



annual report



2004–2005



Australian Capital Territory

OMBUDSMAN



annual report

2004–2005

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5 September 2005

Mr Jon Stanhope MLA
Attorney-General
Australian Capital Territory Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Attorney-General

I am pleased to provide you with the sixteenth Australian Capital Territory (ACT) Ombudsman's Annual Report for tabling in the Legislative Assembly. The report covers the period 1 July 2004 to 30 June 2005.

This report has been prepared under subsection 6(1) of the *Annual Reports (Government Agencies) Act 2004* and in accordance with the requirements referred to in the Chief Minister's Annual Report Directions in as far as they relate to this office. It has been prepared in conformity with other legislation applicable to the preparation of the Annual Report by the ACT Ombudsman.

I certify that this Annual Report is an honest and accurate account and that all material information on the operations of the ACT Ombudsman during 2004–05 has been included and that it complies with the Chief Minister's Annual Report Directions.

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



Prof. John McMillan
Australian Capital Territory Ombudsman

CONTACTING THE ACT OMBUDSMAN

Inquiries about this report or any other information should be directed to:

Chief Information Officer
Commonwealth and ACT Ombudsman

Phone: 02 6276 0111
Fax: 02 6249 7829
Email: ombudsman@ombudsman.gov.au

If you would like to make a complaint, or obtain further information about the Ombudsman, you can contact us at:

Ground Floor, 1 Farrell Place
Canberra ACT 2600
(GPO Box 442, Canberra ACT 2601)

Complaints: 1300 362 072 (local call charge)
Phone: 02 6276 0111
Fax: 02 6249 7829
Website www.ombudsman.act.gov.au

The ACT Ombudsman Annual Report 2004–05 is available on our website.

TABLE OF CONTENTS

Transmittal letter and certificate to Minister	iii
Contacting the ACT Ombudsman	iv
Chapter 1—Ombudsman overview	1
ACT Ombudsman	1
Major issues, challenges and achievements	2
Performance overview	4
Outlook for 2005–06	5
Chapter 2—Performance	7
Key strategic achievements	7
ACT Government agencies overview	13
ACT Policing overview	17
Human Rights Act	22
Access to government strategy	22
Community engagement	22
Multicultural framework	23
Chapter 3—Corporate management	24
Internal accountability structures and processes	24
Strategic and organisational planning	24
Government contractual debts	24
Chapter 4—Information and access	25
Freedom of information	25
Public interest disclosure	25
Territory records	26
Appendix—Statistics	27
Abbreviations and acronyms	30
Compliance index	31
Alphabetical index	32



ombudsman overview

1



Prof. John McMillan, ACT Ombudsman

By fostering improved government administration, we can strengthen the community's confidence in the integrity and professionalism of government and we can support fairer and more accountable government.

ACT OMBUDSMAN

The ACT Ombudsman considers complaints about the administrative actions of government departments and agencies and aims to foster good public administration by recommending remedies and changes to agency decisions, policies and procedures. The Ombudsman also makes submissions to government on legislative and policy reform.

The office investigates complaints in accordance with detailed written procedures, including relevant legislation, a service charter and complaint investigation guidelines. Complaint investigations are carried out impartially and independently, and are handled in private. Complaints may be made by telephone, in person or in writing (by letter, email or facsimile, or by using the online complaint form on our website). Anonymous complaints may be accepted.

'By fostering improved government administration, we can strengthen the community's confidence in the integrity and professionalism of government ...'

During the 16 years of its operation, the ACT Ombudsman's office has dealt with many thousands of ACT residents seeking assistance on matters as diverse as building applications, public housing, vehicle registration, child protection, policing and correctional services, and whistleblower protection.

The ACT Ombudsman has been able to stimulate improvements in government administration through the experience and insights gained from handling complaints. Areas include the quality of decision making, internal complaint handling, transparency, record keeping, communication with the public, sensitivity to individual needs, and government accountability generally.

The key values of the ACT Ombudsman are independence, impartiality, integrity, accessibility, professionalism and teamwork.

Legislation

The role of the ACT Ombudsman is performed under the *Ombudsman Act 1989* (ACT). The Ombudsman also has specific responsibilities under the *Freedom of Information Act 1989* (ACT) and the *Complaints*

(Australian Federal Police) Act 1981 (Cth) (the Complaints Act), and is authorised to deal with whistleblower complaints under the *Public Interest Disclosure Act 1994* (PID Act). Links to this legislation can be found at our website: www.ombudsman.act.gov.au.

Members of the Australian Federal Police (AFP) provide policing services for the ACT under an agreement with the ACT Government. Members of the AFP assigned to the AFP's ACT Region are engaged in community policing duties under the ACT Chief Police Officer, who is also an AFP Deputy Commissioner. Under the Complaints Act, responsibility for investigating complaints is shared between the AFP and the Ombudsman's office.

Annual reporting compliance

The ACT Ombudsman is neither a public authority nor an administrative unit within the meaning of the *Annual Reports (Government Agencies) Act 2004* (ACT). Consequently, the ACT Ombudsman is unable to report against some aspects of the ACT Chief Minister's 2004–2005 Annual Report Directions.

Elements on which reports cannot be provided mainly relate to areas where ACT Ombudsman functions are intrinsically linked with broader Commonwealth Ombudsman organisational operations. They include:

- financial statements and financial reports
- whole of government issues
- risk management and internal audit arrangements
- fraud prevention arrangements
- staffing profile and human resource management issues
- procurement contracting principles and processes
- workplace injury prevention and management
- capital works management
- asset management strategy
- ecologically sustainable development and fuel management plans.

Reporting on these issues is provided for the office as a whole through the Commonwealth Ombudsman Annual Report 2004–05.

MAJOR ISSUES, CHALLENGES AND ACHIEVEMENTS

Complaint handling remains the core of the ACT Ombudsman's role. In 2004–05, the office handled 902 complaints from the public. The complaint investigation role of the office is dealt with at length later in this report.

To ensure effective complaint handling and investigation, the office expends considerable effort on improving office systems and nurturing its relations with other agencies and groups in the community.

'Our aim is to help ensure that best administrative practice is an integral part of government planning.'

In 2004–05, we focused attention on improving the effectiveness of our operations in the three areas outlined below.

Positioning the office to maintain delivery of a high-quality, consistent complaint service

- A new complaints management system was developed to enhance our capacity to respond quickly and appropriately to complainants (to commence operation in October 2005).
- A user-friendly online complaint form was developed to facilitate email access in response to the ever-growing use of internet services (to be introduced in October 2005).
- Ongoing training was provided to staff to ensure they are well equipped to handle the increasing complexity of complaints.

Working with the ACT Government to enhance the quality of public administration and complaint handling in agencies

- Drawing from our expertise in public administration, comments were provided to ACT Government agencies on several key ACT Government initiatives, including the ACT Prison Project; our aim is to help ensure that best administrative practice is an integral part of government planning.

- Tailored training and briefing in good complaint management was conducted for ACT Government staff.
- Regular meetings were held with ACT Government agency and ACT Policing contact officers to maintain the good working relationships that are so valuable to the timely resolution of complaints.

Broadening community awareness of the office and its role

- Briefings were provided to new members of the ACT Legislative Assembly and their staff.
- There was an expansion of outreach activity to community and Indigenous groups, including to the Wreck Bay community.
- The Dennis Pearce Essay Competition was promoted as part of our commitment to raising youth awareness of the role of the Ombudsman across the ACT.



ACT and NSW Ombudsman staff members at Wreck Bay in July 2004

ACT Ombudsman shopfront

In June 2004, the ACT Chief Minister, Jon Stanhope MLA, opened the Ombudsman's shopfront on the ground floor of 1 Farrell Place, Canberra City. The opening of the shopfront has made the office more accessible to the ACT community, and is an important element of providing public access to the office, symbolically as well as practically. While the shopfront has increased the office's public profile, it has brought with it an increased obligation to provide personal assistance to individuals.

'Managing the expectations of complainants is an ongoing challenge for the office.'

Complainants sometimes regard the office as an important last resort, and they can be highly agitated and emotional when discussing their complaints. There has also been an increase in the number of complainants who drop into the office repeatedly, despite having been advised that the issue about which they are complaining is not within our jurisdiction. Managing the expectations of complainants is an ongoing challenge for the office.

Ombudsman seminar for ACT contact officers

The Ombudsman's office has an ongoing program of training for ACT Government complaints contact officers. As part of this program, we held a successful seminar for contact officers in May 2005. The seminar, entitled 'Promoting Good Administration', covered the principles and processes involved in good administration of complaint handling.

The program aims to assist contact officers to improve practical complaint-handling skills as well as to enhance their understanding of policy and legislation in decision making. The seminar was well received by over 40 participants from 34 agencies.

Dennis Pearce Essay Competition

In our 2003–04 annual report, we provided details of an inaugural essay competition for ACT college students. Named after the first ACT Ombudsman, Professor Dennis Pearce, the competition was open to Year 11 and Year 12 students, who were asked to address the topic: *The ACT Ombudsman—a watchdog on government*.

Although the competition attracted only a small number of entries in 2004–05, we were delighted with the quality and originality of the essays received. The purpose of the competition was to stimulate critical interest in the role of the Ombudsman as an accountability agency in a democratic system of government.

The essays captured that theme very well, emphasising how important it is for members of the public to have an independent office to which

they can turn. At the same time, the essays drew attention to the challenges facing the Ombudsman if the office is to fulfil its objectives.

The winning essay was from Stephen Brightman, a Year 12 student at Radford College, who received a \$300 cash prize. We published the winning entries on our website at www.ombudsman.act.gov.au.

In 2005–06, the topic for the essay competition will address the question of whether there is a need for a youth ombudsman in the ACT. We are currently working with the ACT Chief Minister's office to promote the competition widely through schools and colleges.



1st prize winner of Dennis Pearce Essay Competition 2004, Stephen Brightman

Excerpt from Stephen's essay:

The ACT public's acceptance and resulting utilisation of the Ombudsman as an effective complaints handler would suggest that the office has been successful in developing strong relationships with both the public and government whilst maintaining the required independence.

PERFORMANCE OVERVIEW

The office dealt with 902 complaints about ACT Government agencies and ACT Policing in 2004–05. These figures have remained at a fairly stable level over the last four years.

The principal performance measures for the Ombudsman are complaints received and finalised, time taken to finalise complaints, and quality of training and liaison. An overview follows, with detailed information included in the 'Performance' section of this report.

Complaint trends

In 2004–05, there was a slight reduction in the overall number of complaints received about ACT Government departments and agencies and ACT Policing—902 complaints compared to 955 in the previous year.

There was a small increase in the number of complaints received about ACT Government agencies (as distinct from ACT Policing complaints)—459 in 2004–05 compared to 452 in 2003–04.

