

ACT Ombudsman – Quarterly Report

A REPORT ON THE ACTIVITIES OF THE ACT OMBUDSMAN

1 OCTOBER TO 31 DECEMBER 2021

Report by the Acting ACT Ombudsman
Penny McKay

REPORT NO. **1 | 2022**

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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.

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

The second quarterly report for 2021–22 covers 1 October to 31 December 2021.

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 current review 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 completed a self-assessment providing information about actions taken in response to the Office's recommendations. The Office analysed these responses and provided agencies with our 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 2 of 2021–22, as outlined in Table 1, the Office received 118 complaints, which is a decrease compared to the 136 complaints received last quarter. Complaint levels are 27 per cent lower compared with the same quarter last financial year.

Table 1: ACT complaints received from 1 October to 31 December 2021, compared to the same quarter in the previous financial year

Complaints received from 1 October to 31 December	Q2 2020 21	Q2 2021 22
ACT Government agencies	125	91
ACT Policing	24	21
FOI Act	1	1
ACT Reportable Conduct Scheme	11	2
ACT Integrity Commission	1	3
Total complaints received	162	118

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, 31 related to the Community Services Directorate, 25 complaints related to the Chief Minister, Treasury and Economic Development Directorate and 14 complaints related to the Justice and Community Safety Directorate. Table 2 provides a further breakdown of ACT Directorate and agency complaints received between 1 October to 31 December 2021.

Table 2: ACT Directorate and agency complaints received 1 October to 31 December 2021

	Number	Percentage of total*
Community Services Directorate	31	28
Chief Minister, Treasury and Economic Development Directorate	25	22
Justice and Community Safety Directorate	14	13
Transport Canberra and City Services Directorate	6	5
Independent Statutory Offices	5	4
Education Directorate	4	4
Health Directorate	3	3
Canberra Health Services	2	2
Office of the Legislative Assembly	1	1
Environment Planning and Sustainable Development Directorate	0	0
Total complaints received about ACT agencies	91	
ACT Policing	21	19
Total complaints received	112	

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

Complaint Channel	% in 2019 20	% in 2020 21	% in Q2 2021 22
Telephone	41	40	25
Internet (web form)	32	34	48
Email	21	22	26
Written (letter)	2	2	0
In person	4	1	0

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

Data on how complaints were made in quarter 2, compared to the previous 2 financial years, shows a reduction in complaints received by phone, with more people using our web form to lodge complaints in response to the measures we put in place due to COVID-19 (see below).

Complaints finalised and complaint handling

As outlined in Table 4, the Office finalised 82 complaints during this quarter, 48 per cent fewer than the previous quarter:

- 64 complaints about ACT agencies
- 15 ACT Policing complaints
- 3 complaints about the Reportable Conduct Scheme.

The reduction in complaints finalised was influenced by the ongoing effects of COVID-19 (see below).

Table 4: ACT complaints finalised from 1 October to 31 December 2021, compared to the same period of the previous financial year

	Q2 2020 21	Q2 2021 22
Complaints finalised about ACT agencies	124	64
Complaints finalised about ACT Policing	23	15
Complaints finalised about the FOI Act	1	0
Complaints finalised about Reportable Conduct Scheme	11	3
Complaints finalised about ACT Integrity Commission	0	0
Total complaints finalised	159	82

*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.

Complaints are assessed to see if they can be resolved quickly or whether a more formal investigation is warranted. Our focus on early resolution aims to provide 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 11 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 being taken. In 2 cases we decided to investigate after receiving information using preliminary inquiries.

Outcomes of investigated complaints

During this quarter, the Office finalised 10 investigations about ACT agencies. More than one outcome can be achieved per complaint investigation. For many of these matters, finalised investigations achieved better explanations by the agency or by the Ombudsman.

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 per cent 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, 31 per cent of complaints about ACT agencies were closed within 7 days, with 53 per cent of complaints finalised within 40 days and 72 per cent finalised within 90 days.

The Office's service standards continue to be impacted by COVID-19 (see below).

New and ongoing complaint trends

The ACT agency with the highest number of complaints this quarter was Housing ACT (30), followed by Access Canberra (16) and ACT Corrective Services (14).

COVID-19 response

Maintaining our accessibility to the public is an important part of our work and the Office continued to provide our phone service throughout the pandemic. However, the ongoing effects of COVID-19 impacted our availability to take phone calls and manage complaints, due to lockdowns, with staff being required to isolate and take unplanned leave.

