



OMBUDSMAN AN OFFICER OF
THE ACT LEGISLATIVE ASSEMBLY 

18/19

ANNUAL REPORT



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OMBUDSMAN AN OFFICER OF
THE ACT LEGISLATIVE ASSEMBLY 

4 October 2019

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

Dear Speaker

I present to you my Annual Report for 2018–19.

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

I certify that the Annual Report 2018–19 is an honest and accurate account of the work of the ACT Ombudsman's Office and that all material information on the operations of the Office has been included for the period from 1 July 2018 to 30 June 2019.

As I am an Officer of the Legislative Assembly, this report is not subject to the Annual Reports (Government Agencies) Directions 2019. Where relevant to my Office, I have, nevertheless, sought to include similar information in this report to that required under these directions.

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

Yours sincerely

A handwritten signature in black ink, appearing to read "Michael Manthorpe".

Michael Manthorpe PSM
ACT Ombudsman

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The ACT Ombudsman Annual Report 2018–19 is available on the website.

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Review by the Ombudsman



I am pleased to introduce the 2018–19 Annual Report for the ACT Ombudsman.

This has been a year of significant activity within each of the following functions that form the Office of the ACT Ombudsman:

- complaint-handling
- oversight and inspection of certain ACT Policing powers
- managing the ACT’s Reportable Conduct Scheme
- undertaking specific functions under the *Freedom of Information Act 2016*
- providing support to the ACT Judicial Council
- preparing for implementation of my new role in 2019–20, as the Inspector of the Integrity Commission (the Inspector).

A number of initiatives have commenced or been implemented to ensure:

- the ACT community understands how we are working to improve public administration in the ACT
- we build stronger networks with ACT agencies and take up new opportunities to influence systemic improvements in the ACT
- we contribute to continual improvement in administrative decision-making, complaint-handling, FOI and reportable conduct processes in our jurisdiction.

New arrangements are in place to ensure ACT residents are aware of our services, and can access them more easily, particularly more vulnerable members of the ACT community:

- A new ACT Ombudsman Facebook page was launched on 6 June 2019 to improve the community’s understanding of the work we do.
- A separate ACT Ombudsman phone line commenced on 1 July 2019, enabling the ACT community to access a more tailored service.

These initiatives are expected to improve service delivery for those who are approaching the ACT Ombudsman and will be complemented by the release of a new and improved ACT Ombudsman website in the second half of 2019.

We are working closely with other oversight agencies in the ACT, including the ACT Human Rights Commission and the Inspector of Correctional Services, to ensure our efforts are complementary and not duplicated and the ACT community can easily access the agency that can best assist them.

During the year, complaints received by the Office about ACT government agencies grew, while complaints about ACT Policing fell. Overall, the number of complaints received was similar to last year.

This was a year of significant growth for our Freedom of Information (FOI) oversight role. My Office has provided 24 Ombudsman review decisions under the FOI Act, published our first annual report on the current FOI scheme and commenced drafting new Ombudsman FOI guidelines. We also established a new FOI practitioners' forum, which has received positive feedback, enhancing engagement with ACT government agencies in terms of best practice FOI and open access processes.

We continue to support organisations to improve organisation-based child protection in the ACT. Under the Reportable Conduct Scheme, my Office handled an increased number of notifications from organisations about allegations of abuse or misconduct by their employees that involve children. We also provided practical feedback to organisations about individual and systemic issues.

I released my first public statement about a reportable conduct investigation in October 2018, in order to assist organisations in the implementation of their responsibilities under the scheme. My Office also engaged with organisations and stakeholders through a range of forums and channels to help embed the scheme in organisations' practice and policies and to promote continuous learning about child safety.

Overall, the increased rate of reporting to my Office under the scheme, the findings reached by organisations and the range of actions taken by organisations in response to child safety issues suggest that organisations are identifying possible reportable conduct appropriately and taking action.

We have begun implementation activities for our new role as Inspector of the ACT Integrity Commission. Scoping activities were completed in February 2019 and required guidelines and policies have been developed.

I welcome the opportunity to take up the role of Inspector in July and will continue to look for new opportunities to influence systemic improvements in public administration of the ACT. As highlighted in this report, my Office will focus on new initiatives for working with ACT government agencies to improve complaint-handling arrangements, as well as ensuring that agencies meet their responsibilities in terms of open access information and reportable conduct.

Michael Manthorpe PSM
ACT Ombudsman



HIGHLIGHTS

ORGANISATIONAL OVERVIEW AND PERFORMANCE

PERFORMANCE ANALYSIS

COMMUNITY ENGAGEMENT AND SUPPORT

SCRUTINY

FINANCIAL MANAGEMENT ANALYSIS



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PART 2—ANNUAL REPORT REQUIREMENTS

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 providing assurance that ACT government agencies and other designated entities that fall within our jurisdiction act with fairness and integrity. Our Office works 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 FOI framework
- the ACT Reportable Conduct Scheme
- ACT Policing (as the Commonwealth Ombudsman).

We also continue to play a support role for the Judicial Council and will begin a new role as Inspector of the ACT Integrity Commission in 2019–20.

The sections below provide an overview of each of these functions. For more detailed performance information for these functions during 2018–19, see Part 2 Performance analysis. A copy of our organisational chart can be accessed on the ACT Ombudsman website.¹

¹ See: <http://www.ombudsman.act.gov.au/about-us/who-we-are/organisation-chart>

Complaints regarding public administration

The Ombudsman receives complaints from members of the public who believe they have been treated unfairly or unreasonably by an ACT government agency or ACT Policing. We assess each complaint which is within our jurisdiction to determine the most appropriate course of action, which may include investigating or making other inquiries of the agency concerned.

People are encouraged to deal directly with agencies in the first instance unless they are in a particularly vulnerable situation. To support this, we are:

- reviewing arrangements for transferring and referring complaints to more appropriate agencies
- expanding our work with ACT Government agencies to help ensure they provide accessible and effective complaint-handling processes to the public.

Management of complaints can result in a number of different outcomes. For example, the person may be given a better explanation of the decision, receive an apology, or the agency concerned may decide to take further action or expedite a process already underway. In relation to other complaints, we may be able to provide independent assurance to the person that the agency acted lawfully and reasonably, or provide feedback to the agency to help them improve their administrative practices. When we investigate a complaint our intention is to discover what happened and whether action

by the agency is required to resolve it. The most common outcomes are better explanations from an agency or our Office about a process or outcome, reconsidering a matter or requesting that a matter be expedited if a delay appears to be unreasonable. As part of our investigations we can provide feedback to agencies to improve their administrative processes and to avoid unfair or unreasonable decisions or outcomes in the future.

Where we cannot investigate a complaint because it falls outside of our jurisdiction, we help people to find the organisation that can best assist them. This includes via advice on our website about who else can help them and formal referrals for vulnerable clients.

For example, an individual seeking to complain about:

- a health service, a service for people with a disability, a service for children, young people or older people, may be referred to the ACT Human Rights Commission
- employment in the public service will be asked to contact the Public Sector Standards Commissioner.

Information about our complaints work in 2018–19 is set out in Part 2 Performance analysis.

Complaints education program

In 2018–19, we initiated an education program targeted at improving complaint-handling by public sector agencies. Our goal is to assist agencies to manage complaints effectively and encourage agencies to use complaints as a valuable tool to improve their own service delivery.

Once fully established, the education program will consist of a series of low-cost workshops, individually tailored to the needs of agencies.

In May 2019, we introduced a one day interactive complaint-handling workshop based on our Office's *Better Practice Guide to Complaint-Handling*. The workshop examines the essential elements of an effective complaint-handling system and invites participants to think critically about their agency's processes. The workshop is targeted at frontline staff and their supervisors.

We have also rolled out agency engagement training, with presentations and discussions tailored to specific agencies on the role of the Office and effective ways to work with us. In 2018–19 Housing ACT participated in this training. ACT agencies were also represented at the annual Commonwealth Complaint-Handling Forum.

Reportable Conduct Scheme

For two years the Office has had a central role in overseeing and promoting good practice in organisations' responses to allegations of abuse or misconduct by employees that involve children. The Reportable Conduct Scheme is set out in Division 2.2A of the *Ombudsman Act 1989*.

Organisations covered by the Reportable Conduct Scheme must report to the Ombudsman allegations, offences or convictions relating to child related misconduct by an employee. It does not matter if the allegations or convictions arose in the course of an employee's professional or private capacity. As long as the person was an employee of the organisation at the time the organisation became aware of the allegation, it must be reported by the organisation to the Office. These organisations must also have practices and procedures in place to prevent reportable misconduct, to respond to reportable allegations and reportable convictions and also to share reportable conduct information when requested by certain organisations in accordance with provisions in the *Children and Young People Act 2008*.

Under the scheme, the Office:

- receives reports from organisations about reportable allegations or reportable convictions of an employee and the action the entity has taken in response, including the results of any investigation carried out by the entity (ss 17G and 17J)
- may monitor an investigation carried out by the entity (s 17I)
- must monitor the practices and procedures of entities for the prevention of reportable conduct and for dealing with reportable allegations or reportable convictions (s 17F)
- may, on its own initiative or in response to a complaint, conduct an investigation into any reportable allegation or reportable conviction, or the response of a designated entity to the allegation or conviction (s 17K)
- may disclose information about investigations to a child, parent and carer (s 17L) and the Office of Fair Trading (s 17M), and may disclose child safety and reportable conduct information it receives under the Act to specified entities (ss 34A, 863B and 863C of the *Children and Young People Act 2008*).

