



ANNUAL REPORT

2012–2013



Australian Capital Territory, Canberra 2013

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ANNUAL REPORT

2012–2013



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The ACT Ombudsman Annual Report 2012–13 is available on the website at www.ombudsman.act.gov.au



7 August 2013

Ms Katy Gallagher MLA
Chief Minister
Australian Capital Territory Legislative Assembly
London Circuit
CANBERRA ACT 2600

Dear Chief Minister

This report has been prepared in line with section 6(1) of the *Annual Reports (Government Agencies) Act 2004* and in accordance with the requirements of the ACT *Annual Reports (Government Agencies) Notice 2013 (No 1)*, NI2013-293.

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

I certify that the attached Annual Report is an honest and accurate account and that all material information on the operations of the ACT Ombudsman during the period 1 July 2012 to 30 June 2013 has been included.

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

Yours sincerely

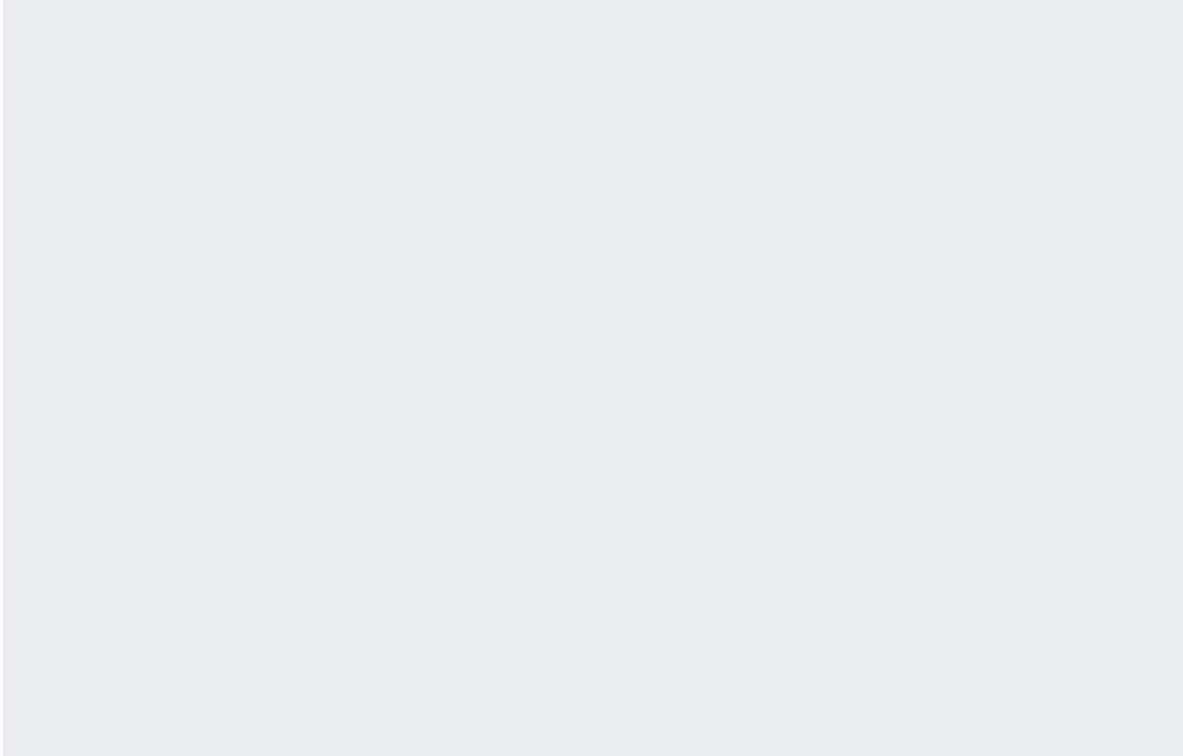
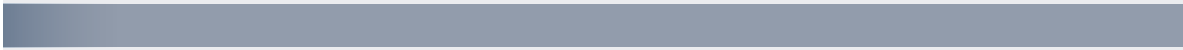
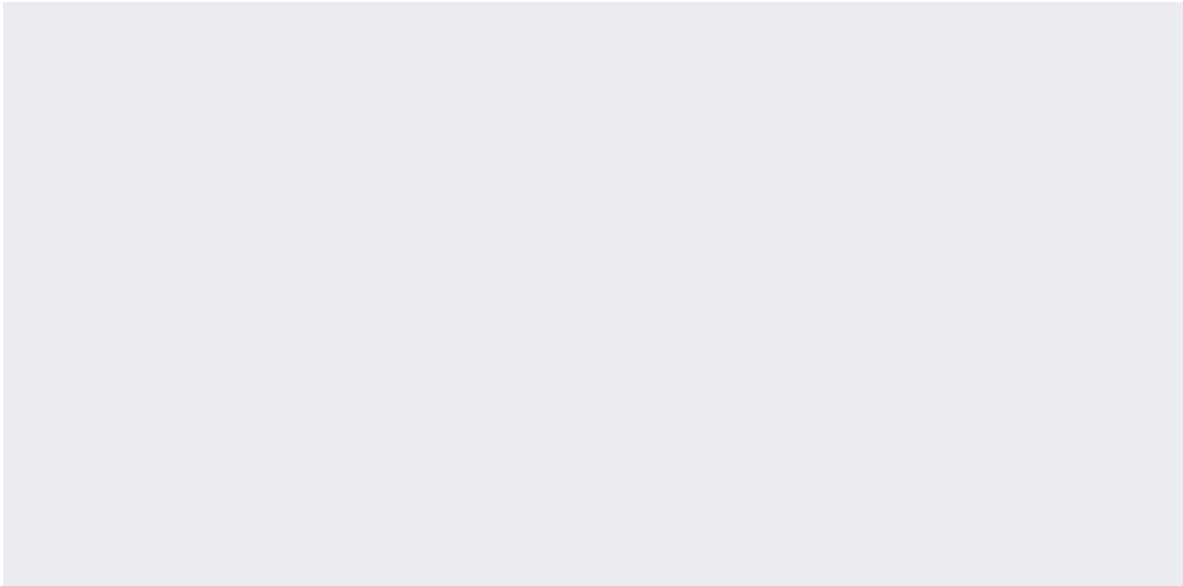
A handwritten signature in black ink, appearing to read "Colin Neave".

Colin Neave AM
ACT Ombudsman

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A

1 | Performance and financial management reporting

The Ombudsman at work

**PERFORMANCE
AND FINANCIAL
MANAGEMENT
REPORTING**

Performance and financial management reporting

A.1 Our organisation

The ACT Ombudsman (the Ombudsman) is an independent statutory officer who considers complaints about ACT Government agencies.

The Office of the ACT Ombudsman (our office) is authorised to investigate complaints about the administrative actions of ACT Government agencies, in line with the *Ombudsman Act 1989* (ACT). The ACT Ombudsman also considers complaints about ACT Policing in accordance with the *Australian Federal Police Act 1979* (Cth) and the *Ombudsman Act 1976* (Cth).

Our office may also investigate complaints about agencies' handling of freedom of information requests from members of the public. These may include processing delays or charges imposed on individuals to access documents they requested under the *Freedom of Information Act 1989* (ACT). In addition, our office can receive complaints from 'whistleblowers' under the *Public Interest Disclosure Act 2012* (ACT).

Complaints are investigated in private after the complainant has attempted to resolve the matter directly with the relevant agency. If the Ombudsman believes the action taken by an agency was wrong,

we may provide a report to the agency making recommendations about a suitable remedy. Remedies may involve the agency reconsidering its decision, providing a better explanation of its decision, amending its policy or procedure, or extending an apology to the complainant. In the unusual situation where a recommendation is not acted upon by an agency, the Ombudsman may make a report to the relevant minister, the ACT Chief Minister, or the ACT Legislative Assembly. Alternatively, we may release a public report.

In addition to complaint handling, our office monitors compliance with the Child Sex Offenders Register by the Chief Police Officer and other authorised people. The Child Sex Offenders Register is established in line with Chapter 4 of the *Crimes (Child Sex Offenders) Act 2005* (ACT). Our office also monitors compliance with crime-related legislation which is used by ACT Policing. We do this by conducting inspections under the *Crimes (Controlled Operations) Act 2008* (ACT), the *Crimes (Assumed Identities) Act 2009* (ACT) and the *Crimes (Surveillance Devices) Act 2010* (ACT).

The Commonwealth Ombudsman discharges the role of ACT Ombudsman in line with the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth) and in line

with a Services Agreement between the Commonwealth Ombudsman and the ACT Government. The Ombudsman is supported by a small team employed by the Commonwealth Ombudsman, with day-to-day responsibility for the ACT Ombudsman service delegated to a Senior Assistant Ombudsman.

