



Australian Capital Territory

OMBUDSMAN



# annual report

2003–2004



Australian Capital Territory

**OMBUDSMAN**



annual report 2003–2004

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2 September 2004

Mr Jon Stanhope MLA  
Attorney-General  
Australian Capital Territory Legislative Assembly  
London Circuit  
CANBERRA ACT 2600

Dear Attorney-General

I am pleased to provide you with the fifteenth Australian Capital Territory (ACT) Ombudsman's Annual Report for tabling in the Legislative Assembly. The report covers the period 1 July 2003 to 30 June 2004.

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 the attached Annual Report is an honest and accurate account and that all material information on the operations of the ACT Ombudsman during 2003–04 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

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The ACT Ombudsman Annual Report 2003–04 is available on our website.

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# ombudsman overview



Prof. John McMillan, ACT Ombudsman

In June 2004, the ACT Ombudsman's office celebrated its fifteenth anniversary. The office was established as part of the framework for ACT self-government in 1989, and has been an enduring feature of the ACT system of government accountability and statutory oversight. Many thousands of ACT residents have approached the ACT Ombudsman over that period on matters as diverse as public housing, road traffic control, whistleblower protection, urban planning, child protection, schooling and correctional services.

Building on the experience and insights gained from handling complaints, the ACT Ombudsman has been able to stimulate improvements across the breadth of government administration. Among the areas beneficially improved are the

quality of decision making, internal complaint handling, transparency, record keeping, communication with the public, and sensitivity to individual needs. These aspects of public administration go to the heart of relations between government and the community. Equally, they have a strong bearing on the level of community confidence in the integrity and professionalism of government.

*'Building on the experience and insights gained from handling complaints, the ACT Ombudsman has been able to stimulate improvements across the breadth of government administration.'*

The fifteenth anniversary of the ACT Ombudsman provided an opportunity for the office to refresh and renew its commitment to the ACT community and government. As described elsewhere in this report, the opening of an ACT Ombudsman shopfront, the launch of an annual essay competition and the staging of a contact officers seminar formed the anniversary activities. Pleasingly, the ACT Chief Minister opened the shopfront and launched the essay competition.

## KEY ACTIVITIES IN 2003–04

Complaint handling remains the core of the Ombudsman's role. During 2003–04 the office handled 955 complaints from the public. The complaint investigation role of the office is dealt with at length later in this report. We highlight some of the other activities of the office during the year in this chapter.

*'Complaint handling remains the core of the Ombudsman's role.'*



**From left:** Ron McLeod (former Ombudsman), John McMillan (ACT Ombudsman), Jon Stanhope (ACT Chief Minister), and Dennis Pearce (first ACT Ombudsman)

## Opening of ACT Ombudsman shopfront

A constant challenge for the office is to maintain a public profile and for the public to know they can turn to the office when problems with government agencies arise. An important step towards meeting this challenge was the opening of a shopfront in Canberra in June 2004. The opening was performed by the ACT Chief Minister, Jon Stanhope MLA, and was attended by two previous ACT Ombudsman and representatives from ACT Government agencies, the Legislative Assembly, and non-government organisations. The shopfront opening was also an event to mark the 15th anniversary of the office of ACT Ombudsman being established in 1989.

The opening of a shopfront was an important event for the office, symbolically as well as practically. Most complaints, inquiries and approaches to the office come via telephone, mail or, increasingly, the Internet; however, the opening of a shopfront is an important step in reaffirming that public accessibility is a vital

aspect of our work, and that visibility is a key component of our relationship with the public. It also signifies the continuing commitment of the office to be active in the community in dealing with problems that people encounter with government.

*'The opening of a shopfront is an important step in reaffirming that public accessibility is a vital aspect of our work, and that visibility is a key component of our relationship with the public.'*

To coincide with the opening of the shopfront, we refreshed the ACT Ombudsman logo and developed street signage. These steps have resulted in a marked increase in the number of complaints being made in person, as well as in the number of telephone and written complaints received. In the longer term, this should enhance public awareness of the existence and role of the office and the service it provides to the community.

## Inaugural Dennis Pearce Essay Competition



At the opening of the shopfront, the Chief Minister announced an inaugural essay competition for Year 11 and 12 ACT college students. The Dennis Pearce Essay Competition is named after Professor Dennis Pearce, who was the Commonwealth Ombudsman when the office of ACT Ombudsman was established, becoming the first ACT Ombudsman. Students were asked to address the topic of 'The ACT Ombudsman— a watchdog on government'; with entries submitted in August 2004. The essay competition will be held annually to raise awareness about the ACT Ombudsman's role.