The scheme does not interfere with reporting obligations to ACT Policing, Child and Youth Protection Services (CYPS) or any other relevant professional bodies.

Organisations covered by the scheme in 2018–19 include:

- all ACT government directorates
- health services, such as hospital and ambulance services
- kinship and foster care organisations
- residential care organisations
- government and non-government schools
- education and care services, including after school care
- religious organisations.

All employees of these organisations are included in the scheme, as are volunteers and contractors engaged by the organisation to provide a service to children. For religious organisations, the definition of employee also includes religious officers and any volunteer or contractor engaged by the organisation, regardless of whether they provide a service to children.

More information about our work under the scheme in 2018–19 is set out in Part 2 Performance analysis.

Freedom of information

The ACT *Freedom of Information Act 2016* (the FOI Act) is designed to:

- provide a public right of access to government information
- promote public participation in government decision-making and increase government accountability
- promote a culture of openness and transparency in government
- improve public understanding of government decisions and confidence in government processes.

The Ombudsman oversees this Act and promotes its objects by:

- conducting independent merit reviews of decisions on access applications made by agencies and Ministers under the FOI Act
- granting extensions of time to decide access applications
- monitoring the operation of the FOI Act, including the publication of open access information by agencies and Ministers and agency compliance with the FOI Act
- making open access information declarations
- publishing guidelines, which are to be periodically revised

- investigating complaints about an agency's or Minister's action in relation to their functions under the FOI Act.

The Ombudsman must also prepare a report on the operation of the FOI Act for each financial year under s 67 of the Act. This report will be prepared and published as a separate document to this annual report, once data from ACT agencies and Ministers' annual reports have been made available to inform the report. The Office will then deliver the report to the Speaker for presentation to the Legislative Assembly.

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

Where possible our Office focuses on informal resolution of its review matters. We also work closely with agencies in the ACT through regular agency liaison and practitioners forums, to support them to build capability and evolve their processes to meet the requirements of the FOI Act.

More information about our work under the FOI Act is set out in Part 2 Performance analysis.

Inspections

The Office monitors ACT policing's use of covert powers through inspections conducted under the *Crimes (Controlled Operations) Act 2008*, *Crimes (Assumed Identities) Act 2009* and the *Crimes (Surveillance Devices) Act 2010*, as well as compliance with Chapter 4 and Part 3.11 of the *Crimes (Child Sex Offenders) Act 2005*.

Information about our inspections in 2018-19 is set out in Part 4 of this report.

Judicial Council

The Office continues to provide support to the ACT Judicial Council as part of a service agreement with the ACT Government.

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 four members:

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

The Ombudsman is the Council's Principal Officer. Together with two 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 which will be published on its website.

Performance analysis

Complaints management

Complaints received

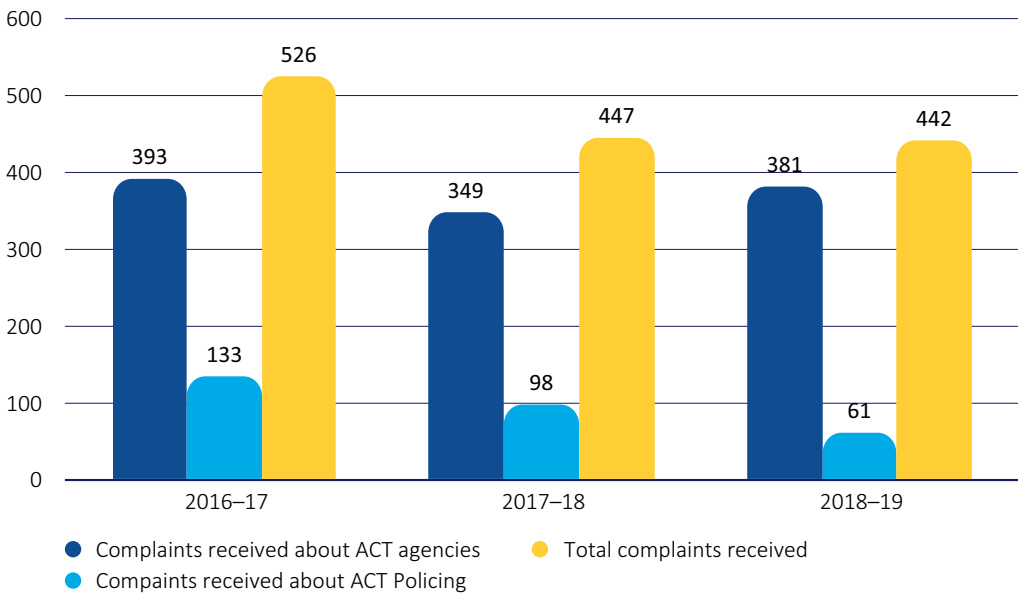
In 2018–19, as outlined in Figure 1, the Office received a total of 442 complaints, including:

- 381 complaints that related to ACT agencies
- 61 complaints that related to ACT Policing.

This does not include:

- enquiries to the Office that are identified upon receipt as not within our jurisdiction
- general requests—both formal, such as access applications, and informal, such as media enquiries or requests for copies of our publications.

Figure 1—ACT complaints received during 2018–19, compared with the last three financial years



There has been a one per cent decrease in total complaints received since last financial year.

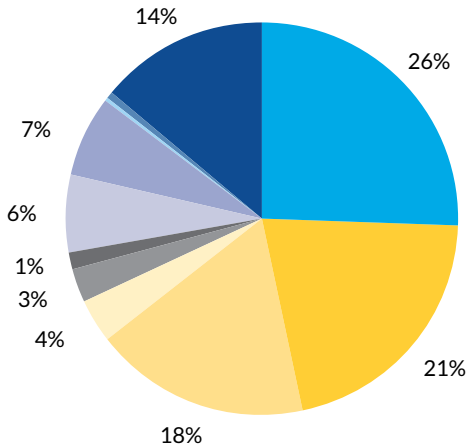
Complaints regarding ACT Policing continued to decrease, with 61 complaints received in 2018–19 compared to 98 complaints in 2017–18. There has, however, been a nine per cent increase in complaints received about ACT agencies.

Figure 2 outlines the complaints received by ACT Directorates, ACT Policing and other independent ACT agencies.

The largest number of complaints received in 2018–19 regarding an ACT government directorate were about the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). Together, complaints about CMTEDD, the Community Service Directorate (CSD) and the Justice and Community Safety (JACS) Directorate made up 65 per cent of all ACT complaints.²

² It should be noted that agencies reported under CMTEDD and JACS have changed in this annual report from previous years. This is explained further at Appendix 1.

Figure 2—Complaints received by directorates, ACT Policing and other independent ACT agencies in 2018-19



- Chief Minister, Treasury and Economic Development Directorate
- Community Services Directorate
- Justice and Community Safety Directorate
- Education Directorate
- Environment, Planning and Sustainable Development Directorate
- Health Directorate
- Transport Canberra and City Services Directorate
- Independent statutory offices
- Prescribed authorities
- Territory-owned corporations
- ACT Policing

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

- Housing and Community Services ACT (Housing ACT), 82 complaints
- ACT Corrective Services (ACTCS), 69 complaints
- Access Canberra, 51 complaints.

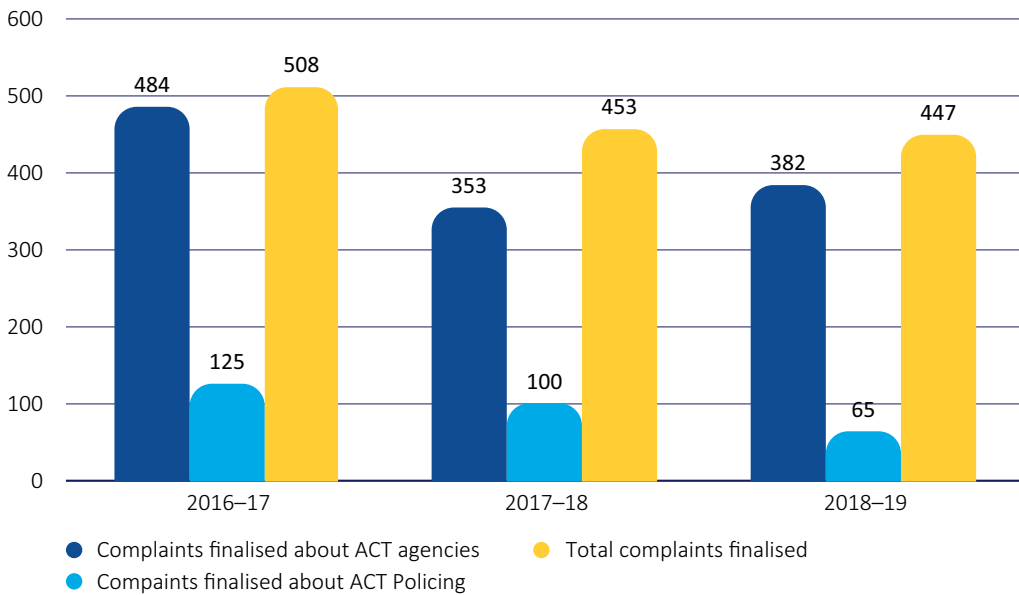
A more detailed table indicating complaints received by individual ACT agencies, is provided at Appendix 1.

