudsman's own motion power which allows the initiation of investigations into complaints or issues, particularly those which are systemic in nature and involve a number of individual complaints.

Complaint numbers

Complaints about the AFP's community policing role decreased during 1997-98. The Ombudsman received 587 complaints about the AFP in relation to its ACT function, compared with 610 complaints in 1996-97. While the change is small, it is encouraging because it is the first time that the Ombudsman has recorded a fall in complaints about ACT community policing.

Workplace resolution of complaints

The minor complaint resolution process, known as 'workplace resolution', is the method by which most less serious complaints are dealt with in the workplace, often

by a supervisor speaking to the officer and the citizen about the complaint.

During the past year, two ACT Community Policing Sergeants have been posted to Internal Investigations on a six week rotation to deal with the majority of minor complaints. This has significantly improved the process, and complaints are being dealt with in a more timely manner.

From 1 March 1998 to 30 May 1998, Internal Investigations, in consultation with the Ombudsman's Office, conducted a review of workplace resolution of complaints.

The review considered the following issues:

- the usefulness of locating Community Policing Sergeants at Internal Investigations;
- the length of their period of rotation;
- the effectiveness of internal processes regarding workplace resolution; and
- how the AFP assesses and measures client satisfaction and ensures fairness to affected members.

The review found that:

- The period of rotation should be extended to eight weeks for a variety of reasons including: to retain the skills of those officers who were performing the task; to enable new officers to enhance their skills in handling minor complaints; and to permit a greater overlap of officers rotating through the area.
- There were numerous instances where AFP managers were able to carry out pro-active measures to remedy a complaint and hopefully to prevent a recurrence.
- Few complainants express dissatisfaction with the process.

Treatment of youth by the AFP

In May 1997, the Ombudsman released a public report of the investigation into the interaction between the AFP and youth in the ACT. This own motion investigation was initiated following the receipt of a disproportionate number of complaints about police treatment of young people. The Ombudsman's 1996-97 Annual Report provided details of recurring issues, which included

police interviewing children in the absence of a parent or other suitable adult, and police improperly searching children.

The report of the Ombudsman's investigation made a number of recommendations which were largely aimed at improving police awareness of their responsibilities when dealing with young people, particularly the legal requirements of the Children's Services Act. The Commissioner of the AFP adopted each of the recommendations and it is pleasing to note that there has been a significant decline in the number of complaints from youth about police in the past year. The improvement largely reflects the increase in community police awareness of the laws relating to children.

Use of own motion powers

Over the past year the Ombudsman has used the own motion power to investigate AFP matters on a number of occasions. In particular, investigations were conducted into:

- Police use of personal search powers;

- Use of police powers under the Intoxicated Persons (Care and Protection) Act; and
- Allegations of unlawful arrest, unlawful use of force, wrongful detention and interview (referred to later in this report).

In addition, Ombudsman investigations were conducted into a complaint made by an AFP Constable about an internal investigation, and a practices and procedures issue relating to the execution of warrants for the non payment of traffic fines.

Client/customer focus

The general theme of complaints about the AFP in its community policing role is one of a lack of client focus. Rudeness and poor treatment of the public remain the major areas of concern. While workplace resolution assists the public to understand the complaints process and the role of police, it does not diminish the need for police to respond to the public in a professional way.

One illustration of this involved police mistreatment of a young woman in her own home.

Case study: She failed the 'attitude' test

Complaint

Miss T alleged that a noisy domestic dispute had been over for some time when two AFP Constables arrived at her flat. She said that one officer, Constable B, left but the other did not leave when she asked him to do so. She said that when he did not leave she pushed him. He then grabbed her by the wrists and pushed her to the floor, causing her to hit her head against the steel leg of a chair as she fell. She said that the Constable then dragged her, on her face, out of her home.

She was taken by police to Belconnen Police Station where she was interviewed without a lawyer, even though she asked for one several times. She was charged with assaulting police and resisting arrest.

At the court hearing the Magistrate found that there was no lawful basis for the police officers to remain at the premises once the original basis for being there had passed. He found the arrest of Miss T to be unlawful. He also said that '...on the evidence, Miss T had failed what is commonly known as the attitude test'. While the Magistrate was rightly critical of the police conduct, he could not make any order or finding in relation to disciplinary action against them, as it was not in his power to do so.