Our services are free and people are encouraged to approach our office in person, online, by telephone or in writing. Our clients and stakeholders include all people who may be affected by the administrative actions of ACT Government agencies or ACT Policing.

A.2 Overview

Organisational planning and environment

In 2012–13 our office undertook an internal restructure to release resources for strategic engagement with agency stakeholders and the community. Our aim is to better understand emerging issues for agencies, proactively advise on initiatives that may result in ‘downstream’ complaints to the Ombudsman, and help agencies improve internal complaint handling processes.

Another initiative undertaken during the year was the redesign of our telephone queue and auto-attendant messaging system. The main purpose of this new system is to ensure callers receive information about matters that are within our jurisdiction to investigate. It also sets out the preliminary steps callers should take before making a complaint to our office. This has allowed our Public Contact Team to focus on callers whose matters are more likely to warrant further assessment.

The 2010–13 strategic plan for the Office of the Commonwealth Ombudsman includes the strategic objectives for the ACT Ombudsman. Each year the office reviews the plan and establishes the priorities for the next year. The strategic priorities of the office are to:

- build on the work practices and system changes to deliver improved quality, efficiency and consistency in managing complaints
- continue to strengthen working relationships with Directorates
- help Directorates develop consistent complaint-handling policies
- provide advice to Directorates on identified emerging systemic issues.

Summary and complaint statistics

During the year our office received a total of 563 approaches: 438 from ACT Government agencies and 125 from ACT Policing. Approaches include complaints, enquiries and other forms of contact with our office.

This represents a decrease of 26% on 2011–12 numbers when we received a total of 763 approaches (625 from ACT Government agencies and 138 from ACT Policing).

In 2012–13 ACT Government agencies accounted for 30% fewer approaches than in 2011–12. ACT Policing accounted for 9% fewer approaches — results that continue a four-year trend. This reflects our efforts over several years to encourage client agencies to improve and promote internal complaint-handling processes

to resolve complaints before they are referred to our office. It also reflects the success of our redesigned telephone queue and auto-attendant messaging system. We note that there has been a similar decrease (34%) in approaches to the Commonwealth Ombudsman about Australian Government agencies.

Of the approaches received about ACT Government agencies, Housing ACT and ACT Corrective Services attracted the highest number (120 and 61 respectively). However, approaches about Housing ACT and ACT Corrective Services were down from 2011–12 (21% and 16% respectively).

In 2012–13, the office finalised a total of 587 approaches: 464 for ACT Government agencies and 123 for ACT Policing. Further details are provided in Section A.9 of this report.

Table 1: Approaches and complaints by method received about ACT Government agencies and ACT Policing 2012–13

| TELEPHONE | WRITTEN | IN PERSON | ELECTRONIC | TOTAL |
|-----------|---------|-----------|------------|-------|
| 291 | 62 | 30 | 180 | 563 |
| 52% | 11% | 5% | 32% | 100% |

Figure 1: Approaches and complaints received about ACT Government agencies (excluding ACT Policing), 2003–04 to 2012–13

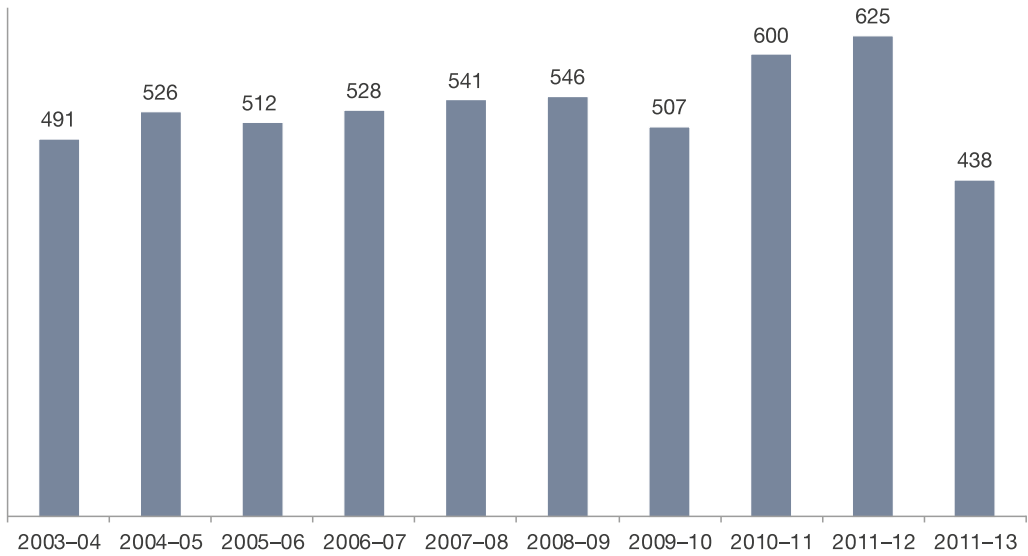
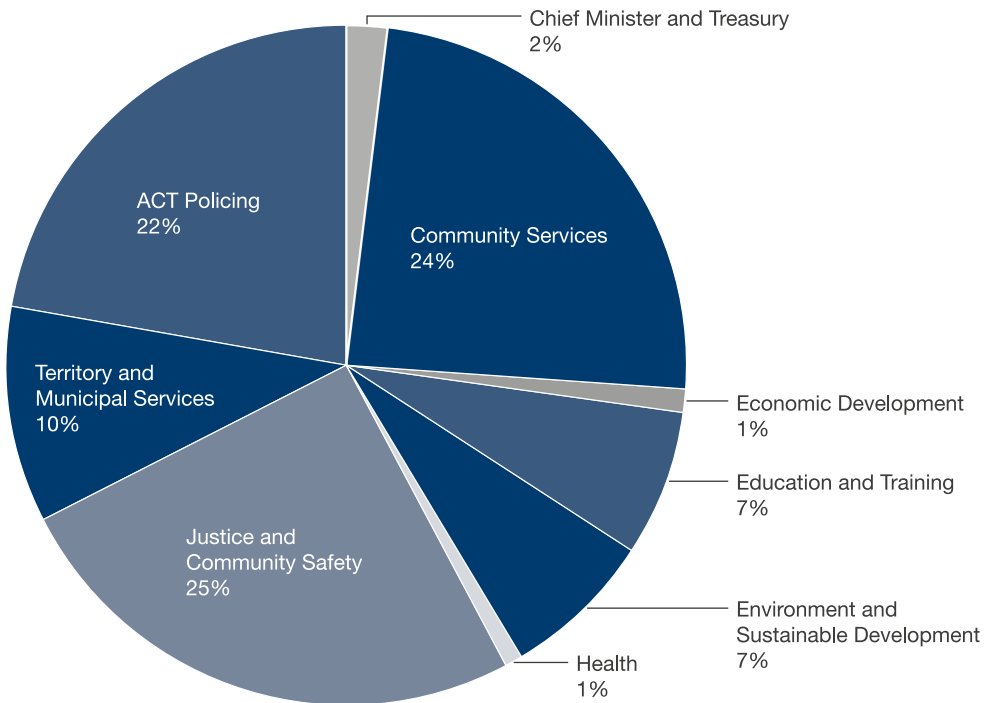


Figure 2: Spread of approaches and complaints received about ACT Government agencies and ACT Policing, 2012–13



A.3 Highlights

Our office reports four main highlights this year:

- We introduced a new 20-minute ‘bite-sized’ seminar targeting ACT Public Sector employees who have little or no recent experience of our office. The seminar demystifies our work by addressing ‘five things to know about your Ombudsman’, explaining the primary role of ACT Public Sector employees in dealing with complaints before these become disputes taken to the Ombudsman. The seminar also emphasises our approach to resolving disputes independently and cooperatively with agencies wherever possible. Interest in the series to date supports a continuing roll-out to Directorates in 2013–14.
- We revised our procedures for giving feedback to agencies as part of the notice closing the complaint rather than through an ‘administrative deficiency’ recording against the agency.
- We held two complaint-handling forums for ACT Public Sector employees regarding complaint management and service delivery.
- We ran a community forum to improve awareness of the office and to gather information about the effectiveness of administrative processes in the justice system.

A.4 Outlook

In 2013–14 we will continue to discharge our various statutory functions. We will continue our roll-out of the 20-minute ‘bite-sized’ seminar series to Directorates, and seek to work with selected Directorates on improved complaint management systems and processes. We note the tight fiscal environment in which ACT Government agencies are operating and the continuing need for agencies to resource their complaint handling areas to avoid additional complaints being referred to the Ombudsman.