We updated the messaging on the ACT Ombudsman phone lines and website to encourage people to use our online complaint forms or to direct enquiries to specific email boxes which are monitored during business hours.

The Office also engaged additional complaints officers to manage the ongoing effects of COVID-19.

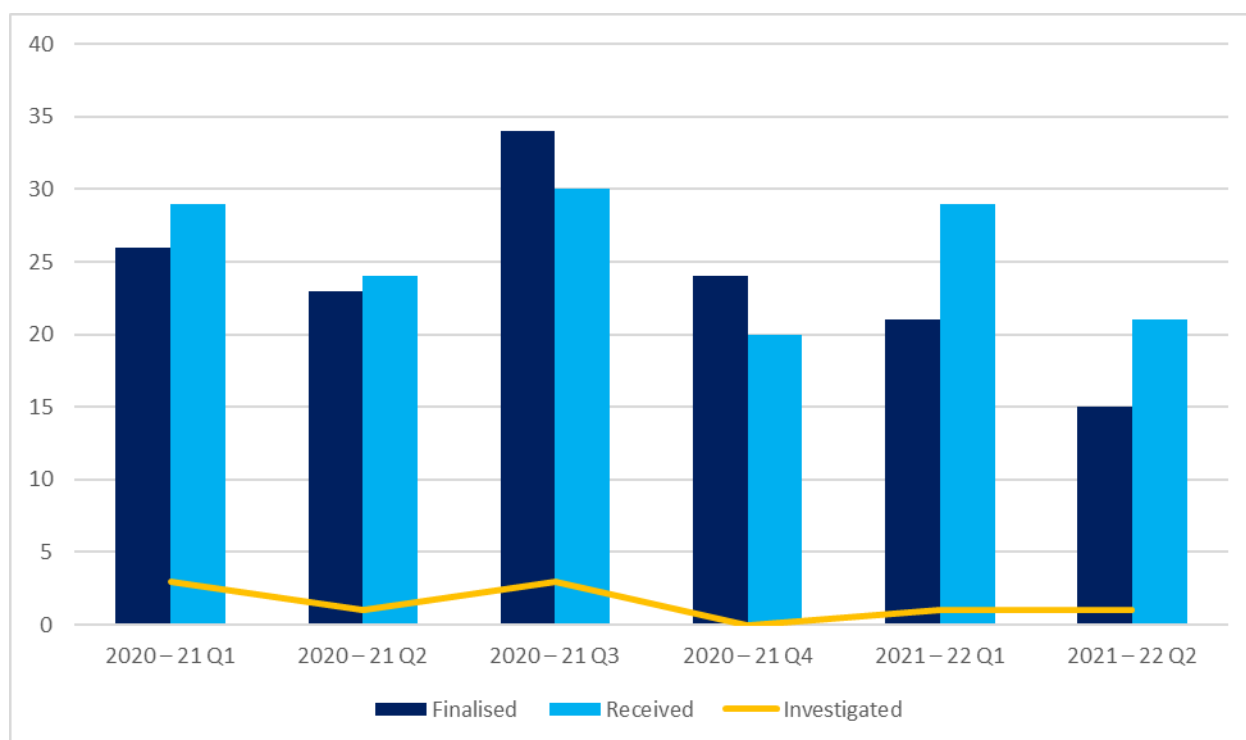
During this quarter, approximately 5 per cent of complaints about ACT agencies referred to COVID-19 and the associated response. Complaints were made about delays in receiving exemptions from quarantine restrictions, accessing the ACT Government Business Support grant scheme, mandatory vaccination policies, and about the management of COVID-19 within the Alexander Maconochie Centre. One of these complaints is being considered further, one complainant was provided with a better explanation and the others were referred to agencies who may be able to better assist with a resolution, for example, the ACT Health Services Commissioner and the Chief Minister, Treasury and Economic Development Directorate.

3. ACT Policing

The Commonwealth Ombudsman receives and considers complaints about ACT Policing. As outlined in Figure 1, we received 21 complaints about ACT Policing and finalised 15 complaints this quarter. Complaint numbers decreased in comparison with the previous quarter, in which we received 29 complaints and finalised 21 complaints.

