

ACT Ombudsman – Quarterly Report

A REPORT ON THE ACTIVITIES OF THE ACT OMBUDSMAN

1 JULY TO 30 SEPTEMBER 2021

Report by the Acting ACT Ombudsman
Penny McKay

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1. Overview of ACT Ombudsman functions

The role of the ACT Ombudsman (the Office) is to influence systemic improvement in public administration in the ACT and provide assurance that ACT agencies within our jurisdiction act with fairness and integrity.

We undertake this role through our complaint handling activities, as well as our oversight of:

- the ACT Freedom of Information (FOI) framework
- the ACT Reportable Conduct (RC) Scheme
- ACT Policing (as the Commonwealth Ombudsman)
- the ACT Integrity Commission (as the Inspector of the ACT Integrity Commission).

We also play a support role for the Judicial Council, for which the ACT Ombudsman is the Principal Officer.

Our functions are supported by an education and engagement program, which aims to improve agencies' complaint handling. We work with agencies to help ensure they provide accessible and effective complaint handling processes to the public. Our goal is to assist agencies to manage complaints effectively and encourage agencies to use complaints as a valuable tool to improve their own service delivery.

In addition to the ACT Ombudsman's Annual Report, we publish quarterly reports to provide information on our activities throughout the year.

Our reports are published on the ACT Ombudsman website at ombudsman.act.gov.au/publications/reports

The first quarterly report for 2021–22 covers 1 July to 30 September 2021.

2021–22 funding

The 2021–22 ACT Budget, released on 6 October 2021, allocated funding of \$2,855,704 (GST exclusive) to the ACT Ombudsman. Total funding received by the ACT Ombudsman in 2020–21 was \$3,032,652 (GST exclusive).

Funding for the ACT Ombudsman in 2021–22 is \$176,948 less than funding received in 2020–21.

The Office assessed how best to deliver ACT Ombudsman services within the 2021–22 funding envelope. In 2021–22, the Office will focus on legislative obligations and deliverables required under our Services Agreement with the ACT Government. Some of the Office's additional and discretionary oversight and engagement work may be reduced due to the reduction in funding this year.

Implementation of recommendations

The Office is currently reviewing the implementation of recommendations made in reports we published in the period 1 July 2019 to 30 June 2021 (for both Commonwealth and ACT Ombudsman functions). We conducted a similar review in September 2020 and produced a report titled [Did they do what they said they would: Reviewing our Recommendations](#).

The review currently includes recommendations from 3 reports relevant to the ACT:

- [Investigation into the transparency of commercial land valuation decisions in the ACT](#) [ACT Revenue Office]
- [Investigation into the Administration of Parole by ACT Corrective Services](#)
- [ACT Policing's administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community](#).

The relevant agencies recently completed a self-assessment and provided information about actions taken to respond to the Office’s recommendations. The Office is analysing these responses and will provide agencies with preliminary views for comment. This material will be collated into a report that may be published in 2022, subject to Ombudsman approval.

2. Complaints management

Total complaints received

During quarter one of 2021–22, as outlined in Table 1, the Office received a total of 136 complaints, which is a decrease compared to the 151 complaints received last quarter. Complaint levels are also 16 per cent lower, compared with the same quarter last financial year.

Table 1: ACT complaints received from 1 July to 30 September 2021, compared to the same quarter in the previous financial year

Complaints received from 1 July to 30 September	Q1 2020 21	Q1 2021 22
ACT Government agencies	125	104
ACT Policing	29	30
FOI Act	2	0
ACT Reportable Conduct Scheme	4	2
ACT Integrity Commission	1	0
Total complaints received	161	136

Note: This data is dynamic and may be updated. For this reason, there may be minor differences when compared to previous published reports.

Complaints about ACT Directorates and agencies

Of the complaints received about ACT Directorates and agencies this quarter, 27 related to the Community Services Directorate, followed by 26 complaints about the Chief Minister, Treasury and Economic Development Directorate and 25 complaints about the Justice and Community Safety Directorate.

Table 2: ACT Directorate and agency complaints received 1 July to 30 September 2021

	Number	Percentage of total*
Community Services Directorate	27	20%
Chief Minister, Treasury and Economic Development Directorate	26	19%
Justice and Community Safety Directorate	25	19%
Health Directorate	10	7%
Independent Statutory Offices	6	4%
Transport Canberra and City Services Directorate	4	3%
Environment Planning and Sustainable Development Directorate	3	2%
Education Directorate	2	1%
Canberra Health Services	1	1%
Total complaints received about ACT agencies	104	
ACT Policing	30	22%
Total complaints received	134	

*Percentages may not add up to 100 per cent due to rounding.