A.7 Statement of performance

In 2012–13 the ACT Government paid an unaudited total of \$1,083,939 (including GST) to the Commonwealth Ombudsman for the provision of ACT Ombudsman services. This consisted of \$501,260 for *Ombudsman Act 1989* (ACT) services and \$573,679 for complaint handling in relation to ACT Policing.

The total payment of \$1,083,939 represented a 2% increase over 2011–12 (\$1,058,016) and was calculated in accordance with the terms of our Services Agreement with the ACT Government.

Our performance against indicators is shown in Table 2. Further detail is available under the headings ‘ACT Government Directorates – approaches and complaints’ (Section A.9), ‘ACT Policing – approaches and complaints’ (Section A.9) and ‘ACT Policing – inspections’ (Section B.4).

The statistical report in Appendix 1 provides the 2012–13 details of approaches and complaints received and finalised, and remedies provided to complainants.

Table 2: Summary of achievements against performance indicators, 2011–12 and 2012–13

| PERFORMANCE INDICATORS | ACT GOVERNMENT AGENCIES | | ACT POLICING | |
|-----------------------------------|-------------------------|---------------------|---------------------|---------------------|
| | 2011–12 | 2012–13 | 2011–12 | 2012–13 |
| Number of approaches received | 625 | 438 | 138 | 125 |
| Number of approaches finalised | 592 | 464 | 141 | 123 |
| Time taken to finalise complaints | 88% within 3 months | 83% within 3 months | 91% within 3 months | 93% within 3 months |
| Number of inspections conducted | 0 | 0 | 3 | 5 |

Figure 3: Time taken to finalise approaches and complaints about ACT Government agencies and ACT Policing, 2012–13

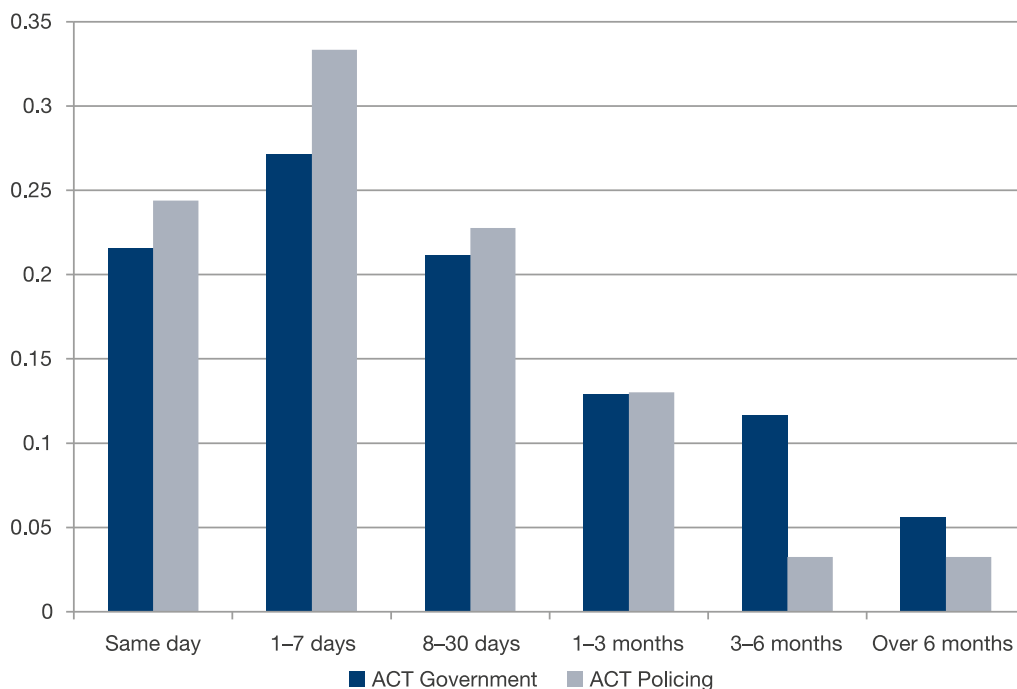


Table 3: Remedies provided in finalised complaints about ACT Government agencies and ACT Policing, 2012–13

| TYPE OF REMEDY | ACT GOVERNMENT | ACT POLICING |
|--|----------------|--------------|
| Action expedited | 10 | 8 |
| Apology | 6 | 17 |
| Decision changed or reconsidered | 17 | 0 |
| Disciplinary action | 1 | 0 |
| Better explanation provided | 51 | 75 |
| Financial remedy | 7 | 0 |
| Law, policy or practice changed | 3 | 0 |
| Other non-financial remedy | 2 | 0 |
| Remedy provided without Ombudsman intervention | 3 | 0 |

A.9 Analysis of agency performance

ACT Government administration is organised within nine Directorates, as set out in Notifiable Instrument NI2012-593, *Administrative Arrangements 2012 (No 2)*.

On 10 November 2012, changes were made to this structure which impacted on our data collection and reporting.

The data below has been aligned to the set-up of Directorates before and after 10 November 2012.

ACT Government Directorates — approaches and complaints

Complaint handling remains the core of the Ombudsman’s role. Every contact we receive is registered in our case management system. New matters (as opposed to a person calling about an existing matter) are registered as a new ‘approach’. Not all approaches can be classed as ‘complaints’ that the Ombudsman has the authority to deal with. In many instances, the person may be seeking advice about how to deal with a matter, they may be seeking legal advice or advocacy, or they may wish to make a complaint about a non-government agency or individual. We consider a ‘complaint’ to be ‘any expression of dissatisfaction about a service provided, or a decision made by a government agency or officer’.

We categorise approaches into five categories depending on the complexity of the matter, or the workload inherent in dealing with the matter. Straightforward approaches are resolved without investigation (categories 1 and 2). More complex matters require the office to exercise its formal statutory powers (categories 3, 4 and 5).

In all approaches that require investigation, we contact the agency to find out further information about the complaint and to provide the agency with an opportunity to respond to the issues raised in the complaint. Often an approach from this office to the agency assists in resolving the complaint.

The main reasons for not investigating complaints are:

- the issue was resolved during the complainant’s first contact with us
- complainants were advised to pursue the matter with a more appropriate agency
- other reasons, including: the matter being considered by the courts; the complainant not having sufficient interest in the complaint; there being insufficient evidence to investigate the matter; or there being no viable remedy to be obtained from an investigation.

Our investigations may result in one or more remedies being provided by the agency to the complainant. It may also include a better explanation from our office.

Chief Minister and Treasury Directorate

The complaints we investigated related to:

- land tax
- freedom of information
- public interest disclosure.

Table 4: Approaches and complaints received about the Chief Minister and Treasury Directorate 2012–13

| CHIEF MINISTER AND TREASURY | RECEIVED | FINALISED | | |
|---|-----------|------------------|--------------|-----------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| Chief Minister and Treasury Directorate | 3 | 2 | | 2 |
| Chief Minister and Cabinet Directorate (previous) | 1 | 1 | 1 | 2 |
| Treasury Directorate (previous) | 7 | 5 | 4 | 9 |
| ACT Legislative Assembly | | | 1 | 1 |
| | 11 | | | 14 |

Table 5: Remedies for investigated complaints about the Chief Minister and Treasury Directorate 2012–13

| TYPE OF REMEDY | % |
|--|------|
| Action expedited | |
| Apology | 12.5 |
| Decision changed or reconsidered | |
| Disciplinary action | |
| Better explanation provided | 62.5 |
| Financial remedy | 12.5 |
| Law, policy or practice changed | |
| Other non-financial remedy | 12.5 |
| Remedy provided without Ombudsman intervention | |

Commerce and Works Directorate

Complaints about water supply (through ACTEW), such as disputes over billing, are handled by the ACT Civil and Administrative Tribunal. Most approaches

to the Ombudsman's office about these matters are referred to the tribunal without investigation. We started investigation into one complaint during the reporting period.

Table 6: Approaches and complaints received about the Commerce and Works Directorate 2012–13

| COMMERCE AND WORKS | RECEIVED | FINALISED | | |
|--------------------------------|-----------|------------------|--------------|-----------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| Commerce and Works Directorate | 2 | 1 | | 1 |
| ACTEW | 13 | 13 | | 13 |
| | 15 | | | 14 |

Community Services Directorate

Many of the Community Services Directorate's portfolio responsibilities fall outside the Ombudsman's jurisdiction to investigate, in line with section 5(2)(n) of the *Ombudsman Act 1989* (ACT). Approaches about matters outside the Ombudsman's jurisdiction are referred to an appropriate body without investigation. With the exception of approaches about Housing

ACT, the majority of approaches about the Community Services Directorate are referred to the Human Rights Commission. We either refer the complainant to the commission or formally refer the approach details to the commission in line with sections 6A or 6B of the *Ombudsman Act 1989* (ACT).

