

ACT OMBUDSMAN
ANNUAL REPORT
2020-21



2020–21 HIGHLIGHTS

1,168

Total contacts



Received



Finalised



Enquiries

277

277



Complaints

634

622



Reportable
conduct
notifications

171

196



Freedom of
information
reviews

43

36



ACT Ombudsman

Credits

Australian Capital Territory

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Produced by the ACT Ombudsman, Canberra.

Transmittal Certificate

9 September 2021

Ms Joy Burch MLA
Speaker
Legislative Assembly for the ACT
London Circuit
CANBERRA ACT 2600

Dear Speaker

I present to you the *ACT Ombudsman's Annual Report 2020–21*.

The report has been prepared to fulfil the requirements of s 7A of the *Annual Reports (Government Agencies) Act 2004*.

I certify the Annual Report 2020–21 is an honest and accurate account of the work of the ACT Ombudsman's Office (the Office) and that all material information on the operations of the Office has been included for the period from 1 July 2020 to 30 June 2021.

As I am an Officer of the Legislative Assembly, this report is not subject to the *Annual Reports (Government Agencies) Directions 2021*. Where relevant to the Office, I sought to include similar information in this report to the information required under these directions.

Section 15 of the *Annual Reports (Government Agencies) Act 2004* requires that you present a copy of this report to the Legislative Assembly within 15 weeks after the end of the reporting year.

Yours sincerely



Penny McKay
Acting ACT Ombudsman

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Website ombudsman.act.gov.au

The *ACT Ombudsman Annual Report 2020–21* is available on the website.

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Part 1: Review by the ACT Ombudsman



I am pleased to introduce the *ACT Ombudsman Annual Report 2020–21*.

The year began under the shadow of COVID-19 and the restrictions associated with trying to bring a pandemic under control. Canberra remained relatively COVID-free, but the continuing economic and societal impacts, and the on-going uncertainty had a bearing on the way we do our work. Despite this, 2020–21 was a year of active engagement for the Office, ensuring that ACT agencies are held accountable in a way that is fair and constructive.

In this reporting year, the number of complaints we received about ACT agencies increased when compared to 2019–20. This may reflect the reliance that more people have on government services during the pandemic, as well as a greater awareness of the role the ACT Ombudsman plays in resolving complaints.

In 2020–21, the Office issued 3 public reports of interest to the ACT community. The first report investigated a lack of transparency in the valuation decisions of commercial land by the ACT Revenue Office. This report highlighted that community confidence follows from good practices, including making the reasons for administrative decisions available to those impacted by them. The second reported on a lack of coherent and up-to-date policies and practices to support detainees being held at the Alexander Maconochie Centre (AMC) applying for parole. This investigation was a priority for the Office as even the smallest administrative error has the potential to result in a person being detained beyond their earliest release date. The third public report issued by the Office reported on ACT Policing’s administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community. This report was a crucial step to better understand how ACT Policing approaches its engagement with the ACT’s Aboriginal and Torres Strait Islander community. We assessed whether the programs, policies, procedures and training ACT Policing has in place are appropriate and whether they support consistent, fair and accountable decisions and actions.

The Commonwealth Ombudsman also issued a report of interest to the ACT community that arose from a self-disclosure by the Australian Federal Police (AFP). This public report made recommendations to the AFP, including ACT Policing, to improve compliance when using powers to access telecommunications data to enforce the criminal law. These powers are exercised covertly, without the knowledge of the person whose data is being accessed. It is vital that all agencies comply with legal requirements when they use covert powers, such as access to telecommunications data, including safeguards designed to protect privacy.

We are mindful that if we are to provide assurance, to help people who come to us, and to optimise systemic improvements, we need to engage closely with our stakeholders and bring professional curiosity to every issue.

During preparation of this report, Michael Manthorpe PSM retired as the Ombudsman and the process for the selection of a replacement commenced. I will continue to act in the position until a new Ombudsman is appointed.

Penny McKay
Acting ACT Ombudsman

Part 2: Annual Report Requirements

Organisational overview

The role of the ACT Ombudsman

The role of the ACT Ombudsman is to influence systemic improvements in public administration in the ACT, as well as provide assurance that ACT Government agencies (agencies) and other designated entities that fall within our jurisdiction act with fairness and integrity.

The Office also works closely with agencies to ensure they provide accessible and effective complaint handling processes to the public.

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

- the ACT Freedom of Information (FOI) framework
- the ACT Reportable Conduct Scheme
- ACT Policing, and
- the ACT Integrity Commission (as the Inspector).

We also play a support role to the Judicial Council with the ACT Ombudsman as the Principal Officer.

The following sections provide an overview of each of these functions.

For more detailed performance information about these functions during 2020–21, see Part 3 Performance Analysis.

A copy of our organisational chart can be accessed on the [ACT Ombudsman](#) website.¹

Managing complaints about public administration

The Ombudsman receives complaints, including from members of the public who consider they have been treated unfairly or unreasonably by an ACT Government agency or ACT Policing.

Each complaint we receive is assessed to determine the most appropriate course of action. Complaints that are not in our jurisdiction may be referred to an organisation that is in a better position to assist the complainant. Complaints that are within our jurisdiction undergo further assessment to determine if the agency has been told of the issue, if preliminary enquiries might need to be made, or if an investigation of the matter is required. When making these assessments, we focus on resolving the issue for the complainant, while also identifying any potential systemic matters.

There are several outcomes that can help resolve the complaint. These include a better explanation of the action, an apology, a refund, or a change of decision. Sometimes agencies may take further action or expedite a process already underway.

A vital part of complaints management is the ongoing improvement of administrative processes. We provide feedback to agencies to help avoid unfair or unreasonable decisions or actions and to ensure better communication with the public. Ensuring better administration is at the heart of what we do.

¹ ACT Ombudsman, *Organisational chart*, viewed 4 September 2021, www.ombudsman.act.gov.au/dev/about-us/who-we-are?a=105930

Improving complaint processes

An important role for the ACT Ombudsman is to support accessible and effective complaint handling systems in agencies. We work strategically with agencies to develop a healthy complaints culture, which includes valuing complaints as a tool to improve service delivery. The ACT Ombudsman can provide advice and support to Directorates when they are reviewing their complaint management practices.

Own motion investigations and public reports

The Ombudsman may decide to conduct an own motion investigation when assessing a complaint that appears to raise systemic issues or when a matter is brought to our attention in another way. Own motion investigations are usually broader in scope than individual complaint investigations and are more likely to result in a public report, with formal recommendations.

Four own motion reports of relevance to the ACT community were released by the Ombudsman in 2020–21:

- Investigation into the transparency of commercial land valuation decisions in the ACT
- Investigation into the administration of parole by ACT Corrective Services (ACTCS)
- ACT Policing’s administration framework for engagement with the ACT Aboriginal and Torres Strait Islander community, and
- Commonwealth Ombudsman investigation into the Australian Federal Police’s (AFP) use and administration of telecommunications data powers under Chapter 4 of the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act).

The own motion report into commercial land valuation decisions was one where the initial complaint investigation involved issues specific to one block of land, but our investigation identified broader concerns. These concerns were about the ACT Revenue Office’s (ACTRO) failure to document reasons for increases in the Unimproved Value (UV) of commercial property. Therefore, ACTRO was unable to provide property owners with reasons when they were questioned about rate increases, which are based on the UV of a property. This inability goes against the principles of good public administration, which require the reasons for such administrative decisions be recorded and available to the affected person.

We made 9 recommendations for the improvement of decision-making and transparency. ACTRO agreed to all recommendations and now provide more information to ratepayers about valuation decisions. These actions should ensure ACTRO’s processes for future commercial property valuations are fair, transparent and reflect best practice.

In November 2020, we published our own motion investigation into the administration of parole by ACTCS. Human rights principles require that no person be detained for longer than necessary. Delaying a person’s release unnecessarily places added pressure on the strained resources of the Alexander Maconochie Centre (AMC) and the Sentence Administration Board (SAB). Parole facilitates the supported reintegration of detainees back into the community. Sentence management should include preparing detainees for their earliest possible release and aim for a successful transition to living in the community. As the ACT Government recognised in its ‘Building Communities, Not Prisons’ initiative, parole and other rehabilitation programs can help reduce the cost on the criminal justice system and improve community safety outcomes.

This own motion investigation started after we received complaints about the following issues associated with preparation for parole at the AMC:

- the information available to detainees about the parole process
- the level of preparedness of detainees and the support provided to them to participate in this process
- the natural justice afforded to detainees during the parole application process and their access to legal representation, and
- the accuracy and completeness of the information provided to the SAB for it to consider when making decisions on parole applications.

Detainees indicated they were reluctant to make formal complaints about these issues, because of concerns about impacts on their parole outcome. Therefore, an own motion was considered appropriate and was given priority as even small administrative failure can result in a delay to a detainee's release.

The investigation resulted in 15 recommendations, all of which were accepted by the Justice and Community Safety Directorate (JACS). JACS confirmed ACTCS are committed to developing a holistic Integrated Offender Management (IOM) system that focuses on preparing detainees for release at the earliest opportunity, with due regard for risk and community safety. Most of the recommendations are implemented and we continue to monitor complaints about parole processes to determine if the changes had the expected impact.

The Office also released a report in March 2021 about the administrative framework available to support interactions between ACT Policing and the Aboriginal and Torres Strait Islander community.

The 1991 Royal Commission into Aboriginal Deaths in Custody detailed how police are the most consistent point of contact between Aboriginal people and colonial power. These issues continue to be relevant, with Aboriginal and Torres Strait Islander people greatly overrepresented in interactions with the justice system. For example, while Aboriginal and Torres Strait Islander people make up 1.9 per cent of the ACT population, they make up 21.9 per cent of detainees at the AMC.

ACT Policing publicly committed to achieving justice targets as part of the ACT Aboriginal and Torres Strait Islander Agreement 2019–2028². These targets are reflected in the Australian Federal Police's Reconciliation Action Plan 2018–2020³, including a commitment to working with the ACT Aboriginal and Torres Strait Islander community to reduce the arrest and incarceration rates of Aboriginal and Torres Strait Islander people in the ACT. However, while we heard examples of excellent and respectful community policing, we continue to hear examples of poor practice and disrespectful interactions. Guided by these examples, we investigated ACT Policing's current administrative arrangements for engagement with Aboriginal and Torres Strait Islander people. We assessed whether the programs, policies, procedures and training ACT Policing has in place to manage its engagement with the ACT Aboriginal and Torres Strait Islander community are appropriate. We also considered whether ACT Policing officers are supported by a program and policy framework that enables consistent, appropriate and effective decision-making in a transparent and accountable manner.

