



ACT Ombudsman

ANNUAL REPORT 2014-15

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The ACT Ombudsman Annual Report 2014-15 is available on our website.

Readers with enquiries about the Ombudsman or this report should contact the Administration Officer at the above address. Information for senators and members of parliament is available from the ACT Ombudsman at the above telephone and facsimile numbers.

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Australian Capital Territory

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A. TRANSMITTAL CERTIFICATE



6 October 2015

Mrs Vicki Dunne MLA
Speaker
Legislative Assembly for the ACT
London Circuit
CANBERRA ACT 2600

Dear Speaker

I present to you my Annual Report for 2014-15.

This report has been prepared to fulfil s 6(2)(b) of the *Annual Reports (Government Agencies) Act 2004*.

It has been prepared in conformity with other legislation applicable to the preparation of the Annual Report by the ACT Ombudsman.

I certify that information in the attached Annual Report is an honest and accurate account and that all material information on the operations of the ACT Ombudsman has been included for the period 1 July 2014 to 30 June 2015.

Section 13 of the *Annual Reports (Government Agencies) Act 2004* requires that you cause a copy of the Report to be laid before the Legislative Assembly within four months of the end of the financial year.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Colin Neave".

Colin Neave
ACT Ombudsman

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B. ORGANISATIONAL OVERVIEW AND PERFORMANCE

B1. ORGANISATIONAL OVERVIEW

Our role and functions

Our role is to resolve complaints and monitor the actions of government agencies and the police under the *Ombudsman Act 1989* and other legislation.

Our services are free of charge. We can deal with most complaints involving the administrative actions of agencies and police, including requests made to them under the *Freedom of Information Act 1989* and 'whistleblower' disclosures under the *Public Interest Disclosure Act 2012*.

We monitor police use of covert powers through formal inspections of their records under the *Crimes (Controlled Operations) Act 2008* (ACT), the *Crimes (Assumed Identities) Act 2009* (ACT) and the *Crimes (Surveillance Devices) Act 2010* (ACT). We also monitor police management of information on the Child Sex Offenders Register established under the *Crimes (Child Sex Offenders) Act 2005* (ACT).

We investigate as a last resort. Initially, we encourage people to work through their concerns with agencies or police. We enable this by working with agencies and police to ensure they provide accessible and effective complaint-handling processes to the public.

When we do investigate, it is done independently and impartially. Our aim in all cases is to resolve complaint disputes fairly and to help agencies improve services.

Our investigations are conducted in private and we cannot compel agencies or police to follow our recommendations. If agencies or police do not act on recommendations, the Ombudsman may provide a report to relevant ministers, the Speaker or the Legislative Assembly, or release a public report on the matter.

Our work helps people access remedies. These range from better explanations for actions through to decisions being reconsidered or actions expedited. Other remedies include apologies and changes to law, policy or practices that help others in the future.

The ACT Ombudsman role is delivered by the Commonwealth Ombudsman under a Services Agreement between the ACT Government and the Commonwealth Ombudsman.

Strategic engagement

As part of our three-year refresh program, which began in January 2013, we continued to focus on our engagement with administrative decision makers and those who deliver services to the public, the ACT Public Service (ACTPS). We met with executive teams, business managers and frontline staff to discuss our role and the need to effectively engage with complainants before complaint disputes are escalated to us.

We expressed our interest in briefings from directorates and agencies on planned initiatives and policy changes that could foreseeably result in public approaches to us.

We met with operational areas of ACT Policing to improve understanding of the processes used to facilitate their compliance with the relevant legislation, in addition to our formal inspections.

We offered our expertise to directorates and agencies at the planning and design stage of new initiatives and in public communication campaigns. Through proactive engagement with the ACTPS, we aim to ensure that public complaints are dealt with effectively and provide feedback for continuous improvement.