Note: These complaints are a subset of the total complaints referenced in Table 1, above. Table 2 does not include complaints in relation to the ACT Integrity Commission, FOI Act or ACT Reportable Conduct Scheme.

Further details about the number of complaints received about ACT Directorates and individual agencies are provided at **Appendix A**.

How complaints were made

Table 3 details the percentage of complaints, by the channel received, for the first quarter of 2021–22 and provides a comparison of how complaints were made over the last 2 financial years.

Table 3: How complaints about ACT agencies were made during the first quarter of 2021–22 and annually over the last 2 financial years

Complaint Channel	% in Q1 2021 22	% in 2020 21	% in 2019 20
Telephone	41	41	44
Internet (web form)	37	34	31
Email	21	21	20
Written (letter)	1	3	3
In person	0	1	3

**Percentages may not add up to 100 per cent due to rounding.*

Data on how complaints were made over the last 2 years shows a continuing preference for complaints by telephone, followed by the internet (using an online form), followed by email.

Complaints finalised and complaint handling

As outlined in Table 4, the Office finalised 125 complaints during this quarter:

- 99 complaints about ACT agencies
- 21 ACT Policing complaints
- 5 complaints about the Reportable Conduct Scheme.

Table 4: ACT complaints finalised from 1 July to 30 September 2021, compared to the same period of the previous financial year

	Q1 2020 21	Q1 2021 22
Complaints finalised about ACT agencies	101	99
Complaints finalised about ACT Policing	26	21
Complaints finalised about the FOI Act	3	0
Complaints finalised about ACT Reportable Conduct Scheme	5	5
Complaints finalised about ACT Integrity Commission	1	0
Total complaints finalised	136	125

**This data is dynamic and may be updated. For this reason, there may be minor differences when compared to previous published reports.*

Complaints to the Office can result in different outcomes, including a clearer explanation of a decision, an apology, further action taken by the agency or an expedited process within the agency.

Every complaint is assessed to see if it can be resolved quickly or whether a more formal investigation is warranted. Our focus on early resolution provides a better service for complainants and agencies.

Several factors determine how we deal with a complaint including whether:

- the agency concerned had an opportunity to resolve the complaint or an internal review pathway exists
- another oversight body or a tribunal could provide a better outcome
- a reasonable outcome is available for the complainant.

Positive outcomes for complainants can be achieved with or without a full investigation. For example, there are times where we can provide a better explanation to the complainant based on our knowledge of the processes of Directorates and agencies.

During this quarter, the Office finalised 15 complaints using preliminary inquiries. A preliminary inquiry is a one-off, straightforward inquiry made of an agency to determine whether to investigate a complaint. Agencies are asked to provide a response within a week.

Most preliminary inquiries made this quarter were used to assess if complaints were lodged with the agency and, if so, what action was taken. In 4 cases we decided to investigate after receiving information using preliminary inquiries.

Outcomes of investigated complaints

During this quarter, the Office finalised 10 investigations related to ACT agencies. More than one outcome can be achieved per complaint investigation. The outcomes achieved this quarter included:

- a better explanation by the Ombudsman or by the agency
- an apology
- a change of decision
- a change to law, policy or practice
- remedy provided by agency.

The table at **Appendix B** provides further details of the outcomes of complaint investigations finalised this quarter, broken down by ACT Directorates and agencies.

Performance against service standards

Our Office has service standards which we apply to complaints we receive about both the Australian Government and ACT agencies.

We aim to resolve 55 per cent of all government complaints within 7 days, 85 per cent within 40 days and 90% within 90 days. We are usually able to achieve this timeframe for routine or simple complaints, but more complex complaints will take longer. This means we may not always meet the 55 per cent target if we receive a higher proportion of more complex complaints.

This quarter, 56 per cent of complaints about ACT agencies were closed within 7 days, with 75.8 per cent of complaints finalised within 40 days and 87.9 per cent finalised within 90 days.

We continue to explore ways to deliver efficiencies in complaints management while ensuring we provide the ACT community with appropriate levels of service for complex complaints.