We made 9 recommendations aimed at supporting ACT Policing to engage in a positive and respectful manner with the ACT Aboriginal and Torres Strait Islander community. These recommendations relate to 4 themes of good administration:

² Community Services Directorate, *ACT Aboriginal and Torres Strait Islander Agreement 2019–2028*, viewed 28 July 2021, www.communityservices.act.gov.au/_data/assets/pdf_file/0015/1323132/ACT-Aboriginal-and-Torres-Strait-Islander-Agreement-2019-2028.pdf

³ Australian Federal Police, *Australian Federal Police Reconciliation Action Plan 2018–2020*, Published 2018, viewed 28 July 2021, www.afp.gov.au/sites/default/files/PDF/afp-reconciliation-action-plan.pdf

- a strong governance framework that supports the delivery of program commitments
- policies and procedures that clearly articulate expectations
- transparency and accountability with the community, and
- the ability to measure and evaluate success.

Each of the 9 recommendations provides an administrative solution to assist ACT Policing to bridge the gap between high-level justice targets and day-to-day community policing activities. Five of the recommendations were fully supported, 3 were partially supported and one was noted. Deputy Commissioner Neil Gaughan APM, Chief Police Officer for the ACT, noted the ACT's Aboriginal and Torres Strait Islander communities would be closely consulted and the implementation of these recommendations would be guided by their response.

On 28 April 2021, the Office of the Commonwealth Ombudsman released a report of direct interest to the ACT community. The report followed the Commonwealth Ombudsman's investigation into the use and administration of telecommunications data powers under the TIA Act by the Australian Federal Police (AFP).

The investigation was launched in response to the AFP's identification of compliance issues affecting ACT Policing's handling of requests for a certain type of telecommunications data – location-based services (LBS), colloquially known as 'pings' – dating back to 2007.

The Commonwealth Ombudsman identified the internal procedures at ACT Policing and a cavalier approach to exercising telecommunications data powers resulted in a culture that did not promote compliance with the TIA Act. This contributed to ACT Policing's non-compliance.

The investigation also found the AFP and ACT Policing missed several opportunities to identify and address these issues earlier. The Commonwealth Ombudsman was not satisfied the scope of the breaches was fully identified by the AFP, nor the potential consequences, and considered it is possible that breaches occurred in parts of the AFP other than ACT Policing.

The Commonwealth Ombudsman's report made 8 recommendations to assist the AFP in addressing these issues and to implement processes to prevent them from reoccurring. The AFP accepted all 8 recommendations.

In September 2020, the Office of the Commonwealth Ombudsman released another report that is of relevance to the work of the ACT Ombudsman's Office. The report is titled 'Did they do what they said they would?'. It demonstrated the importance of crafting recommendations that clearly define and prioritise the actions to be taken to influence systemic change in public administration. It also highlighted the value of making the implementation of recommendations part of the ongoing dialogue we have with agencies.

Complaints Education Program

The Office's education activities were predominantly delivered online in 2020–21, due to the ongoing risk of COVID-19.

In 2020–21, the Office delivered 2 webinar sessions on handling complaints during COVID-19 to complaint handlers, including staff from agencies.

In February 2021, the Office published the updated Better Practice Complaint Handling Guide, a resource to help agencies have effective and user-centred complaint handling systems.

The Office's annual complaints handling forum was delivered online for the first time in May 2021. More than 400 participants attended the forum's 4 sessions, including staff from agencies. Sessions included keynote presentations, a workshop on managing unreasonable persistence and a panel discussion facilitated by the Deputy Ombudsman with complaints handling experts from government agencies and industry bodies.

Complaints Assurance Program

The Complaints Assurance Program (CAP) is a tool we use to help agencies improve complaint handling processes. This collaborative program allows agencies to self-assess their complaint policies and practices and provide a random sample of complaints to the Office for analysis. It enables us to provide targeted recommendations for improvement to participating agencies. The CAP supports agencies to use complaints to improve service delivery and allows us to share best practice initiatives.

Housing ACT participated in the CAP in 2020, with 5 high-level recommendations for improvement to their complaint handling processes. The Community Services Directorate (CSD) is currently using these recommendations, along with other information from a Directorate wide audit, to reassess and reform complaint management practices.

Reportable Conduct Scheme

The ACT Reportable Conduct Scheme (the Scheme) is in its fourth year of operation.

Under the Scheme, which is set out in Division 2.2A of the *Ombudsman Act 1989* (the Ombudsman Act), the Office oversees how designated entities⁴ prevent and respond to allegations of child abuse and child-related misconduct by employees.

In addition to reporting to ACT Policing, Child and Youth Protection Services (CYPS), and/or any other relevant professional or regulatory bodies, organisations covered by the Scheme must:

- report to the Office allegations, offences or convictions relating to child-related misconduct by employees, including volunteers and contractors, in the context of their professional or private activities⁵, and
- have practices and procedures in place to prevent reportable conduct, respond to such allegations and convictions, and to handle and share information in accordance with provisions in the *Children and Young People Act 2008* (CYP Act).

Our role is to:

- receive and assess organisations' responses to reportable conduct allegations, including whether there was appropriate action by the organisation in its response and the adequacy of any investigation carried out by the organisation, and
- monitor the above practices and procedures an organisation has in place to meet its obligations under the Scheme.

The Scheme does not replace or interfere with police investigations.

⁴ Organisations covered by the Scheme include all ACT Government directorates, health services, kinship and foster care organisations, residential care organisations, government and non-government schools, education and care services including after school care, and religious organisations.

⁵ ACT Ombudsman's Office, *ACT Ombudsman Practice Guide No. 2 Identifying Reportable Conduct*, February 2018, viewed 16 July 2021, www.ombudsman.act.gov.au/_data/assets/pdf_file/0009/81000/No.-2-Identifying-Reportable-Conduct.pdf

To enhance organisation-based child protection outcomes and encourage best practice, we may also:

- monitor an investigation carried out by the organisation
- investigate any reportable allegation or conviction or the response of an organisation to a reportable allegation, and
- disclose information about investigations to a child, parent and carer, the Office of Fair Trading and other entities specified in the CYP Act.

More information about our work under the Scheme in 2020–21, including trends in reports received from organisations and investigation outcomes, is set out in Part 3 Performance Analysis.

Freedom of Information

The Office oversees the ACT *Freedom of Information Act 2016* (the FOI Act) and promotes its objects by:

- conducting independent merits review of decisions on access applications
- publishing guidelines to assist Freedom of Information (FOI) practitioners who make access decisions
- granting extensions of time to decide access applications
- investigating complaints about an agency's or Minister's actions under the FOI Act, and
- monitoring the compliance of agencies and Ministers with their open access obligations.

In reviewing a decision, the ACT Ombudsman can confirm or vary the original decision or set it aside and substitute it with a new decision. The Ombudsman review decisions are binding and may be appealed to the ACT Civil and Administrative Tribunal (ACAT).

We resolve review matters informally where possible. For example, by facilitating a compromise where an agency and applicant agree to some additional information being provided to the applicant and the review application is withdrawn.

We also work closely with agencies through regular forums, to support them to build capability and to meet their obligations under the FOI Act.

More information about our work under the FOI Act is set out in Part 3 Performance Analysis in this report. The Office also publishes a separate report every year on the operation of the FOI Act. This report is available on our [Reports](#) webpage on our website.⁶

Inspections

The Office monitors ACT Policing's use of covert and intrusive powers through inspections conducted under the *Crimes (Controlled Operations) Act 2008*, and the *Crimes (Surveillance Devices) Act 2010*, as well as compliance with Chapter 4 of the *Crimes (Child Sex Offenders) Act 2005*.

The Office also has an oversight role regarding ACT Policing's use of the *Crimes (Assumed Identities) Act 2009* and compliance with Part 3.11 of the *Crimes (Child Sex Offenders) Act 2005*.

The Office did not conduct an inspection in the 2020–21 reporting year of ACT Policing's compliance with the *Crimes (Assumed Identities) Act 2009* and Part 3.11 of the *Crimes (Child Sex Offenders) Act 2005* because ACT Policing did not use these powers during the reporting period.

Information about our inspections in 2020–21 is set out in Part 4 of this report.

⁶ ACT Ombudsman's Office, [Reports](#) webpage, viewed 4 September 2021, www.ombudsman.act.gov.au/publications/reports

ACT Integrity Commission

The ACT Ombudsman is the Inspector of the ACT Integrity Commission (the Commission), which commenced full operations on 1 December 2019.

To help improve public confidence, the Inspector was set up to ensure the Commission operates within its legislative powers. The Inspector can:

- investigate and assess complaints about the Commission and its staff
- make recommendations to the Commission, and
- assess and report on the Commission's compliance with the *Integrity Commission Act 2018* (IC Act).

The Inspector must prepare a separate annual operational review and annual report under the IC Act. This report is available on our [Reports](#) webpage on our website.⁷

ACT Judicial Council

The Office provides support to the ACT Judicial Council (the Council).

The Council is a separate entity established under the *Judicial Commissions Act 1994* with powers to receive and examine complaints about the conduct or capacity of ACT judicial officers (judges and magistrates). The Council has 4 members who include:

- the Chief Justice of the ACT Supreme Court
- the Chief Magistrate of the ACT Magistrates Court
- an appointed legal practitioner member, and
- an appointed member of the community.

The Ombudsman is the Council's Principal Officer. Together with nominated staff, the Ombudsman is responsible for:

- receiving the Council's enquiries and complaints
- assisting the Council to conduct preliminary inquiries and other examinations, and
- facilitating communication between the Council, complainants and judicial officers.

Staff also perform secretariat services for the Council.

The Council issues its own annual report to the ACT Attorney-General, published on the [ACT Judicial Council](#) website at actjudicialcouncil.org.au.⁸

⁷ ACT Ombudsman's Office, [Reports](#) webpage, viewed 4 September 2021, www.ombudsman.act.gov.au/publications/reports

⁸ ACT Judicial Council, [Annual Report](#) webpage, viewed 16 July 2021, www.actjudicialcouncil.org.au/annual-report

Part 3: Performance analysis

Contacts

In 2020–21, 1,168 contacts were made to the Office, comprising:

- 277 enquiries about our ACT Ombudsman functions
- 634 complaints about ACT agencies, organisations or ACT Policing, and
- 257 program specific matters (for example, FOI review requests).

These are discussed in more detail in the sections below.