Summary of performance

We discharged all statutory functions and responsibilities as detailed in this report. We also continued our work with agencies to assist them to better deal with complaints and improve their service delivery. Highlights included:

- providing targeted feedback to directorates and agencies on improvements to complaint-handling processes
- sharing business process observations arising from investigations with directorates and agencies to avoid future complaints by rewording template letters and policy material

- establishing key stakeholder briefings with directorates and agencies to understand planned initiatives and policy changes before complaints were received
- facilitating the first ever attendance of ACT directorates at the Commonwealth complaint-handling forums hosted by this office
- concluding an own motion investigation and survey on ACT and Commonwealth agencies' complaint-handling processes
- recognition by ACT Policing of our positive working relationship in overseeing police use of certain covert and intrusive powers.

The ACTPS environment

The year was a challenging one for the ACTPS, to which it has responded appropriately.

The Asbestos Response Taskforce brought together the ACT Government's policy response to a difficult problem in real time and in challenging circumstances.

It has been our observation that the taskforce has carefully and effectively delivered the scheme. Given the scale and impact that the scheme had, we have seen low levels of complaints and investigation was only warranted in a small number of cases.

The introduction of Access Canberra was a substantial reorganisation of the ACTPS, with the intention to centralise service and regulation functions. This transition to establish a unified service should aid in simplifying community interaction with government.

This may result in less frustration for customers than where there are disconnected services. We will monitor complainants' experiences with Access Canberra and provide feedback and suggestions for enhancement.

Outlook and priorities

In 2015–16 our priorities will focus on the correct and proper discharge of all our statutory functions. We will engage with the ACT community to gauge their service-delivery experiences and expectations of government agencies and police.

We hope to establish a better picture on what complaints might not be being made, to this office or directorates, and what the reasons or barriers might be for this. This will enable us to get ahead of complaint trends and to work with directorates to continue to improve the system for those who may not speak up for themselves.

B2. PERFORMANCE ANALYSIS

The ACT Ombudsman role is delivered by the Commonwealth Ombudsman under a Services Agreement. Quarterly performance reports are provided to the Speaker and the Head of Service on complaints received and investigated.

Information on our complaints work is provided below. Information on our inspections work is provided at Part 4.

Public contact with our office is recorded as an approach. Not all approaches are complaints requiring further action. People may be seeking help on raising a concern with government agencies or police. Others are concerned about the actions of an entity or action outside our jurisdiction.

We do not take further action on approaches when we:

- resolve the concern during that contact
- refer the person to a more appropriate agency
- would be unable to access a better remedy from investigating
- find that the matter is or has been before a court or tribunal.

For approaches that are within our jurisdiction and require further action, we usually contact the agency for further information and provide them with an opportunity to respond to the complaint. Often this contact is sufficient for us to resolve the complaint.

Remedies obtained by complainants may be at the initiative of agencies or suggested by us. These may include us providing the complainant with a better explanation of what the agency or police did and why.

Our community reputation for independence and impartiality often means complainants are more receptive to our messages than those of agencies or police about whom they have lodged a complaint. Through our contact we aim to rebuild trust in agencies and police in cases where their actions appear to us to have been fair and reasonable.

Summary of complaint statistics

In 2014-15 we received 590 approaches: 465 about directorates and 125 about police. (In 2013-14 we received 467 approaches: 374 about directorates and 93 about police.)

In 2014-15 directorates accounted for 24% more approaches than in 2013-14. Police accounted for 34% more approaches compared with the previous year.