Ombudsman investigation

The Ombudsman conducted an own motion investigation after the court case. Miss T and the police officers were interviewed by Ombudsman investigators. Constable B said that he originally did not intend to interview Miss T at the police station. He said

that he asked her if she wanted to be interviewed. According to him she did. He then began a formal interview. Miss T made a request for a lawyer a number of times, however Constable B continued to ask questions even though Miss T said that she was not going to say anything else until she had a lawyer. On two occasions during the interview Miss T told Constable B that she wished to make a complaint about his behaviour. On one occasion he said he would deal with her complaint later, however he took no further action.

Findings

The Ombudsman concluded that Miss T should be compensated for the unlawful use of force by the police, unlawful detention and wrongful arrest. It was recommended that disciplinary action be taken against both Constables for failing to report a complaint and failing to follow proper interview procedures. Other procedural recommendations were also made.

Outcome

The AFP accepted all of the Ombudsman's recommendations. Disciplinary action was taken against each of the Constables. The AFP paid \$12,000 compensation to Miss T for her mistreatment.

Traffic matters

While most complaints about the police enforcement of traffic offences are of a minor nature, there are times when the substance of the complaint indicates a general lack of understanding by the police officer of what is professional conduct.

One complaint dealt with by Workplace Resolution typified this problem.

Case study: 'Don't do as I do, do as I say'

Complaint

Mr D, a motorist, complained that he was issued a traffic infringement notice for doing a U-turn over double lines after he followed a police car doing the same manoeuvre.

Investigation

The matter was dealt with by way of workplace resolution. After the traffic infringement notice was reviewed it was withdrawn and Mr D was given a caution.

Outcome

Mr D's concerns were brought to the attention of the issuing Constable in a constructive way, so that he might learn from the experience.

Exhibit and property handling

As mentioned earlier, the Ombudsman is conducting an own motion investigation into how the AFP handles property and exhibits. The investigation began following receipt of a number of complaints.

In one case a member of the public located a cardboard box containing

AFP video tapes at a local garbage tip. The tapes were handed to the Ombudsman's office. Inquiries revealed that the tapes were of interviews conducted by AFP officers of suspects and witnesses in police matters.

It was clear that a breakdown in AFP exhibit handling procedures had occurred which allowed the tapes to be disposed of at the tip. Poor accountability procedures had contributed to this. The procedures in place at the time are no longer followed.

In another instance a woman reported the loss of her wallet to the AFP. The wallet was handed to the AFP by a member of the public two days later. The woman was not informed by the AFP that her wallet had been recovered until nearly one month later, even though she left two contact telephone numbers with the AFP.

In the meantime she had to obtain a new passport which had been in the wallet, incurring unnecessary expense.

The AFP reimbursed the woman \$126 for the cost of the passport.

Training issues

The Ombudsman places a high priority on contributing to AFP training programs in recognition of the importance of maintaining a skilled, ethical community policing program. Over the past year Ombudsman staff have given

presentations at a variety of AFP courses including:

- confidant training;
- recruit induction;
- management of serious crime;
and
- the interagency integrity investigations program.

Appendix One: ACT Ombudsman statistics 1997-98

Table One: complaints received and complaint issues finalised under the Ombudsman Act (including FOI by agency 1997-98)

AGENCY	Number received		Complaint issues identified	Discretion Exercised	Withdrawn or lapsed	Substantially in favour of complainant	Partially in favour of complainant	Not at all in favour of complainant	Number of issues finalised
	Written	Oral							
Attorney-General's									
Dept Justice & Community Safety	0	7	7	3	0	1	2	4	10
ACT Community Advocate	3	3	6	3	0	1	2	2	8
ACT Consumer Affairs Bureau	1	5	6	2	0	1	1	2	6
ACT Corrective Services	7	47	54	29	3	7	14	29	82
ACT Emergency Services	0	1	1	0	0	0	0	1	1
ACT Human Rights Office	1	0	1	1	0	0	0	0	1
ACT Legal Aid Office	3	21	24	13	0	2	2	9	26
ACT Magistrates Court	0	6	6	3	0	0	3	1	7
ACT Public Trustee	1	7	8	5	0	0	0	4	9
ACT Registrar-General	0	2	2	2	0	0	0	0	2
ACT Supreme Court	1	1	2	1	0	0	1	0	2
Director of Public Prosecutions	0	0	0	0	0	1	0	0	1
Business, the Arts, Sport and Tourism									
Dept of Business, the Arts, Sport and Tourism	1	4	5	3	0	1	0	0	4