### Review of the ACT statutory oversight system

During 2003–04, the ACT Government initiated a review of the system of statutory oversight of government in the ACT. The Foundation for Effective Markets and Governance conducted the initial stage of the review, which was followed by a further round of public consultation.

My office made submissions at all stages of the review, and participated in discussions with those

involved. Our submissions focused on the ACT Ombudsman's distinctive role in overseeing the actions of ACT Government agencies, as well as the long standing experience the office has developed in handling and resolving complaints from members of the public. The office is better placed to make this contribution by reason of the link between the Commonwealth and ACT Ombudsman offices. This link enables the ACT Ombudsman to draw on the tradition, profile, resources, experience, training capacity, and national and international connections of a larger office. It is also a cost-effective means of delivering a high quality service to the ACT community.

'The office is better placed to make this contribution by reason of the link between the Commonwealth and ACT Ombudsman offices.'

Our submissions to the review made a number of practical suggestions for integrating and harmonising the activities of the different oversight agencies in the ACT. We noted the need for those agencies to work together in receiving and transferring complaints and even jointly conducting investigations. Innovations that deserve consideration are the establishment of a clearinghouse function, and the co-location of oversight and complaint agencies. We also drew attention to the need to extend the role of the ACT Ombudsman in two particular respects: to confer a conciliation function on the Ombudsman; and to extend the Ombudsman's jurisdiction to cover complaints about the outsourced delivery of publicly-funded services.

### Defining the Ombudsman's role in a contemporary setting

The Ombudsman's office, though well established, is part of a system of government that is undergoing constant change. Some of those changes impact on the work of the Ombudsman, requiring the office to reflect on its role in government. Several aspects of change arose in 2003–04.

The legislation establishing the offices of Commonwealth and ACT Ombudsman is broadly similar. It was framed in 1976, when the office of

Commonwealth Ombudsman was established, and has not been reviewed in any comprehensive fashion. A review is currently being undertaken by the office, with a view to putting proposals to government for the enactment of a new Ombudsman Act. The ACT Government will be consulted in the course of this review. A prime objective of the review is to improve and modernise the legislative framework, so that it is once again a model for administrative investigation. It is not proposed to change the role of the Ombudsman.

A major role of the ACT Ombudsman is to handle complaints about the Australian Federal Police in performing its community policing role in the ACT. The legislative basis for that role is the *Complaints (Australian Federal Police) Act 1981* (Cth). Reform of that legislative framework was proposed in a report in 2003 by the Hon. William Fisher, AO, QC, *A Review of Professional Standards in the Australian Federal Police*. The Ombudsman's office is contributing to a review within government of the Fisher Review and the framework for investigation of complaints against the police.

The Ombudsman's role in relation to policing also arose in a different light during the year. In June 2004, the Australian Government announced it would establish an agency to investigate corruption in law enforcement agencies, including the Australian Federal Police. An issue raised in public debate was the role of the Ombudsman in this respect. Our position, in broad terms, is that the Ombudsman should not be the chief agency responsible for investigating corruption allegations. However, there is a thread that links administrative misbehaviour and official corruption, and complaints about law enforcement action are sometimes made in strong and accusatory language. My office, both in its Commonwealth and ACT guise, is contributing to the discussions within government about the framework for investigation of corruption allegations.

Yet another aspect of the Ombudsman's role under discussion in the past year was the function conferred upon the office by the *Public Interest Disclosure Act 1994* (the PID Act). The ACT Government released a discussion paper setting

out options for a new public interest disclosure model for the ACT. My office expressed support for a model that would clarify the oversight role of the Ombudsman (together with the Auditor-General and the Commissioner for Public Administration) in handling disclosures made under the PID Act. Our view is that the prime responsibility for investigation should remain with the agency to which a disclosure relates, but the oversight agencies should be notified of a disclosure at an early stage so that a decision can be made as to how and by whom a PID disclosure is to be handled.

### **Privacy and Ombudsman investigations**

A matter of concern to my office during the year was a determination of the Privacy Commissioner (*Complaint Determination No 5 of 2004*) that arose from an investigation by ACT Ombudsman staff. The Privacy Commissioner made a determination that an officer of the ACT Department of Justice and Community Safety had disclosed personal information to the ACT Ombudsman's office in a manner that breached Information Privacy Principle 11.1.