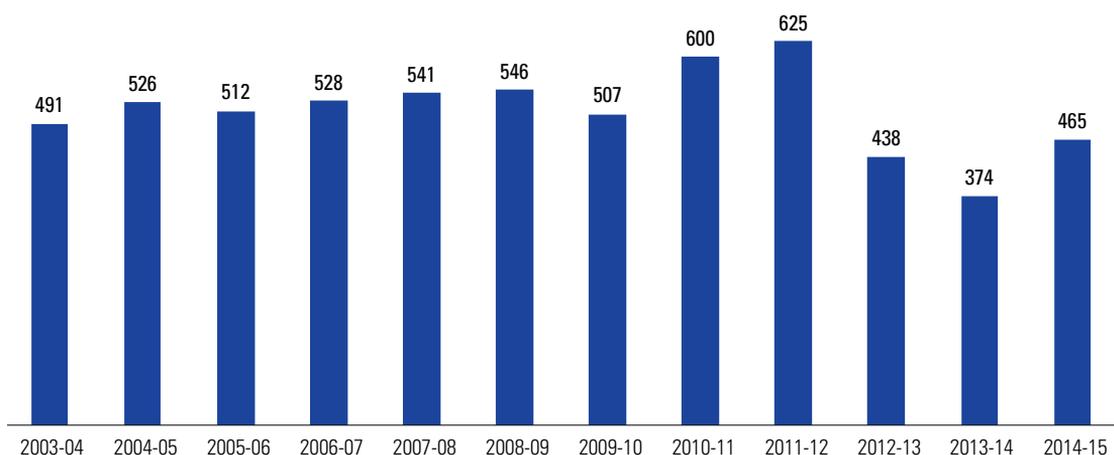
This increase in complaints follows a record low level of complaints in 2013-14.

In 2014-15 we finalised 603 approaches: 478 about directorates and 125 about police. We investigated 114 approaches: 100 about directorates and 14 about police. In comparison, in 2013-14 we finalised 476 approaches: 382 about directorates and 94 about police and investigated 76 approaches: 65 about directorates and 11 about police.

B3. SCRUTINY

The Ombudsman's office appeared before the Standing Committee on Public Accounts in November 2014 and the Select Committee on Estimates 2015-16 in June 2015.

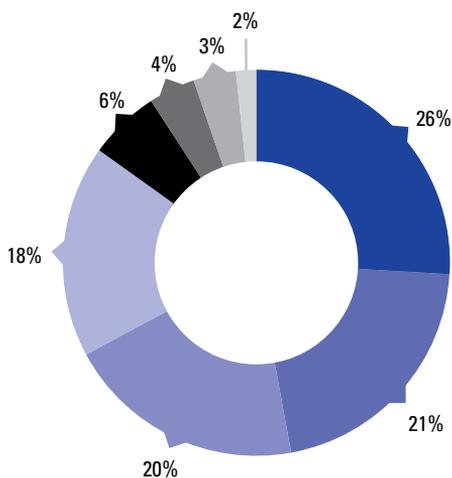
Figure 1 Approaches and complaints received about directorates (excluding ACT Policing), 2003-04 to 2014-15



C. FINANCIAL MANAGEMENT REPORTING

In 2014-15 the ACT Government paid \$1,131,572 (including GST) to the Commonwealth Ombudsman in accordance with our Services Agreement. It consisted of \$532,683 for ACT Ombudsman services and \$598,889 for complaint handling and oversight in relation to ACT Policing.

Figure 2 Spread of approaches and complaints received about directorates and ACT Policing, 2014-15



- Justice and Community Safety Directorate
- ACT Policing
- Community Services Directorate
- Chief Minister, Treasury and Economic Development Directorate
- Territory and Municipal Services Directorate
- Environment and Planning Directorate
- Education and Training Directorate
- Health Directorate

Table 1 Remedies provided in finalised investigated complaints* about directorates and ACT Policing, 2014-15

TYPE OF REMEDY	ACT GOVERNMENT	ACT POLICING
Better explanation provided	59	8
Decision changed or reconsidered	23	1
Remedy provided by agency without Ombudsman intervention	18	
Action expedited	11	1
Other non-financial remedy	8	
Apology	4	
Law, policy or practice changed	4	
Financial remedy	3	

*Multiple remedies may result from the same investigation

PART 4 - AGENCY-SPECIFIC ANNUAL REPORTING REQUIREMENTS

During our 2014-15 inspections relating to the use of its covert and intrusive powers, ACT Policing was cooperative and provided ACT Ombudsman staff with sufficient access to relevant information.