Of the 15 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 31 December 2021



The Office is responsible for inspecting ACT Policing records related to the use of certain covert and intrusive powers under ACT legislation. One inspection was conducted during quarter 2 of 2021–22. An inspection of ACT Policing compliance with legislative requirements relating to the Child Sex Offenders Register (CSOR) was conducted in December 2021. The result of the CSOR inspection will be included in the ACT Ombudsman’s 2021–22 annual report. 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.

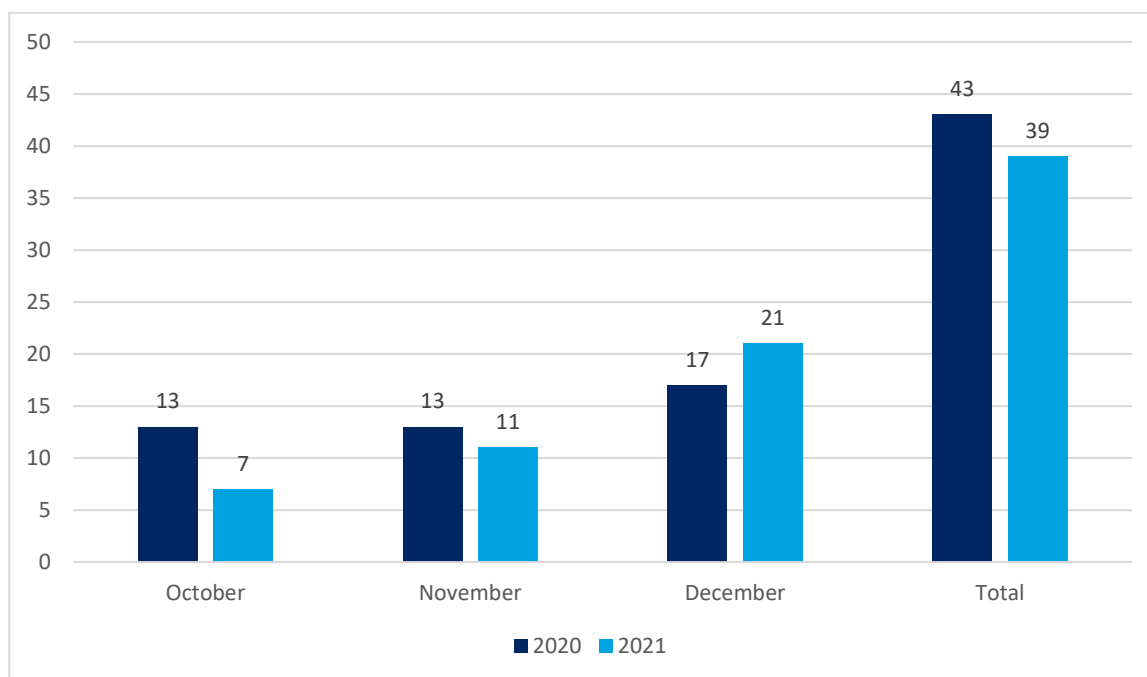
4. Reportable Conduct Scheme

Notifications received

This quarter the Office received 39 notifications from entities about allegations of reportable conduct, with 9 of these notified to ACT Policing by entities.

As outlined in Figure 2, this is a 9 per cent decrease in the reporting of notifications compared to the same quarter in the previous year. This slight decrease in notifications received this quarter may reflect COVID-19 restrictions easing during the last quarter and businesses and schools returning slowly to business as usual.

Figure 2: Notifications received from 1 October to 31 December 2021, compared to the same period of the previous financial year



The largest number of notifications received were from education and care service providers (12 reports) followed by kinship and foster care (11 reports) and government and non-government schools (9 reports).