I disputed that suggestion in a submission to the Privacy Commissioner, and proffered the view that the disclosure by the ACT officer was both proper and authorised by the *Ombudsman Act 1989* (ACT). I also made the argument that it could have a chilling effect on Ombudsman investigations if government agencies were excessively constrained by the spectre of privacy breaches in conveying information to the Ombudsman's office (which is itself subject to strict secrecy and privacy obligations). The alternative, for the Ombudsman to issue a formal statutory notice to an agency when seeking information, would constrain the speed, flexibility and informality of Ombudsman investigations.

The Privacy Commissioner's Determination is at odds with my submission; it is a concern at which I propose to look at further, including by discussion with the Privacy Commissioner. One option is to seek statutory clarification of the discretionary capacity of a government agency to provide information to the Ombudsman without committing a breach of privacy laws.

## Launch of ACT Integrity Policy

I was asked to launch the ACT Integrity Policy in March 2004. A particular strength of the Policy is that it creates a single integrity framework that deals in an integrated and comprehensive fashion with fraud control, anti-corruption, ethics and propriety in government. In doing so, the Policy demonstrates that no single structure or formula will guarantee integrity in government; it is rather the plurality of mechanisms that is important.

The development of the Policy is also a salutary reminder that it is necessary to establish a framework of rules and procedures to control fraud and corruption in government and to advance ethical behaviour. The ACT is fortunate to enjoy ethical and accountable government; its continuation rests on a practical commitment to the rules, principles and values in the Integrity Policy.

## PERFORMANCE REVIEW

My office dealt with 955 complaints about ACT Government agencies and ACT Policing in 2003–04. These figures have remained at a fairly stable level over the last three years.

The principal performance measures for the Ombudsman are an assessment of complaints received and finalised, time taken to finalise

complaints, and training and liaison contacts. An overview follows, with detailed information included in the 'Overall performance' section of this report.

## Complaint trends

In 2003–04, there was a slight reduction in the overall complaints received about ACT Government departments and agencies and ACT Policing—955 complaints compared to 960 in the previous year.

There was a small increase in the number of complaints received about ACT Government agencies—452 compared to 447 last year. The trend in total complaints has continued to be fairly stable over the past three years.

The largest number of complaints about a single agency involved ACT Corrective Services, with 102 new complaints received in 2003–04 compared with 54 received last year. Other agencies that accounted for significant numbers of complaints included ACT Housing (93 new complaints, down 32% from last year); Department of Education, Youth and Family Services (60 complaints, up 58%); and Road User Services (43 complaints, down 7%).

We also saw an increase in complaints about the ACT Magistrates Court (18 complaints compared to 11 last year) and the ACT Public



ACT Government contact officers seminar, November 2003

Trustee (16 complaints compared to 7 last year); and a decrease in complaints about the Department of Urban Services (22 complaints compared to 36 last year). We received 29 complaints about the newly created ACT Planning and Land Authority.

For ACT Policing, there was a 2% decrease in complaints received (503 compared to 513 in the previous year). This follows a general decrease in the number of complaints made about ACT Policing over the past six years. Analysis of complaints received and finalised is provided in the Overall Performance section of this report.

### **Ombudsman seminars for ACT contact officers**

The Ombudsman's office held two successful seminars during the year for contact officers in ACT Government departments and agencies. The first was held in November 2003, providing an overview of the Ombudsman's role. It conveyed an understanding of how our office handles and investigates complaints. The second seminar, held on 2 June 2004, looked at 'Moving beyond Defective Administration and Resolution' and focused on internal complaint handling by agencies and working with the Ombudsman's office to achieve resolutions. Both seminars were well attended, and positive feedback was received from participants about the importance and usefulness of the seminars.

### **Submissions**

Through its complaint handling and investigation work, the Ombudsman's office comes into contact over time with most aspects of ACT Government. As stated in our Strategic Plan for 2003–04, we see it as a distinct role of the Ombudsman 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 furthering these objectives, my office made submissions to or commented on a range of administrative practice matters and legislative proposals during the year:

- the discussion paper on a Disability Services Commissioner

- the review of the *Children and Young People Act 1999*
- *The Territory as Parent—Review of the safety of children in care in the ACT and of ACT Child Protection Management* (the Vardon Report)
- the report of the ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act*
- the review of the *Public Interest Disclosure Act 1994*
- the Economic White Paper for the Australian Capital Territory
- the draft *Government Procurement (Quotation and Tender Thresholds) Guideline 2003* and the Justice and Community Safety Legislation Amendment Bill 2004
- a draft policy on the *Acceptance of Non-Domestic Waste (Trade-Waste) into the Sewerage Network*
- the review of the system of statutory oversight of government in the ACT.