Overall our inspections found ACT Policing's records relating to controlled operations and its use of surveillance devices to be comprehensive and adequate. In response to our draft inspection reports, ACT Policing accepted our findings and acknowledged our positive working relationship. The results of these inspections are discussed below.

CONTROLLED OPERATIONS

The *Crimes (Controlled Operations) Act 2008* (ACT) allows ACT Policing and the Australian Crime Commission (ACC) to conduct controlled (covert) operations in the ACT.

The ACT Ombudsman is required to inspect the records of these law enforcement agencies at least once every 12 months to determine the extent of compliance with the Act. The ACC advised that there were no relevant records to be inspected during 2014-15.

During 2014-15 we conducted and finalised two inspections of ACT Policing's records associated with all controlled operations authorities that had either expired or were cancelled during the period 1 January to 31 December 2014.

Inspections criteria

The following inspection criteria were applied to assess compliance:

1. Were applications for authorities properly made and authorities properly granted?
2. Were applications for amendments of authorities properly made and decided?
3. Were cancellations of authorities properly made?
4. Were the reported activities covered by the authorities?
5. Were the notification requirements satisfied in the event of loss of or serious damage to property?
6. Were reports properly made and records properly kept by the agency?

Inspection findings

At the first inspection, ACT Policing was assessed as compliant with the requirements of the Act, except in two instances where we were unable to determine compliance, as discussed below. We also noted some administrative errors and, where appropriate, ACT Policing advised that it had addressed these errors.

Section 11(3)(j) of the Act states that an authority must state any conditions to which the conduct of the controlled operation is subject. When conducting our assessments, we look for evidence that ACT Policing had considered and met any such conditions; however, for two authorities we were unable to locate such evidence.

Subsequent to the inspection, ACT Policing advised that the conditions on the authorities had been met by all participants and it was an administrative oversight that this information had not been presented.

At the second inspection, ACT Policing was assessed as compliant with the requirements of the Act, except in one instance where an application for an authority was not signed by the applicant as required under s 9(2)(a). ACT Policing accepted this finding.

SURVEILLANCE DEVICES

The *Crimes (Surveillance Devices) Act 2010* establishes a framework for the use of surveillance devices by law enforcement officers in the ACT.

The ACT Ombudsman may inspect the records of ACT Policing and the ACC to determine the extent of compliance with the Act. The ACC advised that there were no relevant records to be inspected during 2014-15.

During 2014-15 we conducted and finalised two inspections which examined ACT Policing's records associated with all warrants that had either expired or were revoked during the period 1 January to 31 December 2014.

Inspections criteria

The following criteria were applied to assess compliance:

1. Were applications for warrants and emergency authorisations properly made?

2. Were applications for extensions and amendments to surveillance device warrants properly made?
3. Were revocations of warrants properly made?
4. Were surveillance devices used lawfully?
5. Were records properly kept and used by the agency?
6. Were reports properly made by the agency?

Inspection findings

At the first inspection, ACT Policing was assessed as compliant with the requirements of the Act, except in four instances, which are discussed below. We also noted an issue in relation to ACT Policing's annual reporting under s 38 of the Act, which it advised that it will address for future annual reports.

In two instances it appeared that the installation of surveillance devices on a premises commenced before a surveillance devices warrant being issued authorising the installation (and use) of the devices (s 15(2)(a) of the Act).

In response, ACT Policing advised that this issue arose as a result of a reporting error by the relevant operational team.

In one instance we were unable to determine whether there was a connection between the person named on the warrant and the vehicle on which the surveillance device was installed under the authority of the warrant, as required under s 15(2)(c) of the Act.

In the other instance the chief officer did not take steps to ensure that an application was made for the revocation of the surveillance device warrant under s 17 of the ACT once the use of the surveillance device was no longer necessary.