New and ongoing complaint trends

This quarter, the ACT agency with the highest number of complaints was Housing ACT (25), followed by ACT Corrective Services (23) and Access Canberra (19).

COVID-19 response

During the quarter, the Office received 15 complaints (14 per cent) that were directly related to the impact of lockdown or other COVID-19 management measures (i.e. border restrictions). This is notable, particularly given the overall decline in the total volume of complaints received in quarter one (down 15 per cent).

This quarter, 10 complaints were received about ACT Health, almost equalling the total number of complaints received about ACT Health in 2020–21 (13). Notably, 5 of these complaints were received from 2 complainants, raising the same issue. Three complaints were in relation to ACT Corrective Services (the Alexander Maconochie Centre (AMC)), one complaint was attributed to Access Canberra (in relation to processing a travel exemption) and one related to Housing ACT.

The issues raised by complainants can be summarised broadly as:

- 9 relating to travel exemptions and border restrictions – including eligibility, timeframes, lack of reasons
- one related to quarantine requirements (returning to ACT)
- 2 related to the vaccine rollout
- 3 related to matters in ACT Corrective Services (one related to mask wearing, detailed below).

No complaints related to COVID-19 were received about administration or support in relation to small business, schools, ACT Policing, or compliance by Access Canberra.

A further 5 matters received in the quarter cited the COVID-19 lockdown as an extenuating circumstance to the complaint issue being raised.

Given the scale and impact of the ACT's lockdown and border restrictions, these numbers appear to indicate low levels of concern about the way agencies are managing the COVID-19 response. These numbers suggest there may be a level of tolerance from the ACT public in relation to the need for COVID-19 management measures.

In response to these 15 complaints, the Office took the following actions:

- 8 were referred to the agency complained about, all in relation to travel exemption issues
- 3 preliminary inquiries were undertaken, with no further action subsequently required
- one was out of jurisdiction
- one was resolved by the entity while it was being assessed
- one was assessed and is now being investigated
- one was closed when the complainant did not provide further information.

The relevant agency may be best placed to quickly provide a better explanation or revisit a decision. Our Office therefore referred people who had travel exemption complaints back to the relevant agency in the first instance. Given the context of COVID-19, our Office was also conscious of the potential impacts of diverting agency resources to answering our questions, if a direct complaint to the agency could achieve the same result for complainants.

During the quarter, the Office received a complaint alleging that some Corrective Service Officers were not wearing masks at the AMC. We contacted the AMC to enquire about the use of personal protection equipment (PPE), as a preliminary inquiry. We received evidence the AMC provided direction to staff on PPE requirements and had issued a further reminder to staff about PPE obligations in response to the complaint received by our Office. The complainant was encouraged to contact our Office again if they had concerns about potential breaches of PPE protocol in future.

Housing ACT

The number of complaints about Housing ACT (25) declined this quarter, down from 37 complaints in the previous quarter and from 33 complaints in the same quarter of the previous financial year (2020–21).