The largest number of complaints received about a single agency involved ACT Corrective Services, with 104 complaints received in 2004–05, which is only marginally higher than the 102 received in 2003–04. Other agencies that accounted for a significant number of complaints included: Housing ACT (83 complaints); ACT Road User Services (51 complaints); ACT Office for Children, Youth and Family Support (50 complaints); and ACT Planning and Land Authority (44 complaints).

We also saw a decrease in complaints about the ACT Magistrates Court (eight complaints compared to 18 last year) and the ACT Public Trustee (five complaints compared to 16 last year).

For ACT Policing, there was a 12% decrease in complaints received (443 in 2004–05 compared to 503 in 2003–04). This is indicative of a general decrease in the number of complaints made about ACT Policing over the past seven years. Analysis of complaints received and finalised is provided in the 'Performance' section of this report.

Submissions and own motion investigations

A distinct role of the Ombudsman is to contribute to public discussion on administrative law and public administration and to foster good public administration that is accountable, lawful, fair, transparent and responsive.

In this context we made submissions to, or commented on, a range of administrative practice matters, cabinet submissions and legislative proposals during the year. An example is a submission to the review of the *Public Interest Disclosure Act 1994*.

The Ombudsman also has authority to undertake investigations on his own initiative ('own motion' investigations)—for example, relating to systemic issues where a change is needed in law, policy, procedure or practice to prevent the problem from recurring. Experience shows that own motion investigations are useful in improving overall administrative procedures across government.

In 2004–05, the Ombudsman conducted an own motion investigation into Traffic Infringement Notices (TINs) issued in a residential street in Lyneham, ACT. The investigation identified a systemic problem in advice provided to motorists about the speed limit applicable in the area, resulting in the withdrawal of over 470 TINs issued to motorists. More detail is provided in the 'Performance' section of this report.

'Experience shows that own motion investigations are useful in improving overall administrative procedures across government.'

An own motion investigation was also commenced into the management of, and conditions for, detainees in the Belconnen Remand Centre. This investigation is expected to be completed in 2005–06.

Review of Ombudsman's role

In 2003–04, we reported that a review of the Commonwealth Ombudsman's legislation was being undertaken, with a view to putting proposals to government for the enactment of a new Ombudsman Act. It was noted that the ACT Government would be consulted in the course of this review. We expect to consult with the ACT Government when the review has been completed and proposals for any amendments have been finalised.

We also reported on discussions with the ACT Government about the most appropriate model for handling disclosures made under the PID Act. Our view was that primary responsibility for investigation should remain with the agency to which a disclosure relates, with the oversight agencies being notified at an early stage.

The increased number of Public Interest Disclosures (PIDs) received by the Ombudsman's office in 2004–05 suggests that further discussion needs to take place on the management of these disclosures. Information on PIDs is provided in the 'Information and access' section of this report.

OUTLOOK FOR 2005–06

New memorandum of understanding

The existing Memorandum of Understanding (MOU) with the ACT Government for the provision of Ombudsman services in relation to ACT Government agencies and ACT Policing was extended to 30 June 2005 by mutual agreement.

We are currently finalising negotiations for a new MOU, which will take account of expected impacts on the complaint workload of the office. These include developments such as the new ACT prison, the increase in PID complaints, and changes to the way complaints about ACT Policing are managed.

ACT Government agencies

There are a few areas of concern to the office that will receive attention in the coming year.

These include:

- handling the increasing number of whistleblower complaints made under the PID Act that raise the troublesome dividing line between disclosures under the Act and staff grievances against an agency
- managing complaints that cross the jurisdictions of two or more agencies—recent complaints have highlighted problems that can arise where complaint issues involve the administrative actions and policies of more than one agency
- managing complaints related to outsourced government programs—this issue was identified in our submission to the recent Review of the System of Statutory Oversight of Government in the ACT.

ACT Policing

The response of ACT Policing to individual complaints continues to be the core issue in our oversight of ACT Policing. Ombudsman staff will continue to be active in ensuring that the AFP's complaint management system provides an effective response to individual complainants and provides public assurance about police accountability.

Recent recruitment within the Ombudsman's Law Enforcement Team will allow further development of our own motion investigation functions relating to ACT Policing. These own motion investigations

will focus on areas where police interaction with the public remains problematic, and will draw on the office's inspection experience with certain Australian Government law enforcement activities.

In conclusion

This year's annual report covers a range of activities on which the Ombudsman is able to report, among them: how complaints about government were handled, the response by ACT Government agencies to accountability requirements, issues in ACT Policing, and own motion and special investigations.

It is pleasing to report that the ACT Ombudsman Annual Report 2003–04 won two bronze awards from the ACT Division of the Institute of Public Administration Australia. The awards were for the quality of the report in the ACT Government category and the Commonwealth and ACT on-line category.

Annual reports are a vital step in ensuring government accountability to the public. In keeping with that aim, the annual reports of the ACT Ombudsman reflect on how complaints about government have been handled throughout the year.

Prof. John McMillan

Australian Capital Territory Ombudsman

performance

KEY STRATEGIC ACHIEVEMENTS

In 2004–05, the ACT Government paid an unaudited total of \$878,217 (including GST) to the Ombudsman's office for provision of services. Monies are received directly from the ACT Government under a Memorandum of Understanding. Payments (including GST) were for the purposes of the *Ombudsman Act 1989* (ACT) (\$413,418) and the *Complaints (Australian Federal Police) Act 1981* (Cth) (\$464,799).

The principal performance measures for the ACT Ombudsman and ACT Policing comprise:

- numbers of complaints received and finalised
- time taken to finalise complaints
- quality of training and liaison contacts.

Performance against these measures is outlined below. The statistical report in the appendix provides details of complaints received and issues finalised for individual ACT Government agencies and ACT Policing during 2004–05.

As well as handling complaints directly, the Ombudsman's office plays a valuable role in referring people to the most appropriate agency to deal with their concerns. Where a person has an inquiry or complaint outside the Ombudsman's authority, we try to provide relevant information and contact details to assist them.

During 2004–05, staff handled 491 general inquiries about ACT Government agencies (compared to 426 in 2003–04). In some instances, we referred complainants to other review agencies that could more appropriately deal with the issues they raised. These issues included complaints about environment, health and consumer services, as there are special commissioners to deal with these matters. There are also certain matters that we are unable to consider because they are outside our

jurisdiction, such as complaints about employment conditions.

The Ombudsman's Law Enforcement Team also receives many inquiries about actions of other police forces, especially where members of the public are uncertain whether they interacted with the New South Wales Police Service or the Australian Federal Police (AFP). In these cases, staff refer the complaint to the relevant State ombudsman.

Complaints received

During 2004–05, the Ombudsman received a total of 902 complaints about ACT Government departments and agencies and ACT Policing, compared to 955 complaints in the previous year. Of the 902 complaints received:

- 459 complaints (51%) were about ACT Government agencies
- 443 complaints (49%) were about ACT Policing.

ACT Government agencies

There was a small increase in complaints received about ACT Government agencies (459 complaints compared to 452 in the previous year). The trend line in total complaints has continued to be fairly stable over the past four years.

Of the 459 complaints received, 83 were about Housing ACT, a decrease of 12% from 2003–04. A significant number of the Housing ACT complaint issues related to maintenance matters (33) and the application process (21), which included waiting lists for public housing.

In 2004–05, the ACT Department of Education, Youth and Family Services was divided into two new departments: ACT Department of Education and Training; and the Office for Children, Youth and Family Support (OCYFS). We received 50 complaints about the OCYFS, with the primary

areas of concern being about Care and Protection Orders and actions by staff.

There was an increase in complaints received about ACT Road User Services (ACTRUS) (51 compared to 43 last year) and the ACT Planning and Land Authority (ACTPLA) (44 compared to 29 last year).

The main complaint issues about ACTRUS related to vehicle registration (23) and infringement notices (18). A common theme in complaints about infringement notices related to complainants failing to read information on the back of the notice and missing vital information on matters such as the length of time in which to comply, appeal rights and extensions of time.

Of the 44 ACTPLA complaints received, the most common cause of complaints related to development applications. Other significant causes were adjoining lessee disputes over matters such as fence heights, retaining walls and non-approved structures.

ACT Policing

For ACT Policing, there was a 12% decrease in complaints received (443 compared to 503 in the previous year). This continues a general decrease in the number of complaints made about ACT Policing since 1998–99. The fluctuations from year to year do not indicate any significant trend, although it is likely that the decrease in complaints in 2004–05 continues to result from ACT Policing’s emphasis on customer service issues.

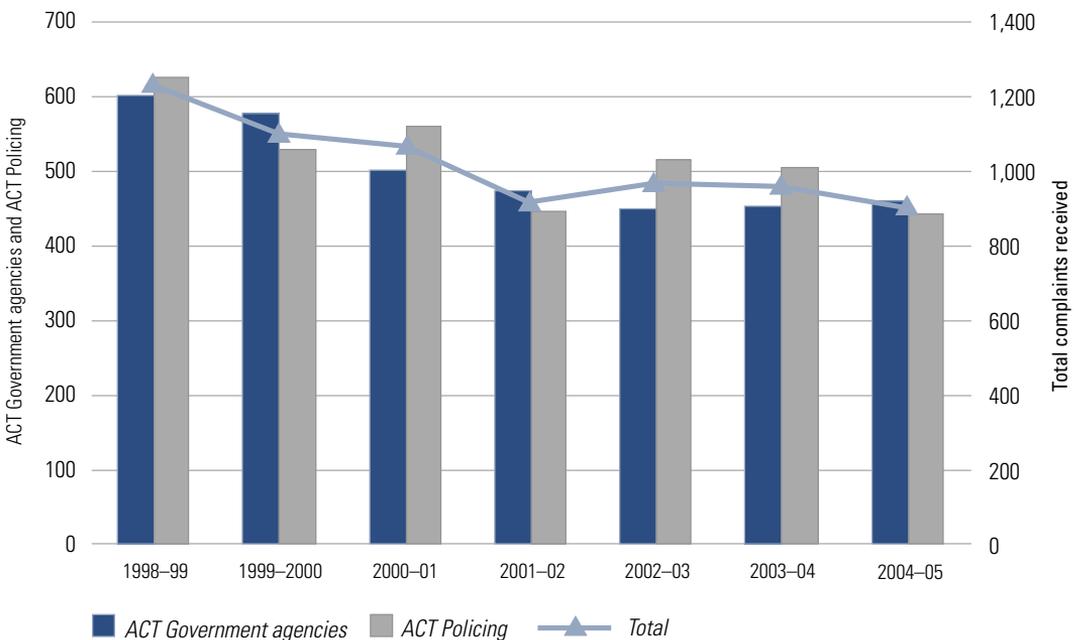
Figure 1 provides an overview of complaints received about ACT Government agencies and ACT Policing since 1998–99.