The complaints we investigated all related to housing matters.

Table 7: Approaches and complaints received about the Community Services Directorate 2012–13

| COMMUNITY SERVICES | RECEIVED | FINALISED | | |
|--------------------------------|------------|------------------|--------------|------------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| Community Services Directorate | 14 | 14 | | 14 |
| Housing ACT | 120 | 94 | 40 | 134 |
| | 134 | | | 148 |

Table 8: Remedies for investigated complaints about the Community Services Directorate 2012–13

| TYPE OF REMEDY | % |
|--|----|
| Action expedited | 18 |
| Apology | 6 |
| Decision changed or reconsidered | 19 |
| Disciplinary action | |
| Better explanation provided | 43 |
| Financial remedy | 6 |
| Law, policy or practice changed | 3 |
| Other non-financial remedy | 3 |
| Remedy provided without Ombudsman intervention | 1 |

Economic Development Directorate

One approach remained under assessment at the end of the reporting period.

Table 9: Approaches and complaints received about the Economic Development Directorate 2012–13

| ECONOMIC DEVELOPMENT | RECEIVED | FINALISED | | |
|------------------------------------|----------|------------------|--------------|----------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| ACT Gambling and Racing Commission | 1 | | | |
| ACT Land Development Agency | 2 | 2 | | 2 |
| Economic Development Directorate | 1 | 1 | | 1 |
| | 4 | | | 3 |

Education and Training Directorate

Complaints about the provision of services for children and young people are excluded from the Ombudsman's jurisdiction under section 5(2)(n) of the *Ombudsman Act 1989* (ACT). While we receive approaches about the provision of education and training services for children and young people, we usually refer them to the Human Rights Commission without investigation unless

special circumstances justify another course of action.

Most complaints we investigated related to:

- dispute resolution
- fees and charges
- course work
- discipline.

Table 10: Approaches and complaints received about the Education and Training Directorate 2012–13

| EDUCATION AND TRAINING | RECEIVED | FINALISED | | |
|------------------------------------|-----------|------------------|--------------|-----------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| Canberra Institute of Technology | 15 | 7 | 11 | 18 |
| Education and Training Directorate | 13 | 12 | 1 | 13 |
| University of Canberra | 14 | 11 | 3 | 14 |
| | 42 | | | 45 |

Table 11: Remedies for investigated complaints about the Education and Training Directorate 2012–13

| TYPE OF REMEDY | % |
|--|----|
| Action expedited | |
| Apology | |
| Decision changed or reconsidered | 47 |
| Disciplinary action | |
| Better explanation provided | 35 |
| Financial remedy | |
| Law, policy or practice changed | |
| Other non-financial remedy | 6 |
| Remedy provided without Ombudsman intervention | 12 |

Environment and Sustainable Development Directorate

Section 5(2)(h) of the *Ombudsman Act 1989* (ACT) excludes action taken in managing the environment from the Ombudsman's jurisdiction (other than in relation to

stormwater and street lighting). Approaches about these matters are referred to the Commissioner for the Environment.

Most complaints we investigated related to building and development matters.

Table 12: Approaches and complaints received about the Environment and Sustainable Development Directorate 2012–13

| ENVIRONMENT AND SUSTAINABLE DEVELOPMENT | RECEIVED | FINALISED | | |
|---|-----------|------------------|--------------|-----------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| ACT Planning and Land Authority | 23 | 19 | 5 | 24 |
| Environment and Sustainable Development Directorate | 3 | 2 | 1 | 3 |
| | 26 | | | 27 |

Table 13: Remedies for investigated complaints about the Environment and Sustainable Development Directorate 2012–13

| TYPE OF REMEDY | % |
|--|----|
| Action expedited | 14 |
| Apology | 10 |
| Decision changed or reconsidered | 18 |
| Disciplinary action | 10 |
| Better explanation provided | 48 |
| Financial remedy | |
| Law, policy or practice changed | |
| Other non-financial remedy | |
| Remedy provided without Ombudsman intervention | |

Health Directorate

Complaints about the provision of health services are excluded from the Ombudsman’s jurisdiction under section 5(2)(n) of the *Ombudsman Act 1989* (ACT). While we receive approaches about the provision of health services, we usually refer them

to the Human Rights Commission without investigation, unless special circumstances justify another course of action.

We conducted one investigation into how the Health Directorate managed a complaint. The Directorate provided a better explanation to the complainant as a result.

Table 14: Approaches and complaints received about the Health Directorate 2012–13

| HEALTH | RECEIVED | FINALISED | | |
|--------------------|----------|------------------|--------------|----------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| Health Directorate | 8 | 7 | 1 | 8 |
| | 8 | | | 8 |

Justice and Community Safety Directorate

Most approaches we received related to issues arising at the Alexander Maconochie Centre.

Table 15: Approaches and complaints received about the Justice and Community Safety Directorate 2012–13

| JUSTICE AND COMMUNITY SAFETY | RECEIVED | FINALISED | | |
|--|------------|------------------|--------------|------------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| Civil and Administrative Tribunal | 7 | 6 | 3 | 9 |
| ACT Corrective Services | 61 | 42 | 12 | 54 |
| Director of Public Prosecutions | 6 | 5 | 1 | 6 |
| ACT Emergency Services Agency | 2 | 2 | | 2 |
| ACT Government Solicitor | 1 | | 1 | 1 |
| Human Rights Commission | 6 | 6 | | 6 |
| Justice and Community Safety Directorate | 8 | 7 | 1 | 8 |
| Legal Aid ACT | 7 | 8 | | 8 |
| ACT Law Society | 2 | 2 | | 2 |
| ACT Magistrates Court | 4 | 2 | 2 | 4 |
| Public Advocate of the ACT | | | 1 | 1 |
| ACT Office of Regulatory Services | 28 | 19 | 17 | 36 |
| Public Trustee for the ACT | 8 | 6 | 2 | 8 |
| Supreme Court of the ACT | 1 | 1 | | 1 |
| | 141 | | | 146 |

Table 16: Remedies for investigated complaints about the Justice and Community Safety Directorate 2012–13

| TYPE OF REMEDY | % |
|--|----|
| Action expedited | 5 |
| Apology | 7 |
| Decision changed or reconsidered | 10 |
| Disciplinary action | 2 |
| Better explanation provided | 59 |
| Financial remedy | 8 |
| Law, policy or practice changed | 5 |
| Other non-financial remedy | 2 |
| Remedy provided without Ombudsman intervention | 2 |

Territory and Municipal Services Directorate

Most complaints we investigated related to neighbourhood trees and animal services.

Table 17: Approaches and complaints received about the Territory and Municipal Services Directorate 2012–13

| TERRITORY AND MUNICIPAL SERVICES | RECEIVED | FINALISED | | |
|--|----------|------------------|--------------|-------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| Territory and Municipal Services Directorate | 57 | 49 | 10 | 59 |

Table 18: Remedies for investigated complaints about the Territory and Municipal Services Directorate 2012–13

| TYPE OF REMEDY | % |
|--|----|
| Action expedited | |
| Apology | 5 |
| Decision changed or reconsidered | 10 |
| Disciplinary action | |
| Better explanation provided | 60 |
| Financial remedy | 25 |
| Law, policy or practice changed | |
| Other non-financial remedy | |
| Remedy provided without Ombudsman intervention | |

ACT Policing

Community Policing in the ACT is undertaken by the Australian Federal Police (AFP) in line with an agreement between the ACT Minister for Police and Emergency Services, the AFP Commissioner and the Chief Police Officer for the ACT.

Complaints about ACT Policing are managed by the AFP in line with Part V of the Australian *Federal Police Act 1979* (the AFP Act) and may also be investigated by the Ombudsman under the Ombudsman Act 1976 (Cth).

If a complainant is not satisfied with the outcome of the AFP's handling or investigation of their complaint, they may approach our office.

Although complaints about ACT Policing are investigated under the Ombudsman's

Commonwealth jurisdiction, in line with the Services Agreement between the ACT Government and the Ombudsman we regularly report to the ACT Government on the actions of ACT Policing. In line with this agreement, we have included statistics on ACT Policing complaints for 2012–13 below.

The complaints we investigated related to:

- inappropriate action
- customer service
- use of force
- breach of the AFP Code of Conduct. (Note: Complaints about these breaches are not necessarily employment-related complaints.)