Complaints finalised

As outlined in Figure 3, in 2018-19, the Office finalised a total of 445 complaints, including:

- 65 ACT policing matters
- 380 complaints relating to the ACT jurisdiction.

Figure 3—ACT complaints finalised during 2018–19, compared to the two previous financial years



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

- An ACT resident contacted us and complained that a local restaurant had installed a large, noisy refrigerator unit in their street. Following our assessment and preliminary inquiries of the agency concerned, we were able to assure the complainant that Access Canberra and the Environmental Protection Authority were actively managing the situation, without needing to undertake a formal investigation.

We consider a number of factors in assessing complaints and determining appropriate action to take. This includes whether:

- the complainant has complained to the agency involved
- we can resolve the complaint quickly, for

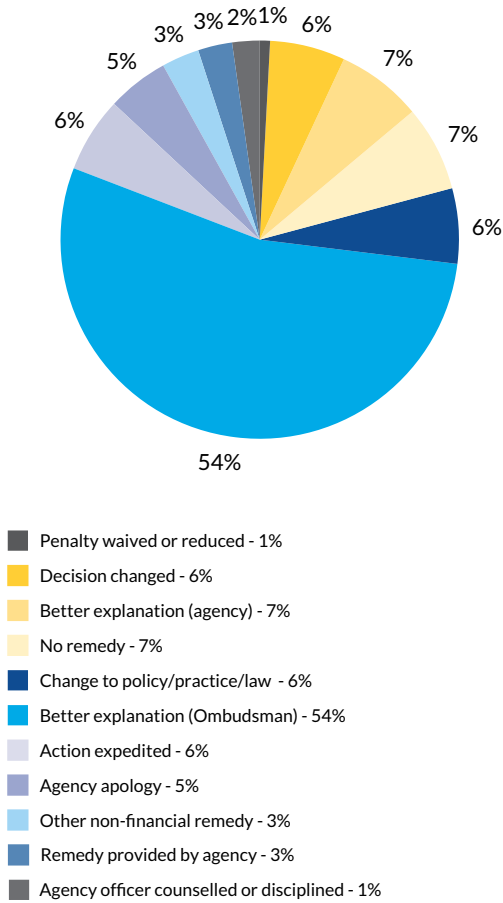
- example, by providing a better explanation
- another agency or oversight body can provide a better outcome for the complainant
- the event complained about happened more than 12 months ago
- it is clear the agency has made a reasonable and lawful decision, based on the information provided by the complainant, without the need for us to request additional information.

Outcomes achieved for investigated complaints

Where a formal investigation of a complaint occurs, more than one outcome can be achieved. Figure 4 below outlines the outcomes that resulted from formal investigations finalised in 2018–19. The table at Appendix 2 also provides this information by ACT government agency.

The outcomes achieved this year were positive, with only seven per cent of the complaints investigated resulting in no outcome being able to be provided.

Figure 4—Outcomes of investigated complaints finalised in 2018-19



Complaint trends

The sections below provide more detailed commentary on complaint trends identified in relation to particular ACT government agencies during 2018-19, and initiatives by our Office in response to the issues identified.

CASE STUDY

A complainant runs a small business that does work for an ACT government agency. They wrote to our Office, saying that their business had been waiting for payment of outstanding invoices for work that had been completed in 2016.

Some of the delay in payment had been caused by delays in issuing the invoices, but there were instances where it appeared the agency had not acted in accordance with the ACT Accounting Policy.

Following our investigation, the agency was able to identify and arrange payment for all outstanding matters. They wrote and apologised to the complainant. They also reviewed their processes with a view to improving services to suppliers in future.

Housing ACT

The agency with the highest number of complaints received this financial year was Housing ACT. Eighty-two complaints were received in 2018-19, an increase of 19 per cent in comparison to last financial year.

The most common issues raised included:

- maintenance issues and in particular, failures to undertake or complete urgent maintenance
- complaint management, including multiple complaints not being addressed or managed effectively
- requests to transfer properties, particularly where allocated housing did not meet the medical/specialised needs of the resident.

We continue to work closely with Housing ACT to facilitate improvements in public administration where possible and monitor identified issues, such

as through quarterly liaison meetings. ACT Housing has a significant program of change and digitisation underway, which is expected to help them address some of these issues.

CASE STUDY

A housing ACT client complained that due to a number of medical conditions and a permanent disability, their Housing ACT property was not suitable. They were put on an emergency waiting list.

After more than seven years on this list, they were contacted by Housing ACT in July 2017 and told that a property was available for them in North Canberra. While the property was new and clean, the person required access to specialist medical services which were not available in this suburb and so, they were forced to turn down the property.

They were told of another property that was available and advised that if they turned this property down as well, they would be taken off the priority list.

As a result, the person signed the lease for the new property in August 2017. When they moved in, they noted that a number of electrical items in the unit were not working and the property had not been cleaned. The person's disability also meant they were unable to access the rubbish room in the apartment complex.

Following an investigation by our Office, Housing ACT determined that the original offer made to the client did not meet their needs. They were able to offer a new property that was more suitable and closer to the services they needed.

ACT Corrective Services

Sixty-nine complaints were received in 2018–19 about ACT Corrective Services (ACTCS), an increase of 38 per cent compared to 2017–18.

These complaints were all made about the Alexander Maconochie Centre (AMC), and almost all were made by detainees. Common issues stemming from these complaints included:

- complaints management processes
- access to facilities and programs at the AMC
- access to visitors.

Complaints also raised issues about detainee property, officer conduct and use of force.

Our Office has continued to work closely with ACTCS during 2018–19 to manage the increase in complaints to our Office and help ACTCS to address any systemic issues in conjunction with other AMC oversight agencies, such as the ACT Human Rights Commission and the Office of the Inspector of Correctional Services (OICS). We also provided a submission to the Healthy Prisons Review currently being undertaken by the OICS. This is available on our website.³

In 2018–19, we commenced an informal trial to transfer complaints directly to ACTCS. This has proven successful with detainees being provided with help to find information about their situation and/or personal records. Our Office will be seeking to finalise formal complaint transfer arrangements with ACTCS in 2019–20, and commence regular quarterly meetings at officer level to ensure these arrangements are implemented effectively and remain on track.

³ See: <http://www.ombudsman.act.gov.au/publications-and-media/submissions>

CASE STUDY

A detainee in the AMC approached the ACT Ombudsman raising concerns about their detention in the management wing for an extended period without access to open air, during which they made four complaints but did not receive an acknowledgement or response.

In response to our questions, ACTCS indicated that action had been taken in relation to some of the complaints raised by the detainee, but it acknowledged that staff had not complied with policies around recording access to outside time, or in terms of complaint management.

ACTCS has since advised they are taking steps to address these issues, including drafting communications to remind all staff of the appropriate process for complaint receipt, response and documentation.

Building and planning complaints

Our Office has received an increase in complaints related to building and planning this financial year. We are analysing these complaints for trends and considering actions for influencing process improvement in 2019–20.

We acknowledge that following our investigation of a particular matter, Access Canberra has centralised its complaints process into the Complaints Management Team, and integrated Building and Planning Compliance into this team. There is now a Rapid Response Team responsible for triaging building and planning complaints. We expect this to have a positive impact in terms of processing building and planning related complaints by the ACT Government.

ACT Revenue Office

The number of complaints received about the ACT Revenue Office increased by 18 per cent this financial year, with 26 complaints received.

The most common issues raised were fees and charges, and incorrect decisions. This included complaints about the land valuation objections process, as well as land tax arrears payments and processes.

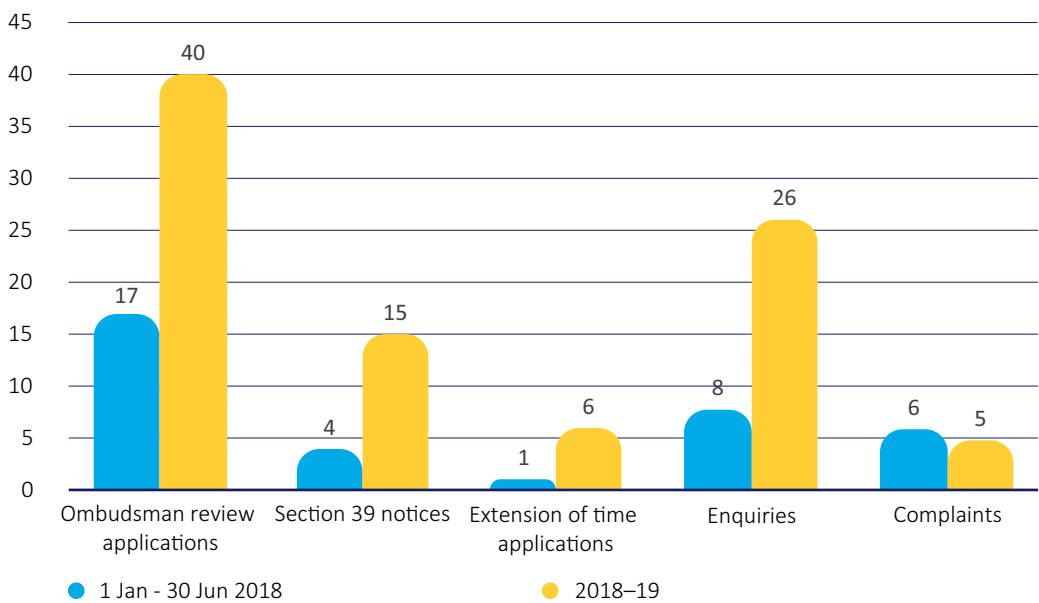
Freedom of Information

Contacts received

As outlined in Figure 5, this year the Office received 92 contacts relating to our role under the FOI Act. This comprised of:

- 40 applications for Ombudsman review
- 26 enquiries
- 15 s 39 notices
- 6 requests for extension of time to the Ombudsman
- 5 complaints.