Complaints finalised

ACT Government agencies

During the 2004–05 reporting year, the Ombudsman’s office finalised 498 complaints which contained 596 issues about government agencies, compared to 457 complaints and 639 issues in the previous year. Complaints can contain a number of

FIGURE 1 COMPLAINTS RECEIVED, 1998–99 TO 2004–05



issues, each requiring separate investigation and possibly resulting in different outcomes.

Of the 596 complaint issues that were finalised during the year:

- 15% were finalised by way of preliminary inquiries
- 39% were formally investigated
- 46% were cases we decided not to investigate.

The latter figure of 46% compares with 36% in the previous year and represents a decrease in the number of complaint issues we decided to investigate or finalise by way of preliminary inquiries.

The most common reason for deciding not to investigate a complaint was that the person had not first tried to resolve their problem with the relevant agency. This practice provides an agency with the opportunity to resolve any issues before an external body, such as the Ombudsman, becomes involved.

For those complaint issues we did investigate, remedies included agency explanation (explaining to the complainant why the agency acted the way it did); action to expedite the matter; an apology; reconsideration of an earlier decision; or changes in administrative policy and procedure.

In 13% of complaints investigated, we formed the view that there had been a deficiency in the administrative actions by an agency; that is, the relevant agency had not acted fairly, reasonably or in accordance with its legislation, policies and procedures.

In 21% of investigations, we did not find any deficiency in the administrative actions of agencies. In the remaining cases (66%) it was not necessary to form a view as to whether administrative deficiency had occurred, for a variety of reasons, including the provision of a remedy by an agency during investigation or the withdrawal of the complaint by the complainant. A remedy was provided in 53% of cases.

The majority of the ACT Corrective Services issues were about the Belconnen Remand Centre (BRC) and primarily related to the lack of access to exercise and educational facilities. On visits

to the BRC, Ombudsman staff noted that there was an increase in the number of 'copy cat' complaints (one in six), where detainees from a specific yard would all complain about the same issue. On investigation, the event or incident complained about apparently related to only one or two individuals. This is reflected in the complaint outcome figures, which show that of the 130 complaint issues finalised, we determined that 85 issues did not warrant further investigation by the Ombudsman's office.

ACT Policing

Of the 637 issues finalised this year, a large number (460 or 72%) were referred to the AFP's workplace resolution process for conciliation. A further 45 issues (7%) were subject to some investigative action; we decided not to investigate the remaining 132 issues (21%) on receipt or after making preliminary inquiries. The 'ACT Policing' section later in this report provides further information on investigations, including complaints conciliated through the workplace resolution process.

Of the 45 issues subjected to investigative action, the Ombudsman conducted a special investigation into one complaint about ACT Policing matters. Due to the personal nature of the complaint issues, we did not make the results of the investigation public. The other 44 issues (compared to 69 in 2003–04) were investigated by the AFP and reviewed by the Ombudsman's office. Of these issues:

- four (9%) were substantiated
- two (5%) were incapable of determination
- four (9%) were conciliated
- 27 (62%) were unsubstantiated
- one complaint issue was not pursued as it was withdrawn by the complainant.

The Ombudsman's office decided not to investigate six of the 44 issues, for reasons such as the ability of the complainant to raise the matter with a court or a tribunal, jurisdictional issues or other circumstances.

In reviewing AFP investigation reports, we found most represented a comprehensive investigation

and analysis, resulting in reasonable and appropriate recommendations.

There were some occasions where reports were returned to the AFP for further action—such as a quality assurance review of the report or further clarification of a particular issue. We also worked with the AFP to ensure that, where appropriate, the investigation outcome considered organisational issues and a response from the AFP directly to the complainant. Overall, we were satisfied that investigation reports represented robust responses to complaint issues.

‘In reviewing AFP investigation reports, we found most ... resulted in reasonable and appropriate recommendations.’

Time taken to finalise complaints

One of our major performance targets for 2004–05 was to finalise 90% of complaints about agencies within three months of receipt.

ACT Government agencies

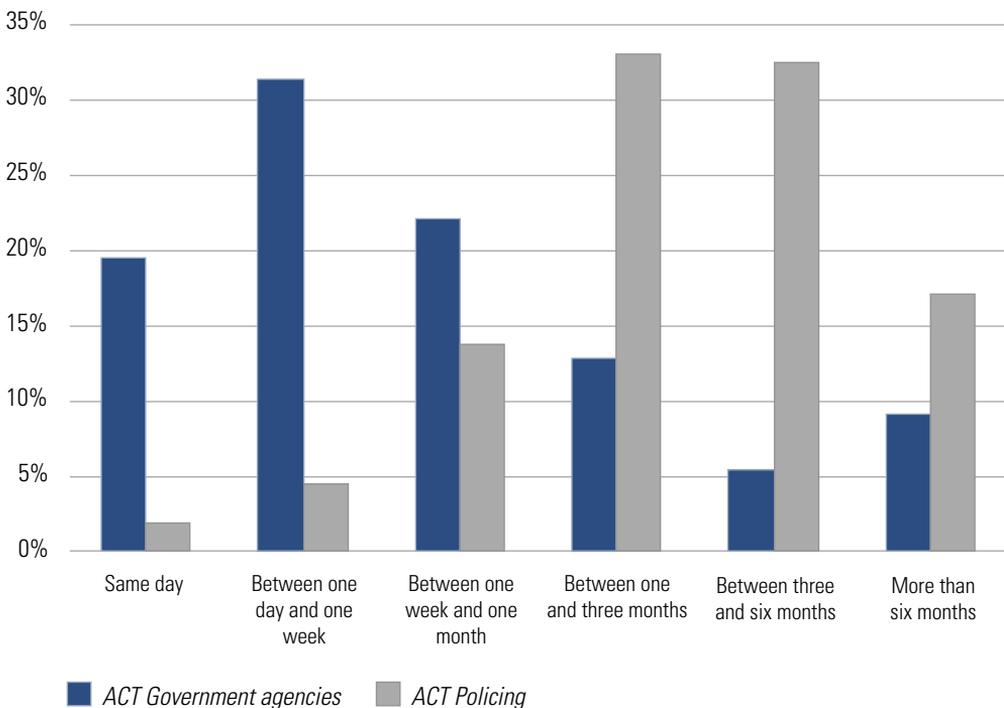
During the year 498 complaints about government agencies were finalised, of which 85% were completed within three months of receipt. This was a marked improvement over 2003–04, when we completed 81% of complaints within three months of receipt.

Of the remaining complaints, 6% were completed in three to six months and 9% took over six months to complete. Complaints taking more than six months to complete were more complex and usually required extensive involvement of senior staff.

ACT Policing

For complaints about the AFP, 53% were finalised within three months of receipt (compared to 68% in 2003–04) and 85% were finalised within six months. The remaining complaints, which extended beyond six months, were characterised by the size and complexity of the investigations.

FIGURE 2 TIME TAKEN TO FINALISE COMPLAINTS, 2004–05



This year we encountered difficulty in maintaining staffing numbers within our Law Enforcement Team, leading to delays in our review and finalisation of some matters. This led to a marked increase in the percentage of complaints taking three to six months to complete (33% in 2004–05, compared to 22% in 2003–04). The proportion of cases taking more than six months to finalise increased by 5%.

The filling of staffing positions and a workload management strategy implemented in June 2005 will see the backlog of cases reduced by August 2005. We are also continuing to work with the AFP to ensure that delays in AFP responses to complaints are minimised.

Figure 2 (on page 10) provides a detailed breakdown of the time taken to finalise complaints about ACT Government agencies and ACT Policing in 2004–05.

Training and liaison

The Ombudsman's office attaches great importance to establishing a cooperative and respectful relationship with government agencies and community sector organisations. This is important in the effective and efficient conduct of our complaint investigation role.

ACT Ombudsman staff participated in a number of formal and informal meetings with ACT Government and other agencies and provided a range of tailored training opportunities for agency staff.

Specific activities included:

- conducting a seminar entitled 'Promoting Good Administration' attended by representatives of 34 ACT Government departments and agencies in May 2005
- providing training to new ACT Corrective Services recruits on the role of the Ombudsman and the handling of complaints
- conducting two five-day Integrity Investigation Programs jointly with the AFP in May and June 2005

- participating in the Department of Justice and Community Safety's ACT Prison Project which is overseeing development of the new prison
- participating in the ACT Free Legal Advice Forum and the Complaint Handlers' Forum to discuss topical issues in complaint management
- visiting ACT Legislative Assembly members and their staff to provide advice on the services we provide to the ACT community
- conducting regular meetings with senior staff of the BRC to discuss ongoing complaint issues
- conducting regular meetings with senior managers in ACT Government agencies to provide feedback on complaints received and possible systemic issues
- meeting quarterly with the AFP's Professional Standards team to discuss issues relevant to the operation of the complaints management system, and meeting weekly with Professional Standards staff to discuss individual complaints and investigations
- conducting a range of outreach activities, including visits to community centres, local libraries and Indigenous communities, and participating in the annual National Multicultural Festival
- participating in the Australian National University Criminal Practice workshops with regular discussions about our role in law enforcement
- co-sponsoring a three-year study entitled 'Whistling while they work' on whistleblowing protection laws across Australia
- commenting on a range of ACT Government and agency submissions and discussion papers raising issues of administrative practice.

Members of the Ombudsman's Law Enforcement Team continued to assist other integrity bodies from the Asia-Pacific region through presentations to and training of international delegations, particularly in discussing the key aspects

of our relationship with the AFP. We hosted representatives of the Office of the Ombudsmen of Thailand, the Chinese Ministry of Supervision and the Hong Kong Police Force.

Service charter standards

We are committed to providing the best service possible. The ACT Ombudsman Service Charter is available on our website at www.ombudsman.act.gov.au. The Charter outlines the service that can be expected from the office, ways to provide feedback and steps that can be taken if standards are not met.

Where a complainant disagrees with our conclusions and decision on a complaint, they may ask for a review of how the investigation was conducted. A more senior officer not previously involved in the matter will conduct a review, and seek to determine whether the conclusion reached was reasonable, justified and adequately explained to the complainant. Only in exceptional circumstances will more than one review be undertaken.

During the reporting period, we received three complaints about our service delivery and ten requests for reviews of our complaint handling. We finalised seven reviews, with the original decision being affirmed in four complaints. In three cases we conducted further investigation on the basis of new information provided by the complainant. In one of these cases the decision remained unchanged, and in the other two cases some of the issues raised are being further investigated.



Prof. John McMillan, ACT Ombudsman, giving a presentation on promoting good administration at the ACT Government contact officers seminar in May 2005

ACT GOVERNMENT AGENCIES OVERVIEW

Each year we receive complaints across a range of issues about many government agencies. Many complaints are resolved quickly, with others requiring detailed examination of agency files and procedures.