Table 19: Approaches and complaints received about ACT Policing 2012–13

| ACT POLICING | RECEIVED | FINALISED | | |
|--------------|------------|------------------|--------------|------------|
| | TOTAL | NOT INVESTIGATED | INVESTIGATED | TOTAL |
| ACT Policing | 125 | 113 | 10 | 123 |
| | 125 | | | 123 |

Figure 4: AFP approaches received, investigated and finalised 2007–08 to 2012–13

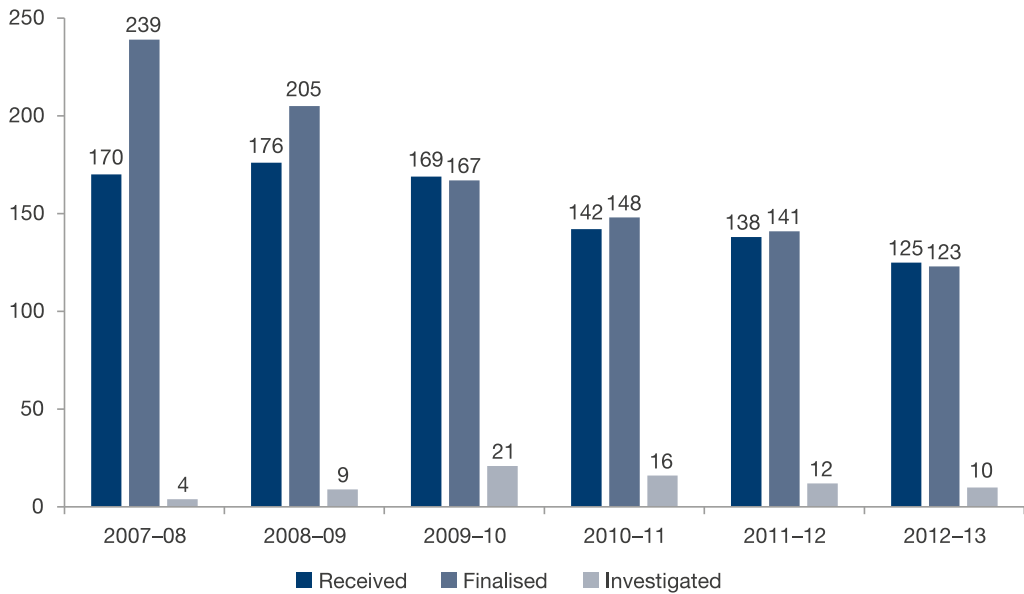
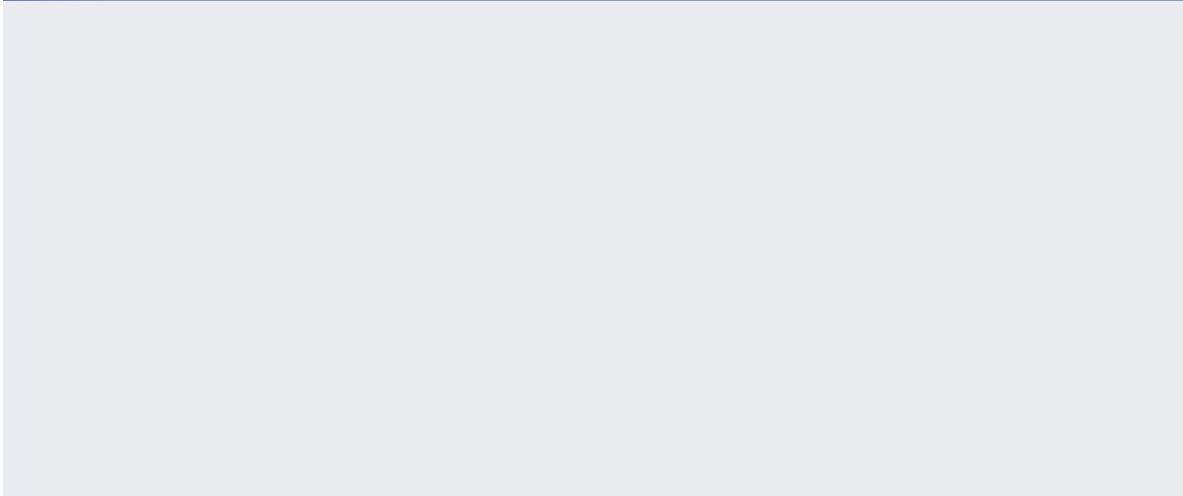
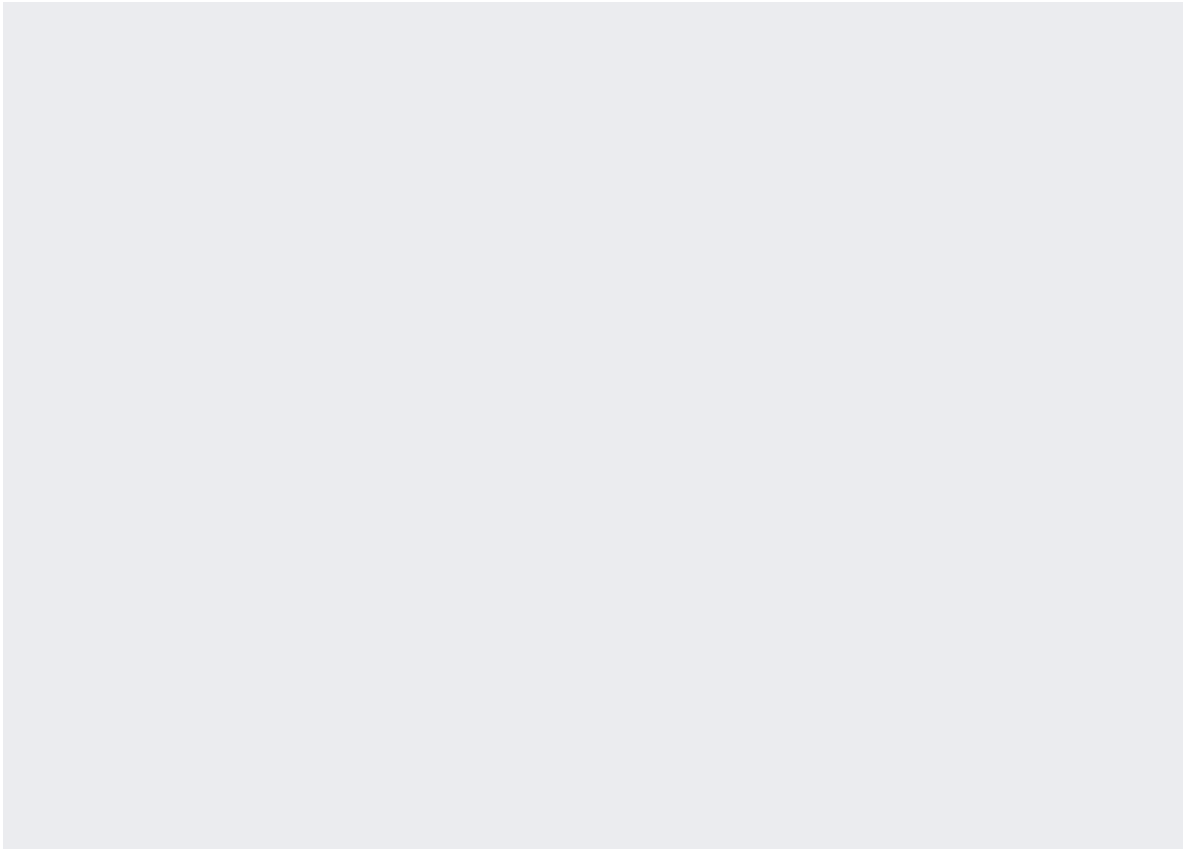


Table 20: Remedies for investigated complaints about ACT Policing, 2012–13

| TYPE OF REMEDY | % |
|--|----|
| Action expedited | 8 |
| Apology | 17 |
| Decision changed or reconsidered | |
| Disciplinary action | |
| Better explanation provided | 75 |
| Financial remedy | |
| Law, policy and practice changed | |
| Other non-financial remedy | |
| Remedy provided without Ombudsman intervention | |



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The Ombudsman at work

CONSULTATION AND SCRUTINY REPORTING

Consultation and scrutiny reporting

B.1 Community engagement

Officers representing the ACT Ombudsman attended and hosted several community functions in 2012–13 as part of an ongoing commitment to networking and engaging with the community. Events included:

- Homeless Connect — Canberra’s inaugural Homeless Connect day, August 2012
- Legal Aid ACT Strategic Planning Consultation, November 2012
- the launch of the CONTACT 2013 directory by the Citizens Advice Bureau, November 2012
- the launch of the *Free Law Directory* at ACT Legal Aid, December 2012
- Community Conversation: the Administration of Justice in the ACT, a forum we hosted, February 2013
- the ACT Aboriginal and Torres Strait Islander Justice Agreement Implementation Group Meeting, March 2013

- ‘Has the model of a human rights prison worked in the ACT?’ — a forum organised by the Prisoners’ Advocacy group at the Australian National University, March 2013
- a forum hosted by the ACT Human Rights Commissioner to discuss the human rights audit of the conditions of detention for women at the Alexander Maconochie Centre, June 2013.