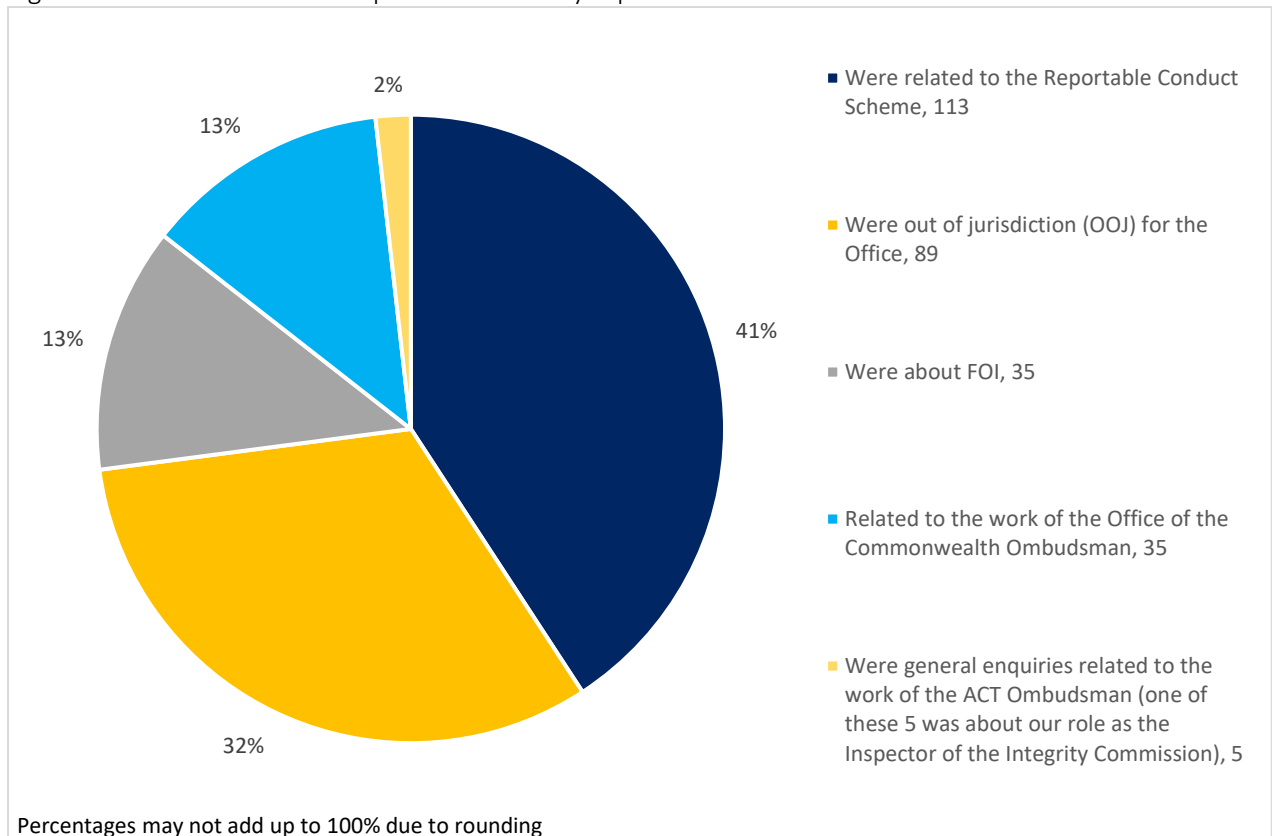
Enquiries

ACT enquiries

We received 277 enquiries to the ACT Ombudsman through our phone line and electronically via our webpage in 2020–21. Of these:

- 113 were related to the Reportable Conduct Scheme
- 35 were about FOI
- one was about our role as the Inspector of the Integrity Commission
- 4 were general enquiries related to the work of the ACT Ombudsman
- 35 related to the work of the Office of the Commonwealth Ombudsman, and
- 89 were out of jurisdiction (OOJ) for the Office.

Figure 1: Breakdown of the enquiries received by topic area



Complaints management

Complaints received

In 2020–21, as outlined in Table 1, the Office received a total of 634 complaints, comprising:

- 103 complaints that related to ACT Policing
- 500 complaints that related to ACT agencies and general public administration matters
- 6 complaints that related to the FOI Act
- 21 complaints that related to the ACT Reportable Conduct Scheme, and
- 4 complaints related to our work as Inspector of the ACT Integrity Commission.

Table 1: ACT complaints received during 2020–21, compared to the previous 2 financial years

	2018 19	2019 20	2020 21
Complaints received about ACT agencies	381	423	500
Complaints received about ACT Policing	61	70	103
Complaints received related to FOI Act	5	11	6
Complaints received related to ACT Reportable Conduct Scheme	20	15	21
Complaints received about ACT Integrity Commission	-	1	4
TOTAL complaints received	467	520	634

There was a 22 per cent increase in total complaints received since last financial year. Complaints about agencies increased, with 423 complaints received in 2019–20, compared to 500 complaints in 2020–21.

Complaints regarding ACT Policing increased, with 103 complaints received in 2020–21, compared to 70 complaints received in 2019–20 and 61 complaints in 2018–19.

Complaints about agencies

Table 2 outlines the complaints received, by ACT directorates, ACT Policing, and other independent ACT agencies, and the percentage of total complaints received.⁹

Table 2: ACT complaints received during 2020–21, by agency

Agency	Number	Percentage ¹⁰
Community Services Directorate	140	23%
Justice and Community Safety Directorate	123	20%
Chief Minister, Treasury and Economic Development Directorate	110	18%
Independent Statutory Offices	34	6%
Transport Canberra and City Services Directorate	32	5%
Environment Planning and Sustainable Development Directorate	24	4%
Education Directorate	15	2%
Health Directorate	13	2%
Canberra Health Services	5	1%
Territory-owned corporations	2	-
Office of the Legislative Assembly	1	-
Prescribed authorities	1	-
ACT Policing	103	17%
Total	603	-

The largest number of complaints received in 2020–21 was about the Community Services Directorate (CSD). Together, complaints about CSD, the Justice and Community Safety Directorate (JACS) and the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) made up 62 per cent of all complaints about ACT agencies.

For individual agencies, as opposed to directorates, the largest number of complaints received were about:

- Housing ACT with 130
- ACT Corrective Services (ACTCS) with 116, and
- Access Canberra with 79.

A more detailed table indicating complaints received by individual agencies is provided at Appendix 1.

How complaints were received

Figure 2 shows the preferred method for contacting the Office this reporting year was by telephone.¹¹

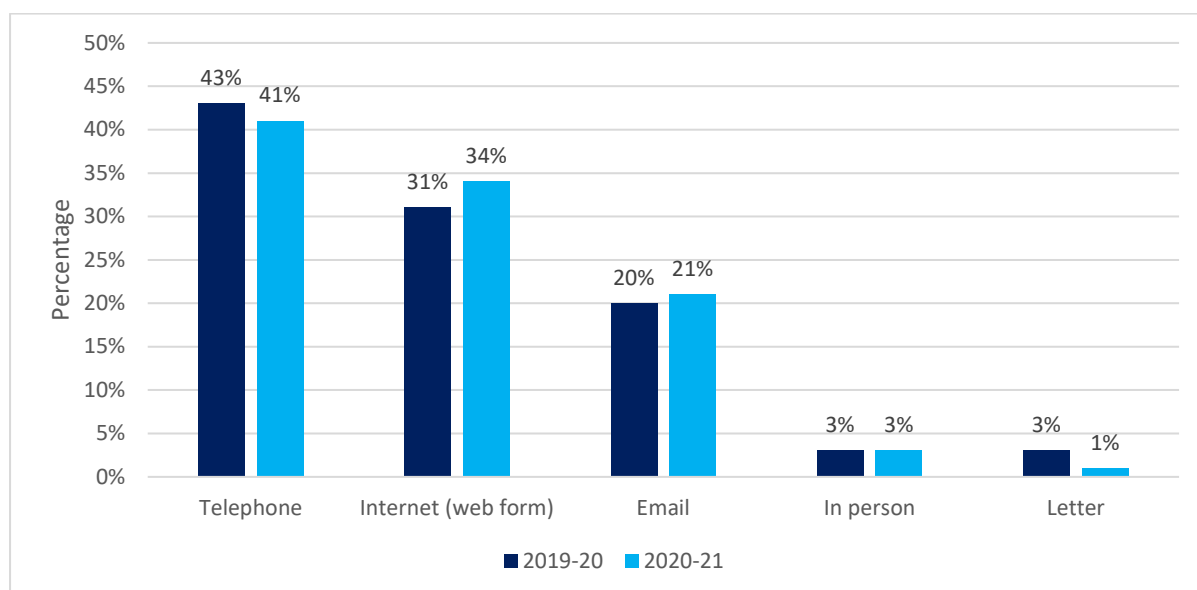
Based on comparing the proportion of contacts, methods of contacting the Office were broadly consistent with the previous financial year. There was a slight decrease (2 per cent) in telephone approaches and a slight increase (3 per cent) in web-based form (Internet).

⁹ This does not include complaints related to the FOI Act, Inspector of the ACT Integrity Commission and Reportable Conduct Scheme, which are discussed separately in this report.

¹⁰ Percentages may not add up to 100 per cent due to rounding.

¹¹ Includes complaints received about ACT Policing and ACT agencies.

Figure 2: How ACT complaints were made during 2020–21 compared to the previous financial year



Complaints finalised

As outlined in Table 3, in 2020–21 the Office finalised a total of 622 complaints comprising:

- 107 ACT Policing matters
- 483 complaints relating to ACT Government agencies
- 7 complaints relating to the FOI Act
- 21 complaints relating to the Reportable Conduct Scheme, and
- 4 complaints relating to our work as Inspector of the ACT Integrity Commission.

Table 3: ACT complaints finalised during 2020–21, compared to the previous 2 financial years

	2018 19	2019 20	2020 21
ACT Government agencies	382	424	483
ACT Policing	65	70	107
FOI Act	-	11	7
ACT Reportable Conduct Scheme	15	16	21
ACT Integrity Commission	-	-	4
TOTAL complaints finalised	462	521	622

Every complaint is assessed on its merits to determine whether it can be resolved quickly, or a formal investigation is required. Our focus on early resolution provides a better service for complainants and agencies, with positive outcomes for people often able to be achieved without the Office proceeding to a full investigation.

CASE STUDY – ACTCS and AMC

A detainee contacted the Office concerned about their safety, due to threats of violence from other detainees. The detainee advised they experienced serious physical harm while previously in detention. They were not sleeping and were too scared to leave their room. Due to the claimed urgency, the Office transferred the complaint immediately to ACTCS under our assisted referral policy.

In less than 2 working days, ACTCS advised the Office that staff had followed up with the detainee to ensure they had not been assaulted during their current period of custody. ACTCS staff confirmed the detainee's concerns related to a threat from a particular detainee. ACTCS assured the Office that appropriate actions were taken to ensure the risk was mitigated.

Outcomes achieved for investigated complaints

The table at Appendix 2 provides outcomes resulting from investigations finalised in 2020–21. More than one outcome can be achieved per complaint investigation.

The outcomes achieved this financial year include:

- the Ombudsman was able to provide a better explanation to the complainant in 31 cases
- a better explanation was provided by the agency in 15 cases
- a decision was changed or reconsidered in 9 cases
- an apology was given in 9 cases
- a change to a law, policy or procedure in 8 cases
- a remedy was provided by the agency in 7 cases, and
- the action was expedited in 6 cases.