Figure 5—Contacts received under the FOI Act in 2018–19, compared to the first six months of the operation of the FOI Act

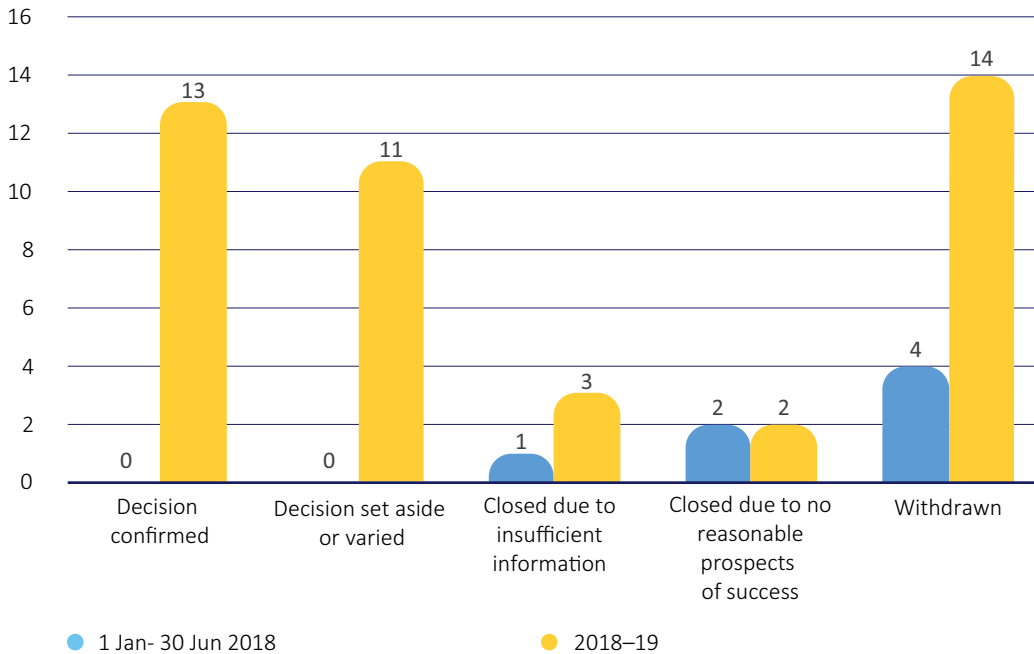


Finalised FOI reviews

As shown in Figure 6, in 2018–19 the Office finalised 43 Ombudsman reviews:

- confirming the original decision in 13 cases
- varying the decision in three cases
- setting the decision aside and substituting the decision in eight cases
- three were closed due to insufficient information
- two matters were closed due to no reasonable prospects of success
- fourteen matters were withdrawn, largely due to informal resolution activities under taken by this Office.

Figure 6—FOI review applications finalised in 2018-19 by outcome, compared to the first six months of the operation



Informal resolution

We continue to focus on informal resolution wherever possible to finalise Ombudsman reviews.

Case officer assessments are now being used to resolve matters on an informal basis before progressing to a final decision, by working together with applicants and agencies, giving information to applicants regarding the likely outcomes of their review and options for resolution.

In cases where an agency decision is likely to be confirmed by the Ombudsman upon review, the case officer assessment provides the review applicant with an opportunity to make further relevant submissions, accept an option for resolution proposed by an agency, and/or withdraw their application for review.

This approach has resulted in reduced review timeframes and saves applicants additional legal fees

if they are represented by a lawyer. In some cases, additional information has also been released to the applicant when the agency has been willing to release further information administratively.

Published decisions

We published 24 decisions on the ACT Ombudsman website.⁴ These decisions have allowed us to build a body of case law on the application of the FOI Act. They also provide agencies with guidance on the application of the public interest test and other aspects of the FOI Act.

⁴ See <http://www.ombudsman.act.gov.au/Freedom-of-Information>.

Guidelines project

A priority for our Office in 2019 is the development of a set of FOI Guidelines to help agencies implement and improve their processes under the FOI Act. These guidelines will provide guidance on the interpretation, operation and administration of the FOI Act to assist ACT government decision-makers, and also promote its pro-disclosure objectives.

In May, the Office published in draft the first two guidelines: *Open Access Information* and *Dealing with Informal Requests for Government Information*. A further four guidelines are currently in development and due to be published in 2019–20. These topics were selected to reflect the importance of proactive disclosure of government information and the Legislative Assembly's intention that formal FOI processes be used as a last resort.

Engagement activities

The Office held three FOI practitioner forums during the year, providing the opportunity for ACT government participants to discuss the operation of the FOI Act and best practice approaches, including applying the public interest test. The forums were also used to workshop and consult agencies in the development of Ombudsman Guidelines under the FOI Act.

For agency representatives, the forums were an opportunity to build their FOI networks, share their experiences with others and gain an insight into how the Ombudsman views the operation of the FOI Act and lessons learnt from our review work. For the Ombudsman's Office, they provided an opportunity to share our observations about the FOI Act's implementation and facilitate discussion to help us identify challenges, opportunities and areas of capacity development in the agencies we oversee.

The Office released a brochure, *Accessing Government Information*, aimed at community members, which uses simple language and visual aids to explain the FOI process from access application to Ombudsman review. The brochure is available on the Office's website.⁵

Reportable conduct

The Office received 176 notifications from organisations about allegations of reportable conduct in 2018–19, which is an increase of 23 per cent compared to 2017–18. We also received 205 enquiries.

The increase in notifications in the second year of the scheme is not unexpected. This increase appears consistent with greater awareness by organisations about their reporting obligations to the Ombudsman and steps taken internally by organisations to ensure allegations of reportable conduct are identified. The addition of religious organisations to the scheme from 1 July 2018 generated nine additional notifications.

Overall, 47 organisations in the scheme have submitted a notification to our Office. Many of these organisations operate a number of separate services for children and have made notifications for more than one of these services. The Office continues to promote the scheme with organisations covered, so that current levels of awareness are improved.

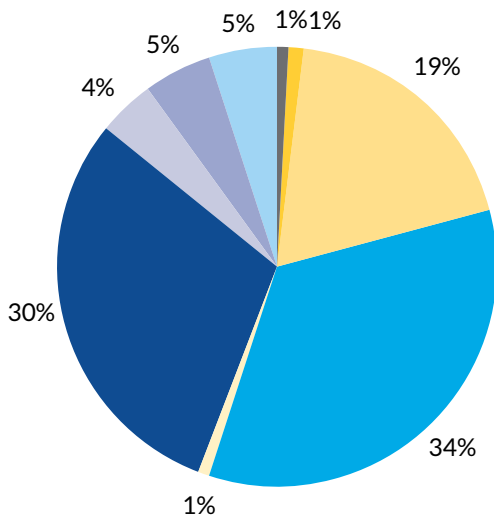
In 2018–19, the Office analysed its contact with organisations under the scheme, such as through notifications, training, a survey, enquiries, liaison and newsletter subscriptions, to determine the extent to which different sectors had actively engaged with our Office. The Office then wrote to all organisations where there were no records of engagement in order to support their awareness

⁵ See: <http://www.ombudsman.act.gov.au/Freedom-of-Information>

of their responsibilities under the scheme and to inform them of the training and resources offered by our Office. These organisations were all in the early education and care, religious, or health services sectors.

Figure 7 outlines the number of reports received this year by sector, with the greatest number of reports received from the school sector (60 reports) followed by the kinship and foster care sector (53 reports).

Figure 7—number of notifications by sector



- Child Care Services, 1
- Education and Care Service Providers, 34
- Government and Non-Government Schools, 60
- Health Service Providers, 1
- Kinship and Foster Care, 53
- ACT Directorates, 8
- Religious Organisation, 9
- Residential Care Organisations, 9
- Other, 1

*Reports to the Office from the Education Directorate and the ACT Health Directorate (including Canberra Health Services) are counted in 'government and non-government schools' and 'health service providers', respectively.