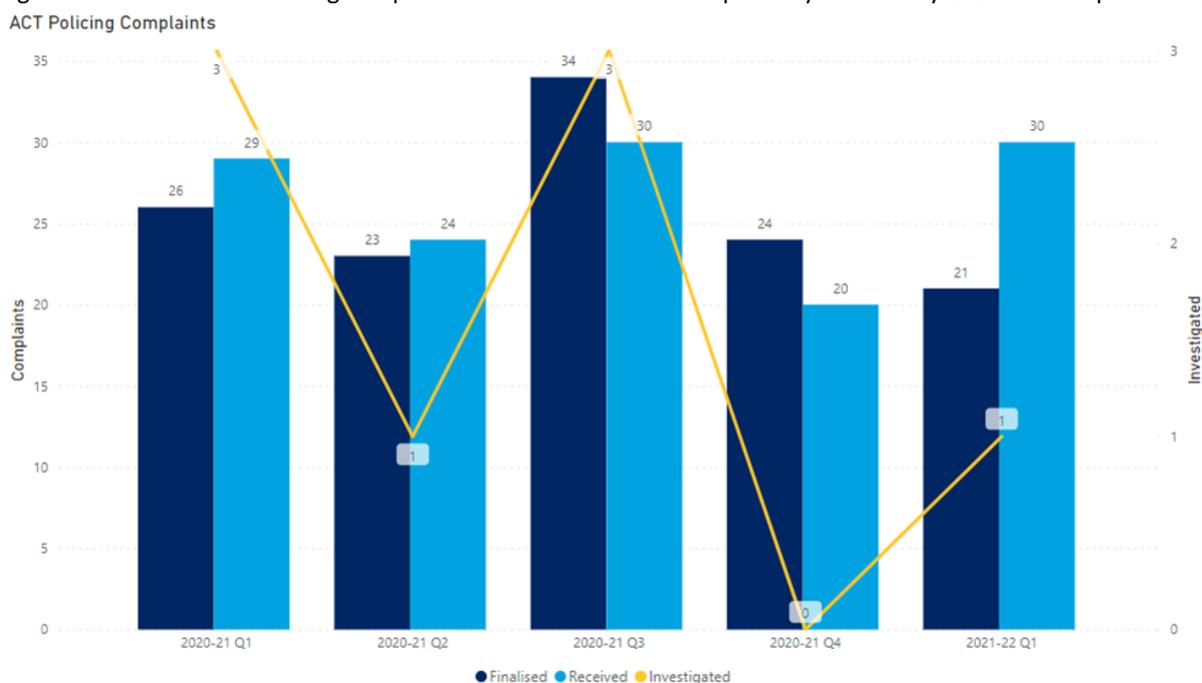
We closed 6 investigations related to Housing ACT in the quarter (all but one was received in a previous quarter). Each complaint related to alleged delays or refusal to conduct maintenance to a property. Following investigation, the Office found no concerns about the actions of Housing ACT for the issues raised.

3. ACT Policing

The Commonwealth Ombudsman receives and considers complaints about ACT Policing. As outlined in Figure 1, this quarter we received 30 complaints about ACT Policing and finalised 21 complaints. Complaint numbers increased in comparison with the previous quarter, in which we received 20 complaints and finalised 24 complaints.

Of the 21 complaints finalised this quarter, one was investigated. In most cases, we were able to resolve complaints through early resolution tools, including referring the complainant to the agency to raise their concerns in the first instance.

Figure 1: Trends in ACT Policing complaints received and finalised quarterly from 1 July 2020 to 30 September 2021



The Office is responsible for inspecting ACT Policing records related to the use of certain covert and intrusive powers under ACT legislation. No inspections were conducted during quarter one of 2021–22. The next inspections of ACT Policing under the *Crimes (Surveillance Devices) Act 2010 (ACT)* and the *Crimes (Controlled Operations) Act 2008 (ACT)* are scheduled for April 2022. An inspection of ACT Policing compliance with legislative requirements relating to the child sex offenders register is scheduled for December 2021.