Table 5: Notifications received from 1 October to 31 December 2021, by sector

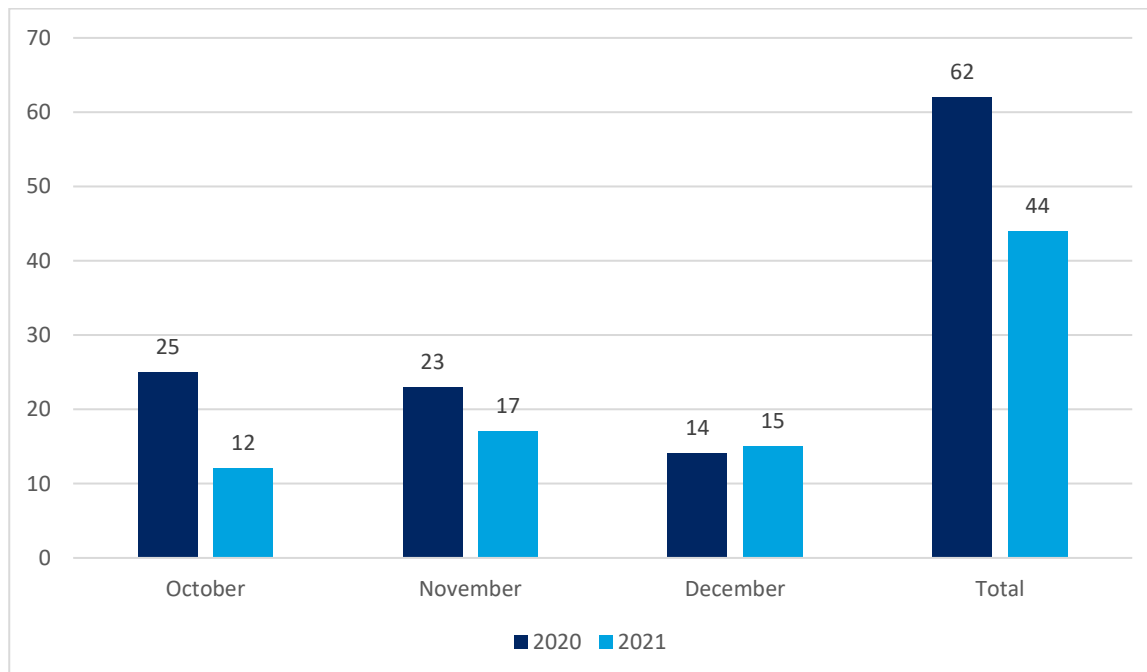
Sector	Number	Percentage*
Education and care service provider	12	31
Kinship and foster care	11	28
Government and non-government schools	9	23
ACT Directorates	2	5
Health Services providers	2	5
Residential care organisations	2	5
Religious organisation	1	3
TOTAL	39	

*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 44 matters, a 29 per cent decrease in finalised cases compared to the same quarter for the previous financial year.

Figure 3: Reports finalised from 1 October to 31 December 2021 compared to previous financial year

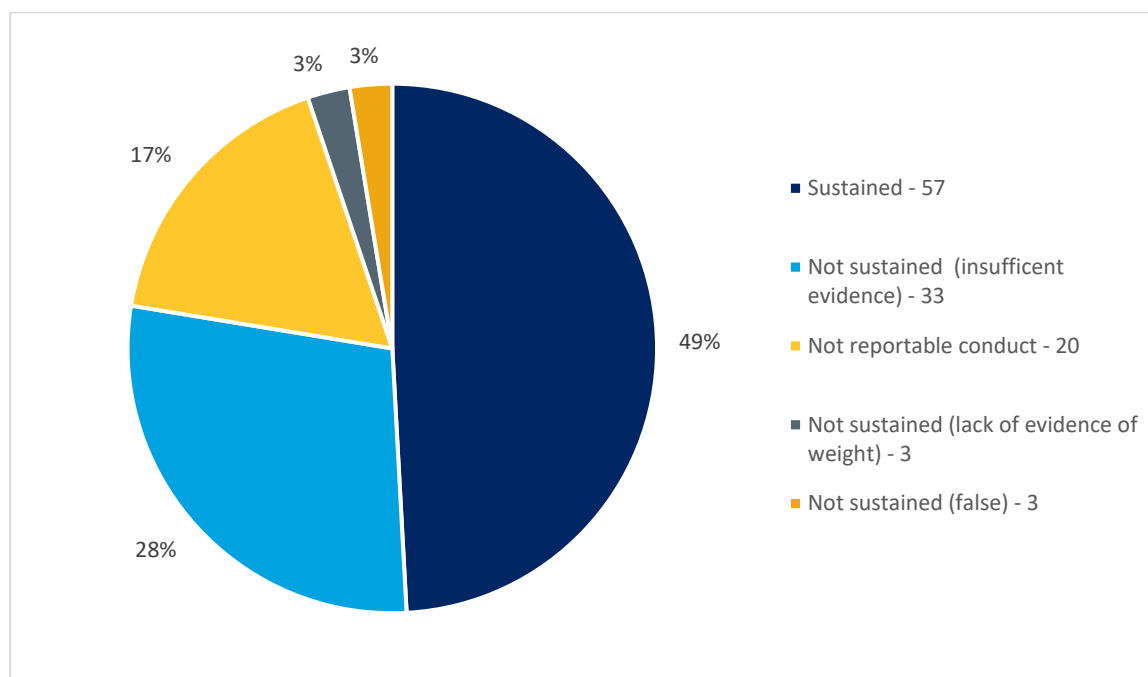


Entities must report the results of the investigation when completed and any action taken or proposed to be taken.