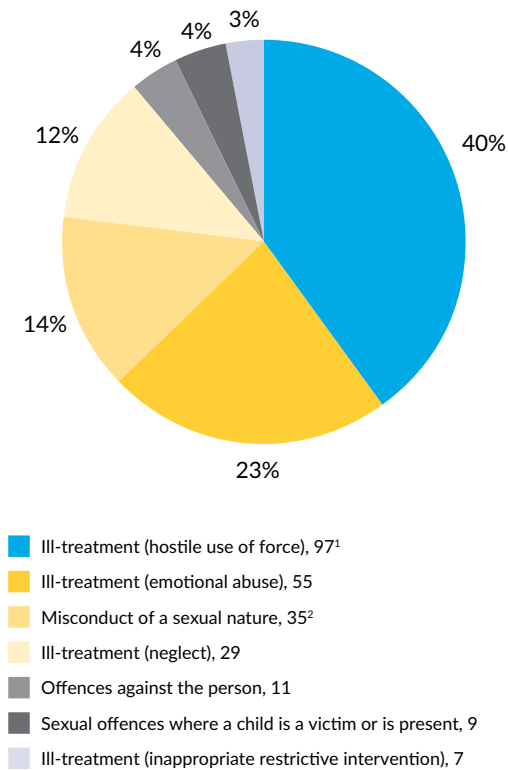
Allegation types

Our Office records each allegation of reportable conduct against the categories set out in the Act. There may be more than one allegation in a notification. The majority of allegations are of misconduct at the less serious end of these categories.

The guidance provided by our Office details what we consider likely to fall within each category. It also strongly encourages employers to contact ACT Policing if there is a possibility that an offence has been committed. Our records indicate that organisations contacted ACT Policing about allegations in 38 notifications.

Figure 8 shows the allegation type of all finalised matters reported to our Office in 2018-19. The most common allegations reported to our Office were the same as in 2017-18, namely ill-treatment (hostile use of force/physical contact), followed by misconduct of a sexual nature and ill treatment involving emotional abuse being the next most common allegation categories.

Figure 8—Allegation type for matters finalised in 2018–19



Note:

- 1 'Ill-treatment (hostile use of force/physical contact)' may cover conduct which is unreasonable and seriously inappropriate, inhumane or cruel force/physical contact against a child or which causes a child to fear the imminent use of such force/physical contact.
- 2 'Misconduct of a sexual nature' can include physical contact or speech, or other communication of a sexual nature, inappropriate touching, inappropriate relationship with attention or focus, grooming behaviour, sharing pornography or pornographic images, voyeurism and crossing professional boundaries.

The most common allegation types in schools were of ill-treatment (hostile use of force/physical contact) (38 per cent), followed by ill-treatment (emotional abuse) (25 per cent) and misconduct of a sexual nature (19 per cent).

For early education and care, the most common types were ill-treatment (hostile use of force/physical contact) (50 per cent), misconduct of a sexual nature (19 per cent) and ill-treatment (emotional abuse) (16 per cent). For foster and kinship care the most common types were ill-treatment (hostile use of force/physical contact) (36 per cent) and ill-treatment (emotional abuse) (32 per cent).

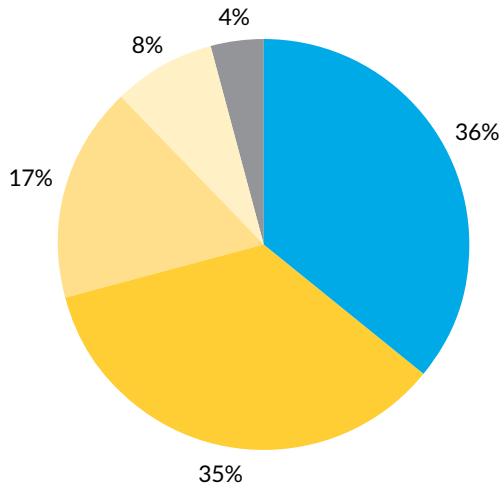
Outcomes

After notifying the Office of a reportable conduct allegation, the organisation must provide the Ombudsman with the outcome of its inquiries and what action it has taken as a result.

The Office encourages organisations to indicate whether or not each allegation has been sustained, or not sustained, after investigating. Making a finding is important to bring transparency and closure for the parties involved in the matter and to ensure that any risks to child safety can be assessed. It also helps other organisations with whom the information may be shared to perform their roles (for example, in relation to the administration of the Working with Vulnerable People Scheme). The Office has provided guidance on the types of findings available to support consistency in reporting.

Figure 9 and Figure 10 summarise the outcomes for each allegation and the action taken by organisations, as reported to us in reports finalised this financial year.

Figure 9—Outcomes reported by organisations—finalised investigations in 2018-19

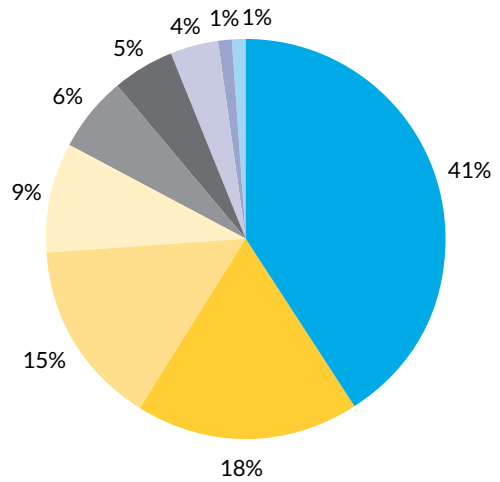


- Not sustained (insufficient evidence), 87
- Sustained, 85
- Not reportable conduct, 41
- Not sustained (lack of evidence of weight), 19
- Not sustained (false), 11

The proportion of allegations that were reported as sustained after an organisation’s inquiry has been finalised has increased to 35 per cent compared to 17 per cent in 2017-18.

This increase may be attributed to the increase in the number of final investigation reports provided to this Office from 30 in 2017-18 to 129 in 2018-19. It may also be as a result of the awareness and capacity building activities of this Office in assisting organisations to respond appropriately and effectively to allegations of reportable conduct. Whilst the numbers are low and can fluctuate, the rate of 35 per cent of reportable allegations substantiated is comparable to both the NSW and the Victorian reportable conduct schemes.

Figure 10—Actions taken by organisations—finalised in 2018-19



- No action after the investigation process, 99
- Training, 43
- Termination, 37
- Performance monitoring or managing, 22
- Counselling, 15
- Other forms of disciplinary action as per employer, 12
- Letter of warning, 10
- Transfer/demotion, 3
- A formal apology, 2

We only seek information on action taken by the organisations. Employee action that may be related to the allegation, such as resignation, is not captured in Figure 10.

Investigations and complaints

The Ombudsman may, on his own initiative or in response to a complaint, choose to conduct an investigation into 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.

The Office finalised its first investigation into an organisation's handling of an allegation of reportable conduct under s 17K of the Act in October 2018.

This matter concerned the Education Directorate and the Ombudsman made general recommendations relating to:

- the interplay of workplace relations and reportable conduct
- the continuation of investigations after an employee has ceased employment
- information sharing
- the development of relevant policies regarding the prevention of reportable conduct and handling of allegations
- training for all directorate staff
- ensuring a broader 'lessons learnt' review is undertaken in respect of matters.

The Ombudsman published a statement about the investigation on the basis that many of the issues identified in the investigation would be of interest to other organisations covered by the scheme.

The Office noted the Education Directorate's assistance and cooperation during this investigation and worked with the Directorate to support its implementation of the recommendations.

Complaints

In 2018–19, the Office received 20 complaints about organisations' handling of reportable conduct matters. These were handled by contacting the relevant organisation and facilitating pathways for complainants to access internal processes or information. Two of these complaints resulted in a notification to the Office of an allegation.

Monitoring activities

The Ombudsman has a legislated role to 'monitor the practices and procedures of a designated entity' for the prevention of reportable conduct and for dealing with reportable allegations and convictions (s 17F, of the *Ombudsman Act 1989*). The Act allows the Office to request information from entities to fulfil the monitoring role.

Since the scheme began on 1 July 2017, we have fulfilled our monitoring role by:

- providing feedback on policies, practices and procedures through our casework on individual notifications
- surveying entities in mid-2018 about policies, practices and training
- providing systemic feedback to major stakeholders through liaison meetings (Barnardos, Child and Youth Protective Services, Education Directorate, and the Professional Standards Unit).

In July 2018, the Office completed its first survey of designated entities that were part of the scheme as at 30 June 2018. We received responses for 311 organisations, which was approximately 58 per cent of organisations in the scheme at that time.

The results suggest that within the first year of the scheme, responding organisations took a range of approaches to their duty to have practices and procedures in place to prevent, report and deal with reportable allegations and convictions and were looking for ways to improve their policies, practices, staff awareness and education.

In relation to measures to prevent reportable conduct, a high number of responding organisations stated they give guidance on appropriate and inappropriate behaviour, conduct pre-employment screening procedures and provide training and awareness raising about child safety (over 80 per cent). A number of organisations also indicated that they conduct periodic reviews of

Working with Vulnerable People registrations (74 per cent), have clearly defined roles for people within the organisation (69 per cent), and review reportable conduct matters to identify ways to prevent reportable conduct within organisations (64 per cent).

In relation to policies on reportable conduct, the responses indicate that internal policies and procedures largely addressed what reportable conduct is, who is covered and how to report matters internally. However, only half of the organisations responding to the survey said their policies and procedures covered the receipt and handling of reportable conduct information and how the organisation would respond to a reportable allegation or reportable conviction. Ten per cent indicated their organisation did not have policies and procedures that specifically cover reportable conduct.

The information provided was used to target our awareness raising work, develop our training program and establish a baseline for future surveys.

A similar survey will be sent in July 2019 to all religious organisations identified as part of the scheme.

Timeliness of reporting

The Act requires that organisations notify the Office within 30 days of becoming aware of an allegation.