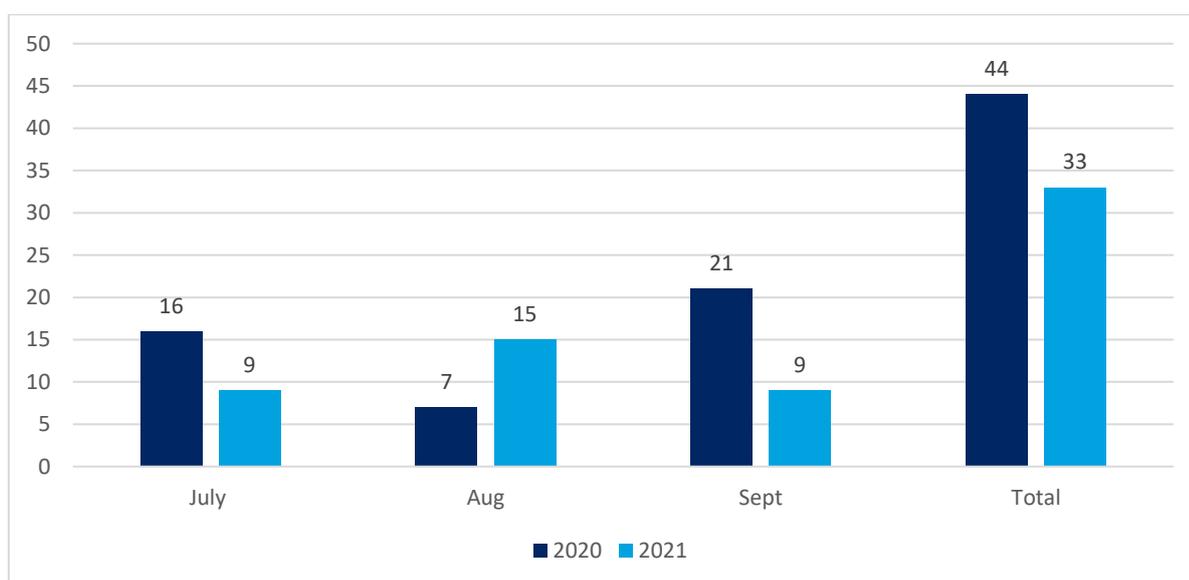
4. Reportable Conduct Scheme

Notifications received

This quarter the Office received 33 notifications from entities about allegations of reportable conduct, with 10 of these being notified to ACT Policing by entities.

As outlined in Figure 2, this is a 25 per cent decrease in the reporting of notifications compared to the same quarter in the previous year. The decrease in notifications received this quarter, notably in September, may reflect the COVID-19 restrictions during this period in the ACT, with disruption to schools and businesses. This is compared to the same time last year when schools and businesses were operating in the ACT with limited or no restrictions.

Figure 2: Notifications received from 1 July to 30 September 2021, compared to the same period of the previous financial year



The largest number of notifications received were from government and non-government schools (12 reports) followed by education and care service providers (7 reports) and residential care (7 reports).

Table 5: Notifications received from 1 July to 30 September 2021 by sector

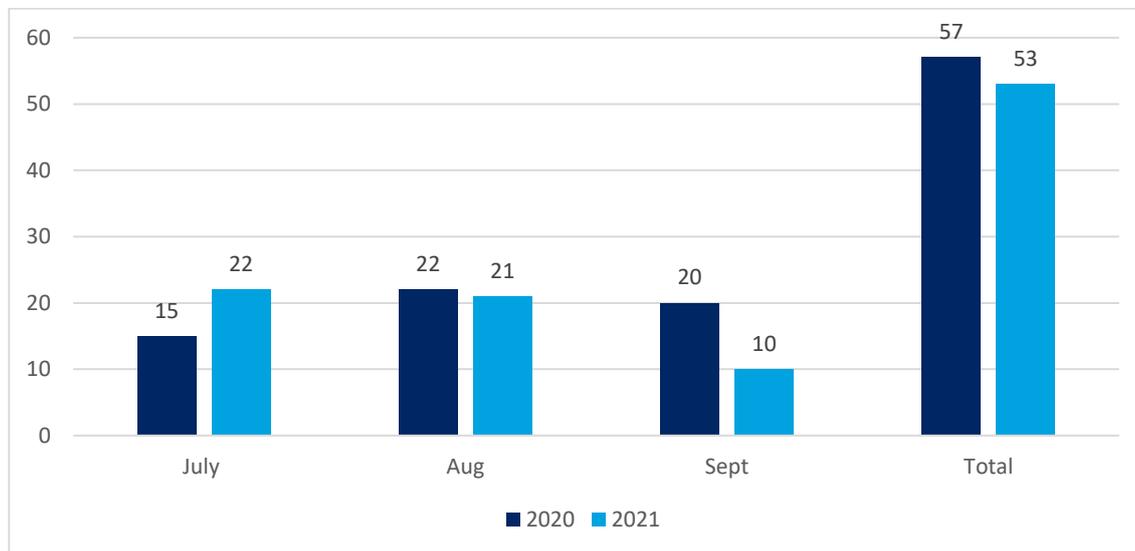
Sector	Number	Percentage
Government and Non-Government Schools	12	36%
Education and Care Service Providers	7	21%
Residential Care Organisations	7	21%
Kinship and Foster Care	4	12%
ACT Directorates	2	6%
Health Service Providers	1	3%
TOTAL	33	

*Percentages may not add up to 100 per cent due to rounding.

Reports finalised

In this quarter, as outlined in Figure 3 below, the Office finalised 53 matters, a 7 per cent decrease in finalised cases as compared to the same quarter for the previous financial year.