## **OUTLOOK FOR 2004–05**

### **New Memorandum of Understanding**

We are currently negotiating a new five-year Memorandum of Understanding with the ACT Government for the Commonwealth Ombudsman to continue to fulfil the role of ACT Ombudsman. Initial discussions have considered future impacts such as a new prison for the ACT, the increase in Public Interest Disclosure complaints, the volume and complexity of complaints about ACT government agencies, and complaints about community policing.

### **ACT Government agencies**

Some areas of concern to be looked at in the coming year for ACT Government departments and agencies include:

- treatment of ACT Housing clients
- conditions at the Belconnen Remand Centre; for example, overcrowding, opportunities to exercise and undertake other activities

- development of an ACT scheme for compensation for detriment caused by defective administration
- matters concerning the temporary registration of motor vehicles, including the duration and cost of registration for vehicles needing repair to gain a roadworthy certificate, the extension of temporary registration, and the review of decisions about temporary registration.

## **ACT Policing**

This year there was an increase in ‘customer service’ complaints about the AFP in its ACT community policing role, particularly relating to the issuing of Traffic Infringement Notices (despite total complaints about police declining). Ombudsman staff are continuing to work with the AFP to develop communication strategies for police officers when issuing traffic notices to allow the public to offer explanations for their driving behaviour.

The Law Enforcement Team and the ACT Team conducted outreach activities with the communities of Wreck Bay and Jervis Bay during 2003–04. We will continue to develop links with a wide range of community groups throughout the coming year, particularly those groups with

a large number of clients from disadvantaged and minority sectors such as the multicultural, Indigenous Australian, youth, gay and lesbian sectors, and those with mental health problems.

## **In conclusion...**

The ACT Ombudsman Annual Report 2003–04 is available on our website at [www.ombudsman.act.gov.au](http://www.ombudsman.act.gov.au). This online report offers more than a simple copy of a printed report. For the first time, our annual report has been developed as an online publication with improved usability and accessibility in line with government standards.

This year’s annual report covers a range of different activities on which the Ombudsman is able to report, among them: how complaints against government were handled, the response by ACT Government agencies to accountability requirements, issues in ACT policing, and options for revising the statutory oversight system in the ACT.

This has been a vibrant year for the ACT Ombudsman. That it has been so is a sign of the value an Ombudsman’s office can add to government and the community.

## **Prof. John McMillan**

Australian Capital Territory Ombudsman

# role and overall performance

## OMBUDSMAN ROLE AND FUNCTIONS

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

The Ombudsman's office investigates complaints in accordance with detailed written procedures, including the 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.

*'Complaint investigations are carried out impartially and independently, and are handled in private.'*

The key values of the ACT Ombudsman are:

- independence
- impartiality
- integrity
- accessibility
- professionalism
- teamwork.

### Legislation

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

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

### Organisation structure

During the year, the Ombudsman delegated day-to-day responsibility for operational matters for the ACT Ombudsman to Senior Assistant Ombudsman, Helen Fleming, and responsibility for Law Enforcement including ACT Policing to Senior Assistant Ombudsman, Philip Moss. Both are supported by a team of specialist staff in carrying out these responsibilities for the Ombudsman.

### Annual reporting compliance

The ACT Ombudsman is a public authority within the meaning of the *Annual Reports (Government Agencies) Act 2004*. The ACT Ombudsman is unable to report against some aspects of the Chief Minister's 2004 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, and 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.

## PERFORMANCE REPORT

In 2003–04, 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* (\$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 an analysis of the number of complaints received and finalised, time taken to finalise complaints, and 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 2003–04.

### Preliminary inquiries and formal investigations

Many of the complaints to the Ombudsman’s office are dealt with as preliminary inquiries—a stage in our complaint-handling process that allows us to determine whether a complaint is within the office’s jurisdiction, whether an investigation is required or whether the

complaint can be resolved by informal inquiries. Where a complaint involves complex or multiple issues, we conduct a more formal investigation. The decision to investigate a matter more formally can be made for a number of reasons:

- the need to gain access to agency records
- the nature of the allegations made by a complainant
- the time taken for an agency to respond to our requests for information
- the likely effect on other people of the issues raised by the complainant.