In 2018–19, organisations demonstrated mixed compliance with this obligation. Only 55 per cent of notifications to our Office were made within the timeframe, which suggests that a number of organisations, particularly larger organisations with higher numbers of required notifications, continue to struggle to meet their obligations in this space.

Where we identify that an organisation is not making timely notifications, we encourage these organisations to review their processes and

resourcing dedicated to handling allegations of child abuse or child related misconduct by employees.

The consequences of delayed notifications can impact on the value that organisations can obtain from participating in the scheme and the experience of the process for persons subject to allegation, or children, parents and carers involved. In particular, delayed notifications reduce opportunities for the Office to provide suggestions on the scope and nature of the organisation's inquiries and its risk management. At times, this has meant that information likely to be relevant to the matter was not obtained by the organisation at the time it was available and reliable.

Sectors performing well in this space include the religious, residential care and education and care providers. We find we can add most value to an organisation's response when they approach us early, after conducting their initial assessment, risk management and investigation planning.

Common challenges for organisations

The Office has identified common challenges for organisations when responding to allegations. In particular, the Office has provided feedback to organisations on the following themes:

- identifying and managing risk
- timeliness of response, investigation and reporting
- planning investigations
- collecting relevant information
- interviewing witnesses, including children
- procedural fairness to those involved in the investigation
- creating accurate records of interviews and decisions
- coming to a clear outcome which is supported by evidence and reasons
- sharing reportable conduct information with other organisations, where appropriate.

In addition to providing feedback on individual matters, we include information about these issues in our training sessions and resources available online.

Engagement activities

In 2018–19, we supported organisations to build their capacity to prevent, report and respond to allegations of reportable conduct through:

- Training: this year we responded to requests from organisations to repeat a program of free training on conducting reportable conduct investigations and investigative interviewing for representatives of organisations. There were 12 training sessions, attended by a total of 231 participants, including all ACT Education Directorate principals. The training was well received, with positive feedback.
- Information sessions: the Office conducted two hour introductory sessions for representatives of organisations (there were 12 information sessions attended by approximately 220 participants, including dedicated sessions for ACT Policing, ACT directorates' human resource directors and the ACT Education Directorate's human resources branch).
- Online resource kit: we have maintained our online guidance for organisations, such as self-assessment tools. We are in the process of updating these and developing an investigations guide.
- Practitioner forums: the Office hosted six reportable conduct practitioner forums for organisations with greater exposure to or experience with the scheme. This included the first dedicated forum for practitioners from religious organisations, and it is anticipated that similar forums will be held every six months.
- Regular liaison meetings: we met regularly with organisations with higher reporting activity.
- E-newsletters: in 2018–19 we sent eight email updates about the scheme to a subscriber database with over 520 email addresses (as at June 2019).

The Office acknowledges the range of agencies involved in child safety and seeks to share resources, approaches and common challenges where possible. We are also keen to ensure that organisations understand all of their child safety obligations and they communicate consistent messages about these obligations to their staff and the public.

We maintained regular liaison with oversight and regulatory bodies related to child protection in the ACT, both individually and through mechanisms such as the Children's Oversight Agency Committee hosted by the ACT Human Rights Commission, the Bimberi Oversight Agency Committee hosted by the Community Services Directorate, and the ACT Working Party for the Royal Commission into Institutional Responses to Child Sexual Abuse. We hosted a forum to engage with the reportable conduct scheme operators in Victoria and NSW, and participated in the consultations on the child focused complaint-handling guide developed by the National Office for Child Safety in the Department of the Prime Minister and Cabinet and the NSW Ombudsman.

The Office was pleased to connect with the wider ACT community about child protection issues. For National Child Protection Week, the Office partnered with the National Association for Prevention of Child Abuse and Neglect (NAPCAN) and the ACT Children and Young People Commissioner to host the 2018 Play Your Part Awards. The Awards, which were attended by approximately 50 ACT community stakeholders, celebrated people doing inspiring work to build stronger communities and support children and families.

Information sharing

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.

This year our Office commenced stakeholder consultations on draft information sharing guidance. We also continued to work closely with Access Canberra to develop regular information sharing practices between our Office and the Working With Vulnerable People Unit. This exchange of information provides additional assurance that each organisation has the information it needs to fulfil its child safety role.

Royal Commission Legislation Amendment Act 2019

The *Royal Commission Legislation Amendment Act 2019* passed in March 2019 and includes changes to the Reportable Conduct Scheme which will affect religious organisations. These will start on a date to be determined by the Minister, prior to 28 September 2019. The changes include:

- Religious bodies must nominate a head of entity for the purposes of the Reportable Conduct Scheme
- a new obligation on religious bodies to report to the Ombudsman allegations of reportable conduct made during a religious confession where that allegation involves sexual abuse of a child or non-accidental physical injury to a child
- clarification that a person is not considered an employee of a religious body under the scheme merely because they participate in worship.

We have communicated these changes to our stakeholders through our website, e-newsletters, practitioner forums, and by direct emails to all identified religious organisations in the ACT.

Community engagement and support

Our Office continues to take an active approach to ensuring that ACT residents are aware of our services, particularly members of the community who are experiencing vulnerability.

This year saw a high level of community outreach activities, with the Office continuing to seek opportunities to engage with the ACT community about our role, provide assistance in relation to empowering people to resolve their issues with ACT agencies, and to work with ACT agencies to highlight and improve administrative processes.

This included hosting information stalls at numerous community events, such as:

- the Mental Health and Wellbeing Expo in October 2018, which enabled our Office to engage with particularly vulnerable members of the ACT Community
- the CBR Fair Day in November 2018, in conjunction with the ACT Human Rights Commission, which facilitated our staff hearing directly from Canberra's LGBTIQ communities
- the Annual Comorbidity Interagency Day organised by Catholic Care in December 2018, which enabled our staff to hear directly from people experiencing both mental illnesses and problematic drug and/or alcohol use
- O-Week at the University of Canberra and the Canberra Institute of Technology in February 2019, which allowed our staff to connect with Canberra's growing student population
- The National Multicultural Festival in February 2019, in conjunction with the ACT Human Rights Commission
- Seniors' Week in March 2019.

Outreach to Canberra's Aboriginal and Torres Strait Islander communities was also a particular focus this financial year.

Our staff:

- attended the ACT NAIDOC flag-raising ceremony held at the Legislative Assembly and hosted a stall at the ACT NAIDOC Week event at the University of Canberra in July 2018
- met with staff from the Gulanga Program at the ACT Council of Social Services in August and September 2018
- attended and hosted a stall at the launch of the ACT Aboriginal and Torres Strait Islander Agreement 2019–2028⁶
- held meetings with the CEO of the ACT Aboriginal Legal Service, the Women’s Legal Centre’s Mulleun Mura program manager and project officer, the ACT Legal Aid’s Aboriginal Liaison Officer, Ngunnawal Bush Healing Farm team, the Ngunnawal Centre Manager at University of Canberra, the Director and Community Outreach Officer at the Tjabal Centre at Australian National University, and the Indigenous Justice Team at the Justice and Community Safety Directorate
- attended an ACT Policing community forum designed to increase engagement with Aboriginal and Torres Strait Islander communities in March 2019.

These were important opportunities to build on our community networks and gain a general understanding of current issues faced by Aboriginal and Torres Strait Islander community members and their service providers. Such engagements also help inform work done by the Office to ensure that our services are accessible.

Scrutiny

The Office appeared before the Standing Committee on Public Accounts in November 2018

for the Annual Report Hearing and the Select Committee on Estimates in 2018–19 in June 2019.

The acting Ombudsman and acting Deputy Ombudsman appeared before the ACT Legislative Assembly Select Committee on Independent Integrity Commission 2018, on 24 September 2018.

Financial management reporting

Financial Management Analysis

In 2018–19, the ACT Government paid a total of \$2,901,769 to the Office to undertake its functions.

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

- \$1,083,769 for ACT Ombudsman services and for complaint-handling and oversight in relation to ACT Policing
- \$833,000 to perform functions under the Reportable Conduct Scheme
- \$864,000 to implement and perform functions under the FOI Act
- \$80,000 to perform functions as the principal officer to support the ACT Judicial Council
- \$41,000 to implement and perform functions under the Inspector of the ACT Integrity Commission.

Note: all figures quoted above are exclusive of GST.

⁶ This is an agreement between the ACT government and the Aboriginal and Torres Strait Islander Elected Body which sets out the long-term direction of Aboriginal and Torres Strait Islander affairs in the ACT.

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HIGHLIGHTS

CONTROLLED OPERATIONS

SURVEILLANCE DEVICES

ASSUMED IDENTITIES

CHILD SEX OFFENDERS REGISTER

**REVIEW OF COMPLAINT-HANDLING UNDER PART V OF THE
AUSTRALIAN FEDERAL POLICE ACT 1979**



04

PART-4 ANNUAL REPORT REQUIREMENTS FOR SPECIFIC REPORTING ENTITIES

Part—4 Annual report requirements for specific reporting entities

The Office has statutory responsibility for inspecting ACT Policing’s records regarding its 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*. Overall, our inspections in 2018–19 found ACT Policing’s records relating to controlled operations, its use of surveillance devices and its management of the Child Sex Offenders Register to be compliant, but noted a number of areas for improvement.

Controlled Operations

A controlled operation provides protection from criminal responsibility for law enforcement officers and civilians who engage in certain conduct that would otherwise be unlawful, if that conduct occurs for the purpose of obtaining evidence that may lead to the prosecution of a relevant offence.