Table one (ctd)

Chief Minister's												
ACT Office of Financial Management	1	3	4	4	2	0	1	1	2	0	1	6
Education, Training and Children's, Youth and Family Services												
Canberra Institute of Technology	1	1	2	2	2	0	0	1	0	0	0	3
ACT Children's, Youth and Family Services Bureau	4	17	21	24	10	2	0	4	9	0	0	25
Dept of Education and Training	3	25	28	37	14	1	4	11	6	0	0	36
University of Canberra	1	2	3	3	0	0	2	0	1	0	0	3
Health and Community Care												
Dept of Health and Community Care	1	14	15	17	13	0	0	3	3	0	0	19
Urban Services												
ACT Housing	16	206	222	244	90	8	46	40	51	0	0	235
ACTION	1	7	8	10	3	0	5	0	2	0	0	10
ACT Road User Services	12	73	85	90	48	1	13	9	16	0	0	87
Planning and Land Management	7	16	23	28	10	0	6	4	4	0	0	24
Dept of Urban Services	9	27	36	41	10	0	8	5	12	0	0	35
Environment ACT		2	2	2	1	0	0	0	0	0	0	1

Table Two: ANALYSIS OF COMPLAINTS HANDLED WITHIN THE ACT OMBUDSMAN'S OFFICE, 1997-98

AGENCY	TOTAL CLOSED		COMPLAINT ISSUES NOT INVESTIGATED			COMPLAINT ISSUES INVESTIGATED				Median time to finalise investigated complaints	
	Number of complaints closed	Number of complaint issues finalised	Number of complaint issues not investigated	% where client advised of alternative process to resolve their complaint	% where initial analysis showed no indication of defective administration	% declined on other grounds	Number of complaint issues investigated	% where outcome substantially in favour of client	% where outcome not at all in favour of client		
ACT Housing	214	235	98	48%	35%	17%	137	34%	29%	37%	6
ACT Road User Services	83	87	49	37%	55%	8%	38	34%	24%	42%	4
ACT Corrective Services	54	82	32	28%	59%	13%	50	14%	28%	58%	7
ACT Urban Services	35	35	10	40%	50%	10%	25	32%	20%	48%	6
Other	210	236	106	50%	35%	15%	130	25%	32%	43%	21
TOTAL	596	675	295	44%	41%	14%	380	28%	29%	43%	7

Explanatory notes for Table two

COMPLAINTS and COMPLAINT ISSUES: A complaint to the ACT Ombudsman's Office can sometimes involve more than one issue. For example, a client may complain about the quality of an agency's decision as well as the behaviour of a staff member. This would be counted as a single complaint with two complaint issues. Complaint closure information is reported against each issue in a complaint.

COMPLAINT ISSUES NOT INVESTIGATED: The ACT Ombudsman has discretionary powers not to investigate a complaint for a range of reasons.

Alternative process to resolve complaint - This includes cases where the client has not yet complained to the agency or where an alternative (more appropriate) review mechanism is available to the client.

Initial analysis shows no evidence or defective administration - This includes cases where the complaint is already under consideration by the agency (or a minister), the complaint has already been remedied, the client provides insufficient information to support their complaint, the complaint is frivolous, vexatious or not in good faith, or for other reasons investigation is not warranted in all the circumstances.

Declined on other grounds - This includes cases where the complaint is withdrawn by the client or lapsed, where a written complaint has been requested but not received, where the complaint is over 12 months old, the client has insufficient interest in the complaint, or the complaint relates to commercial activities.

MEDIAN TIME TO FINALISE INVESTIGATED COMPLAINTS: This is a measure of the median number of days between receipt and final closure of a complaint.

It is not necessarily indicative of delays within agencies, as a range of factors can contribute to timeliness of complaint handling, including difficulties contacting the client, the need to undertake complex research, and resource constraints within the ACT Ombudsman's Office.

Appendix Two

Investigation principles and procedures

The *Ombudsman Act 1989* specifies two major roles for the ACT Ombudsman, 'Improving government administration' and 'Complaint investigation'.