During 2020–21, the Office finalised 46 investigations. In most matters, the complainant's concerns were resolved after we started our investigation and raised the matter with the relevant agency. In some matters, we were able to provide independent assurance to complainants that agencies had acted reasonably and lawfully and give a better explanation of what occurred.

Performance against service standards

The Office's service standards are available on the ['What we do with your complaint'](#) webpage on our website. These standards apply to complaints we receive about agencies.

We aim to resolve 60 per cent of all government complaints within 7 days. We are usually able to achieve this timeframe for routine or simple complaints, but more complex complaints take longer. This means we may not always meet the 60 per cent target when we receive a higher proportion of more complex complaints.

In 2020–21, 43.5 per cent of complaints finalised about agencies were closed in 7 days, with 67 per cent of complaints finalised in 30 days. Four ACT complaints took longer than 12 months to finalise.

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

Complaint trends and agency engagement

The sections below provide detailed commentary on complaint trends about specific agencies during 2020–21 and the initiatives by the Office in response.

Complaints made about FOI or Reportable Conduct matters are discussed separately under the relevant sections. Complaints about the ACT Integrity Commission are discussed in the *ACT Inspector of the Integrity Commission Annual Report 2020–21*.

The way we deliver education activities to stakeholders has changed fundamentally and we may not entirely go back to the old way of doing things. Webinars and other online offerings are cheaper and more accessible to most people. The ACT Ombudsman opened a webinar in September 2020 about effective complaint handling during COVID-19. The webinar was well received and attended by representatives from Commonwealth and ACT Government agencies.

We liaise regularly with directorates and agencies across the ACT as part of our oversight role, to monitor possible systemic issues and identify improvements for public administration. For example, we participated in meetings with the ACT Human Rights Commission, ACT Housing, Access Canberra, ACT Corrective Services (ACTCS), and the ACT Integrity Commission and we continued our regular engagement with ACT Policing.

ACT Corrective Services

In 2020–21, the Office received 116 complaints about ACTCS, one fewer than last year.

Each complaint was about the Alexander Maconochie Centre (AMC), and the complaints were made by detainees, their friends and families. Common complaints issues related to:

- medical treatment
- parole processes
- quality of food
- access to visitors, and
- segregation and management.

A complaint issue that arose this year related to inter-prison communication and transfer policies given ACT detainees can, in certain circumstances, be transferred to NSW Corrective Services. We continue to work with ACTCS to ensure their policies and procedures relating to inter-prison transfers are current and appropriate. We also received complaints relating to the lack of access for family visits and cultural supports at ACTCS.

In relation to our oversight of the AMC, the Office:

- continued to attend virtual meetings with ACTCS, the Official Visitors, the ACT Human Rights Commission, the ACT Inspector of Correctional Services, and the ACT Public Advocate
- presented information sessions about the ACT Ombudsman’s role and jurisdiction at the induction training for ACTCS custodial officer recruits, and
- participated in a roundtable meeting hosted by JACS and attended by stakeholders to discuss the implementation of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the designation of National Preventative Mechanisms in the ACT.

CASE STUDY – AMC

A complainant, detained at the AMC, complained that a program, designed to address his criminogenic behaviour, would not be offered during his non-parole period. He also expressed a concern that, given his individual history, being required to complete the program as part of a group was potentially traumatising for him. After the Office received his complaint and informed the AMC, the AMC offered him the option to engage in the program on a one-on-one basis, starting immediately. The program would be continued in the community should he be granted parole.

Housing ACT

During 2020–21, the Office received 130 complaints about Housing ACT, a 73 percent increase in complaints compared to 2019–21. The most common issues raised included:

- maintenance and repair issues, including failure to properly assess repair and maintenance needs
- complaints about the administration of the priority waiting list
- anti-social behaviour and neighbourhood disputes, and
- debt and refund issues.

Social housing is a valuable and limited resource. We work closely with Housing ACT to ensure the administration of this resource is managed in accordance with best practice and administrative law principles, policy and legislation.

In addition to our regular quarterly meetings with Housing ACT, we also meet regularly with Canberra Community Law and other community providers of housing and homelessness services, to build a greater understanding of the economic and social environment in which Housing ACT operates.

Housing ACT is part of CSD. Complaints for Housing ACT can be handled by many different teams within CSD and, as they do not have a dedicated complaint handling system, it can sometimes be difficult to access all relevant records. Not only can this cause delays for complainants, it can also cause delays when responding to our Office. CSD is currently in the process of reviewing and rewriting their complaint management policies and procedures and we look forward to the outcomes of this process.

CASE STUDY – Housing ACT

A complainant wrote expressing concern about delays in receiving information from Housing ACT. The complainant had requested decisions in relation to approval of house modifications, adjustment of rental rebate and allegations that emails had been falsified.

The complainant had been pursuing a resolution to the first of these matters since 2017. The outcome of an investigation was due in February 2020. The complainant contacted the Office in April 2020, when they did not receive the outcome as expected.

Our initial letter to Housing ACT was sent on 29 April 2020. We did not receive a comprehensive response to our enquiries until February 2021. The response noted the house modifications were approved in June 2020 and the rental rebate was recalculated and back dated to August 2018. Housing ACT apologised to the complainant for the lengthy delay in finalising the matter and noted that new arrangements for the management of house modifications were now in place.

Housing ACT advised that archiving practices made it difficult to retrieve electronic copies of emails older than 6 months and they relied on hard copies kept on file. Housing ACT also advised they are reviewing business practices for handling and managing of complaints. We are working with Housing ACT to support better processes and outcomes.

Access Canberra

The number of complaints received about Access Canberra increased from 66 in 2019–20 to 79 in 2020–21, which is an increase of 20 per cent.

Similar themes were evident in complaints about Access Canberra, compared to the previous financial year, with complaints covering a broad range of issues including:

- licencing and registration
- building noise and approvals and not following policy or procedure
- parking and traffic infringement notices
- working with vulnerable people registration practices, and
- investigating fair trading complaints.

The Office maintains regular engagement with Access Canberra by meeting quarterly to discuss complaint trends and how we can work together effectively. During 2020–21, Executive staff from the Office gave a presentation to Access Canberra’s senior leadership group to share our insights into better practice complaint handling.

CASE STUDY – Access Canberra

We were contacted by a complainant advising they had not received a refund of ACT vehicle registration fees after moving interstate. A combination of human error and system software changes had hindered both the payment of the refund and the resolution of the complaint.

Following an investigation by the ACT Ombudsman, Access Canberra contacted the complainant, apologised for the delay, and confirmed the refund was paid. This resolved the matter to the complainant’s satisfaction. Access Canberra also advised the Office the transition to the new customer experience software system is now complete.

Transport Canberra and City Services

In 2020–21, the number of complaints received about Transport Canberra and City Services (TCCS) increased by 23 per cent. Thirty-two complaints were received this financial year, compared to 26 complaints received the previous financial year.

Complaints about TCCS covered a broad range of issues including:

- transport and traffic issues, such as vehicle registration, cancellations and defect notices
- domestic animals, such as nuisance animals and issues with Domestic Animal Service staff, and
- property matters such as damage caused by trees and works to neighbouring properties.

Historically, we receive a high number of complaints about dangerous dogs. We continue to monitor this issue closely with TCCS and clarified how the ACT community can make complaints about dangerous dogs. This information is published on the [ACT Ombudsman](#) website.¹²

We continue to work with TCCS to improve their complaint handling processes.

¹² ACT Ombudsman, [Dangerous Dogs](https://www.ombudsman.act.gov.au/making-a-complaint/common-complaints/dangerous-dogs) webpage, viewed 06 August 2021, <https://www.ombudsman.act.gov.au/making-a-complaint/common-complaints/dangerous-dogs>

CASE STUDY – TCCS

A complainant advised this Office they had not received a response from Transport Canberra and City Services (TCCS) to their complaint. The complaint related to a shared driveway being repaired by a Roads ACT contractor, without adequate notice given to the resident. While the contractor was replacing the driveway, the neighbour widened the driveway without approval and laid sub-base on their side of the drive. The complainant lived in a Housing ACT property and had contacted TCCS several times about the concerns they had with the driveway but did not receive a response. The neighbour received several responses from TCCS about various requests to have the driveway repaired. The complainant contacted the Office for assistance.

After making preliminary inquiries with TCCS, we started an investigation and identified several issues of concern. Our investigation revealed the treatment received by the neighbour and the complainant was unequal, unfair and potentially displayed bias. In addition, TCCS did not follow its investigation timeframes.

We made several suggestions to TCCS, including for the Directorate to contact the complainant to arrange the necessary repairs, apologise to the complainant, take appropriate action against the neighbour, and develop appropriate procedures for complaint handling, including staff training and education. TCCS has since been in touch with the complainant, apologised and inspected the driveway for necessary repairs. TCCS also accepted our offer to provide training to staff on complaint handling and avoiding bias.

ACT Revenue Office

We received 13 complaints about the ACT Revenue Office (ACTRO) in 2020–21, a decrease of 24 per cent compared to 2019–20. Common complaint issues were:

- refusal of Home Builder Grants
- landholder duty
- late payment penalties, and
- matters relating to rental bonds.

The decrease in complaint numbers and the change in complaint issues may indicate the reforms made by ACTRO to improve communications with rate payers are helping people to understand the decisions being made. We continue to work with ACTRO in relation to ensuring the reasons for decisions are clearly communicated to the public.