Figure 3: Reports finalised from 1 July to 30 September 2021, compared to previous financial year

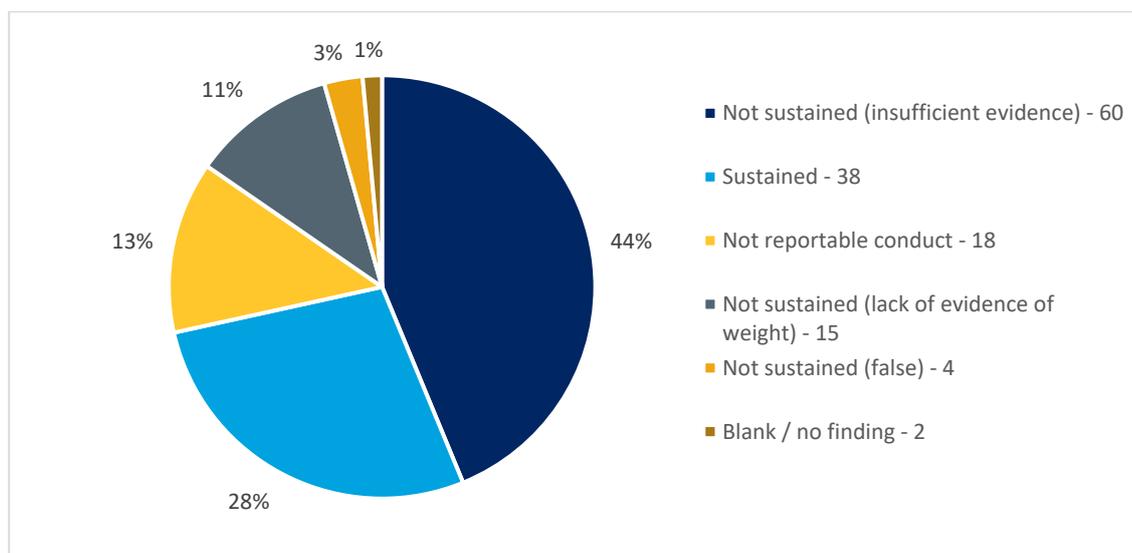


Entities must report the results of the investigation when completed and any action taken or proposed to be taken.

An investigation into alleged reportable conduct may find the allegation was not sustained based on insufficient evidence or lack of evidence of weight. In some cases, an allegation may be found to be false or may not meet the definition of reportable conduct.

The investigation outcomes of each allegation and the action taken by entities this quarter are summarised in Figure 4 and Table 6. A notification may contain multiple allegations, each having a finding and action recorded.

Figure 4: Investigation outcomes reported by entities from 1 July to 30 September 2021



*Percentages may not add up to 100 per cent due to rounding.

Table 6: Final investigation actions taken by entities from 1 July to 30 September 2021

Action	Number	Percentage
No action after the investigation process	45	33%
Training	27	20%
Other discipline	18	13%
Counselling	14	10%
Termination	10	7%
Letter of warning	9	7%
Other action / not recorded	7	5%
Performance monitoring or managing	7	5
TOTAL	137	

Note: an investigation may contain more than one allegation, which may result in more than one finding and action.

*Percentages may not add up to 100 per cent due to rounding.

Performance against service standards

Our Office has service standards for the Reportable Conduct function.

When we receive a notification from an entity about an allegation of reportable conduct (s 17G notification) we assess the initial response by the organisation against criteria such as, its reporting to other bodies, its risk assessment and its investigation plan. This allows the entity to consider our feedback during its investigation. We aim to do this within 7 days in 80 per cent of cases.

This quarter we assessed 80 per cent of initial notifications within 7 days.

When we receive a final report from an entity following its investigation into reportable conduct allegations (s 17J report) we consider whether there was a proper investigation, appropriate action taken and whether we need further information from the entity. This gives the entity reasonable opportunity to act on our feedback or provide further information. We aim to complete this within 28 days in 80 per cent of cases.

This quarter we completed 60 per cent of these assessments within this timeframe.

We will continue to work to meet our services standards and provide entities with timely feedback.