B.3 Legislative Assembly Committee inquiries and reports

There is nothing to report in this section.

B.4 Legislation report

ACT Policing – inspections

The Ombudsman has inspection functions regarding ACT Policing's use of covert and intrusive powers under the *Crimes (Controlled Operations) Act 2008*, *Crimes (Surveillance Devices) Act 2010*, *Crimes (Assumed Identities) Act 2009* and Chapter 4, *Crimes (Child Sex Offenders) Act 2005*.

We appreciate ACT Policing's cooperation with our staff and for providing all documents relevant to our inspections during 2012–13. The findings of each inspection and progress against previous findings are reported to ACT Policing. ACT Policing has been responsive to our inspection findings and has taken steps to improve its compliance with legislation.

Controlled operations

The *Crimes (Controlled Operations) Act 2008* (ACT) allows ACT Policing to conduct controlled (covert) operations in the ACT. The ACT Ombudsman is required to inspect the records of ACT Policing at least once every 12 months to determine its compliance with the Controlled Operations Act.

We conducted two inspections during 2012–13 which examined ACT Policing's records associated with all authorities to conduct controlled operations that had either expired or were cancelled during the period 1 July 2011 to 31 December 2012.

The following criteria were applied to assess compliance:

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

At the first inspection, ACT Policing was assessed as compliant with the requirements of the Controlled Operations Act. However, we made one best practice suggestion regarding how ACT Policing may better demonstrate its compliance with provisions of the Controlled Operations Act. ACT Policing has responded to this suggestion by amending its templates.

The results of the second inspection conducted under the Controlled Operations Act have not been finalised and will be reported in the 2013–14 annual report.

Surveillance devices

The *Crimes (Surveillance Devices) Act 2010* (ACT) establishes a framework for the use of surveillance devices by law enforcement officers in the ACT. The ACT Ombudsman may inspect the records of ACT Policing to determine the extent of its compliance with the Surveillance Devices Act.

We conducted two inspections during 2012–13 which examined ACT Policing’s records associated with its use of surveillance devices under all warrants and authorities that had either expired or were revoked during the period 1 July to 31 December 2012.

The following criteria were applied to assess compliance:

1. Were applications for warrants properly made?
2. Were warrants compliant with the Act?
3. Were surveillance devices used lawfully?
4. Were revocations of warrants properly made?
5. Were records properly kept and used by the agency?
6. Were reports properly made by the agency?

At the first inspection, ACT Policing was assessed as compliant with the Surveillance Devices Act except in two minor areas (one of which was self-disclosed by ACT Policing). We will monitor these issues at future inspections. We were also unable to determine compliance in relation to another four instances, as there were insufficient records on file. ACT Policing advised that in future the relevant records will be on file.

The results of the second inspection conducted under the Surveillance Devices Act have not been finalised and will be reported in the 2013–14 annual report.

Assumed identities

The *Crimes (Assumed Identities) Act 2009* (ACT) facilitates investigations and intelligence gathering in relation to criminal

activity by providing for the lawful acquisition and use of assumed identities in the ACT. The ACT Ombudsman may inspect records of a law enforcement agency to determine the extent of its compliance with the Assumed Identities Act.

To date, no inspections have been conducted under the Assumed Identities Act as ACT Policing advised that it has not applied for any assumed identities under the Assumed Identities Act.

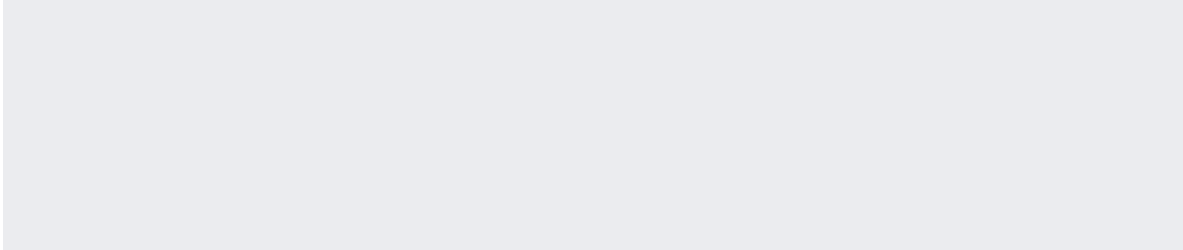
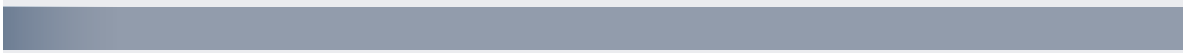
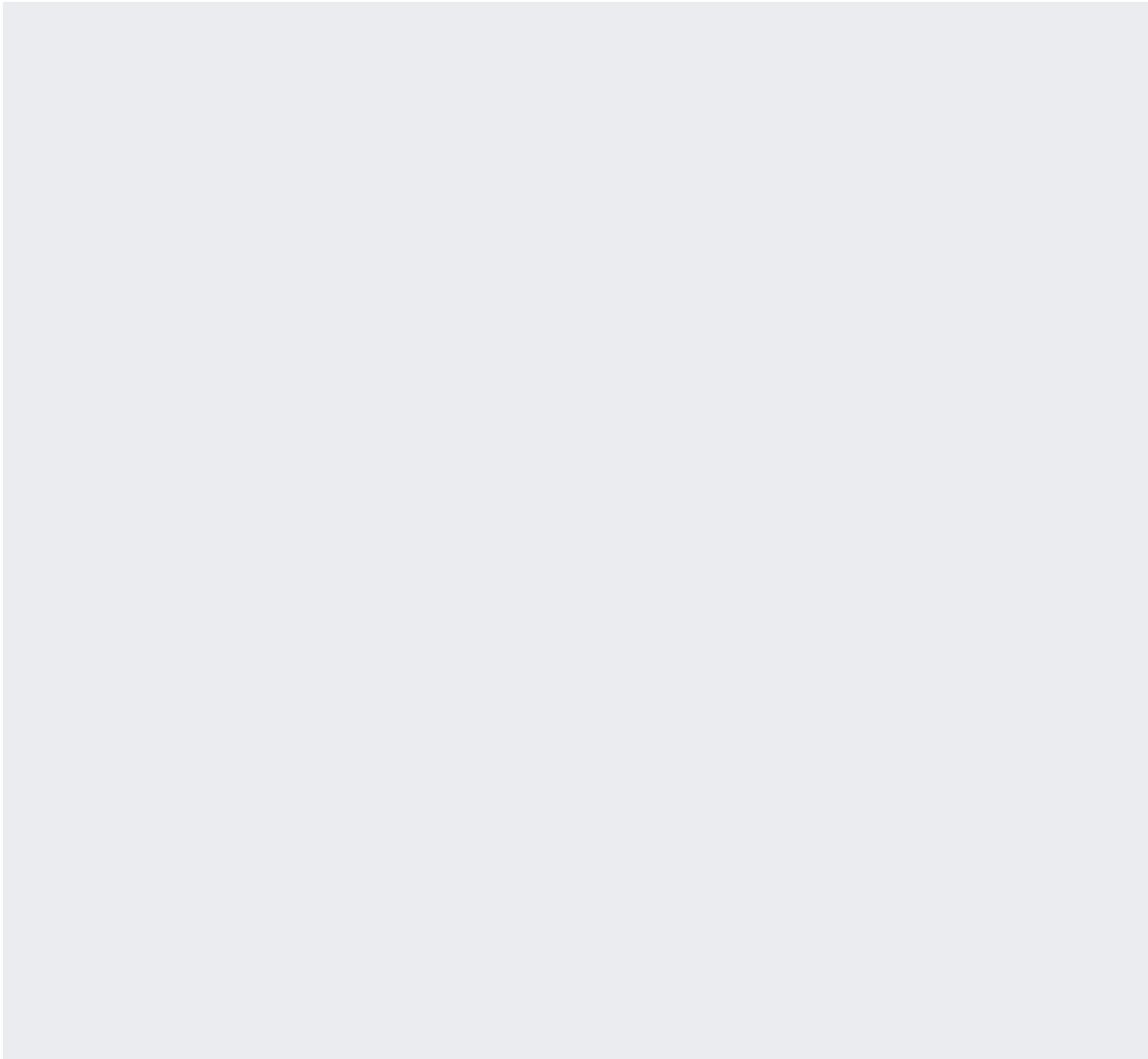
Child Sex Offenders Register

The ACT Child Sex Offenders Register is established by the *Crimes (Child Sex Offenders) Act 2005* (ACT). The register must contain current information relating to the identity and whereabouts of people living in the ACT who have been convicted of sexual offences against children. The ACT Ombudsman is required to monitor ACT Policing’s compliance with Chapter 4 of the Child Sex Offenders Act.