During 2004–05, we focused on areas of concern relating to two agencies about which we receive a relatively high number of complaints each year.

- **Housing ACT complaints:** The areas that most commonly arise in complaints to the Ombudsman are maintenance and the housing application process. As a result of dissatisfaction expressed to us by housing tenants who had complained to the agency during 2003–04, we worked closely with Housing ACT staff in 2004–05 to develop proactive approaches to resolving complaints. There was a marked decrease (12%) in the number of complaints to the Ombudsman during the year.
- **Belconnen Remand Centre (BRC) complaints:** Complaint issues identified in 2003–04 were overcrowding, length of time in detention, and lack of exercise facilities and access to educational programs. Following discussions between our office and senior staff at the BRC in 2004–05, an activities officer was appointed to conduct educational programs and exercise equipment was installed for detainee use.

Complaint numbers in 2004–05 for the BRC were similar to those for the previous year. We will continue to work closely with senior staff at the BRC and monitor issues arising from detainees.

Common themes identified across agencies during 2004–05 are covered in this section of the report, and include:

- applying best practice in administration
- unclear or inadequate administrative procedures
- agency responsiveness
- falling through cracks in government administration.

Applying best practice in administration

It is expected that agencies will establish clear procedures and policies for the administration of their programs. Sometimes the actual application of procedures falls below what we would consider best administrative practice and mistakes are made. In these cases the Ombudsman focuses on helping the agency to acknowledge the error and develop strategies for avoiding similar errors in the future. Equally, we want to ensure that an agency provides an appropriate remedy for the complainant. Some agencies work hard to take up this challenge, as the *Insufficient verification* case study demonstrates.

CASE STUDY insufficient verification

Ms A registered a business name on the ACT Register of Business Names, administered by the Registrar-General's Office (RGO), and commenced business under that name. Six months later, the RGO wrote to Ms A advising the business name would be cancelled because it was similar to a previously registered business name.

Ms A wrote to the Ombudsman to complain that she had invested a considerable amount of money on signage, stationery and advertising and her business had established a client base. She felt she had been seriously disadvantaged by the RGO's actions.

We contacted the RGO to ask why the business name registration had been approved given that a similar name already existed, and why it had taken so long to detect the error.

The RGO acknowledged that an error had occurred during registration of Ms A's business name, and committed to tightening its verification procedures. The RGO also apologised to the complainant and offered reasonable compensation to cover the costs incurred.

In the *Insufficient verification* case we were satisfied the agency had recognised the problem and had provided the best solution possible in the circumstances. The complainant had been disadvantaged, but action was taken to minimise the damage. Unfortunately, in other cases, while the agency can take action to avoid a recurrence of a problem, there is little remedy for the complainant. The *Validity of extensions* case study illustrates this point.

Unclear or inadequate administrative procedures

The responsibilities of an agency to the public are defined by its legislation and internal administrative policies and procedures. During the year, we received a number of complaints that highlighted instances where agencies had made decisions in accordance with relevant administrative procedures, yet the procedures were either ambiguous, insufficiently comprehensive or incorrectly interpreted, resulting in problems for the complainant. The *Inconsistency in policy application* case study is one example.

CASE STUDY validity of extensions

Mr B complained to the Ombudsman about a two-storey development occurring next door to his property. The former Commissioner for Land and Planning had granted the developer approval to commence construction within 12 months and to complete construction within 24 months.

The developer had not commenced construction until 21 months later and had not sought an extension on the commencement date until 17 months after the approval date. The ACT Planning and Land Authority (ACTPLA) had also approved several other extensions in addition to this extension.

We questioned the validity of extensions of time granted by ACTPLA, as its legislation did not allow for extensions. We pointed out that the practice of granting extensions was based on a misconception that had wide-ranging implications for development approvals generally.

ACTPLA accepted that its practice was legally questionable and agreed to seek a legislative amendment to clarify the power to grant extensions. In the circumstances, we decided this was a satisfactory outcome, even though no appropriate remedy could be provided to the complainant.

CASE STUDY inconsistency in policy application

A number of NSW parents complained to the Ombudsman about the out-of-area enrolment procedures for a particular ACT high school. The parents complained that the oral undertaking by the high school's principal led them to believe that the school would continue its long-standing practice of giving priority to out-of-area students who meet one of three criteria: living in the surrounding rural areas; being a sibling of a current student; or being enrolled in a special program.

The criteria given in the oral undertaking by the principal were not followed, and priority enrolment was refused to some children who had been accepted into the special programs and to some children who had siblings at the school. The parents complained that: the advice given by the principal was misleading; there was no advice on right of appeal; and the appeal period was too short.

Our investigation determined that the school's enrolment policy and the oral advice given to parents were inconsistent with the Department of Education and Training's policies and guidelines. In addition, parents were not advised of their right to appeal and there was limited time in which to lodge an appeal. Of the booklets provided to Ombudsman staff about specialist programs, only one booklet indicated that acceptance into a specialist program did not guarantee enrolment into the school.

The school's principal accepted responsibility that the oral advice given had raised the expectations of parents and students. The Department instituted an appeal process to deal with the numerous complaints about the enrolment policy, allowing parents the opportunity to challenge the enrolment refusal. The Ombudsman suggested that the school's out-of-area enrolment policy be brought into line with the Department's policy and the seven-day timeframe for appeals be extended.

Agency responsiveness

A big challenge for agencies across the ACT Government is to be responsive to complaints, both in timeliness and in making an extra effort. Many of the complaints we receive arise where a client has asked for information or action from an agency, and the agency has not acknowledged the request or provided an explanation for a delay in responding. The *Delayed responses* case study is an example of a readily avoidable complaint, where the agency could have saved itself (and our office) extra work.

Responsiveness is a critical aspect of good administration, which we constantly draw to the attention of agencies. We have seen excellent

examples where agencies have responded positively once a problem has been brought to their attention, as the *Inappropriate comments* and *Unfinished action* case studies demonstrate.



Image courtesy of ACTION Authority.

CASE STUDY delayed responses

Ms D complained to the Ombudsman after the Office for Children, Youth and Family Support (OCYFS) did not respond to several of her letters.

In response to our inquiries, OCYFS acknowledged that it had not answered Ms D's letters. OCYFS subsequently wrote to Ms D apologising and providing answers to her queries.

CASE STUDY inappropriate comments

Ms E complained on behalf of her 14 year old son about discrimination and inappropriate comments from an ACTION bus driver. Her son had a school term bus ticket that allowed him to catch any bus on any route. On several occasions when he tried to catch a public bus, as opposed to a school-designated bus, the ACTION driver directed him to get off the public bus and catch the school bus.

Ms E complained to ACTION. The bus driver subsequently made comments to her son that Ms E found inappropriate and discriminatory.

Following our inquiries, ACTION acknowledged the error and agreed to re-educate all its drivers on the policy that a student holding a term ticket is entitled to catch any bus. ACTION's Customer Service Manager spoke to the driver involved in the incident. In addition, all ACTION bus drivers were reminded of the appropriate manner expected by ACTION when engaging with customers. ACTION sent a written apology to Ms E and her son.

CASE STUDY unfinished action

Ms F was a Housing ACT tenant. She had informed Housing ACT that she wished to cancel direct debits from her bank account for her rental payments, opting to pay in cash at the post office instead.

While Ms F's housing manager confirmed this changed arrangement in writing, Housing ACT did not cancel the direct debit. As a result, continued attempts to direct debit Ms F's account left her with over \$300 in bank charges incurred when there were insufficient funds in her account to cover the debit.

In response to our inquiry, Housing ACT acknowledged that an error had occurred, apologised to Ms F and reimbursed bank fees arising from the incorrect debits.

Falling through the cracks

During the year, we found a number of instances where issues raised by complainants crossed the administrative responsibilities of more than one agency or organisation. Unfortunately, complainants can find themselves caught between the agencies, with each agency believing the problem is not theirs. The result can be frustrating for complainants whose main objective is to find a resolution to their problem.

Understandably, they may see government, including non-government utilities, as a single entity that should be able to deal with their problem in a coordinated way. The *Lack of coordination* case study is one example of such a problem brought to the Ombudsman's office. We intend to focus on improving responses in these situations over the next year.

Dryandra Street own motion investigation

The Ombudsman conducted an own motion investigation into Traffic Infringement Notices (TINs) issued in a residential street in the suburb of Lyneham. The investigation was conducted in association with the AFP, and came to light during a related own motion about the AFP's administrative processes associated with the adjudication of TINs. The investigation resulted in the withdrawal of over 470 TINs issued to motorists. In view of the significant number of ACT

residents affected by this investigation, we have provided a detailed report on its conduct below.

On 1 June 2003, the ACT Government introduced 'neighbourhood speed limits'—a default 50 kilometres per hour (kph) speed restriction to apply on all ACT roads unless signs indicate otherwise. A short while later, ACT Policing began receiving an unusually high number of requests for withdrawal of TINs for Dryandra Street, Lyneham, following detection of speeding infringements by mobile speed cameras. Without exception, the requests for



CASE STUDY lack of coordination

Mr G complained to the Ombudsman about the ACT Planning and Land Authority (ACTPLA) and ActewAGL. Mr G had lodged a development application with ACTPLA to build a home. The application was approved and building commenced.

ActewAGL objected soon after, stating that the new plans would interfere with utility infrastructure (in this case aerial electricity lines). ActewAGL advised Mr G that it would cost nearly \$7,000 to have the electricity lines rearranged; alternatively, Mr G could submit amended plans that would have meant lengthy and costly delays. Mr G decided to pay to have the electricity lines rearranged.

Mr G's complaint arose from a lack of coordination between ACTPLA and ActewAGL about development requirements. This resulted in considerable inconvenience and expense to Mr G. The Ombudsman is still pursuing the issue with the two organisations.

withdrawal cited the reason as a lack of speed restriction signs (causing ambiguity and, it was argued, a lack of fairness).

Responsibility for ACT road signs and the mobile-speed-camera policy rests with the Department of Urban Services (DUS). While the Ombudsman had not received complaints directly, we were mindful that the implementation of the speed-camera policy in the ACT and other jurisdictions had been a matter of public interest. Questions had been raised in public discussion about the technology used to detect potential infringements at a high volume and low cost, leaving government open to accusations of 'revenue raising'.

Consequently, the Ombudsman considered it was appropriate to conduct a separate own motion investigation into the Dryandra Street issues to ensure DUS was properly administering its speed-camera policy. DUS cooperated readily and agreed not to issue further TINs while the investigation was being conducted.

The investigation established that the majority of the TINs in question resulted from detected speeds between 51 kph and 65 kph, lending credibility to the assertions of motorists that they mistakenly believed that they were travelling in a 60 kph zone. Site inspections were conducted with the AFP and DUS to determine possible ambiguity in the speed limit for the street. Our investigation established that the DUS policy document on speed limits had not been updated to take account of the introduction of the 50 kph default speed limit.