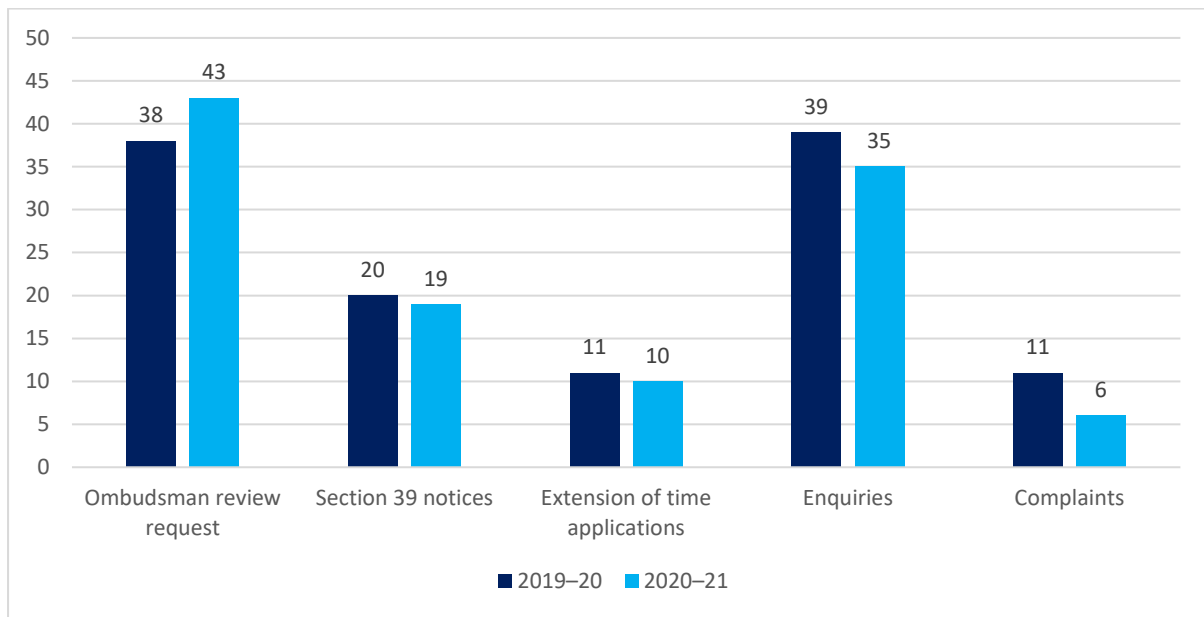
Freedom of Information

FOI contacts received

In 2020–21, the Office received 113 contacts related to our role as the independent oversight agency for FOI, compared to 119 contacts in 2019–20. This was a 5 per cent decrease compared to last financial year. As outlined in Figure 3, this included:

- 35 FOI related enquires
- 43 applications for Ombudsman review
- 19 s 39 notices (notices given to the ACT Ombudsman to advise that a decision on an access application was not made in time)
- 10 extension of time requests, and
- 6 FOI related complaints.

Figure 3: Contacts received under the FOI Act in 2020–21, compared to 2019–20



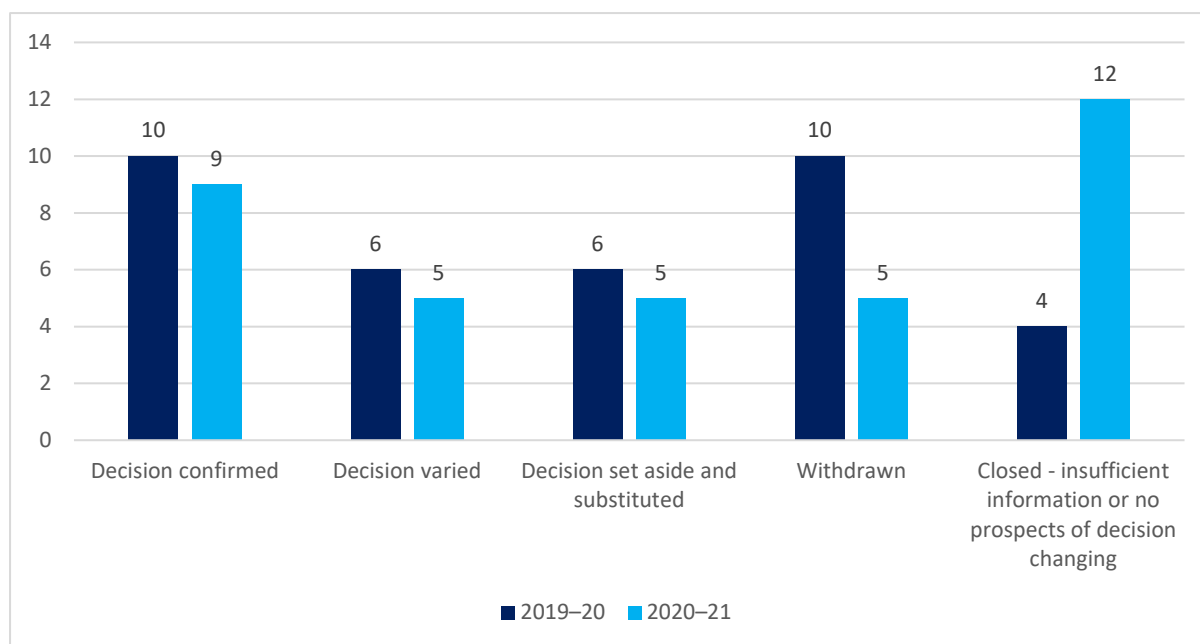
Finalised FOI reviews

As shown in Figure 4, the Office finalised 36 Ombudsman reviews in 2020–21.

The outcomes of these reviews were:

- The original decision was **confirmed** in 9 cases
- The original decision was **varied** in 5 cases
- The original decision was **set aside** in 5 cases
- Twelve matters were **closed** without review because they were invalid requests or due to no reasonable prospects of success, and
- Five matters were **withdrawn** following informal resolution activities.

Figure 4: FOI review requests finalised in 2020–21, compared to 2019–20



Performance against service standards

The Office established service standards for our FOI review applications from 1 July 2019.¹³

In 2020–21, we did not meet our service standards:

- 18 per cent of FOI review matters finalised within 6 weeks (below the standard of 30 per cent)
- 52 per cent finalised in 12 weeks (below the standard of 60 per cent), and
- 90 per cent finalised in 6 months (below the standard of 95 per cent).

FOI review matters can generally be finalised within 6 weeks, where informal resolution is successful. Our ability to meet the 30 per cent service standard is expected to vary depending on the number of cases finalised through informal resolution processes.

Where a formal decision is required, matters are expected to take 12 weeks to finalise and complex matters can take longer. Timeframes may also be delayed where agencies are slow to provide copies of relevant documentation to enable a review to commence.

In 2020–21, fewer reviews were resolved by informal resolution and withdrawal than in 2019–20. However, more were resolved by deciding there were no reasonable prospects than in 2019–20. In 2020–21, we observed an increase in the complexity and novelty of the issues identified in reviews. For example, 3 reviews decided during the reporting period involved complex issues relating to intergovernmental relations. The need to fully consider the implications of decisions for relevant intergovernmental relationships contributed to the length of time taken to decide these reviews and this accounts for the small discrepancies between the service standards and real outcomes in 2020–21.

¹³ For more information about Freedom of Information service standards, go to www.ombudsman.act.gov.au/improving-the-act/freedom-of-information/foi-complaints-and-reviews, last viewed 16 July 2021

Published decisions

At 30 June 2021, the Office had published 67 FOI decisions on the [ACT Ombudsman](#) website.¹⁴

During the reporting period, 19 of these decisions were published. Publication of decisions contributes to the body of precedent for FOI law, and provides agencies and applicants with guidance on the FOI Act, including the application of the public interest test and transparency in decision-making.

Open access monitoring strategy

In 2020–21, the Office started working with agencies to monitor their compliance with open access requirements. Following self-assessments by agencies and desktop audits by the Office, in this reporting period we wrote to all ACT agencies to report on our findings, provide individualised feedback, and highlight possible opportunities for improved practice. Our initial analysis of 23 agency self-assessments and our desktop audits of 9 Directorates found most agencies are keen to meet their open access obligations.

The Office will continue its open access monitoring strategy in 2021–22, with a focus on agency education.

Engagement activities

In response to COVID-19, we engaged with stakeholders in different ways in 2020–21. We circulated 3 newsletters to FOI practitioners in the ACT. The newsletters replaced face-to-face forums. The newsletters provided updates on current events and trends, as well as tips to FOI practitioners dealing with access applications.

To mark International Access to Information Day on 28 September 2020, we released a joint statement with Information Commissioners and Ombudsmen across Australia and New Zealand.¹⁵ The joint statement stressed the importance of transparency and access to government held information during times of crisis.

In November 2020, the Deputy Ombudsman attended the biannual meeting of the Association of Information Access Commissioners with the ACT Ombudsman chairing the second meeting in June 2021.

We hosted a face-to-face FOI practitioners' forum in February 2021, with more than 30 Information Officers from agencies attending. The forum was an opportunity to reconnect with ACT agencies and involved discussion on processing and deciding access applications.

¹⁴ ACT Ombudsman, [FOI Review decisions](#) webpage, viewed 16 July 2021, www.ombudsman.act.gov.au/improving-the-act/freedom-of-information/foi-review-decisions

¹⁵ ACT Ombudsman, [Joint statement on International Access to Information Day 2020](#) webpage, viewed 16 July 2021, <https://www.ombudsman.act.gov.au/publications/media/2020/joint-statement-on-international-access-to-information-day-2020>

Reportable Conduct

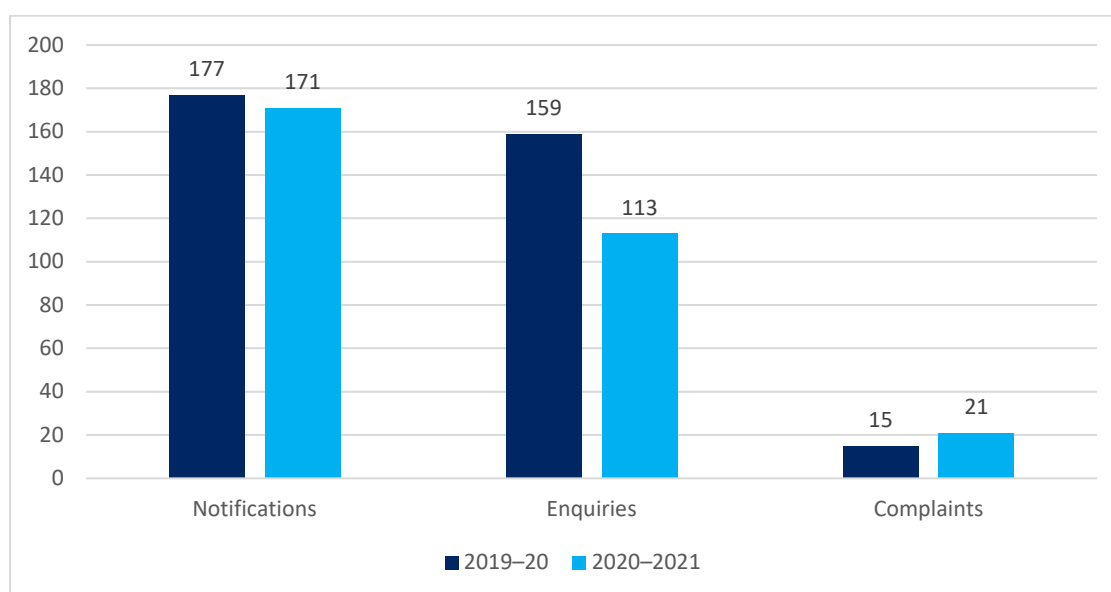
Reportable Conduct – contacts received

The Office received 305 contacts relating to Reportable Conduct in 2020–21, a decrease on the 351 contacts received in 2019–20.

Figure 5 shows:

- 171 notifications from organisations¹⁶ about allegations of reportable conduct
- 113 enquiries, and
- 21 complaints.