In 2012–13 we finalised one inspection of ACT Policing’s maintenance of the register. No assessment was made in relation to two criteria, which could not be assessed or were not applicable in this inspection period. ACT Policing was assessed as compliant with the remaining criteria under Chapter 4 of the Child Sex Offenders Act, with the exception of minor administrative errors. Subsequent to the inspection, ACT Policing advised that it has corrected each of these errors and reviewed its work practices to reduce future occurrences.

The report of the results of this inspection was provided to the Minister for Police and Emergency Services and the ACT Chief Police Officer in November 2012.







C

25 | Legislative and policy-based reporting

The Ombudsman at work
**LEGISLATIVE AND
POLICY-BASED
REPORTING**



Legislative and policy-based reporting

C.3 Public interest disclosure

The ACT Ombudsman is a proper authority for receiving public interest disclosures under the now repealed *Public Interest Disclosure Act 1994* (ACT) and is also a 'disclosure officer' under the *Public Interest Disclosure Act 2012* (ACT) which commenced on 1 February 2013.

For public interest disclosures we received from a member of the public or an officer of a public service agency before 1 February 2013, we may choose to investigate the matter using our investigative powers under the *Ombudsman Act 1989* (ACT). Alternatively, we may refer the matter to another authority if it is better placed to investigate the matters disclosed. Once we have referred the matter, we remain an interested party to any ongoing investigation and we are entitled to receive progress reports from the other authority every three months.

For public interest disclosures received after 1 February 2013, we must provide a copy or written record of the disclosure to the head of each public sector entity to which the disclosure relates, as well as to the Commissioner for Public Administration.

For a disclosure that relates to an entire agency or Directorate, we must also provide a copy or written record to the Head of Service. The Ombudsman is only authorised to investigate a public interest disclosure received after 1 February 2013 if it relates to the disclosable conduct of the Head of Service.

No new public interest disclosures were made during the reporting period and we finalised one investigation.

C.4 Freedom of information

In 2012–13 we received 14 approaches about requests for information made to ACT Government agencies. We finalised 13 approaches, four of which we investigated. Two other investigations remain ongoing at the end of the reporting period.

We received two requests for information under section 14 of the *Freedom of Information Act 1989* (ACT).

C.17 Territory records

Our office has a records management program that was approved by the Director of Territory Records.

In accordance with the *Territory Records Act 2002* (ACT), we ensure that:

- all ACT Ombudsman records are stored appropriately and securely
- relevant position profiles and duty statements reflect the records management skills required by the office
- training is available for records management and general staff in record keeping skills and responsibilities
- a controlled language system for records management for the office has been developed and is used by staff.

The office operates in line with the Territory Records (Records Disposal Schedule — Ombudsman Complaint Management Records) Approval 2011 (No 1) (NI 2011–93).

Given the nature of the Ombudsman’s work, the office does not have records that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage.

Part 3 of the Territory Records Act provides for public access to ACT records that are more than 20 years old.

C.21 Aboriginal and Torres Strait Islander reporting

We participated in the Aboriginal and Torres Strait Islander Justice Agreement implementation group and continued to look at ways to improve access to complaint services for Aboriginal and Torres Strait Islander people in the ACT.

C.22 ACT Multicultural Strategy 2010–2013

The Ombudsman provides support to the ACT Multicultural Strategy through efforts to ensure the office is easily accessible by the Australian community. Information sheets are available at www.ombudsman.act.gov.au in 36 community languages setting out the role of the Ombudsman and how to make a complaint about a government agency.

The office uses interpreting services, particularly telephone interpreting services, to help people dealing with the office who may have difficulty communicating in English.

The Ombudsman at work

APPENDICES

Appendices

Appendix 1 — Approaches and complaints received and finalised about ACT Government agencies and ACT Policing, 2012–13 (including freedom of information)

Explanation of terms used in the following table.

| | |
|---|---|
| APPROACHES/ COMPLAINTS RECEIVED | Approaches/complaints received in 2012–13 |
| APPROACHES/ COMPLAINTS FINALISED | Approaches/complaints finalised in 2012–13, including some complaints carried over from previous years |
| CATEGORY 1 | Approaches/complaints resolved without investigation, outcomes include decisions not to investigate and referrals to appropriate agency or authority |
| CATEGORY 2 | Complaints that cannot be resolved at Category 1 and require further internal enquiries/research or more information from the complainant, resolved without contacting the agency |
| CATEGORY 3 | Complaints where an investigation was conducted and the agency contacted |
| CATEGORY 4 | Further investigation conducted as the complaint was not able to be resolved at Category 3 |
| CATEGORY 5 | Further investigation conducted as the complaint was not able to be resolved in Category 4; involves formal reporting processes |
| REMEDIES | Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in a number of different remedies |

Table A1: Approaches and complaints received and finalised about ACT government agencies and ACT Policing, 2012–13
(including freedom of information)

| DIRECTORATE/AGENCY | RECEIVED | | FINALISED | | | | | REMEDIES | | | | | | | | | | | |
|--|----------------|----|------------|------------|------------|------------|------------|-----------------|------------------|---------|----------------------------------|---------------------|-------------|------------------|----------------------------|---------------------------------|--|----------------|-----------|
| | Total Received | | Category 1 | Category 2 | Category 3 | Category 4 | Category 5 | Total Finalised | Action expedited | Apology | Decision changed or reconsidered | Disciplinary action | Explanation | Financial remedy | Other non-financial remedy | Law, policy or practice changed | Remedy provided by agency without Ombudsman intervention | Total Remedies | |
| Chief Minister and Treasury Directorate | 3 | 2 | | | | | | 2 | | | | | | | | | | | |
| Chief Minister and Treasury Directorate (previous) | 1 | | | 1 | | | | 2 | | | | | 2 | | | | | | 2 |
| Treasury Directorate (previous) | 7 | 2 | 2 | 3 | 4 | | | 9 | | 1 | | | 3 | 1 | 1 | | | | 6 |
| ACT Legislative Assembly | | | | | 1 | | | 1 | | | | | | | | | | | 1 |
| | 11 | | | | | | | 14 | | | | | | | | | | | 8 |
| Commerce and Works Directorate | 2 | | | 1 | | | | 1 | | | | | | | | | | | |
| ACTEW | 13 | 4 | 4 | 9 | | | | 13 | | | | | | | | | | | |
| | 15 | | | | | | | 14 | | | | | | | | | | | |
| Community Services Directorate | 14 | 6 | 6 | 8 | | | | 14 | | | | | | | | | | | |
| Housing ACT | 120 | 43 | 43 | 51 | 24 | 16 | | 134 | 14 | 5 | 15 | | 33 | 5 | 2 | 2 | 1 | | 77 |
| | 134 | | | | | | | 148 | | | | | | | | | | | 77 |
| Economic Development Directorate | | | | | | | | | | | | | | | | | | | |
| ACT Gambling and Racing Commission | 1 | | | | | | | | | | | | | | | | | | |
| ACT Land Development Agency | 2 | 1 | 1 | 1 | | | | 2 | | | | | | | | | | | |
| Economic Development Directorate | 1 | 1 | 1 | | | | | 1 | | | | | | | | | | | |
| | 4 | | | | | | | 3 | | | | | | | | | | | 3 |