### Complaints received

During the 2003–04 reporting year, the Ombudsman received a total of 955 complaints about ACT Government departments and agencies and ACT Policing: this compared to 960 complaints in the previous year.

From the 955 complaints received, 452 complaints (47%) were about ACT Government agencies, and 503 complaints (53%) were about ACT Policing.

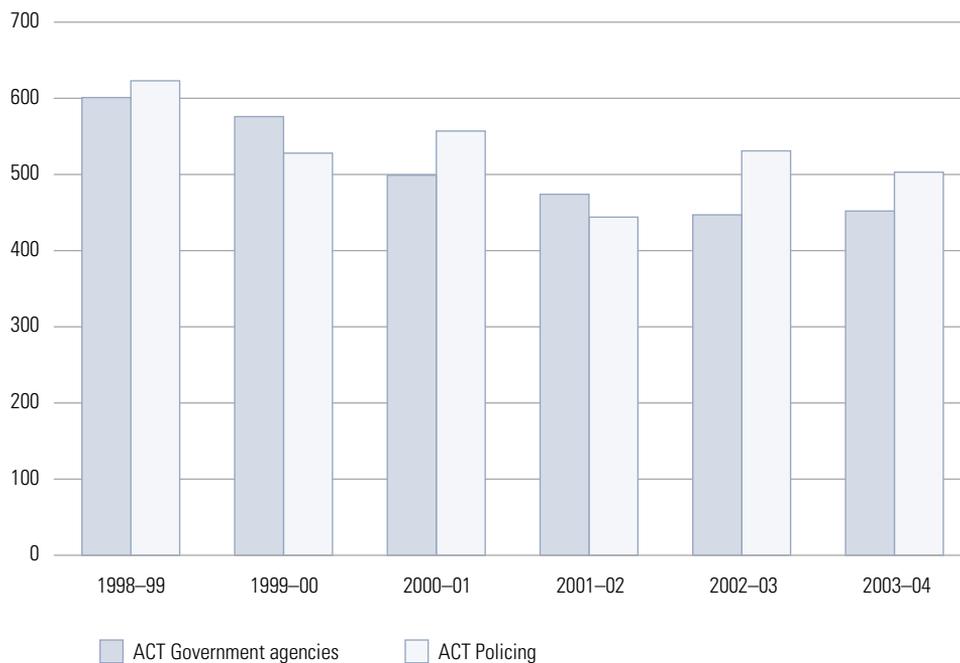
### General referrals

The Ombudsman’s office plays a valuable role in referring people to the most appropriate agency. 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 the year, staff handled 426 general inquiries about ACT Government agencies.

*‘The Ombudsman’s office plays a valuable role in referring people to the most appropriate agency.’*

The Ombudsman’s Law Enforcement Team 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 AFP. In these cases, staff refer the complaint to the relevant State Ombudsman.

**FIGURE 1** Complaints received, 1998–2004



### *ACT Government agencies*

There was a small increase in complaints received about ACT Government agencies (452 complaints compared to 447 in the previous year). The trend in total complaints has continued to be fairly stable over the past three years. Figure 1 provides complaint trends since 1998–99.

### *ACT Policing*

For ACT Policing, there was a 2% decrease in complaints received (503 compared to 513 in the previous year). This follows 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 the slight decrease in complaints in 2003–04 may be attributed to ACT Policing’s increased emphasis on customer service issues. Figure 1 provides an overview of complaints received since 1998–99.

## **Complaints finalised**

### *ACT Government agencies*

During the 2003–04 reporting year, the Ombudsman’s office finalised 457 complaints and 639 issues about

government agencies, compared to 432 complaints and 510 issues in the previous year.

Of the 639 issues that were finalised during the year, 27% were finalised by way of preliminary inquiries, 37% were formally investigated and in 36% of cases we decided not to investigate at the outset. The latter figure of 36% compares with 45% in the previous year and represents an increase in the number of complaints we decided to investigate.

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 other complaints, as required under our legislation, we refer particular issues to other review agencies that can more appropriately deal with the complaint. These issues include complaints about environment, health and consumer services, as there are special commissioners to deal with these issues. There are also certain issues that we

are unable to consider, such as complaints about employment conditions and other matters that may arise within an agency.

