

Our ref: A1616307

9 May 2018

Ms Joy Burch MLA  
Speaker  
Legislative Assembly for the ACT  
GPO Box 1020  
CANBERRA ACT 2601

Dear Speaker

**ACT Ombudsman quarterly update – 1 January 2018 to 31 March 2018**

I am writing to provide you with the quarterly update for the period 1 January to 31 March 2018. I have recently been discussing with the Head of Service, Ms Kathy Leigh, a change in our approach to our quarterly reporting to provide more qualitative information and analysis of our activities. My Office will continue to refine this reporting and welcome any feedback you might have.

This update provides an overview of our general agency oversight and complaints function over the quarter and the progress of our new Reportable Conduct Scheme and Freedom of Information (FOI) functions. I would be happy to expand upon any aspect of this report.

Please find attached:

1. Quarterly report of complaint approaches to my Office for the period 1 January 2018 to 31 March 2018
2. Financial year to 31 March 2018 report of complaint approaches to my Office.

You will see that this quarter shows a drop in complaint approach numbers to my Office compared with previous quarters this financial year. Of note are lower numbers of approaches regarding Access Canberra and Housing ACT, both of which have consistently recorded the highest number of approaches to our Office over the past two years.

While my Office will consider the factors contributing to this fluctuation, I am keen to ensure that the ACT public service and community is aware of my Office and the work that we do in relation to complaints, Reportable Conduct and Freedom of Information. To that end, I intend to shortly write to all heads of ACT government directorates and agencies to ensure that information about my Office and relevant contact points are up to date and accessible. I will also suggest that ACT agencies include references to the ACT Ombudsman in agency complaint handling correspondence, and that information about my Office is communicated to the public in user friendly mediums.

My Office has also continued its focus on improving the visibility and accessibility of our services this quarter with community engagement activities that have targeted the Aboriginal and Torres Strait Islander community and detainees at the Alexander Maconochie Centre (AMC) in addition to our more general engagement.

### Aboriginal and Torres Strait Islander Accessibility

As part of a broader strategy to positively engage and include the local Aboriginal and Torres Strait Islander community in our business, a focus for this quarter was preparing and launching an ACT Ombudsman Aboriginal and Torres Strait Islander Art competition. The competition drew significant interest with record Facebook activity reaching some 45,000 people. Entries were received from local artists, including several entries from detainees at the AMC. It culminated with an event on 5 April 2018 to announce the winner, Leah Brideson, and the runners up, and was attended by artists and members of the Aboriginal and Torres Strait Islander community. In the current quarter we plan to use the winning artwork on publications and communications to promote our services in the ACT.

Our Office also continues to engage with local Aboriginal and Torres Strait Islander services to develop and maintain positive relationships and to build greater awareness and confidence in our services.

### ACT Corrective Services and AMC Outreach Activity

This quarter we commenced visits to AMC on a monthly basis to improve the accessibility of our services to detainees, and we have combined our visits with those of the Official Visitors. These visits have improved awareness of the role of my Office and we have seen that the number of approaches to our Office from ACT Corrective Services (ACTCS) increase.

My Office continues to engage with the AMC through oversight agency meetings, AMC and Ombudsman liaison meetings, and contributes as an observer on the Moss Inter-Directorate Project Team chaired by JACS.

During the quarter, we met with the new Inspector of Correctional Services, Neil McAllister, to establish our relationship within the new oversight regime for the AMC. We are keen to avoid duplication and ensure clarity around our roles and priorities going forward.

### ACT Community engagement

In the course of our general community engagement this quarter, my staff attended and held stalls at the:

- National Multicultural Festival
- ACT Policing Community Forum facilitated by the Aboriginal and Torres Strait Islander Elected Body
- Canberra Institute of Technology Orientation Week
- Seniors Week Expo.

Events such as these provide a valuable opportunity to engage with the community about our role. We also seek to encourage and to assist people to resolve problems with ACT agencies directly.

### Issues of interest

This quarter we continued to monitor developments relating to Transport Canberra and City Services' Domestic Animal Services (DAS) and the management of 'dangerous dogs'. We understand that TCCS has commissioned an independent review of the operation of the DAS, and we have sought a copy of that review report, which we understand will soon be finalised.

I also wrote to AFP Commissioner Andrew Colvin, concerning ACT Policing's response to the recommendation made by the Coroner at the conclusion of the inquest into the death of Tara Costigan. I understand from Commissioner Colvin that the AFP supports in principle the recommendation, and that ACT Policing is working as part of the ACT Family Violence Intervention Program Coordination Committee to implement the recommendations. I will continue to seek updates as these progress.