At the second inspection, ACT Policing was assessed as compliant with the requirements of the Act, except in one instance where an application for the revocation of a retrieval warrant was not made by the chief officer once the grounds for the issue of the warrant no longer existed, as required by s 24(5) of the Act.

Subsequent to our inspection, the Act was amended to add s 22(4), which provides that a retrieval warrant remains in force unless it is executed or revoked. As a result of this amendment we do not expect this issue to arise at future inspections.

ASSUMED IDENTITIES

The *Crimes (Assumed Identities) Act 2009* facilitates investigations and intelligence gathering in relation to criminal activity by providing for the lawful acquisition and use of assumed identities in the ACT. The ACT Ombudsman may inspect records of ACT Policing and the ACC to determine the extent of compliance with the Act.

To date, no inspections have been conducted under the Act as ACT Policing and the ACC have advised that they have not applied any of the provisions.

CHILD SEX OFFENDERS REGISTER

The ACT Child Sex Offenders Register is established by the *Crimes (Child Sex Offenders) Act 2005* (ACT). The register must contain current information relating to the identity and whereabouts of people living in the ACT who have been convicted of sexual offences against children.

The ACT Ombudsman is required to monitor ACT Policing's compliance with Chapter 4 of the Act. This involves assessing ACT Policing's management of the register, including whether it has captured all necessary information on the register and has sufficient processes in place regarding the use and disclosure of information from the register.

In 2014-15 we finalised one inspection. ACT Policing was assessed as compliant with Chapter 4, except in a small number of instances. Following the inspection, ACT Policing advised that it rectified all identified errors. The detailed report on the results of this inspection was provided to ACT Policing and the Minister for Police and Emergency Services in November 2014.

M. COMMUNITY ENGAGEMENT AND SUPPORT

We continued to focus on our engagement with the ACTPS again this year. We engage with community members on an individual basis as part of our complaint-handling role.

N. JUSTICE AND COMMUNITY SAFETY

N2. Freedom of information

The Ombudsman receives and investigates complaints about the handling by directorates of applications made under the *Freedom of Information Act 1989*. In 2014-15 we finalised 12 approaches, four of which we investigated, about requests made to directorates.

We received four requests for information under section 14 of the Act. Each resulted in no release of information, as there was no material held.

O. PUBLIC SECTOR STANDARDS AND WORKFORCE PROFILE

O.2 Public interest disclosure (PID)

The Ombudsman is a 'disclosure officer' under the *Public Interest Disclosure Act 2012* and may investigate disclosable conduct of the Head of Service. The Ombudsman can also take complaints and review the handling of PIDs.

One disclosure was made during the reporting period and referred to the head of the agency. One complaint about the handling of a disclosure was received and it was investigated.

P. TERRITORY RECORDS

The Ombudsman has a records-management program that was approved by the Director of Territory Records. We operate in line with the *Territory Records (Records Disposal Schedule – Ombudsman Complaint Management Records) Approval 2011 (No 1) (NI 2011-93)*.