**'We were able to resolve issues informally and quickly, and to obtain a remedy for complainants with the cooperation of agencies.'**

In most of the 64% of issues investigated or dealt with as preliminary inquiries, we were able to resolve issues informally and quickly, and to obtain a remedy for complainants with the cooperation of agencies. Remedies included agency explanation (explaining to the complainant why the agency acted the way it did); expediting the matter; an apology; reconsideration of an earlier decision; or changes in administrative policy and procedure.

In 11% of complaints investigated, we formed the view that there had been defective administration by an agency; that is, the relevant agency had not acted fairly, reasonably or in accordance with its legislation, policies and procedures. In 41% of investigations there was no finding of defective administration in relation to an agency's actions. In the remaining cases (48%) it was not necessary to form a view as to whether defective administration had occurred for a variety of reasons, including the provision of a remedy by an agency during investigation or the withdrawal of the complaint.

### **ACT Policing**

Of the 645 issues finalised this year, a large percentage (70.5%, or 455) were referred to the AFP's workplace resolution process for conciliation. A further 77 issues were subject to some investigative action; we decided not to investigate the remaining 113 issues (17.5%) on receipt or after making preliminary inquiries. The ACT Policing section in this report provides further information on investigations, including complaints conciliated through the workplace resolution process.

The Ombudsman conducted special investigations into three complaints about ACT Policing matters.

One of the investigations was finalised during the year; the other investigations will be finalised in 2004–05.

Of the 77 issues subject to investigative action, 69 issues (compared to 158 in the previous year) were investigated by the AFP and reviewed by the Ombudsman's office. Of these issues, eight (12%) were substantiated; four (6%) were incapable of determination; 40 (58%) were unsubstantiated; and five (7%) were withdrawn by the complainant. The Ombudsman's office decided not to investigate 12 issues (17%) for such reasons 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 reports showed a comprehensive investigation and analysis, resulting in reasonable and appropriate recommendations. There were a small number of occasions when reports were returned to the AFP for further action, including a quality assurance review of the report or further clarification of a particular issue. We continue to work with the AFP to ensure that complaint investigation reports represent a robust response to complaint issues. Figure 2 provides outcomes of ACT Policing issues investigated by the AFP and reviewed by the Ombudsman's office in 2003–04.

**'We continue to work with the AFP to ensure that complaint investigation reports represent a robust response to complaint issues.'**

### **Time taken to finalise complaints**

One of our major performance targets for 2003–04 was to finalise 90% of complaints about agencies within three months of receipt.

### **ACT Government agencies**

During the year, 457 complaints about government agencies were finalised, of which 81% were completed within three months of receipt (compared to 86% in 2002–03). The main reasons we took longer to finalise complaints were the complexity of some of the complaints and an unusually high ratio of Ombudsman staff changes,

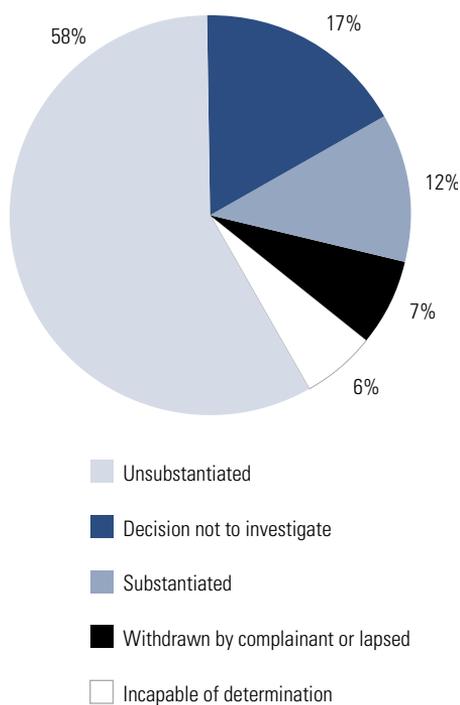
particularly of staff with the experience and skills needed to investigate complex complaints.

Figure 3 provides a detailed breakdown of the time taken to finalise complaints about ACT Government departments and agencies in 2003–04.

### ACT Policing

For complaints about the AFP, 68% were finalised within three months of receipt (the same as in 2002–03) and 22% were resolved within six months. The remaining 10% of complaints, which extended beyond six months, were characterised by the size and complexity of the investigations. Our failure to meet the three-month target for finalising 90% of complaints will be scrutinised in the coming year.