The *Crimes (Controlled Operations) Act 2008 (ACT)* (the Controlled Operations Act) allows ACT Policing to conduct controlled operations in the ACT. 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.

In 2018–19, we conducted two inspections of ACT Policing’s records for all controlled operations authorities that had either expired or were cancelled in 2018. The report on the results of the first inspection was provided to ACT Policing and the Minister for Police and Emergency Services in

January 2019. The results of the second inspection have not yet been finalised and will be reported in the Office’s 2019–20 Annual Report.

Inspection criteria

The Office applied the following inspection criteria to assess compliance:

- Did the agency obtain the proper authority to conduct the controlled operation?
- Were activities relating to a controlled operation covered by an authority?
- Were agency records comprehensive and adequate?
- Was the agency cooperative in facilitating the inspection?

Inspection findings

As a result of the first inspection conducted in 2018–19, we noted a number of issues relating to ACT Policing’s reporting obligations under the Controlled Operations Act, as well as an issue in relation to controlled operations being left to expire.

At each inspection, we monitor progress made by ACT Policing in relation to previous inspection findings. At the previous inspection, covering records for the period 1 July to 31 December 2017, we identified one instance where the principal law enforcement officer (PLEO) for a controlled operation had not made the required report within

two months of the end of the authorised operation. At the 2018–19 inspection, there were two instances where the PLEO’s report had not been made within two months as required. However, we noted at the 2018–19 inspection ACT Policing has implemented improved practices, particularly around demonstrating the PLEO report has been provided to the chief officer as required by the Controlled Operations Act.

Our Office identified one instance where the PLEO report did not specify the nature of the conduct that was undertaken on a particular date, which meant our Office was unable to determine whether the activities engaged in were authorised. ACT Policing provided further information that clarified the conduct undertaken and our Office was satisfied that this conduct was in accordance with the authority.

ACT Policing’s *Better Practice Guide* states that a controlled operations authority must not be left to expire if the expiry date is more than seven days into the future. We acknowledge that it is better administrative practice to revoke authorities than to allow them to continue past the date that they are being utilised. We identified one instance where this guideline was not complied with.

An authorising document for a controlled operation must identify, to the extent known, the nature and quantity of any illicit goods that will be involved in the operation and the route through which those goods will pass in the course of the operation. One authorising document did not detail the route through which the illicit goods would pass, despite this information being included in the application. ACT Policing’s usual practice is to detail this information and it appears an administrative error led to this information being omitted from the authority in this instance.

In the annual report to the Minister, we identified three instances where details of the route through which illicit goods passed were omitted. Under the

Controlled Operations Act, the chief officer must advise the Minister of information to be excluded from the report if it could be expected to endanger a person’s safety. ACT Policing indicated, but did not confirm, that it was possible the information was excluded as it may have contained information that would identify civilian participants and so put them at risk.

The Controlled Operations Act states that the chief officer must ensure a general register of controlled operation authorisations is kept. The register must specify the date and time of cancellation of an authorisation, as well as each relevant offence in respect of which controlled conduct took place under the authority. For one controlled operation authority, the general register listed the date the authority was cancelled but not the time. In another instance, the incorrect offence was specified. Both instances appeared to be a result of human error and, in our view, were not symptomatic of any broader issues with ACT Policing’s management of the general register. Information for other controlled operations was accurately detailed.

Surveillance Devices

The *Crimes (Surveillance Devices) Act 2010* (ACT) (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.

In 2018–19, we conducted two inspections of ACT Policing’s records for all surveillance device warrants that had either expired or were cancelled from 1 July 2017 to 30 June 2018. The report on the results of the first inspection was

provided to ACT Policing and the Minister for Police and Emergency Services in January 2019. The results of the second inspection have not yet been finalised and will be reported in the Office's 2019–20 Annual Report.

Inspection criteria

We applied the following criteria to assess compliance:

- Did the agency have proper authority for the use and/or retrieval of the device?
- Were surveillance devices used and/or retrieved in accordance with the authority of warrants?
- Was protected information properly stored, used and disclosed?
- Was protected information properly destroyed and/or retained?
- Were agency records comprehensive and adequate?
- Was the agency cooperative in facilitating the inspection?

Inspection findings

As a result of our first inspection conducted in 2018–19, we identified and ACT Policing disclosed a number of instances of non-compliance.

The Surveillance Devices Act requires surveillance device warrants to be issued by judges who are appointed to the ACT Supreme Court. ACT Policing disclosed that one surveillance device retrieval warrant had been issued by an Administrative Appeals Tribunal member. ACT Policing advised it had updated Standard Operating Procedures to prevent future incidences of this issue. We will monitor this issue going forward and report on whether, if any protected information was obtained under an invalid retrieval warrant, it was quarantined accordingly.

We identified three instances where the kinds of surveillance devices authorised on the warrant differed to what was specified on the original application and affidavit. We suggested ACT Policing revise its warrant templates to ensure the surveillance devices listed on the warrant are consistent and/or limited to those stated in the application.

Under s 18 of the Surveillance Devices Act, and supported in the ACT Policing guidelines, if a surveillance device warrant is no longer necessary for the purpose of enabling evidence to be obtained regarding the relevant offence, then the chief officer of the law enforcement agency must ensure an application for the revocation of the warrant is made, and steps taken to discontinue the use of the device. This requirement is also covered within ACT Policing guidelines.

Our Office identified two instances where it appeared ACT Policing had not considered the requirement, under s 18(4) of the Surveillance Devices Act, to advise the chief officer that the surveillance device warrant was no longer necessary and the warrant remained in use.

Our Office identified one instance where ACT Policing had not kept a statement as to whether a warrant application was granted (and if so, specific details regarding its execution), refused or withdrawn. ACT Policing usually meets this requirement through a report on the outcome of the use of the device, but did not do so in this instance.

We also identified issues in relation to reporting to the Minister on the number of surveillance device warrants issued and applied for, as well as an instance where a report had not been provided to the Minister within three months after the end of the financial year.

Assumed Identities

The *Crimes (Assumed Identities) Act 2009* (ACT) (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 Act.

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

Child Sex Offenders Register

The ACT Child Sex Offenders Register (the register) is established by the *Crimes (Child Sex Offenders) Act 2005* (the Act). Chapter 4 of the Act sets out how ACT Policing must manage the register, including the information that must be recorded on the register and the controls that must be applied to the use and disclosure of information from the register.

Under Part 3.11 of the Act, ACT Policing may apply for a warrant to enter and search the premises of a registrable offender in order to verify the offender's personal details or determine whether the offender has breached, or is likely to breach, an order prohibiting certain conduct.

The *Ombudsman Act 1989* requires the Office to monitor ACT Policing's compliance with Chapter 4 and Part 3.11. To date, we have not made an assessment regarding Part 3.11 of the Act as ACT Policing advised it has not applied any of the provisions.

During 2018-19, our Office finalised one inspection of the register that was conducted during 2017-18 and conducted one inspection of the register in 2018-19. The results of the 2018-19 inspection will be reported in the Office's 2019-20 Annual Report.

As a result of the 2017-18 inspection, we assessed whether ACT Policing's management of the register is consistent with the Act. There were a number of instances of information being recorded incorrectly, or inadvertently entered or omitted, which was an issue identified at our prior inspection. However the nature of the errors did not substantially affect overall functioning of the register. ACT Policing advised that improved processes of vetting and recording have been introduced. Our Office will continue to monitor this issue at future inspections. The detailed report on the results of the 2017-18 inspection was provided to ACT Policing and the Minister for Police and Emergency Services in October 2018.

Review of Complaint-Handling under Part V of the Australian Federal Police Act 1979

Under s 40XA of the *Australian Federal Police Act 1979* (AFP Act), the Ombudsman is required to review the administration of the Australian Federal Police's (AFP) handling of complaints through inspection of AFP records. This includes records of the handling of complaints about ACT Policing.

The Ombudsman reports annually to Federal Parliament on our review of AFP's activities under Part V of the AFP Act. Our most recent report covered two reviews conducted during 2017-18 and was tabled in May 2019.

During the review periods covered by the 2017-18 report, 31 per cent of the 402 complaints made to the AFP related to ACT Policing. This is reflective of the fact that ACT Policing is an area within the AFP with a significant amount of contact with members of the public.

The AFP found 24 per cent of ACT Policing complaints which were investigated to be 'established' (substantiated), which is an increase from 19 per cent for the last reporting period in 2016-17.

Overall, the 2017–18 report found that the records we inspected indicated the AFP is investigating matters appropriately. The records also demonstrated the AFP’s administration of Part V of the AFP Act, relating to how conduct issues are dealt with, is comprehensive and adequate. However, we did make comments about areas in which the AFP could improve, including the recording of conflict of interest issues, communication with complainants and timeliness in resolving complaints.

In the 2016–17 Annual Report we identified deficiencies in AFP responses to practices issues and recommended that the AFP Commissioner ensure appropriate action is taken in response to all identified practices issues, as required by s 40TX(2) of the AFP Act. Although we are satisfied the AFP has taken steps to address practices issues, it remains an area for improvement.

During the review period we identified eight complaints where the conflict of interest documentation was absent or insufficient. We acknowledged the continued efforts of the AFP in reinforcing the importance of recording conflict of interest issues prior to undertaking an investigation and will continue to monitor this issue at future reviews.