Figure 5: Contacts received related to Reportable Conduct in 2020–21, compared to 2019–20



Of the 171 notifications this year, 33 were also reported to ACT Policing. While the number of overall contacts continue to decrease compared to previous years, Figure 5 shows notification volumes are relatively steady. We consider the decrease in enquiries may be because of COVID-19 restrictions.

Table 4 shows the number of notifications received in 2020–21, by sector.

In 2020–21, we continued to receive the largest number of notifications from government and non-government schools (73 reports), followed by education and care service providers (41 matters), and the kinship and foster care sector (37 reports).

¹⁶ The word 'organisation' is substituted for the term 'designated entity' as defined under s17EA of the *Ombudsman Act 1989*.

Table 4: Notifications received in 2020–21 by sector and percentage of total notifications received

	Number	Percentage
Government and Non-Government Schools	73	43%
Education and Care Service Providers	41	24%
Kinship and Foster Care	37	22%
Residential Care Organisations	7	4%
ACT Directorates	6	3%
Religious Organisation	5	3%
Health Service Providers	2	1%

Timeliness of notification reporting

Under s 17G(2) of the Ombudsman Act an organisation is required to notify the ACT Ombudsman’s Office within 30 days after becoming aware of a reportable allegation or reportable conviction of an employee.

In 2020–21, organisations demonstrated improved compliance with this obligation. During the reporting period, 77 per cent of notifications were made within the timeframe compared to 60 per cent in 2019–20.

It is important organisations notify the Office within 30 days as the Office can add most value to an organisation’s response when approaches are made early. Where we identify an organisation is not making timely notifications, the Office may encourage the organisation to review its processes and resourcing dedicated to handling allegations of child abuse or child related misconduct by employees.

We published Practice Guide No. 1¹⁷ to assist organisations with the process of notifying the Office about reportable allegations and convictions against employees.

Cases finalised

Under s 17J of the Ombudsman Act, organisations must provide the Office with a written report of the results of its investigation, including actions taken.

The Office assesses the organisation’s overall response, in consideration of a range of factors outlined in our Practice Guide No. 9,¹⁸ to determine if the organisation made sufficient inquiry and took appropriate action(s). The Office may seek further information to be satisfied of the response. We may also provide feedback to the organisation for it to consider in terms of ongoing practice improvement.

The Office finalised 196 matters in 2020–21, a 22 per cent increase in finalised cases compared to 2019–20. Table 5 also shows the allegation type of all finalised matters reported to the Office in 2020–21. The most common allegations reported to the Office in 2020–21 were the same as in 2019–20 and 2018–19, namely, ill-treatment (involving hostile use of force/physical contact) (176 allegations).

¹⁷ ACT Ombudsman, *ACT Ombudsman Practice Guide No.1 – How the ACT Ombudsman Responds to Notifications and Reports*, viewed 16 July 2021, www.ombudsman.act.gov.au/data/assets/pdf_file/0035/80999/No.-1-How-the-ACT-Ombudsman-responds-to-notifications-and-reports.pdf

¹⁸ ACT Ombudsman, *ACT Ombudsman Practice Guide No.9 – How the Ombudsman Assesses an Employer’s Response/Investigation*, viewed 16 July 2021, www.ombudsman.act.gov.au/data/assets/pdf_file/0015/81006/No.-9-How-the-ACT-Ombudsman-assesses-an-employers-response_investigation.pdf

Table 5: Allegation type for matters finalised in 2020–21 and percentage of all allegations reported

	Number	Percentage
Ill-treatment – hostile use of force	176	37%
Ill-treatment – emotional abuse	114	24%
Ill-treatment – neglect	68	14%
Misconduct of a sexual nature – crossing professional boundaries	67	14%
Misconduct of a sexual nature – Sexually explicit comments and other overtly sexual behaviour	16	4%
Ill-treatment – inappropriate restrictive intervention	15	3%
Offences against a person	8	2%
Sexual offences where a child is a victim or is present	6	1%
Misconduct of a sexual nature – grooming behaviour	3	1%
Psychological harm	1	0%
Other	1	0%

Performance against service standards

Our focus in 2020–21 was managing the immediate risks associated with incoming notifications and monitoring current reportable conduct investigations by organisations.

Section 17G notifications

When the Office receives a new s 17G notification from an organisation about an allegation of reportable conduct, we assess the initial response by the organisation, including whether it has reported to other authorities, and its risk assessment and investigation plan. This allows the organisation to consider our feedback during its investigation. We aim to assess notifications within 7 calendar days in 80 per cent of cases.

In 2020–21, 83.7 per cent of notifications were assessed within the required timeframe (being 7 calendar days).

Section 17J final reports

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

In 2020–21, 60.4 per cent were assessed within the required timeframe (being 28 calendar days).

We will continue to strive to meet these service standards – recognising the importance of providing timely consideration to organisations on assessments.

Outcomes

After notifying the ACT Ombudsman of a reportable conduct allegation, and on conclusion of its investigation, an organisation must provide the Ombudsman with the outcome of its inquiries and what action it takes as a result. Organisations are required to report on whether an allegation has been sustained or not sustained.

Figure 6 and Table 6 shows the outcomes for each allegation and the actions taken by organisations, as provided to us in reports finalised in 2020–21.¹⁹

Figure 6: Outcomes reported by organisations—finalised investigations in 2020–21

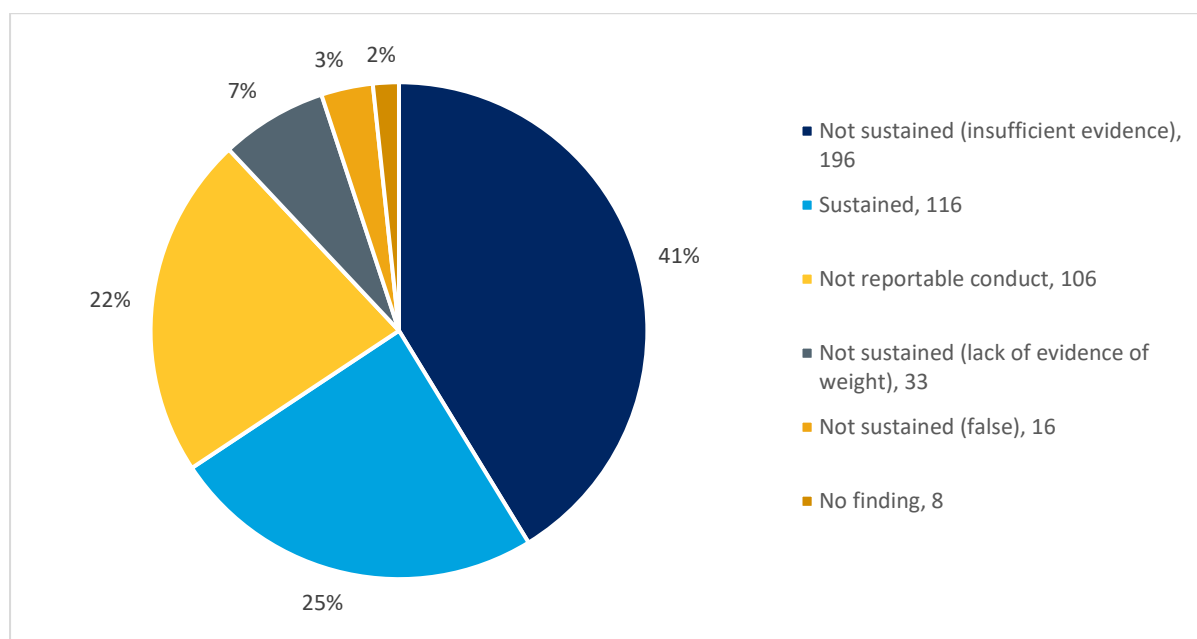


Table 6: Actions taken by organisations—finalised in 2020–21 and percentage of all actions taken

	Number	Percentage
No action after the investigation process	167	35%
Training	103	22%
Performance monitoring or managing	67	14%
Counselling	45	10%
Termination	43	9%
Letter of warning	25	5%
Other forms of disciplinary action as per employer	18	4%
Transfer/demotion	6	1%
A formal apology	1	0%

Investigations and complaints

The Ombudsman may, on their own initiative or in response to a complaint, choose to investigate any reportable conduct allegation or conviction against an employee of an organisation considered under the Scheme. The Ombudsman may also investigate an organisation’s response to a reportable conduct allegation or conviction.

In 2020–21, the Office received 21 complaints about organisations’ handling of reportable conduct matters. Most were handled by contacting the relevant organisation and facilitating pathways for complainants to access internal processes or information.

¹⁹ A notification may contain multiple allegations, each having a finding and action recorded.

We also conducted one investigation under s 9 of the Ombudsman Act in response to a complaint about information sharing. It related to a delay by an agency responding to a request for information from another organisation to assist with a reportable conduct inquiry. During the investigation, the agency recognised the consequences of the delay and committed to substantial improvements. It then assigned dedicated responsibilities to a relevant area and developed practices and procedures to handle such requests in the future.

Monitoring activities

Our 'Practice Guide No. 9 – How the Ombudsman Assesses an Employer's Response/Investigation' provides information to organisations about how the Office monitors an organisation's practices and procedures for preventing reportable conduct and how organisations deal with reportable allegations and convictions.

As outlined in Practice Guide No. 9, we consider the following aspects of an organisation's response:

- initial response
- planning
- information gathering
- employee response
- making a finding, and
- taking action.

We provide written feedback to organisations on the s 17J final reports provided to the Office under the Ombudsman Act. Where we identify systemic feedback concerns, we raise these at liaison meetings. Organisations are also invited to contact us for further discussion about feedback and we encourage organisations to revisit previous feedback provided when handling new matters.

During 2020–21, frequent feedback included, but was not limited to, addressing:

- providing procedural fairness to those involved in an investigation
- allegations needing to be clearly defined, clarified and recorded correctly before an investigation is conducted
- the articulation and mitigation of risk, based on a broad assessment, and
- understanding that reporting obligations under the Scheme may include allegations concerning an employee's private life, where the conduct impacts on the employee's behaviour in the workplace.

In 2020–21, we developed and tested a method to measure and track this feedback on our system. We will use this data to inform our engagement, such as emerging issues and trends in practices.

Through future practitioner forums we continue to focus on how we can better support organisations to implement our feedback and facilitate improvement, recognising that managing reporting obligations can be complex and time consuming. In the coming year, we intend to explore opportunities for building a stronger community of practice to support organisations.

Engagement activities

Engagement activities are integral to our role of supporting organisations to build their capacity to prevent, report and respond to allegations of reportable conduct. In 2020–21, we conducted engagement activities, to the extent possible as COVID-19 restrictions were gradually lifted, maintaining engagement with organisations by telephone and video calls, and slowly reintroducing face-to-face meetings.