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 October to 31 December 2021



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

Table 6: Final investigation actions taken by entities from 1 October to 31 December 2021

Action	Number	Percentage*
Termination	31	27
No action after the investigation process	30	26
Counselling	25	22
Performance monitoring or managing	9	8
Other forms of disciplinary action as per employer	7	6
Letter of warning	5	4
Transfer/demotion	5	4
Other action/not recorded	3	3
Training	1	1
TOTAL	116	

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 95 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 92 per cent of these assessments within this timeframe.

5. Freedom of Information

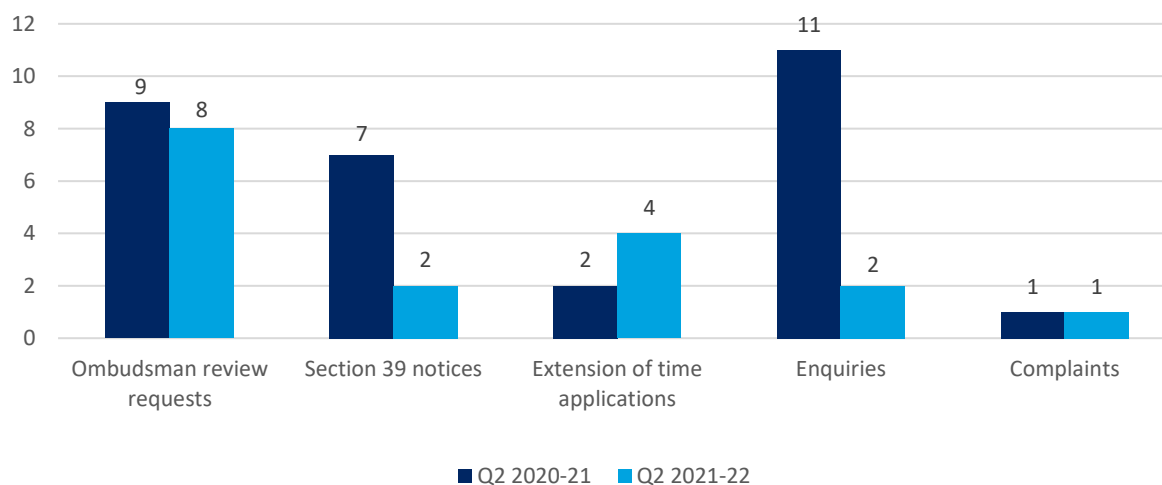
FOI contacts received

The Office received 17 contacts about our role under the FOI Act during this quarter. This represents a decrease on the 22 contacts received in the previous quarter of this year and on the 30 contacts received in the same quarter last year.

As outlined in Figure 5, compared to the same quarter in the previous year, this represents a 43 per cent decrease in the number of contacts received. This comprised:

- 8 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)
- 4 extension of time requests
- 2 enquiries
- 1 complaint.

Figure 5: FOI contacts received from 1 October to 31 December 2021 compared to the same period of the previous financial year