We also identified ten complaints where no records were on file to demonstrate the AFP had complied with best practice requirements to effectively communicate with complainants, or where outcome letters were absent or insufficient. Overall, we were satisfied that there has been improvement in the level of detail provided to complainants in outcome letters. We will continue to monitor the reasons provided to complainants in outcome letters, particularly members of the public who may be unfamiliar with an investigation process.

In regard to the number of complaints resolved within the AFP’s benchmark timeframes, our reviews noted minor improvement in the AFP’s overall performance against this criterion. However, the number of complaints resolved within the benchmarks remain low. We will continue to monitor this in future reviews.

Information relating to findings from inspections conducted in 2018–19 will be published in the Office’s 2019–20 Annual Report.

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HIGHLIGHTS

FREEDOM OF INFORMATION

HUMAN RIGHTS

TERRITORY RECORDS



05

PART 5—WHOLE-OF- GOVERNMENT ANNUAL REPORTING

Part 5—Whole-of-government annual reporting

Freedom of Information

Decisions on open access

During 2018–19, we made four decisions to publish open access information. This includes the Ombudsman’s Annual Report for 2017–18, two investigation reports and four quarterly updates to the speaker of the ACT Legislative Assembly.

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

Access applications

Three applications for release of information were received by the Office under the FOI Act. In relation to one application, the decision was to partially release the information sought. In the other two applications, the Office did not hold the information requested.

Charges and application fees

The 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, our 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.

In May 2018, the ACT Human Rights Commission provided human rights training to staff from our Office, including investigation officers. The training included information on the broader human rights framework, such as ACT legislation and the legislative scrutiny processes.

Relationship protocols are being developed between our Office and the ACT Human Rights Commission to ensure that we work together effectively and do not duplicate our efforts. The first protocol will focus on matters related to the Alexander Maconochie Centre and encompasses the Inspector of Correctional Services and Official Visitors.

Territory Records

The Office 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) (NI2011-93)*.



06

**PART—6 STATE OF THE
SERVICE REPORT**

Part—6 State of the service report

Public Interest Disclosure

The Office is a ‘disclosure officer’ under the *Public Interest Disclosure Act 2012* and may investigate disclosable conduct that relates to the head of service.

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

Two disclosures were received during the reporting period. One disclosure was allocated to the public sector entity involved and one disclosure is currently being assessed.

We also received three PID handling complaints, which were all investigated, and five general PID enquiries.

The image features a large, abstract graphic design. It consists of several overlapping, wavy shapes in shades of blue and yellow. A prominent dark blue shape occupies the lower half of the page, with a lighter blue shape above it. A yellow shape is visible in the top left corner, and another yellow shape is at the bottom. The overall composition is modern and minimalist.

APPENDICES

APPENDIX 1

Complaints received by ACT Ombudsman in 2018–19

Directorate/Agency	Total received	Total finalised	Finalised without investigation	Finalised with investigation
Chief Minister, Treasury and Economic Development Directorate ⁷	114	115	94	21
Access Canberra	51	51	40	11
ACT Revenue Office	26	25	23	2
Canberra Institute of Technology	8	8	7	1
University of Canberra	16	17	14	3
Chief Minister, Treasury and Economic Development—other	13	14	10	4
Community Services Directorate	93	93	82	11
Housing ACT	82	79	70	9
Community Services—other	11	14	12	2
Education Directorate	16	16	14	2

⁷ In previous years, complaints about the University of Canberra and the Canberra Institute of Technology were recorded under the Education Directorate.

Directorate/Agency	Total received	Total finalised	Finalised without investigation	Finalised with investigation
Environment Planning and Sustainable Development Directorate	13	12	12	0
Health Directorate	6	8	5	3
Justice and Community Safety Directorate*	78	76	58	18
ACT Corrective Services	69	67	49	18
ACT Emergency Services Agency	0	0	0	0
Justice and Community Safety—other	9	9	9	0
Transport Canberra and City Services Directorate	28	26	23	3
ACTION Bus	2	1	0	1
Transport Canberra and City Services—other	26	25	23	2
Independent Statutory Offices ⁸	30	31	29	2
ACT Court or Tribunal	3	3	3	0
ACT Human Rights Commission	5	5	5	0
Director of Public Prosecutions	1	1	1	0
Legal Aid ACT	11	12	11	1

8 In previous years, complaints about independent statutory agencies and prescribed authorities listed separately in the table were included in the figures for the Justice and Community Safety Directorate (JACS).

Directorate/Agency	Total received	Total finalised	Finalised without investigation	Finalised with investigation
Public Trustee and Guardian for the ACT	10	10	9	1
Prescribed Authorities	1	1	1	0
ACT Law Society	1	1	1	0
Territory-owned Corporations	2	2	1	1
ACT Long Service Leave Authority	1	1	1	0
Icon Water	1	1	0	1
Total ACT Government	381	380	319	61
ACT Policing	61	65	51	14
Total ACT	442	445	370	75

APPENDIX 2

Outcomes of finalised complaint investigations for 2018–19 by ACT Government agency and by outcome

Directorate/ Agency	Investigations finalised	No action taken	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better explanation by Ombudsman	Better explanation by Agency	Agency office counselled/ disciplined	Remedy provided by agency	Penalty waived or reduced	Positive outcomes achieved
Chief Minister, Treasury and Economic Development Directorate ⁹	21	1	1	3	3	1	20	2	1	0	1	32
Access Canberra	11	-	-	3	2	1	9	2	1	-	1	19
ACT Revenue Office	2	-	-	-	-	-	2	-	-	-	-	2
Canberra Institute of Technology	1	-	-	-	-	-	1	-	-	-	-	1
University of Canberra	3	-	-	-	-	-	5	-	-	-	-	5
Chief Minister, Treasury and Economic Development—other	4	1	1	-	1	-	3	-	-	-	-	5
Community Services Directorate	11	0	3	1	3	0	6	4	0	2	0	19
Housing ACT	9	-	3	-	2	-	5	2	-	2	-	14

⁹ In previous years, complaints about the University of Canberra and the Canberra Institute of Technology were recorded under the Education Directorate.

Directorate/ Agency	Investigations finalised	No action taken	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better explanation by Ombudsman	Better explanation by Agency	Agency office counselled/ disciplined	Remedy provided by agency	Penalty waived or reduced	Positive outcomes achieved
Community Services Directorate—other	2	-	-	1	1	-	1	2	-	-	-	5
Education Directorate	2	0	1	1	0	0	2	0	0	0	0	4
Environment Planning and Sustainable Development Directorate	0	0	0	0	0	0	0	0	0	0	0	0
Health Directorate	3	0	0	0	0	0	2	0	0	1	-	3
Justice and Community Safety Directorate	18	7	0	0	0	0	17	0	1	3	0	21
ACT Corrective Services	18	5	-	-	-	-	16	-	1	3	-	20
ACT Emergency Services Agency	0	-	-	-	-	-	-	-	-	-	-	0
Justice and Community Safety—other	0	2	-	-	-	-	1	-	-	-	-	1
Transport Canberra and City Services Directorate	3	0	0	0	0	1	2	0	0	0	0	3
ACTION Bus	1	-	-	-	-	1	-	-	-	-	-	1
Transport Canberra and City Services—other	2	-	-	-	-	-	2	-	-	-	-	2
Independent Statutory Offices ¹⁰	2	2	0	0	0	0	0	0	0	0	0	0

10 In previous years, complaints about independent statutory agencies and prescribed authorities listed separately in the table were included in the figures for the Justice and Community Safety Directorate (JACS).

Directorate/ Agency	Investigations finalised	No action taken	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better explanation by Ombudsman	Better explanation by Agency	Agency office counselled/ disciplined	Remedy provided by agency	Penalty waived or reduced	Positive outcomes achieved
ACT Court or Tribunal	0	-	-	-	-	-	-	-	-	-	-	-
ACT Human Rights Commission	0	-	-	-	-	-	-	-	-	-	-	-
Director of Public Prosecutions	0	-	-	-	-	-	-	-	-	-	-	-
Legal Aid ACT	1	-	-	-	-	-	-	-	-	-	-	-
Public Trustee and Guardian for the ACT	1	2	-	-	-	-	-	-	-	-	-	-
Prescribed Authorities	0	0	0	0	0	0	0	0	0	0	0	0
ACT Law Society	0	-	-	-	-	-	-	-	-	-	-	0
Territory-owned Corporation	1	0	0	0	0	0	1	0	0	0	0	1
ACT Long Service Leave Authority	0	-	-	-	-	-	1	-	-	-	-	1
ICON Water	1	-	-	-	-	-	-	-	-	-	-	0
Total ACT Government	61	8	5	5	6	2	50	6	2	6	1	83
ACT Policing	14	0	1	1	1	5	10	2	0	0	0	20
Total ACT	75	8	6	6	7	7	60	8	2	6	1	103

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Glossary

ACAT	ACT Civil and Administrative Tribunal
ACC	Australian Crime Commission
ACT	Australian Capital Territory
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
Cwlth	Commonwealth
Directorates	Administrative units of ACT government business
FOI	Freedom of Information
JACS	Justice and Community Safety Directorate
the Office	ACT Ombudsman's Office
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 2018–19, which is available at ombudsman.gov.au.

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