We hosted one practitioner forum in February 2021. The forum included a presentation from the National Office for Child Safety about its role, and specifically how to support children and young people to raise their concerns when they feel unsafe and related resources recently developed. The forum also provided an opportunity to focus on:

- the challenges organisations faced in responding to allegations of reportable conduct during the COVID-19 health emergency
- how organisations implement our case feedback and reflect on how we may better provide effective feedback, and
- discussion about information sharing and an introduction to our new practice guide – ‘Practice Guide No. 8 – Information Sharing and Reportable Conduct’.

We are planning how to deliver information sessions and provide information to organisations in different formats, such as online webinars. We are also reviewing and updating content for when we can resume face-to-face information sessions.

We published 2 newsletters, these included practice information on assessing allegations and providing procedural fairness to employees.

The focus of our engagement during 2020–21 was building on our existing relationships with organisations. This included facilitated feedback discussions with some organisations to help them better understand their obligations under the Scheme and develop a better understanding of what support we can provide. We maintained regular liaison with Access Canberra (for its Working with Vulnerable People registration), Barnardos, the Community Services Directorate (CSD), the Education Directorate, and the Public Advocate and Children and Young Person Commissioner.

Recently, we engaged with ACT Policing regarding implementing regular meetings with a designated officer to discuss the Scheme and the needs of organisations.

We attended 2 roundtable discussions with stakeholders – the first hosted by the Teacher Quality Institute and the second by the Office of the Senior Practitioner.

We continue to attend meetings with the Bimberi oversight group, convened by the CSD and the Children and Young People Oversight Agencies Group and convened by the Public Advocate and the Children and Young People Commissioner.

Information sharing

In December 2020, we published ‘Practice Guide No. 8 – Information Sharing and Reportable Conduct’²⁰, following consultation with regulators, oversight agencies and organisations. The sharing of reportable conduct information between regulators and oversight agencies, ACT Policing, and organisations under the Scheme, is important for managing risks to child safety in the ACT.

During 2020–21, we continued to see organisations adopt a more pro-active approach to sharing information, which appears to reflect an increase in confidence about applying the legislative authorisations available to organisations to disclose information, should it be appropriate. Feedback from organisations also indicated that frequent information sharing has facilitated greater networking.

²⁰ ACT Ombudsman, ‘Practice Guide No. 8 – Information Sharing and Reportable Conduct’
https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0010/112141/ACT-Ombudsman-Practice-Guide-No.-8-Information-Sharing-and-Reportable-Conduct.pdf

Community Engagement and Support

Community engagement is an essential part of our work and COVID-19 highlighted the importance of regular and up-to-date information being provided to our community stakeholders.

During 2020–21, we restarted in-person outreach to the Alexander Maconochie Centre (AMC). We visited the AMC 3 times during 2020–21 to meet with detainees and provide information about the role of the Office. These visits gave us an opportunity to hear about detainees' concerns, not only about conditions at the AMC, but about their experience with other agencies. We continue to explore other avenues to provide information to detainees, which include information sessions to detainee delegates, along with the ACT Human Rights Commission. Staff at the Office also attended meetings with the ACT organisation, Prisoner's Aid.

The Office is committed to promoting respectful relationships with Aboriginal and Torres Strait Islander communities. In November 2020, we attended the ACT Policing Chief Police Officer's virtual Aboriginal and Torres Strait Islander Community Forum. We also participated in a one-day Aboriginal Cultural Awareness Program organised by the ACT Council of Social Services and staff are in regular contact with the Indigenous Official Visitor for the AMC. With the easing of COVID-19 restrictions, we hope to do more outreach to ACT Indigenous organisations and other community groups in 2021–22.

Scrutiny

The Office appeared before the Standing Committee on Public Accounts in March 2021 for the Annual Report Hearing.

In addition, the Ombudsman met with the Justice and Community Safety Standing Committee in June 2021 to discuss the role and responsibilities of the Inspector of the Integrity Commission.

Financial management reporting

In 2020–21, the ACT Government paid a total of \$3,053,652 to the Office to undertake its functions. The funding provided to the Office by the ACT Government was used on, and to support, functions provided to the ACT. Detailed financial statements for the Office of the Commonwealth Ombudsman, an Australian Public Service entity which currently performs the role of the ACT Ombudsman, are published in the Office of the *Commonwealth Ombudsman's Annual Report 2020–21*.

In accordance with the Service Agreement between the Office of the Commonwealth Ombudsman and the ACT Government, the Office was provided with:

- \$518,598 for ACT Ombudsman services, including complaint handling
- \$583,054 to provide oversight in relation to ACT Policing
- \$854,000 to perform functions under the Reportable Conduct Scheme
- \$860,000 to implement and perform functions under the FOI Act
- \$142,000 to perform functions as the principal officer to support the ACT Judicial Council, and
- \$96,000 to implement and perform functions under the Inspector of the ACT Integrity Commission.

Note: All figures quoted above are exclusive of GST.

Part 4: Annual report requirements for specific reporting entities

The Office oversees ACT Policing's use of certain covert and intrusive powers under ACT legislation, as well as monitoring its compliance with Chapter 4 and Part 3.11 of the Crimes (Child Sex Offenders) Act 2005 (the CCSO Act).

From our inspections finalised in 2020–21, we made several better practice suggestions to ACT Policing to improve compliance with the *Crimes (Surveillance Devices) Act 2010* (the Surveillance Devices Act), and the *Crimes (Controlled Operations) Act 2008* (the Controlled Operations Act).

Overall, we saw improvements during our inspections in 2020–21. However, in some instances, ACT Policing was unable to demonstrate sufficient remedial action to address the issues we identified in previous inspections. We continued to monitor this in our most recent inspections of ACT Policing during the 2020–21 reporting period. The results of this inspection will be reported in our 2021–22 Annual Report.

Controlled operations

A controlled operation is a covert operation to obtain evidence that may lead to the prosecution of a person for a relevant offence or be used in an integrity investigation. A controlled operation provides protection from civil and criminal liability for law enforcement officers and civilians who engage in certain conduct that would otherwise be unlawful or lead to civil liability.

The Controlled Operations Act allows ACT Policing to conduct controlled operations in the ACT and in other participating jurisdictions. The Office is required to inspect ACT Policing's records regarding controlled operations at least once every 12 months to assess the extent of its compliance with the Controlled Operations Act.

Inspection findings

The Office's 2019–20 Annual Report did not include the results from our controlled operation inspections conducted in 2019–20. The report about these inspections was finalised and provided to ACT Policing in July 2020 and is discussed below.

Table 7: Overview of controlled operation inspections

When were inspections conducted?	When did the records date from?	Suggestions	Better practice suggestions
2019–20	1 January to 31 December 2019	<p>We made 5 suggestions, including that ACT Policing:</p> <ul style="list-style-type: none"> • Clearly and separately define authorised conduct for law enforcement and civilian participants in controlled operation authorities. • Ensure all relevant records are kept as required by the legislation (for example, applications for controlled operation authorities and authorities that were granted). 	<p>We made one better practice suggestion that ACT Policing update internal guidance to highlight the importance of comprehensive and contemporaneous action sheets being completed during a controlled operation.</p>
2020–21 (inspection 1)	1 January to 30 June 2020	<p>We made 6 suggestions, including that ACT Policing:</p> <ul style="list-style-type: none"> • Ensure law enforcement participants are specifically authorised to instruct civilian participants during a controlled operation. ACT Policing advised it amended its templates to address this issue and it would seek advice on the specific instances identified. • Ensure contemporaneous action sheets document conduct engaged in during a controlled operation. ACT Policing advised it amended its internal guidance to address this requirement. • Review its quality assurance processes to ensure the information provided in applications accurately reflects the relevant authority. 	<p>We made one better practice suggestion that ACT Policing establish a standard for a reasonable timeframe within which to cancel controlled operation authorities.</p>
2020–21 (inspection 2)	1 July to 31 December 2020	<p>The report about this inspection was provided to ACT Policing in July 2021. These findings will be reported in the Office’s 2021–22 Annual Report.</p>	

Surveillance devices

The Surveillance Devices Act provides a framework for law enforcement officers to use surveillance devices in the ACT. Surveillance device means a data device, a listening device, an optical device, a tracking device, or a device that is a combination of these devices.

The Office may inspect ACT Policing's records to assess the extent of its compliance with the Surveillance Devices Act.

The Office's 2019–20 annual report did not include the results from our inspections conducted in 2019–20 for surveillance device warrants, because the report about these inspections was finalised and provided to ACT Policing in July 2020. The findings from these inspections are discussed further below.

In 2020–21, we conducted 2 inspections of ACT Policing's records for all surveillance device warrants that had expired or were revoked from 1 January 2020 to 31 December 2020. The report about our inspection of records from 1 January 2020 to 30 June 2020, was finalised and provided to ACT Policing in October 2020, and is discussed below. The report from our inspection of records from 1 July 2020 to 31 December 2020 was provided to ACT Policing in July 2021, and the findings will be reported in the Office's 2021–22 annual report.

Inspection findings

During our previous inspection of records from 1 July 2018 to 31 December 2018, we could not be satisfied that ACT Policing had taken appropriate action to address our previous inspection findings and suggested ACT Policing revise its inspection practices. We saw an improvement in ACT Policing's engagement with the Office during our inspections from 1 January 2019 to 30 June 2020.

Table 8: Overview of surveillance device inspections

When were inspections conducted?	When did the records date from?	Suggestions	Better practice suggestions
2019–20	1 January to 31 December 2019	<p>We made 7 suggestions, including that ACT Policing:</p> <ul style="list-style-type: none"> • Seek advice and consider amending guidance in relation to warrant extensions being endorsed by signing adhesive labels affixed to the original warrant. • Take various steps in relation to specific warrants or surveillance activities where we identified compliance issues or risks (for example, seeking legal advice or updating the general register). • Amend its reporting to further improve consistency and accuracy. 	<p>We made 2 better practice suggestions in relation to ACT Policing’s applications for extension or amendment of surveillance device warrants, including to ensure information about privacy impacts remains current.</p>
2020–21 (inspection 1)	1 January to 30 June 2020	<p>We made 9 suggestions, including that ACT Policing:</p> <ul style="list-style-type: none"> • Require staff to assess the privacy impact of continuing use of the surveillance device(s) in applications for the extension of warrants. • Develop and implement procedures to inform the Chief Officer when a surveillance device under warrant is no longer necessary. • Take various steps in relation to specific warrants or surveillance activities where we identified compliance issues or risks (for example, amending action sheets and Final Effectiveness Reports to ensure accuracy). 	<p>We made 2 better practice suggestions relating to ACT Policing’s warrant applications and affidavits.</p>
2020–21 (inspection 2)	1 July to 31 December 2020	<p>The report about this inspection was provided to ACT Policing in July 2021. These findings will be reported in the Office’s 2021–22 Annual Report.</p>	

ACT Policing has updated its internal guidance documents and templates to address concerns raised by the Office. We will continue to monitor these issues at future inspections.