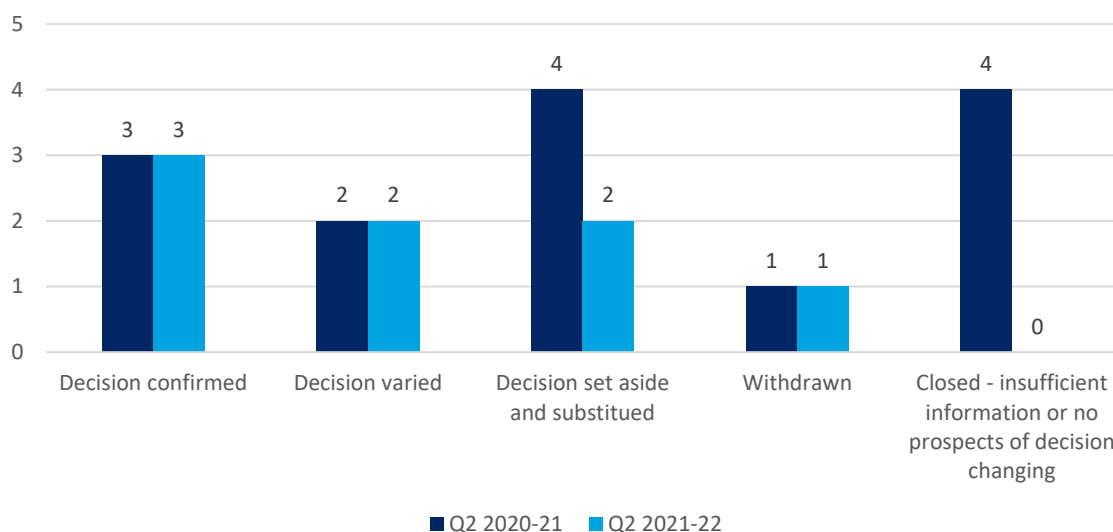
Finalised FOI reviews

As shown in Figure 6, the Office finalised 8 Ombudsman reviews this quarter. This was a decrease on the 11 reviews finalised in the previous quarter and on the 14 reviews finalised in the same quarter last year.

The outcomes of these 8 Ombudsman reviews were:

- the original decision was confirmed in 3 cases
- the original decision was varied in 2 cases
- the original decision was set aside and substituted with a new decision in 2 cases
- 1 application was withdrawn by the applicant
- no applications were finalised without review (for example, where the Office found there were no reasonable prospects of the original decision changing or where the matter was otherwise resolved).

Figure 6: FOI review requests finalised from 1 October to 31 December 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 finalised through informal resolution processes and the complexity of matters.

This quarter we did not meet the 3 service standards in relation to the 8 matters that were finalised:

- 25 per cent of FOI review matters were finalised within 6 weeks (below the standard of 30 per cent)
- 37.5 per cent were finalised in 12 weeks (below the standard of 60 per cent)
- 62.5 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. Several complex matters were finalised in this quarter.

Published decisions

As of 31 December 2021, we published 80 decisions on the ACT Ombudsman website.

Of these decisions, 7 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 October to 31 December 2021

Directorate / Agency	Total received	Total finalised	Finalised with investigation	Finalised without investigation
Canberra Health Services	2	1	0	1
Chief Minister, Treasury and Economic Development Directorate	25	15	3	12
Access Canberra	16	9	2	7
ACT Revenue Office	4	2	1	1
Canberra Institute of Technology	0	1	0	1
CMTEDD – other	1	1	0	1
University of Canberra	2	2	0	2
WorksafeACT	2	0	0	0
Community Services Directorate	31	21	3	18
Housing ACT	30	21	3	18
Community Services - other agencies	1	0	0	0
Education Directorate	4	2	0	2
Environment Planning and Sustainable Development Directorate	0	1	0	1
Health Directorate	3	5	1	4
Justice and Community Safety Directorate	14	13	1	12
ACT Corrective Services	14	13	1	12
Transport Canberra and City Services Directorate	6	2	1	1
Independent statutory offices	5	3	0	3
ACT Human Rights Commission	2	1	0	1
Public Trustee and Guardian	2	2	0	2
Legal Aid ACT	1	0	0	0
Office of the Legislative Assembly	1	1	0	1
ACT Legislative Assembly	1	1	0	1
Total ACT Government	91	64	9	55
ACT Policing	21	15	1	14
Total ACT	112	79	10	69

* 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 October to 31 December 2021

Directorate / Agency	Investigations finalised	Apology	Better explanation by Ombudsman	Better explanation by agency	No remedy	Total positive remedies achieved
Chief Minister, Treasury and Economic Development Directorate						
Access Canberra	2	-	-	1	1	1
ACT Revenue Office	1	-	-	-	2	-
Community Services Directorate						
Housing ACT	3	1	-	-	2	1
Health Directorate	1	-	1	-	-	1
Justice and Community Safety Directorate						
ACT Corrective Services	1	-	-	-	1	-
Transport Canberra and City Services Directorate	1	-	2	-	-	2
Total ACT Government	9	1	3	1	6	5
ACT Policing	1	-	1	1	-	2
Total ACT	10	1	4	2	6	7

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