DUS agreed that there were special factors about Dryandra Street that might have led some motorists to be confused about the applicable speed limit. DUS also agreed that ensuring fairness is an important concern when mobile speed cameras are used.

The outcome of the investigation was that DUS withdrew approximately 470 TINs, refunded applicable penalties and reinstated the demerit point balances of the affected motorists. DUS also erected signs on Dryandra Street to remind motorists that the 50 kph default speed limit applies.

ACT POLICING OVERVIEW

The Australian Federal Police (AFP) and the Ombudsman's office share responsibility for investigating complaints about the AFP's ACT Policing. AFP members provide policing services for the ACT in areas such as enforcing traffic law; maintaining peace and order; undertaking crime prevention activities; responding to critical incidents; and investigating serious crime.

AFP members, including those assigned to ACT Policing, are subject to the provisions of the *Complaints (Australian Federal Police) Act 1981* (Cth) (the Complaints Act). Approximately 65% of all complaints we receive about the AFP relate to ACT Policing. The remaining complaints relate to the AFP's corporate, national and international roles and are reported in the Commonwealth Ombudsman Annual Report 2004–05.

It is natural that a high number of complaints are made about ACT Policing because of the level of public interaction involved in community policing work.

The AFP's Professional Standards team investigates most complaints about AFP members; and formally investigates serious complaints about police actions, with involvement from Ombudsman staff. We receive briefings on the progress of investigations, and work with AFP investigators to ensure appropriate management of systemic issues and contact with complainants. We review all investigation reports and are generally satisfied that investigations are comprehensive and robust. The Ombudsman conducts independent inquiries and investigations, if appropriate.

'We work with AFP investigators to ensure appropriate management of systemic issues and contact with complainants.'

For some investigations conducted during 2004–05, we requested the AFP to reconsider certain aspects of, or responses to, complaints. The AFP's responses to our requests were invariably professional and helpful, which is illustrative of the mature relationship between this office and the AFP.

The Ombudsman will generally conduct an investigation when:

- practices and procedures are the central elements of the complaint
- it is not appropriate for the AFP's internal investigation area to investigate the complaint
- the investigation is initiated under the Ombudsman's own initiative powers.

An overview of the Ombudsman's complaint handling is provided below.

Complaints

In 2004–05, we received 443 complaints about ACT Policing compared to 503 in 2003–04. As stated earlier in this report, there has been a general decrease in the number of complaints made about ACT Policing over the past seven years, with a 12% decrease this year. Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in various outcomes.

This year, we continued to observe that many complainants remained dissatisfied with the explanations for police actions provided to them through the conciliation process. We did not observe many cases where we felt that the conciliation did not represent an adequate approach to the complainant's concerns. Despite dissatisfaction from the complainant, we decided that further consideration by our office was not warranted in 214 unsuccessful conciliations.

In 2003–04, the Ombudsman assessed that it is unproductive and an ineffective use of limited Ombudsman staff resources to investigate a matter if the complainant is not committed to using the conciliation process or the nature of the complaint has not been properly detailed. The requirement to allocate our resources to matters where there was a reasonable prospect of an investigative or conciliated outcome saw an increase in the number of issues we decided not to investigate on receipt or after making preliminary inquiries—132 or 21%, compared with 17% in 2003–04 and 12% in 2002–03.

Workplace resolutions

The majority of complaints about the AFP's ACT Policing role are handled through workplace resolution. Most complaints are of a relatively minor nature and concern the alleged conduct of police, such as incivility or rudeness. The Complaints Act allows the AFP to conciliate these complaints directly with the complainant and senior operational staff through its workplace resolution process.

Many complaints are effectively resolved with the complainant receiving an explanation of police powers and reason for priorities, or acknowledgment of a minor mistake by a member. When a complaint is finalised through the workplace resolution process, the AFP provides a report to the Ombudsman explaining how it managed or investigated the complaint.

'Most complaints are of a relatively minor nature and concern the alleged conduct of police, such as incivility or rudeness.'

The workplace resolution process also:

- allows members of the public to provide feedback about their experience of interaction with police
- provides AFP members with the opportunity to acknowledge and learn from minor mistakes
- facilitates a more timely and flexible response to complaint issues than formal investigation.

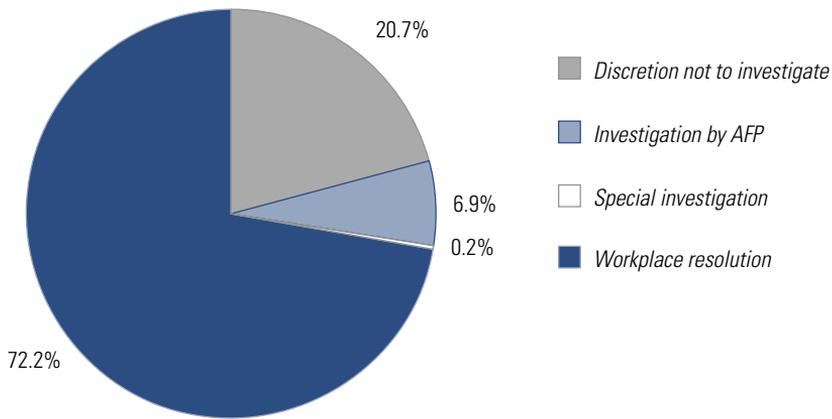
Conciliation remained an important aspect of dealing with customer service and minor complaints, with 460 issues (72%) being managed through the workplace resolution process, as shown in Table 1.

A significant proportion of complaints concerning ACT Policing were assessed as suitable for conciliation using the workplace resolution process, as shown in Figure 3.

TABLE 1 AFP—ISSUES RAISED IN COMPLAINTS TO THE OMBUDSMAN MANAGED AND RESOLVED BY CONCILIATION, 2000–01 TO 2004–05

Year	Issues managed through workplace resolution process	Proportion of issues successfully conciliated
2004–05	460 issues (72%)	246 issues (54%)
2003–04	455 issues (71%)	272 issues (60%)
2002–03	537 issues (67%)	269 issues (50%)
2001–02	394 issues (48%)	238 issues (60%)
2000–01	513 issues (59%)	287 issues (56%)

FIGURE 3 ACT POLICING—METHOD OF HANDLING COMPLAINTS ISSUES FINALISED, 2004–05



Discretionary decision making

As in previous years, a significant number of complaints about ACT Policing in 2004–05 related to Traffic Infringement Notices (TINs)—specifically, to rudeness or bias on the part of the officer issuing the TIN. It appears that members of the public did not feel they were treated respectfully, or that the AFP officer issuing the TIN was not prepared to consider exercising the discretionary powers available to the officer. These concerns were echoed to a lesser extent in other areas where AFP members also have a degree of discretion, notably the granting of bail and decisions to arrest on summons.

We continued to emphasise that decisions by AFP members, which impose a financial penalty on a person (for example, through the issue of a TIN

or a defect notice) or deprive a person of their liberty (through arrest or refusal to grant bail), should include consideration of any available discretionary powers.

The reality of operational policing is that AFP members are required to make decisions in pressured circumstances and often when dealing with people who are agitated or aggressive. While the focus is on maintaining appropriate control of the situation and circumstances, it is also important that AFP members allow people to explain their actions and to request the application of police discretion.

‘We continued to emphasise that decisions by AFP members ... should include consideration of any available discretionary powers.’

Custody in the watch house

The management of people in custody continues to remain a strong focus for the Ombudsman's office. Complaints relating to the City Watch House varied during the year. Some of the issues related to rough handling, minors being detained without notifying their parents, requests for medical assistance going unanswered and failure to follow procedures relating to the management of intoxicated people. The *Detention of a minor* case study demonstrates one example.

For several years the AFP has assured the Ombudsman that a new digital recording system will be installed in the City Watch House. Complaints received this year again demonstrate the need for effective video surveillance to assist in resolving complaints, particularly relating to the use of force in restraining and moving people, and

the standard of care provided in custody. These issues are the core sensitivities for the public relating to police custody.

It remains vital to ensure that monitoring of police conduct, and the investigation of complaints, is supported by a video recording system.

In one complaint matter, existing video evidence corroborated the AFP member's account, disproving a complainant's allegations about the excessive use of force when he was being moved from one cell to another.

The development of an effective and reliable video system as an important accountability tool was demonstrated in the investigation of a complaint where a watch house staff member intentionally struck an intoxicated person, as outlined in the *Use of force* case study.

CASE STUDY detention of a minor

Ms S contacted the Ombudsman's office to complain that the AFP had not notified her about the arrest of her son, T (a minor). Although T was intoxicated at the time of his arrest, he claims that his request to call his parents was denied. Ms S was not contacted by the AFP and heard from T only when he was released from custody the next morning.

An investigation substantiated Ms S's claim that she was not notified about her son's arrest and detention. This was in breach of AFP guidelines for dealing with young people, which require a parent or guardian to be notified as soon as practicable after the arrest or detention of a young person. It is also contrary to the recommendations made in the Ombudsman's June 2001 own motion investigation report about the management of intoxicated people—Review of the AFP's use of powers under the *Intoxicated Persons (Care and Protection) Act 1994* (ACT).

Although this matter was conciliated with Ms S and her son, the Ombudsman's office recommended that the AFP alter some of its procedures to ensure parents or guardians are more promptly advised of the arrest or detention of a young person.

CASE STUDY use of force

Ms U complained that an AFP member had struck her in the face while she was intoxicated and being held in custody, and that some jewellery had been damaged. Due to the serious nature of the complaint, the Ombudsman's office requested that the City Watch House provide all relevant video footage for viewing. Examination of the footage showed that Ms U had been struck with an open hand and that a necklace had been pulled from her neck.

The subsequent internal investigation of these actions substantiated the complaints of excessive use of force and damage to the necklace. Action was taken in relation to the AFP member's conduct and judgement, including action to prevent recurrence of such an incident.

The video footage also identified that some AFP members, who were present at the watch house during this incident, did not consider the actions of the particular AFP member to be excessive. The video footage provided a basis on which to take remedial action to remind these members of their professional standards obligations.

Access to the watch house video footage was pivotal in allowing the Ombudsman and the AFP to reach clear opinions, and remove any ambiguity, about what happened. Ombudsman staff were satisfied the AFP responded appropriately to the issue, and will continue to monitor the outcomes of this incident.

In other complaints, video evidence would have provided assistance in resolving complaint allegations. In one example, a complainant claimed that his watch was broken and water was refused while he was in custody. The complainant's cell was not monitored by video surveillance and the lack of corroborative evidence prevented a conclusion being reached about his allegation.