continued

| DIRECTORATE/AGENCY | RECEIVED | | FINALISED | | | | | REMEDIES | | | | | | | | | |
|--|----------------|------------|------------|------------|------------|------------|-----------------|------------------|---------|----------------------------------|---------------------|-------------|------------------|----------------------------|---------------------------------|--|----------------|
| | Total Received | Category 1 | Category 2 | Category 3 | Category 4 | Category 5 | Total Finalised | Action expedited | Apology | Decision changed or reconsidered | Disciplinary action | Explanation | Financial remedy | Other non-financial remedy | Law, policy or practice changed | Remedy provided by agency without Ombudsman intervention | Total Remedies |
| Education and Training Directorate | | | | | | | | | | | | | | | | | |
| Canberra Institute of Technology | 15 | 2 | 5 | 8 | 3 | | 18 | | | 5 | | 3 | | 1 | | | 9 |
| Education and Training Directorate | 13 | 6 | 6 | 1 | | | 13 | | | | 2 | | | | 2 | | 4 |
| University of Canberra | 14 | 3 | 8 | 3 | | | 14 | | | 3 | | 1 | | | | | 4 |
| | 42 | | | | | | 45 | | | | | | | | | | 17 |
| Environment and Sustainable Development Directorate | | | | | | | | | | | | | | | | | |
| ACT Planning and Land Authority | 23 | 6 | 13 | 4 | 1 | | 24 | 3 | 2 | 4 | 2 | 9 | | | | | 20 |
| ActewAGL | 3 | 1 | 1 | 1 | | | 3 | | | | | 1 | | | | | 1 |
| | 26 | | | | | | 27 | | | | | | | | | | 21 |
| Health Directorate | | | | | | | | | | | | | | | | | |
| Health Directorate | 8 | 3 | 4 | 1 | | | 8 | | | | | 4 | | | | | 4 |
| | 8 | | | | | | 8 | | | | | | | | | | 4 |
| Justice and Community Safety Directorate | | | | | | | | | | | | | | | | | |
| Civil and Administrative Tribunal | 7 | 3 | 3 | 1 | 2 | | 9 | | 1 | | | 2 | | | 1 | | 4 |
| ACT Corrective Services | 61 | 11 | 31 | 8 | 4 | | 54 | | | 1 | 1 | 10 | | 2 | | | 15 |
| Director of Public Prosecutions | 6 | 3 | 2 | 1 | | | 6 | | | | | 1 | | | | | 1 |
| ACT Emergency Services Agency | 2 | 1 | 1 | | | | 2 | | | | | | | | | | |
| ACT Government Solicitor | 1 | | | 1 | | | 1 | | | | | 1 | | | | | 1 |
| ACT Human Rights Commission | 6 | 2 | 4 | | | | 6 | | | | | | | | | | |
| Justice and Community Safety Directorate | 8 | 4 | 3 | 1 | | | 8 | 1 | 1 | | | 1 | | | 1 | | 4 |
| Legal Aid ACT | 7 | 3 | 5 | | | | 8 | | | | | | | | | | |

continued

| DIRECTORATE/AGENCY | RECEIVED | | FINALISED | | | | | REMEDIES | | | | | | | | | | |
|--|----------------|--|------------------|------------|--------------|------------|------------|-----------------|------------------|---------|----------------------------------|---------------------|-------------|------------------|----------------------------|---------------------------------|--|----------------|
| | | | NO INVESTIGATION | | INVESTIGATED | | | | | | | | | | | | | |
| | Total Received | | Category 1 | Category 2 | Category 3 | Category 4 | Category 5 | Total Finalised | Action expedited | Apology | Decision changed or reconsidered | Disciplinary action | Explanation | Financial remedy | Other non-financial remedy | Law, policy or practice changed | Remedy provided by agency without Ombudsman intervention | Total Remedies |
| ACT Law Society | 2 | | | 2 | | | | 2 | | | | | 1 | | | | | 2 |
| ACT Magistrates Court | 4 | | | 2 | 2 | | | 4 | 1 | | | | 1 | | | | 1 | 2 |
| Public Advocate of the ACT | 0 | | | | 1 | | | 1 | | | | | 1 | | | | | 2 |
| ACT Office of Regulatory Services | 28 | | 6 | 13 | 17 | | | 36 | 2 | | 5 | | 16 | 3 | | 1 | | 27 |
| Public Trustee of the ACT | 8 | | 3 | 3 | 1 | 1 | | 8 | 1 | | | | 2 | | | | | 3 |
| Supreme Court of the ACT | 1 | | | 1 | | | | 1 | | | | | | | | | | |
| | 141 | | | | | | | 146 | | | | | | | | | | 59 |
| Territory and Municipal Services | | | | | | | | | | | | | | | | | | |
| Territory and Municipal Services Directorate | 57 | | 23 | 26 | 9 | 1 | | 59 | | 1 | 2 | | 12 | 5 | | | | 20 |
| | 57 | | | | | | | 59 | | | | | | | | | | 20 |
| ACT Policing | 125 | | 56 | 57 | 6 | 4 | | 123 | 1 | 2 | | | 9 | | | | | 12 |
| | 125 | | | | | | | 123 | | | | | | | | | | 12 |
| ACT Government Total | 563 | | 195 | 264 | 94 | 34 | 0 | 587 | 21 | 15 | 35 | 3 | 114 | 14 | 5 | 7 | 4 | 218 |

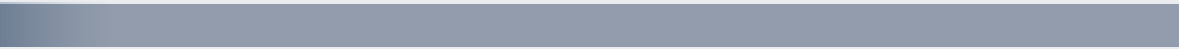
Appendix 2 — Report on omissions and reasons for non-compliance

The ACT Ombudsman has been declared a public authority in accordance with section 16 of the *Annual Reports (Government Agencies) Act 2004*. However, the Commonwealth Ombudsman, who is appointed under the *Ombudsman Act 1976* (Cth), discharges the role of ACT Ombudsman under the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth).

Due to this arrangement, the ACT Ombudsman is unable to report against some aspects of the ACT Chief Minister's Annual Reports Directions 2012–13. Reporting on these issues and whole-of-government issues is provided for the office as a whole through the Commonwealth Ombudsman Annual Report 2012–13, which is available at www.ombudsman.gov.au.

Table A2: Omissions and reasons for non-compliance

| SECTION | PART | REASON |
|---|--|--|
| A: Performance and financial management reporting | A.5 Management discussion and analysis | ACT Ombudsman functions are intrinsically linked with broader Commonwealth Ombudsman organisational operations |
| | A.6 Financial report | |
| | A.7 Statement of performance | |
| | A.8 Strategic indicators | |
| | A.10 Triple bottom line Reporting | |
| B: ACT Multicultural Strategy | B.2 Internal and external scrutiny | ACT Ombudsman functions are intrinsically linked with broader Commonwealth Ombudsman organisational operations |
| C: Legislative and policy-based reporting | C.1 Risk management and internal audit | ACT Ombudsman functions are intrinsically linked with broader Commonwealth Ombudsman organisational operations |
| | C.2 Fraud prevention | |
| | C.5 Internal accountability | |
| | C.6 Human resource performance | |
| | C.7 Staffing profile | |
| | C.8 Learning and development | |
| | C.9 Workplace health and safety | |
| | C.10 Workplace relations | |
| | C.11 <i>Human Rights Act 2004</i> | |
| | C.13 Strategic asset management | |
| | C.14 Capital works | |
| | C.15 Government contracting | |
| | C.16 Community Grants/ Assistance/Sponsorship | |
| | C.19 Ecologically sustainable development (in part) | |
| | C.20 Climate change and greenhouse gas reduction policies and programs | |
| | C.20 Climate change and greenhouse gas reduction policies and programs | |
| | C.23 ACT Strategic Plan for Positive Ageing 2010–14 | |
| C.24 ACT Women’s Plan 2010–15 | | |
| | C.12 Strategic Bushfire Management Plan | No requirement to report |
| | C.18 Commissioner for the Environment | |
| | C.25 Model Litigant Guidelines | |
| | C.26 Notices of non-compliance | |



The Ombudsman at work
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Abbreviations and acronyms

| | |
|------------------------|--|
| ACT | Australian Capital Territory |
| AFP | Australian Federal Police |
| approaches | Complaints, enquiries and other forms of contact with our office |
| Cth | Commonwealth |
| Directorates | administrative units of ACT government business |
| office, the/our | The Office of the ACT Ombudsman |

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| A.6 Financial report | N/A |
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| A.10 Triple bottom line report | N/A |
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| C.4 Freedom of information | 27 |
| C.5 Internal accountability | N/A |
| C.6 Human resource performance | N/A |
| C.7 Staffing profile | N/A |
| C.8 Learning and development | N/A |
| C.9 Workplace health and safety | N/A |
| C.10 Workplace relations | N/A |
| C.11 Human Rights Act 2004 | N/A |
| C.12 Strategic Bushfire Management Plan | N/A |
| C.13 Strategic asset management | N/A |
| C.14 Capital works | N/A |
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| C.25 Model Litigant Guidelines | N/A |
| C.26 Notices of noncompliance | N/A |

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