### Reportable Conduct

In the first nine months of the operation of the reportable conduct scheme, my Office received 89 reports from entities about allegations of reportable conduct and we have closed 48 of these. We note that entities reported allegations to ACT Policing in relation to 26 reports. Ill-treatment of a child involving hostile use of force remains the most common allegation type, with misconduct of a sexual nature and ill-treatment emotional abuse being the next most common allegation categories. Entities determined that allegations were sustained on 6 occasions, not sustained in 27 due to insufficient evidence, and not sustained in a further 11 matters on the basis that the allegation was false.

Our investigation into the Education Directorate's handling of a reportable conduct matter (under s 17K of the Ombudsman Act) is ongoing. The information from the Directorate has been received and reviewed. We will prepare a draft report and will provide this to the Directorate for comments in the coming weeks.

My Office's early experiences indicate how the scheme, and this Office's role in it, can improve ACT entities' responses to allegations of child abuse and child-related misconduct by employees. This can create more child-safe entities, and includes identification of areas for improvement. We have been particularly focused on assisting entities to understand their information sharing responsibilities and to articulate their findings and decisions. In addition to responding to individual reports, we have supported entities with their obligations this quarter by:

- targeted liaison and information sessions to individual entities (such as an independent school, Child at Risk Health Unit of ACT Health, Community Services Directorate)
- providing a newsletter update on changes to legislative provisions during the period and reviewing and updating our practice guides, and
- developing a draft Information Sharing practice guide for consultation.

My Office has commissioned a workplace investigations and training firm, Halloran Morrissey, to help entities under the scheme build their capacity to conduct proper investigations of allegations. The training is offered free of charge and will take place over April-June 2018. It will be open to ACT directorates and include two one-day courses on conducting reportable conduct investigations and conducting investigative interviews. The take up so far has been extremely high with in excess of 260 people who have registered their interest and feedback from the first few sessions has been very positive.

We have been liaising closely with CMTEDD regarding the expansion of the scheme proposed by the ACT Government to cover religious organisations from 1 July 2018. In February we presented on this expansion at a public forum for religious organisations and we made a submission to the Government consultation in March. We have also engaged the services of Melhem and Beckett Legal and Consulting to provide our Office with stakeholder engagement services with respect to religious organisations, and to assess the current capacity of the religious organisations to comply with the requirements of the scheme.

My Office also conducted a post implementation review of the scheme in February-March 2018. Hill Executive considered our planning, resourcing, practices and systems as well as engaging with external stakeholders, including directorates, about the first six months of the scheme's operation. The review provides an overall positive account of my Office's delivery of the scheme.

### Freedom of Information

In the first quarter following the commencement of the ACT *Freedom of Information Act 2016* (FOI Act), my Office received 10 approaches. Of these, two were applications for Ombudsman review, three were FOI complaints from members of the public and one a notice from an agency that it had not processed an access application within the statutory timeframe. As at the end of March, we had not yet received any extension of time applications from ACT agencies or ministers, although we received one request in April 2018.

My Office is closely monitoring agencies' and ministers' compliance with open access as well as approaches (chiefly timeliness) on access applications. I have become aware that some agencies, most notable the Community Services Directorate (CSD), face particular FOI processing challenges, due largely to the size, volume and complexity of the information that is sought by applicants.

While CSD seeks to negotiate further time with each FOI applicant, in the event this is not agreed to, my power to grant an extension of time under s 42 of the FOI Act is limited to a maximum 15 working days. I consider that this time, in some circumstances, may not be sufficient to allow the agency minister to reasonably process the access application. I am continuing to monitor this issue and may formally raise this and other potential amendments to the FOI Act with relevant ministers.

My Office is continuing to publish factsheets on the operation of the FOI Act to both ensure that effective FOI practices, which promote the disclosure of government-held information are implemented, and to inform the public of the information rights provided by the FOI Act.

My Office attended the April meeting of the Association of Information Access Commissioners where Commissioners and Ombudsmen from across Australia and New Zealand shared their experiences of current information issues and developments. The meeting considered and discussed topics such as the Open Government Partnership, the development, use and monitoring of professional standards and research.

You are welcome to contact me directly on (02) 6276 0149 if you have any questions. Alternatively, your office may wish to contact the Senior Assistant Ombudsman responsible, Mr Paul Pfitzner on (02) 6276 3769.

I have provided a copy of this update to Head of Service, Ms Kathy Leigh as required by the Services Agreement.

Yours sincerely



Michael Manthorpe PSM  
ACT Ombudsman