The Ombudsman has asked watch house staff to advise him immediately of all video failures as they occur until a new system is installed.

Family Violence Intervention Program

We continued to take a special interest in family violence complaints in 2004–05. There was a decrease in complaints about police responses to family violence issues, suggesting that the AFP's Family Violence Intervention Program is an effective management tool in dealing with these difficult issues. Where complaints were received or investigated, the issues tended to concern the decisions made by AFP members about an arrest or the nature of charges that would be laid.

Cooperative working relationships

Following a fatal high-speed pursuit in 2004, ACT Policing initiated a review into the guidelines for conducting high-speed pursuits. Based on research and information gathered from complainants, the Ombudsman made a number of suggestions that the AFP took into account when finalising the revised guidelines.

Ombudsman staff have been working collaboratively with the AFP since 2003 on a project to improve administrative processes associated with the adjudication of TINs. The project was initiated because of the high level of complaints over a number of years about the AFP's traffic adjudication responsibility.

The project has led to changed administrative practices, including those relating to the AFP's role in deciding whether individual TINs should be withdrawn or disputed in court. The Ombudsman is confident the changes will reduce complaints about the AFP in this area. The results of the project were provided to the AFP Commissioner in early July 2005.

Critical incidents

In our 2003–04 annual report, we indicated that we would work with the AFP to develop critical incident guidelines. The forecast reform of law enforcement integrity systems has resulted in a review of our role in these matters. While we will continue to provide probity reviews of investigations into critical issues, we will not pursue an active involvement in critical incidents, as we believe that the AFP is best placed to respond to these events.

Special investigation of AFP member

Following the receipt of a complaint, Ombudsman staff conducted a special investigation into the circumstances of an AFP employee who had been investigated by the AFP under both disciplinary and criminal regimes. The decision to proceed by way of special investigation (as opposed to the usual practice of referring the matter for Professional Standards investigation) was made because of the unique circumstances of the employee involved and the fact that the complaint concerned members of the Professional Standards team.

The investigation was finalised with no criticism from the Ombudsman of the AFP's administrative practice or individual members of the AFP. However, it was suggested that the AFP consider developing guidelines for managing information about AFP members who are arrested.

HUMAN RIGHTS ACT

The ACT Ombudsman is working collaboratively with the ACT Human Rights Commissioner to review conditions at the Belconnen Remand Centre and Quamby Youth Detention Centre.

Consistent with ensuring that human rights standards are incorporated into agency administrative procedures, the Ombudsman's office has worked closely with senior staff at the Belconnen Remand Centre to address issues of overcrowding, lack of exercise and lack of access to educational facilities. We have also monitored compliance with the standing orders established for the operation of the centre. Where there have been concerns about non-compliance the Ombudsman has raised these with senior management at ACT Corrective Services.

We are continuing to participate in the Justice and Community Safety ACT Prison Project, which has been established to ensure that the new ACT prison conforms to human rights standards. The experience that the Ombudsman's office can bring from its work involving complaints about immigration detention facilities is also relevant to this project.

ACCESS TO GOVERNMENT STRATEGY

The Ombudsman recognises the importance of the Access to ACT Government Strategy in ensuring equality of access to the services of the ACT Ombudsman for people with disabilities and in eliminating discriminatory practices by staff. The office endeavours to meet its obligations under this strategy through implementation of a Disability Action Plan.

The Ombudsman's Disability Action Plan was reviewed during 2004–05. A revised plan is in place for the three-year period July 2005 to June 2008.

The plan commits the Ombudsman's office to ensuring that people with disabilities are not disadvantaged when attempting to access the services provided by our organisation. It outlines the various approaches we are taking, such as:

- being accessible, with the minimum of formality, to all people who believe they have been adversely affected by defective ACT Government administration, regardless of ethnic or cultural background, sex, language differences or disability
- identifying, and overcoming where possible, barriers which might prevent ready access to the Ombudsman's information and services
- ensuring that the office identifies and understands the priorities and needs of the community (particularly those facing disadvantage).

The implementation of the plan is being monitored through the office's Occupational Health and Safety Committee.

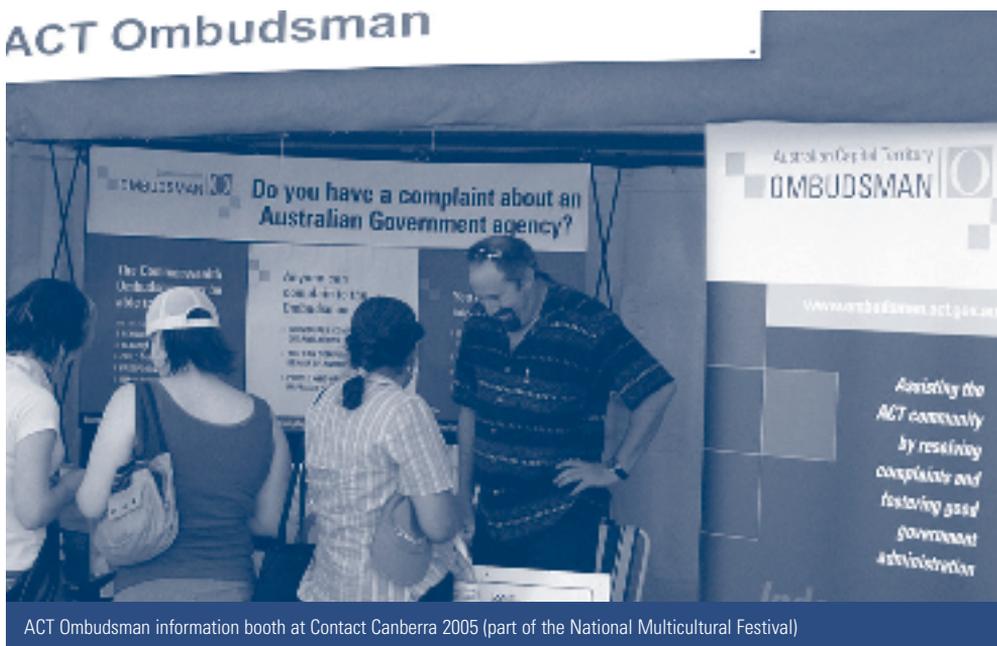
COMMUNITY ENGAGEMENT

Staff from the ACT Ombudsman Team and the Law Enforcement Team engaged with the ACT community in a variety of ways. This aspect of our work is important in raising public awareness of the right to complain to the Ombudsman and building confidence in the role of the Ombudsman in managing and investigating complaints about ACT Government agencies and ACT Policing.

During 2004–05, we identified key organisations and events in the ACT to target as part of our outreach program. Significant activities included:

- ACT Government Contact Officers Seminar—around 40 staff from ACT Government agencies attended our office's seminar, entitled 'Promoting Good Administration'
- ACT Legislative Assembly—a presentation on the services we provide was given to new members by the Deputy Ombudsman
- Contact Canberra 2005 (part of the National Multicultural Festival)—an information booth from the Ombudsman's office attracted 127 enquiries
- presentations were made to local libraries, youth centres, community organisations and ACT Government shopfront staff.

ACT Ombudsman



ACT Ombudsman information booth at Contact Canberra 2005 (part of the National Multicultural Festival)

We recognise that Indigenous and ethnic communities face significant barriers to obtaining fair and equitable access to government services. With this in mind, we have been active in promoting our services to local Indigenous and non-English speaking community groups. This has included visits to the Wreck Bay community, where Ombudsman staff met with Indigenous leaders and elders to discuss the issues facing their communities.

Members of the office's ACT Ombudsman Team and Law Enforcement Team visited the Symonston Temporary Remand Centre, Quamby Youth Detention Centre and Belconnen Remand Centre to work with administrative staff to look at and address detainees' concerns. Ombudsman staff also provided induction training for new ACT Correctional Services officers.

We will continue to develop this program in 2005–06 through participating in community events and forums, hosting and participating in seminars and workshops, and visiting ACT Government agencies and community, business and professional organisations. We will also engage with local media, where appropriate, to support our outreach program.

MULTICULTURAL FRAMEWORK

The Ombudsman provides information sheets on how to make a complaint in 26 community languages, including Arabic, Chinese, Farsi, Filipino, Greek, Italian, Korean and Vietnamese, to name a few. The information sheets are available via a link on our website homepage at www.ombudsman.act.gov.au.

corporate management

INTERNAL ACCOUNTABILITY STRUCTURES AND PROCESSES

The Commonwealth Ombudsman is also the ACT Ombudsman under a Memorandum of Understanding with the ACT Government. The Ombudsman's office remains independent of the ACT Government.

The Governor-General appointed Prof. John McMillan as Commonwealth Ombudsman in March 2003 for a five-year period. The Ombudsman's remuneration is determined in accordance with a ruling by the Remuneration Tribunal.

In 2004–05, the Ombudsman delegated day-to-day responsibility for operational matters for the ACT Ombudsman to Senior Assistant Ombudsman Katherine Campbell, and responsibility for law enforcement, including ACT Policing, to Senior Assistant Ombudsman Vicki Brown. Both are supported by a team of specialist staff in carrying out these responsibilities for the Ombudsman. The Ombudsman and Deputy Ombudsman both maintain an active involvement in the work of these two teams.

STRATEGIC AND ORGANISATIONAL PLANNING

Each year, the Ombudsman develops a Strategic Plan and a Business Plan for the office, which identify priorities for the year. Progress against these plans is monitored and assessed on a quarterly basis, with any adjustments made accordingly.

The plans are customised to reflect current challenges and relevant issues facing individual teams. These business plans are, in turn, used to develop individual work plans for staff members.

Strategic directions for the office are being reviewed for the period 2005–06 to 2007–08, and a priority action plan for 2005–06 is being developed.

GOVERNMENT CONTRACTUAL DEBTS

The Ombudsman is not subject to the reporting requirements of the *Government Contractual Debts (Interest) Act 1994* (ACT). See the 'Annual reporting compliance' section in the Ombudsman overview section of this report for more information.



From left: Ron Brent (Deputy Ombudsman), Vicki Brown, John McMillan (ACT Ombudsman) and Katherine Campbell

information and access

FREEDOM OF INFORMATION

Complaints about the actions of agencies

Section 53(3) of the *Freedom of Information Act 1989* (ACT) (the FOI Act) requires the Ombudsman to report on complaints about the handling of freedom of information (FOI) requests by ACT Government agencies.

This year, we received 15 complaints, involving nine agencies, in which the handling of requests made under FOI provisions was raised as an issue. These complaints mostly related to concern about delays in providing documents and/or reasons for exemption. Frequently the focus of our intervention is to have the agency expedite a response.

Freedom of information requests to the Ombudsman

In 2004–05, we received seven FOI requests under section 15 of the FOI Act. The Act mandates a 30-day period for the processing of FOI requests, subject to certain exceptions and extensions. Three FOI requests were processed within this period, with the remainder being processed outside that timeframe after obtaining the consent of the applicants concerned.