APPENDIX 1

APPROACHES AND COMPLAINTS RECEIVED AND FINALISED ABOUT DIRECTORATES AND ACT POLICING 2014-15

PORTFOLIO/AGENCY	REMEDIES											TOTAL REMEDIES	
	TOTAL RECEIVED	NOT INVESTIGATED	INVESTIGATED	TOTAL FINALISED	ACTION EXPEDITED	APOLOGY	DECISION CHANGED OR RECONSIDERED	EXPLANATION	FINANCIAL REMEDY	LAW, POLICY OR PRACTICE CHANGED	OTHER NON-FINANCIAL REMEDY		REMEDY PROVIDED BY AGENCY WITHOUT OMBUDSMAN INTERVENTION
Chief Minister, Treasury and Economic Development Directorate	105	79	31	110	1	2	4	9		1		17	34
Chief Minister, Treasury and Economic Development Directorate	45	32	3	35		1	1			1			3
ACT Gambling and Racing Commission	2	2	18	20								17	17
ACT Revenue Office	16	13	2	15			1	1					2
University of Canberra	42	32	8	40	1	1	2	8					12
Community Services Directorate	118	93	25	118	7	2	8	22	1		5		45
Community Services Directorate	18	18		18									
Housing ACT	100	75	25	100	7	2	8	22	1		5		45
Education and Training Directorate	21	22		22									
Canberra Institute of Technology	6	7		7									
Education and Training Directorate	15	15		15									
Environment and Planning Directorate	23	23	1	24									
Health Directorate	10	9		9									
Justice and Community Safety Directorate	153	123	36	159	3		6	24	1	1	3	1	39
ACT Corrective Services	53	28	26	54	1		3	16		1	3	1	25
ACT Court or Tribunal	10	9		9									
Human Rights Commission	4	5		5									
Justice and Community Safety Directorate	25	25	1	26	1		1	1					3
Legal Aid ACT	12	12	2	14	1			1					2
ACT Law Society	6	6	1	7									
Public Advocate of the ACT	1	1	1	2				1					1
Office of Regulatory Services	34	30	4	34			2	3	1				6
Public Trustee for the ACT	8	7	1	8				2					2
Territory and Municipal Services Directorate	35	29	7	36			5	4	1	2			12
ACTION Bus	10	8	2	10			1	1					2
Territory and Municipal Services Directorate	25	21	5	26			4	3	1	2			10
ACT Policing	125	111	14	125	1		1	8					10
Total	590	489	114	603	12	4	24	67	3	4	8	18	140

GLOSSARY AND ABBREVIATIONS

ACC	Australian Crime Commission
ACT	Australian Capital Territory
ACTPS	ACT Public Service
AFP	Australian Federal Police
approaches	all public contact made with the office of the ACT Ombudsman
Cth	Commonwealth
directorates	administrative units of ACT Government business
office, the/our	the Office of the ACT Ombudsman

COMPLIANCE INDEX

Report on omissions and reasons for non-compliance

The Commonwealth Ombudsman discharges the role of ACT Ombudsman.

The ACT Ombudsman is not required to comply with the Annual Report Directions under section 8(2)(b) of the *Annual Reports Act 2004*, but the Commonwealth Ombudsman is required to comply under the Services Agreement with the ACT Government.

Because the Commonwealth Ombudsman discharges the role of ACT Ombudsman, many omitted items are separately reported in the Commonwealth Ombudsman Annual Report 2014–15, which is available at www.ombudsman.gov.au.

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2	Agency annual report requirements	
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	B Organisational overview and performance	
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	B.4 Risk management	
	B.5 Internal audit	
	B.6 Fraud prevention	
	B.7 Work health and safety	
	B.8 Human resources management	
	B.9 Ecological sustainable development	
	C Financial management reporting	
	C.1 Financial management analysis	n/a
	C.2 Financial statements	n/a
	C.3 Capital works	n/a
	C.4 Asset management	n/a
	C.5 Government contracting	n/a
	C.6 Statement of performance	n/a
3	Reporting by exception	
	D Notices of non-compliance	
	D.1 Dangerous substances	Nil to report
	D.2 Medicines, poisons and therapeutic goods	Nil to report
4	Agency-specific annual reporting requirements	
	E Education and training	n/a
	F Health	n/a
	G Gambling and racing	n/a
	H Ministerial and Director-General directions	n/a
	I Public land management plans	n/a

PART	SECTION	OMITTED
J	Third party insurance	n/a
K	Victims of crime	n/a
L	Waste minimisation contraventions	n/a
5	Whole-of-government annual reporting	
M	Community engagement and support	
N	Justice and community safety	
N.1	Bushfire risk management	n/a
N.2	Freedom of information	
N.3	Human rights	n/a
N.4	Legal services directions	n/a
O	Public sector standards and workforce profile	n/a
O.1	Culture and behaviour	n/a
O.2	Public interest disclosure	
O.3	Workforce profile	n/a
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