Assumed identities

The *Crimes (Assumed Identities) Act 2009* (the Assumed Identities Act) facilitates investigations and intelligence-gathering regarding criminal activity by providing for the lawful acquisition and use of assumed identities in the ACT. Our Office may inspect ACT Policing's records to assess the extent of compliance with the Assumed Identities Act.

To date, we have not conducted any inspections under the Assumed Identities Act because ACT Policing advised it has not applied any of the provisions.

Child Sex Offenders Register

The ACT Child Sex Offenders Register (the register) is established under the CCSO Act. Chapter 4 of the CCSO Act sets out how ACT Policing must manage the register, including the information that must be recorded on the register. Further, Chapter 4 sets out the controls that must be applied to the use and disclosure of information from the register. Under Part 3.11 of the CCSO Act, ACT Policing may apply for a warrant to enter and search the premises of a registrable offender to verify the offender's personal details or to determine whether the offender has breached, or is likely to breach, an order prohibiting certain conduct.

The Act requires the Office to monitor ACT Policing's compliance with Chapter 4 and Part 3.11 of the CCSO Act. In 2020–21, the Office conducted one inspection of the register. The results of this inspection will be reported in the Office's 2021–22 Annual Report. To date, we have not made an assessment regarding Part 3.11 of the CCSO Act because ACT Policing advised it has not applied any of the provisions.

Review of complaint handling under Part V of the Australian Federal Police Act 1979

Under s 40XA of the *Australian Federal Police Act 1979* (Cth) (the AFP Act), the Commonwealth Ombudsman²¹ is required to review the administration of the Australian Federal Police's (AFP) handling of complaints through inspection of AFP records. This includes reviewing records of the handling of complaints about ACT Policing. Further, under s 40XB of the AFP Act, the Ombudsman may, at any time, inspect the records of AFP conduct and practice issues for the purposes of reviewing the administration of Part V of the AFP Act.

The Ombudsman reports annually to the Federal Parliament on our review of AFP's activities under Part V of the AFP Act. These reports are available on the Commonwealth Ombudsman's [website](#).

²¹ The Commonwealth Ombudsman is also the ACT Ombudsman.

Part 5: Whole-of-Government annual reporting

Freedom of Information

Decisions on open access

During 2020–21, we made 20 decisions to publish open access information. This includes the following material:

- ACT Ombudsman Annual Report for 2019–20
- Quarterly updates to the ACT Head of Service and key stakeholders (4 updates during the period)
- ACT Policing’s Administrative Framework for engagement with the ACT Aboriginal and Torres Strait Islander Community, Volumes 1 and 2
- Investigation into the administration of parole by ACT Corrective Services
- Report on the operation of the Freedom of Information Act 2016 for 2019–20
- Inspector of the ACT Integrity Commission Annual Report 2019–20
- Investigation into the transparency of commercial land valuation decisions in the ACT
- Ombudsman Guidelines – Open Access information
- Ombudsman Guidelines – Ombudsman Reviews
- Ombudsman Guidelines – Amending personal information
- Ombudsman Guidelines – Considering the public interest
- Ombudsman Guidelines – Dealing with access applications
- Ombudsman Guidelines – Informal Requests for Government Information
- July 2020: Child safe standards discussion paper
- Scatter Gun Complaints Policy – Managing complaints sent to multiple AMC oversight agencies, and
- Relationship Protocol between agencies responsible for the oversight of the AMC (amended).

We did not make any decisions to refuse to publish open access information or descriptions of open access information.

Access applications

The Office received 5 applications for release of information under the ACT FOI Act. Access was granted to all the information sought in one application. The decision in relation to 2 applications was to refuse access. In relation to one application, the decision was to partially release the information sought. In the other application, the Office did not hold the information requested.

Charges and application fees

The ACT FOI Act provides that information should be released at the lowest reasonable cost to applicants.

We do not charge for information released under an access application made to the Office. In our oversight role, the Office does not charge any fees for Ombudsman review.

Human Rights

The *Human Rights Act 2004* (the Human Rights Act) forms part of the legislative and policy framework relevant to the complaints we receive. The Human Rights Act provides protections for peoples’ civil and political rights and requires that agencies act consistently with those rights. When assessing a complaint, the Office considers whether the action or decision of an agency may engage one or more human rights.

Part 6: State of the Service Report

Public Interest Disclosure

The Office is a 'disclosure officer' under the *Public Interest Disclosure Act 2012*, which means we can receive disclosures and may investigate disclosable conduct that relates to the head of a public sector entity or service.

We do not have oversight responsibility for the Public Interest Disclosure (PID) Scheme. This rests with the ACT Integrity Commissioner. However, the Office can take complaints about and review the handling of PIDs by ACT public sector agencies.

There were no disclosures or PID handling complaints received during 2020–21 and 2 general PID enquiries were received. The Integrity Commissioner did not refer any disclosures to the Office during the relevant reporting period.

Part 7: Appendices

Appendix 1

Table 9: Complaints received or finalised by ACT Ombudsman in 2020–21

Directorate/Agency	Total received 2020 21	Total finalised 2020 21	Finalised with investigation	Finalised without investigation
Canberra Health Services	5	5	1	4
Chief Minister, Treasury and Economic Development Directorate	110	105	7	98
Access Canberra	79	72	6	66
ACT Revenue Office	13	13	0	13
Canberra Institute of Technology	1	1	0	1
University of Canberra	15	17	1	16
Chief Minister, Treasury and Economic Development – other	2	2	0	2
Community Services Directorate	140	131	10	121
Housing ACT	130	121	10	111
Community Services – other	10	10	0	10
Education Directorate	15	15	0	15
Environment Planning and Sustainable Development Directorate	24	23	1	22
Health Directorate	13	11	0	11
Justice and Community Safety Directorate	123	122	12	110
ACT Corrective Services	116	115	11	104
ACT Emergency Services Agency	0	0	0	0
Justice and Community Safety – other	7	7	1	6

Directorate/Agency	Total received 2020 21	Total finalised 2020 21	Finalised with investigation	Finalised without investigation
Transport Canberra and City Services Directorate	32	32	6	26
Independent statutory offices	34	35	2	33
ACT Court or Tribunal	8	8	0	8
ACT Human Rights Commission	6	6	0	6
Director of Public Prosecutions	1	1	0	1
Legal Aid ACT	2	2	0	2
Public Trustee and Guardian for the ACT	17	18	2	16
Officer of the Legislative Assembly	1	1	0	1
ACT Electoral Commission	1	1	0	1
Prescribed authorities	1	1	0	1
ACT Law Society	1	1	0	1
Territory-owned corporations	2	2	0	2
ACT Long Service Leave Authority	1	1	0	1
Icon Water	1	1	0	1
TOTAL ACT Government	500	483	39	444
ACT Policing	103	107	7	100
TOTAL ACT	603	590	46	544

a - Note a further 6 FOI complaints were received, and 7 complaints were finalised. Twenty-one complaints were received and finalised about reportable conduct. Four complaints were received and 4 were finalised about the ACT Integrity Commission. A total of 634 ACT complaints received by the Office in 2020–21 and 622 complaints were finalised in the same period.

Appendix 2

Table 10: Outcomes of finalised complaint investigations for 2020–21 by agency and by outcome

Directorate /Agency	Investigations finalised	Action expedited	Agency officer action taken	Apology	Better Explanation by Agency	Better Explanation by Ombudsman	Change to law, policy or practice	Decision changed or reconsidered	Fee refunded, waived or reduced	No Remedy	Other financial remedy	Remedy provided by agency	Total
Canberra Health Services	1						1						1
Chief Minister, Treasury and Economic Development Directorate	7	1		3	1	4	3	1	2			1	16
Access Canberra	6	1		3	1	3	3	1	2			1	15
ACT Revenue Office													
Canberra Institute of Technology													
University of Canberra	1					1							1
Chief Minister, Treasury and Economic Development													
Community Services Directorate	10	2		4	3	8	2	6			1	2	28
Housing ACT	10	2		4	3	8	2	6			1	2	28
Community Services - other													
Education Directorate													
Environment Planning and Sustainable Development Directorate	1									1			1
Health Directorate													
Justice and Community Safety Directorate	12				8	9		1		3	1	2	24
ACT Corrective Services	11				7	8		1		3	1	2	22
ACT Emergency Services Agency													

Directorate /Agency	Investigations finalised	Action expedited	Agency officer action taken	Apology	Better Explanation by Agency	Better Explanation by Ombudsman	Change to law, policy or practice	Decision changed or reconsidered	Fee refunded, waived or reduced	No Remedy	Other financial remedy	Remedy provided by agency	Total
Justice and Community Safety – other	1				1	1							2
Independent Statutory Offices	2				1					1		1	3
ACT Court or Tribunal													
ACT Human Rights Commission													
Director of Public Prosecutions													
Legal Aid ACT													
Public Trustee and Guardian	2				1					1		1	3
Office of the Legislative Assembly													
ACT Electoral Commission													
Prescribed Authorities													
ACT Law Society													
Territory-owned Corporations													
ACT Long Service Leave Authority													
Icon Water													
Transport Canberra and City Services	6	1	1	2	2	5	2	1				1	15
ACT Government	39	4	1	9	15	26	8	9	2	5	2	7	88
ACT Policing	7	2				5				1			8
Total		6	1	9	15	31	8	9	2	6	2	7	96

b Note: one investigation may result in multiple outcomes

c Note: this table does not include outcomes for finalised matters in relation to FOI, Reportable Conduct or the ACT integrity Commission. These outcomes are reported separately.

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Glossary

ACAT	ACT Civil and Administrative Tribunal
ACC	Australian Crime Commission
ACT	Australian Capital Territory
ACTCS	ACT Corrective Services
AFP	Australian Federal Police
Agencies	Administrative units of ACT Government business
AMC	Alexander Maconochie Centre
CMTEDD	Chief Minister, Treasury and Economic Development Directorate
CSD	Community Services Directorate
Directorates	Administrative units of ACT Government business
FOI	Freedom of Information
JACS	Justice and Community Safety Directorate
the Office	ACT Ombudsman's Office
OOJ	Out of jurisdiction
PID	Public Interest Disclosure

Compliance statement

Report on omissions and reasons for non-compliance

The Office of the Commonwealth Ombudsman discharges the role of ACT Ombudsman. The ACT Ombudsman is not required to comply with the Annual Report Directions under the Annual Reports Act, but the Commonwealth Ombudsman is required to act in accordance with the Directions under its Service Agreement with the ACT Government. Because the Office of the Commonwealth Ombudsman discharges the role of ACT Ombudsman, many omitted items are separately reported in the *Commonwealth Ombudsman Annual Report 2019–20* available on the [Annual Reports](#) webpage at ombudsman.gov.au.

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