5. Freedom of Information

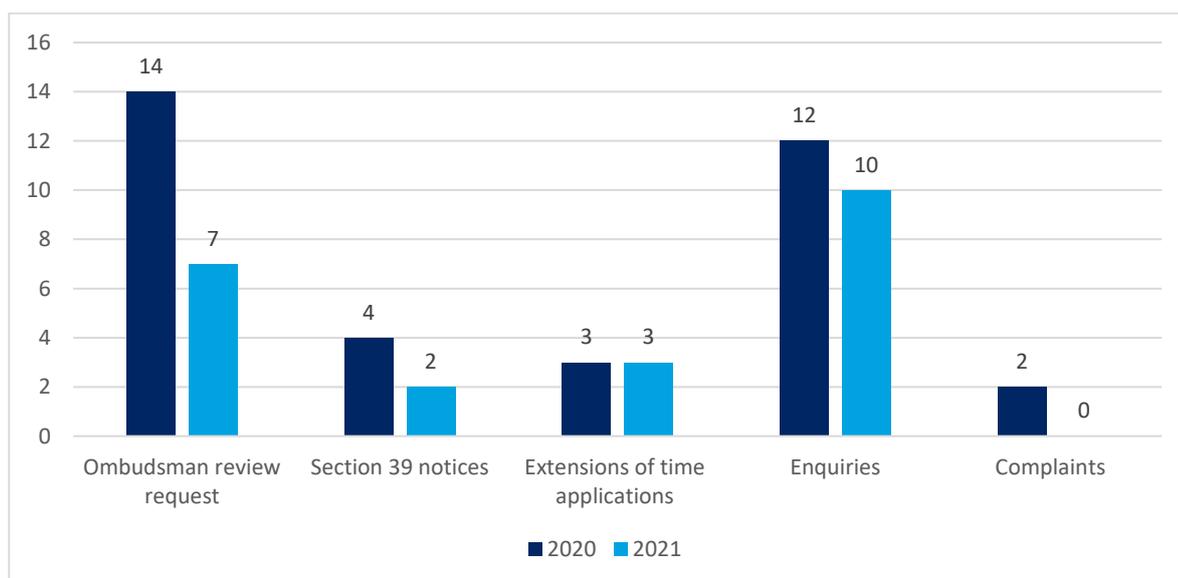
FOI contacts received

The Office received 22 contacts about our role under the FOI Act during this quarter. This represents a decrease of 19 per cent compared to the 27 contacts received in the previous quarter.

As outlined in Figure 5, compared to the same quarter in the previous year, this represents a 23 per cent decrease in the number of contacts received. This comprised:

- 7 applications for Ombudsman review
- 2 section 39 notices (notices given to the Ombudsman to advise that a decision on an access application was not made in time)
- 3 extension of time requests
- 10 enquiries, and
- no complaints.

Figure 5: FOI contacts received from 1 July to 30 September 2021, compared to the same period of the previous financial year



Finalised FOI reviews

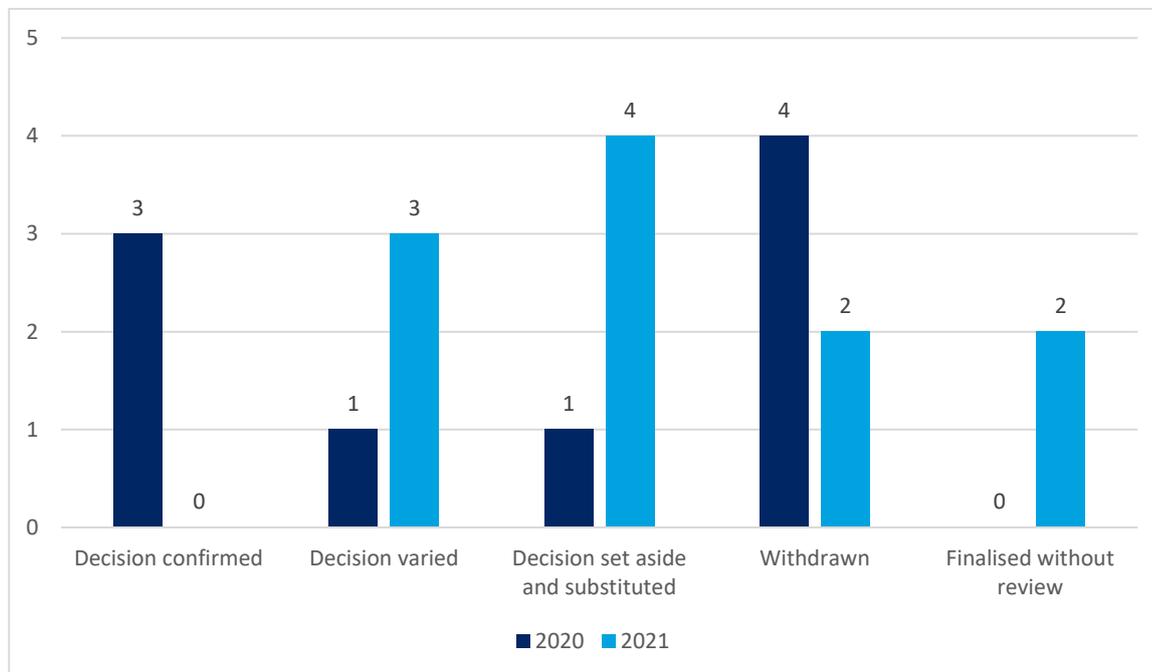
As shown in Figure 6, the Office finalised 11 Ombudsman reviews this quarter. This is an increase on the 8 reviews finalised in the previous quarter and an increase on the 9 reviews finalised in the same quarter last year.