Following requests by the applicants, we conducted internal reviews of two of the decisions. There were no applications for review of decisions made to the Administrative Appeals Tribunal. The cost of dealing with the requests was substantial but so dispersed throughout the office that reliable calculation is not feasible. During the period, no fees or charges were imposed on the applicants in relation to either the primary FOI decisions, or the internal review of those decisions.

The Ombudsman has been considering whether much would be lost if the office, like some of its State counterparts, was excluded from the FOI Act for documents relating to its investigative functions.

PUBLIC INTEREST DISCLOSURE

The Public Interest Disclosure Act 1994 (ACT) (the PID Act) provides that a person may make a Public Interest Disclosure (PID), including to the Ombudsman. Complaints of this nature are usually sensitive and often complex, and their investigation requires a great deal of care.

One area of difficulty is where the person making the disclosure is employed by the agency about which they are complaining. The facts that can bring a matter under the PID Act can be intertwined with other events that have contributed to a disagreement or dispute between the person and the government agency.

It can be difficult to separate the PID issues from other events, particularly if there is a complaint of unlawful recrimination attributable to a PID Act disclosure. It is common for the PID issue to emerge (or to be notified formally) some time after the disagreement or dispute has arisen.

‘One area of difficulty is where the person making the disclosure is employed by the agency about which they are complaining.’

The PID Act is an important element in the framework of democratic, ethical and accountable government in the ACT. The Ombudsman’s role under the PID Act is one that is taken seriously.

Since the PID Act has been in place, the Ombudsman has received on average one disclosure a year. However, there was a significant increase in 2003–04 when six disclosures were received about five agencies. This trend continued in 2004–05, when we received four disclosures about four agencies, as outlined below.

- In April 2005, we received a request from a complainant asking the Ombudsman to

investigate his PID because he had made the disclosures five months earlier to the agency that he had been employed by, and the agency still had not responded to him.

- In May 2005, the ACT Commissioner for Public Administration referred two complaints for our consideration. As serious allegations were made against the departments for which the individuals worked, the Commissioner felt that it was more appropriate for the Ombudsman to investigate the disclosures.
- The remaining PID was from a complainant who raised issues about an agency that had recently terminated his employment.

The office is continuing to investigate each of these matters, along with three PIDs that were received in 2003–04.

During the year, the office of the Commonwealth Ombudsman committed to collaborating in a three-year national research project into the management and protection of internal witnesses (or ‘whistleblowers’) in the Australian public sector. The project is being led by Griffith University and involves five other universities and 14 industry partners from the Commonwealth, State and Territory public sectors.

We are contributing considerable resources to the project, including the participation of senior staff on the project steering committee, a part-time staff

member to work on the project, and a one-off cash contribution of \$15,000.

Protecting whistleblowers and other internal witnesses to corruption, misconduct and maladministration is an ongoing challenge in public sector governance. The project will build on previous Australian and international research to assemble a more up-to-date and representative picture of how whistleblowing and related PIDs are being and should be managed.

TERRITORY RECORDS

In accordance with the *Territory Records Act 2002* (ACT) the ACT Ombudsman’s office ensures that:

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

APPENDIX

statistics

TABLE 1—ACT Government departments and agencies complaints received, and complaints and issues finalised, 2004–05, *Ombudsman Act 1989* (ACT) (including freedom of information).

TABLE 2—ACT Policing complaint issues finalised, 2004–05, *Complaints (Australian Federal Police) Act 1981* (Cth).

TABLE 3—ACT Policing method of handling complaint issues finalised, 2004–05, *Complaints (Australian Federal Police) Act 1981* (Cth).

Legend for tables

Advised to pursue elsewhere—complainant advised to pursue complaint directly with agency, court or tribunal, industry or subject specialist, Member of Parliament or Minister.

AFP investigation—AFP investigation of complaints against AFP members and review by the Ombudsman.

AFP workplace resolution—complaints managed by the AFP in the workplace.

Complaint not pursued—withdrawn by complainant, or written complaint requested but not received.

Complaints finalised—complaints finalised in 2004–05, including some complaints carried over from previous years.

Complaints received—complaints received in 2004–05.

Conciliated—complaints conciliated through the AFP's workplace resolution process.

Defect—administrative deficiency determined where an agency has not acted fairly, reasonably or in accordance with its legislation, policies and procedures.

Incapable of determination—sufficient evidence was not available to support a clear conclusion.

Issues—complaints can contain a number of issues, each requiring a separate decision as to whether to investigate. Each issue may result in a separate outcome.

Ombudsman decision not to investigate—the Ombudsman may decide not to investigate where a person has not tried to resolve their problem directly with the relevant agency or there is a more appropriate avenue of review available.

Ombudsman investigation—further investigation, following preliminary inquiries stage, asking more questions and reviewing the agency's files, policies and procedures.

Ombudsman investigation not warranted—investigation not warranted for one of the following reasons: complaint issue is over 12 months old, frivolous or not in good faith, insufficient interest, or related to commercial activity, or 'not warranted' having regard to all the circumstances.

Ombudsman preliminary inquiries—initial inquiry to determine whether a complaint is within jurisdiction, an investigation is required or the complaint can be resolved by informal inquiries.

Out of jurisdiction—complaint not within the Ombudsman's legal powers.

Resolved without determination—complaint issues resolved before the office reached a view as to whether or not there was any administrative deficiency.

Special investigation—investigations conducted under section 46 of the Complaints Act may be conducted solely by the Ombudsman or jointly with the AFP.

Substantiated—complaint issue was found to be true.

Unsubstantiated—there were no grounds for the complaint.

TABLE 1 ACT GOVERNMENT DEPARTMENTS AND AGENCIES COMPLAINTS RECEIVED, AND COMPLAINTS AND ISSUES FINALISED, 2004–05, *OMBUDSMAN ACT 1989*(ACT) (INCLUDING FREEDOM OF INFORMATION)

Agency	Complaints		Outcome of issues finalised							Total issues finalised
	Received	Finalised	Agency defect	No agency defect	Resolved without determination	Ombudsman investigation not warranted	Advised to pursue elsewhere	Complaint not pursued	Out of jurisdiction	
ACT Architects Board	1	1					2			2
ACT Bureau of Sport and Recreation	1	1				1				1
ACT Canberra Institute of Technology	7	6				3	1		2	6
ACT Chief Minister's Department	4	4				1		1	2	4
ACT Community Advocate	3	4	1		2	1		1		5
ACT Corrective Services	104	104	2	2	9	77	30	7	3	130
ACT Cultural Facilities Corporation	2	2		1			1		1	3
ACT Department of Disability, Housing and Community Services	4	5		1			2	1	1	5
ACT Department of Education and Training	8	14	6	10	2	4	2	1		25
ACT Department of Justice and Community Safety	3	3				1	1		1	3
ACT Department of Treasury	8	8		1		5	2			8
ACT Department of Urban Services	20	25	2	2		13	8	3	1	29
ACT Director of Public Prosecutions	2	3		1	1	1				3
ACT Emergency Services Bureau		1				1				1
ACT Health	7	6		1		1	2		2	6
ACT Human Rights Office	1	1				1	1			2
ACT Law Society	1	1				1				1
ACT Legal Aid Office	10	12		1		8	3	1		13
ACT Legislative Assembly		2						2		2
ACT Magistrates Court	8	9				4	3		2	9
ACT Office for Children, Youth and Family Support	50	53	3	5	2	28	21	6		65
ACT Office of Fair Trading	6	6			1	4	1			6
ACT Planning and Land Authority	44	52	5	11	7	15	30	6		74
ACT Public Trustee	5	5				4	1			5
ACT Registrar-General's Office	4	4				3	1			4
ACT Road User Services	51	50	1	3		32	13	2	1	52
ACT Supreme Court	3	3				1	1		1	3
ActewAGL	5	5				1	2		2	5
ACTION	4	5		1		1	3			5
Environment ACT	5	7		3		2	3	1		9
Housing ACT	83	91	8	9	1	38	45	2	2	105
Office of the Occupational Health and Safety Commissioner and ACT Workcover	3	3				1	1	1		3
University of Canberra	2	2					1	1		2
Total	459	498	28	52	25	253	181	36	21	596

TABLE 2 ACT POLICING COMPLAINTS ISSUES FINALISED, 2004–05, *COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981* (CTH)

Complaints	Received	443
	Finalised	506
<hr/>		
Outcome of issues finalised	Conciliated	250
	Incapable of determination	2
	Substantiated	4
	Unsubstantiated	27
	Ombudsman investigation not warranted	267
	Advised to pursue elsewhere	3
	Complaint not pursued	83
	Out of jurisdiction	1
	Total issues finalised	637

TABLE 3 ACT POLICING METHOD OF HANDLING COMPLAINT ISSUES FINALISED, 2004–05 *COMPLAINTS (AUSTRALIAN FEDERAL POLICE) ACT 1981* (CTH)

Method of handling complaints	Ombudsman decision not to Investigate	85
	Ombudsman preliminary inquiries	47
	Ombudsman investigation	0
	AFP workplace resolution	460
	AFP investigation	44
	Special investigation	1
	Total issues finalised	637

Note: The office reviews and audits its statistical data. Minor adjustments to statistics used in this report may occur as a result of such reviews.

abbreviations and acronyms

ACT	Australian Capital Territory
ActewAGL	Australian Capital Territory electricity, water and gas utility
ACTPLA	Australian Capital Territory Planning and Land Authority
ACTRUS	Australian Capital Territory Road User Services
AFP	Australian Federal Police
BRC	Belconnen Remand Centre
Complaints Act	<i>Complaints (Australian Federal Police) Complaints Act 1981</i> (Cth)
Cth	Commonwealth
DUS	Department of Urban Services
FOI	freedom of information
FOI Act	<i>Freedom of Information Act 1989</i> (ACT)
kph	kilometres per hour
MLA	Member, Legislative Assembly
MOU	Memorandum of Understanding
OCYFS	Office for Children, Youth and Family Support
OFT	Office of Fair Trading
Ombudsman Act	<i>Ombudsman Act 1989</i> (ACT)
PID	Public Interest Disclosure
PID Act	<i>Public Interest Disclosure Act 1994</i> (ACT)
PIN	Parking Infringement Notice
RGO	Registrar-General's Office
TIN	Traffic Infringement Notice

compliance index

Transmittal certificate

Aids to access

Table of contents	v
Alphabetical index	32
Glossary of abbreviations and acronyms	30

Chief Executive overview

Overview of agency	1
Major issues, challenges and achievements for the reporting year	2
Overview of agency performance (and financial results*)	4
Outlook for the coming year	5