Improving government administration

A significant function is to improve the standard of government administration by recommending changes to the law and to the policies and procedures of government agencies. Deficiencies in these areas may be identified through the investigation of complaints from the public or through investigations commenced on the ACT Ombudsman's own motion. Some investigations culminate in specific recommendations for changes to agency policies and practices, while others result in negotiated outcomes aimed at improving administration and eliminating causes of complaints to the Ombudsman.

The ACT Ombudsman seeks to assist in improving public administration in the ACT by making submissions on legislative and policy changes and

participating in a range of working parties and advisory groups. The Office also works closely with ACT agencies to assist them in developing accessible internal review and complaint procedures, with a view to providing appropriate redress, and so limiting the need for clients to complain to the Ombudsman.

Complaint investigation

The other major function of the ACT Ombudsman is to investigate complaints about administrative actions of ACT Government agencies made under the Ombudsman Act. Complaints may be lodged by individuals, groups, representative bodies or organisations and can be made orally (by telephone or in person) or in writing (by letter, electronic mail, facsimile or internet). Anonymous complaints may be accepted, and the Ombudsman is also authorised to receive public interest disclosures.

Complaint investigations are carried out impartially and independently, and are handled in private in accordance with the provisions of the Ombudsman Act

and privacy principles.

Investigations are conducted in accordance with detailed written procedures, including a Client Service Charter and an investigation manual. Most investigations are conducted by telephone or personal contact and are completed quickly with the results communicated clearly to both clients and agencies.

The key values which underpin all Ombudsman investigations are:

- impartiality;
- efficiency;
- accessibility;
- professionalism;
- timeliness
- accountability; and
- confidentiality.

Where actions complained about are found to be defective, the Ombudsman can make recommendations to achieve fair and equitable outcomes. In this

context, 'defective action' as defined by law includes action that:

- appears to be contrary to law;
- is unreasonable, unjust or oppressive;
- is improperly discriminatory;
- is in accordance with a rule of law, a legislative provision or practice, which itself is unreasonable, unjust, oppressive or improperly discriminatory;
- is based wholly or partly on a mistake of law or fact; or
- is otherwise wrong.

To explain the role of the ACT Ombudsman and the principles and procedures followed in complaint handling, the Office has issued a series of pamphlets including a Client Service Charter, a complaint handling flow chart and specific pamphlets explaining procedures under the *Ombudsman Act 1989* and the *Complaints (Australian Federal Police) Act 1981*.

Appendix Three — Delegations

Delegations at 30 June 1998, *Ombudsman Act 1989*

	D	S	A	I
s.5 Power to investigate	x	x	x	x
s.6 Discretion not to investigate	x	x	x	x
s.7(2) Reduce to writing	x	x	x	x
s.8 Preliminary inquiries	x	x	x	x
s.9(1) Inform principal officer	x	x	x	x
s.9(3) Manner of investigation	x	x	x	x
s.9(4) Obtain information/make inquiries	x	x	x	x
s.9(8) Representation before Ombudsman	x	x	-	-
s.9(9) Reduce to writing/inform Minister	x	-	-	-
s.11 Obtain information and documents	x	x	-	-
s.12 Certify delay as unreasonable	x	x	-	-
s.15(1) Notify discontinuation of investigation of discretion not to investigate	x	x	x	x
s.15(3) Notify completion of investigation	x	x	x	x
s.16 Administer oath	x	x	x	-
s.34 Disclosure of information in public int.	x	x	-	-
D Deputy Ombudsman				
S Senior Assistant Ombudsman (SES 1)(Canberra) Director Investigations, ACT (SOGA) (Canberra)				
A Director (SOGB)(Canberra)				
I Senior Investigation Officer (SOGC) Research and Information Officer (SOGC) Investigation Officer ASO Class 6 (Canberra) Investigation Officer ASO Class 5 (Canberra) ASO Class 4 (Canberra) ASO Class 3 (Canberra) ASO Class 2 (Canberra)				

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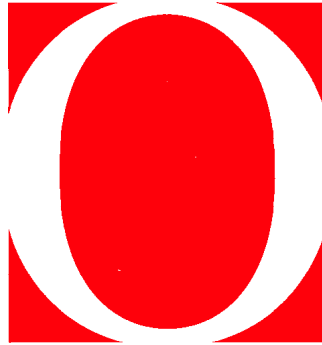
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