The outcomes of these reviews were:

- the original decision was varied in 3 cases
- the original decision was set aside in 4 cases
- 2 matters were withdrawn by the applicant: –
 - one following informal resolution activities, and
 - one because they did not wish to pursue a review
- 2 matters were finalised without review: –
 - one because the agency changed its original decision and provided the applicant with the requested information, and

- one because our Office found there were no reasonable prospects of the original decision changing
- no original decisions were confirmed this quarter.

Figure 6: FOI review requests finalised from 1 July to 30 September 2021, compared to the same period of the previous financial year



Performance against service standards

Our Office has service standards for our FOI review applications. Our ability to meet service standards is expected to vary depending on the number of cases that are finalised through informal resolution processes and the complexity of matters.

This quarter we did not meet the 3 service standards in relation to the 11 matters that were finalised:

- 27 per cent FOI review matters were finalised within 6 weeks (below the standard of 30 per cent)
- 46 per cent were finalised in 12 weeks (below the standard of 60 per cent)
- 82 per cent were finalised in 6 months (below the standard of 95 per cent).

This reflects the complexity of some review matters that were considered in this reporting period.

FOI review matters can generally be finalised in 6 weeks where informal resolution is successful.

Where a formal decision is required, routine matters are expected to take 12 weeks to finalise with complex matters taking longer.

Published decisions

As at 30 September 2021, we published 73 decisions on the ACT Ombudsman website.

Of these decisions 6 were published during this reporting period. Publication of decisions provides agencies and applicants with guidance on the FOI Act including the application of the public interest test.

Appendix A: Complaints received about ACT Directorates and agencies from 1 July to 30 September 2021

Directorate / Agency	Total received		Total finalised	Finalised with investigation	Finalised without investigation
Canberra Health Services	1		0	0	0
Chief Minister, Treasury and Economic Development Directorate	26		25	1	24
Access Canberra	19		20	1	19
ACT Revenue Office	5		4	0	4
Canberra Institute of Technology	1		0	0	0
University of Canberra	1		1	0	1
Community Services Directorate	27		31	6	25
Housing ACT	25		29	6	23
Community Services - other agencies	2		2	0	2
Education Directorate	2		2	0	1
Environment Planning and Sustainable Development Directorate	3		2	0	2
Health Directorate	10		10	0	10
Justice and Community Safety Directorate	25		20	2	18
ACT Corrective Services	23		19	2	17
Justice and Community Safety - other agencies	2		1	0	1
Transport Canberra and City Services Directorate	4		4	0	4
Independent statutory offices	6		5	0	5
ACT Court or Tribunal	2		2	0	2
ACT Human Rights Commission	2		1	0	1
Director of Public Prosecutions	1		1	0	1
Legal Aid ACT	1		1	0	1
Total ACT Government	104		98	9	89
ACT Policing	30		21	1	20
Total ACT	134		119	10	109

* Data on complaints finalised includes complaints that were received in earlier quarters as well as complaints received during the current quarter.

Appendix B: Outcomes of complaint investigations finalised from 1 July to 30 September 2021

Directorate / Agency	Investigations finalised	No remedy	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better explanation by Ombudsman	Remedy provided by agency	Total positive remedies achieved
Chief Minister, Treasury and Economic Development Directorate	1		1	1	1			3
Access Canberra	1		1	1	1			3
Community Services Directorate	6	2			1	1	3	7
Housing ACT	6	2			1	1	3	7
Justice and Community Safety Directorate	2					2		2
ACT Corrective Services	2					2		2
Total ACT Government	9	2	1	1	2	3	3	12
ACT Policing	1					2		2
Total ACT	10	2	1	1	2	5	3	14

Note: More than one outcome can be achieved following a complaint investigation.