Agency performance

Key strategic achievements	7
Human Rights Act	22
Access to government strategy	22
Community engagement	22
Multicultural framework	23
Aboriginal and Torres Strait Islander reporting	N/A*
ACT Women's Plan	N/A*

Management of organisation

Managing our people

HR performance and analysis	N/A*
Staffing profile	N/A*
Culture and Values	N/A*
Workplace diversity	N/A*
Workplace health and safety	N/A*
Learning and development	N/A*
Workplace relations	N/A*

Governance

Internal accountability structures and processes	24
Strategic and organisational planning	24
Fraud prevention	N/A*
Risk management and internal audit arrangements	N/A*
External Scrutiny	N/A*
Reports required by legislation	
Freedom of information	25
Public interest disclosure	25
Territory records	26
Sustainability and environment	
Commissioner for the Environment reporting Ecologically sustainable development	N/A*
Strategic bushfire management plan and bushfire operational plans	N/A*

Analysis of financial performance

Agency financial results and analysis of financial performance	N/A*
Assets management	N/A*
Capital works management	N/A*
Procurement contracting principles and processes	N/A*
Government contractual debts (interest)	24

Appendix: statistics

27

* See notes on page 2 about compliance.

alphabetical index

A

- Access to ACT Government Strategy, 22
- ACT Corrective Services
 - complaints about, 4
 - finalised, 9
 - see also* Belconnen Remand Centre (BRC);
Quamby Youth Detention Centre
- ACT Department of Education and Training
 - case study relating to, 14
- ACT Government
 - Memorandum of Understanding with, 24
 - new, 5
 - payments to ACT Ombudsman's office by, 7
 - see also* Access to ACT Government Strategy
- ACT Government agencies
 - agency responsiveness, 15
 - complaints about, 4, 7–8
 - finalised, 8–9
 - statistics, 28
 - time taken to finalise, 10
 - overview, 13–17
 - relationships with, 3
 - staff grievances against, 6
- ACT Human Rights Commissioner
 - collaboration with, 22
- ACT Magistrates Court
 - complaints about, 4
- ACT Ombudsman
 - and government administration, 1, 2–3
 - and investigations relating to AFP, 18
 - review of role of, 5
- ACT Ombudsman shopfront, 3
- ACT Ombudsman Team
 - and community engagement, 22, 23
- ACT Ombudsman's office, 1
 - community awareness of, 3
 - community engagement, 22–23
 - inquiries/complaints outside Ombudsman's authority, 7
 - payments to by ACT Government, 7
 - records management, 26
- ACT Planning and Land Authority (ACTPLA)
 - case studies relating to, 14, 16
 - complaints about, 4, 8
- ACT Policing
 - complaints about, 4, 6, 7, 8, 17, 18
 - finalised, 9–10
 - method of handling complaints, 19, 29
 - statistics, 29
 - received
 - statistics, 29
 - time taken to finalise, 10–11
 - discretionary decision making, 19
 - investigations, 9–10
 - and Law Enforcement Team, 6
 - overview, 17–21
 - referrals to AFP's workplace resolution process
 - for conciliation, 9
 - relationship with, 3
- ACT Prison Project, 2, 22
- ACT Public Trustee
 - complaints about, 4
- ACT Road User Services (ACTRUS)
 - complaints about, 4, 8
- ActewAGL
 - case study relating to, 16
- ACTION
 - case study relating to, 15
 - administrative procedures
 - unclear or inadequate, 14
 - agency responsiveness, 15
 - annual reporting compliance, 2
 - applying best practice in administration, 13–14
- Australian Federal Police (AFP)
 - ACT Ombudsman and investigations relating to, 18
 - case studies relating to, 20
 - City Watch House, video recording system, 20
 - complaint management system, 6
 - complaints about, 17
 - relationship with, 2, 17, 21
 - special investigation of member of, 21
 - traffic adjudication responsibility, 21
 - see also* ACT Policing; Family Violence

Intervention Program; Professional Standards (AFP); workplace resolution process (AFP)

B

Belconnen Remand Centre (BRC)
complaints about, 9, 13
own motion investigation of, 5
review of conditions, 22
best practice *see* applying best practice in administration
Brightman, Stephen
and Dennis Pearce Essay Competition, 4

C

case studies
delayed responses, 15
detention of a minor, 20
inappropriate comments, 15
inconsistency in policy application, 14
insufficient verification, 13–14
lack of coordination, 16
unfinished action, 15
use of force, 20
validity of extensions, 14
Children, Youth and Family Support *see* Office for Children, Youth and Family Support (OCYFS)
City Watch House
complaints relating to, 20–21
Commonwealth Ombudsman
and Memorandum of Understanding with ACT Government, 24
community awareness of Ombudsman's office, 3
community engagement, 22–23
complaint handling, 1, 2
ACT Policing
overview, 18
complaints that cross jurisdictions of two or more agencies, 6, 16
complaint trends, 4
complaints, 4
about outsourced government programs, 6
finalised, 8–10
statistics, 28, 29
outside Ombudsman's authority, 7
received, 7–8
statistics, 28, 29
that cross jurisdictions of two or more agencies, 6, 16
time taken to finalise, 10–11
see also under ACT Corrective Services; ACT Government agencies; ACT Magistrates

Court; ACT Planning and Land Authority (ACTPLA); ACT Policing; ACT Public Trustee; ACT Road User Services (ACTRUS); freedom of information (FOI); Housing ACT; Office for Children, Youth and Family Support (OCYFS)
Complaints (Australian Federal Police) Act 1981 (Commonwealth), 2, 17
payments by ACT Government relating to, 7
complaints management system, 2
complaints management training, 3
conciliation *see* workplace resolution process (AFP)
contact officers
seminar for, 3
contacting the ACT Ombudsman, iv
Corrective Services *see* ACT Corrective Services
critical incident guidelines, 21
cross-jurisdictional complaints
handling of, 6, 16
custody in the watch house, 20–21

D

delayed responses
case study, 15
Dennis Pearce Essay Competition, 3–4
Department of Education and Training *see* ACT Department of Education and Training
Department of Urban Services (DUS)
and Dryandra Street own motion investigation, 17
detention of a minor
case study, 20
disabilities
access of people with to services of Ombudsman, 22
Disability Action Plan, 22
disclosures under PID Act, 5
and whistleblowers, 5
see also Public Interest Disclosures (PIDs)
discretionary decision making
ACT Policing, 19
discriminatory practices
elimination of, 22
Dryandra Street own motion investigation, 5, 16–17

E

Education and Training, Department of *see* ACT Department of Education and Training
email access, 2
Essay Competition *see* Dennis Pearce Essay Competition
ethnic communities
outreach activity, 23

F

Family Violence Intervention Program, 21
Freedom of Information Act 1989, 1–2, 25
freedom of information (FOI)
 complaints about handling of, 25
 requests to Ombudsman, 25

G

government administration
 Ombudsman and, 1, 2–3
Government agencies *see* ACT Government agencies
Government Contractual Debts, 24
Government Contractual Debts (Interest) Act 1994, 24

H

high-speed pursuits guidelines, 21
Housing ACT
 case study relating to, 15
 complaints about, 4, 7, 13

I

inappropriate comments
 case study, 15
inconsistency in policy application
 case study, 14
Indigenous groups
 outreach activity, 3, 11, 23
inquiries/complaints outside Ombudsman's authority, 7
insufficient verification
 case study, 13–14
internal accountability structures and processes, 24
Internet *see* email access; online complaint form
investigations
 decisions not to investigate, 9
 formal, 9
 preliminary, 9
 see also own motion investigations; special investigation of AFP member

J

Justice and Community Safety ACT Prison Project
 see ACT Prison Project

K

key strategic achievements, 7–12
key values, 1

L

lack of coordination

 case study, 16

Law Enforcement Team
 and ACT Policing, 6
 and assistance to other integrity bodies from Asia–Pacific region, 11–12
 and community engagement, 22, 23
legislation, 1–2
liaison *see* training and liaison

M

Magistrates Court *see* ACT Magistrates Court
Memorandum of Understanding (MOU) with ACT Government
 Commonwealth Ombudsman and, 24
 new, 5
multicultural framework, 23

O

Office for Children, Youth and Family Support (OCYFS)
 case study relating to, 15
 complaints about, 4, 7–8
Ombudsman *see* ACT Ombudsman
Ombudsman Act 1989, 1
 payments by ACT Government relating to, 7
online complaint form, 2
outlook for 2005–06, 5–6
outreach activity, 22–23
 to community, 3, 11
 to ethnic communities, 23
 to Indigenous groups, 3, 11, 23
outsourced government programs
 complaints about, 6
overview, 1–6
own motion investigations, 5, 16–17
 relating to ACT Policing, 6

P

performance measures, 7
performance overview, 4–5
Planning and Land Authority *see* ACT Planning and Land Authority (ACTPLA)
police
 other than ACT Policing, 7
 see also ACT Policing; Australian Federal Police (AFP)
Prison Project, ACT, 2, 22
Professional Standards (AFP), 17, 21
public interest disclosure, 5, 25–26
 and whistleblowers, 6, 26
Public Interest Disclosure Act 1994 (PID Act), 2, 25

submission to review of, 5
Public Interest Disclosures (PIDs), 5
Public Trustee *see* ACT Public Trustee

Q

Quamby Youth Detention Centre
review of conditions, 22

R

records management, 26
Registrar-General's Office (RGO)
case study relating to, 13–14
relationships
with ACT Government agencies, 3
with ACT Policing, 3
with AFP, 17, 21
see also training and liaison
Review of the System of Statutory Oversight of
Government in the ACT
submission to, 6
Road User Services *see* ACT Road User Services
(ACTRUS)

S

seminar for contact officers, 3
Senior Assistant Ombudsmen
and operational matters, 24
Service Charter standards, 12
shopfront, 3
special investigation of AFP member, 21
staff grievances against ACT Government agencies,
6
staff training, 2
statistics, 27–29
strategic achievements *see* key strategic
achievements
strategic and organisational planning, 24
submissions, 5, 6

T

Territory Records Act 2002, 26
time taken to finalise complaints, 10–11
Traffic Infringement Notices (TINs), 19, 21
own motion investigation of, 5, 16–17
withdrawal of, 5, 16
training and liaison, 11–12
see also complaints management training;
relationships; staff training
transmittal letter and certificate to Minister, iii

U

unclear or inadequate administrative procedures,
14
unfinished action
case study, 15
Urban Services, Department of *see* Department of
Urban Services (DUS)
use of force
case study, 20

V

validity of extensions
case study, 14
values *see* key values

W

watch house *see* City Watch House
website, iv, 2, 12, 23
whistleblowers, 11
complaints from, 2
and public interest disclosure, 6, 26
workplace resolution process (AFP), 9, 18–19
issues raised, 19
Wreck Bay community
outreach activity, 3, 23