**FIGURE 2** Outcomes of ACT Policing issues investigated by AFP internal investigation 2003–04



Reasons for taking longer to finalise complaints included the complexity of issues; the unavailability of some complainants to meet with ACT Policing representatives until some time after the complaint was made; and the need for some conciliating

officers to make multiple appointments to resolve issues.

Commitments to overseas deployments this year also had an impact on ACT Policing and the AFP's Professional Standards and led to some increases in the time taken to finalise complaints. We will continue to monitor timeliness issues to ensure that the workplace resolution process remains an effective response to complaints.

Figure 3 provides a detailed breakdown of the time taken to finalise complaints about ACT Policing in 2003–04.

### Training and liaison contacts

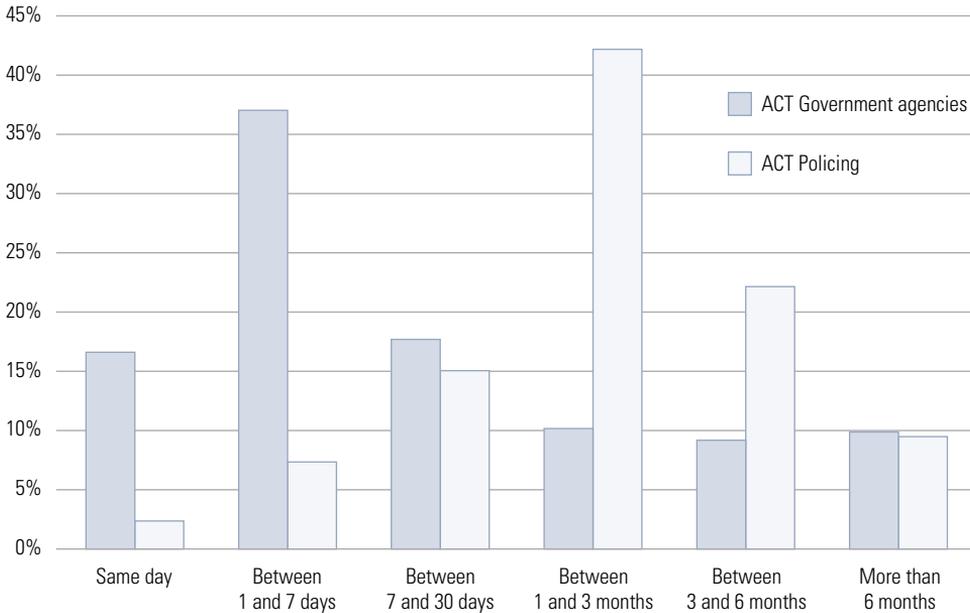
It is important for Ombudsman staff to maintain cooperative relationships with government agencies and community sector organisations. Good working relationships allow us to better understand our respective roles and to ensure effectiveness in resolving complaints.

A number of informal meetings were held during the year with individual agencies to discuss complaint handling and collection of statistics, and to ensure more beneficial use of intelligence gathered by staff. Meetings were also held with the Chief Executive of the Department of Urban Services and the Director of ACT Corrective Services. These discussions provided a useful opportunity to clarify agency roles and responsibilities, and the jurisdictional parameters for Ombudsman investigations.

Members of the Ombudsman's Law Enforcement Team met with representatives of key agencies involved in issues arising from actions by the AFP, including the Director of Public Prosecutions, the Legal Aid Office and the ACT Victims of Crime Coordinator. They also held regular liaison meetings with the AFP's Professional Standards to discuss the progress of complaints.

Staff also attended a range of forums and information sessions presented by ACT Government agencies, including an ACT Complaint Handling Forum conducted by the Community and Health Services Complaints Commissioner and a session on the Public Interest Disclosure Act conducted by the Industrial Relations and Public Sector Management Group.

**FIGURE 3** Time to finalise complaints, 2003–04



Specific activities included:

- hosting a lunch for ACT Government heads of departments to discuss relations with the office
- co-sponsoring a seminar on ‘whistleblowing’ protection laws with the Griffith Centre for Ethics, Law, Justice and Governance
- maintaining an ongoing involvement with the ACT Free Legal Advice Forum
- making a presentation to the ACT Multicultural Council on the role of the Ombudsman’s office
- conducting a three-day Investigators Training Course in August 2003 and a five-day Advanced Investigators Training Course in March 2004 (both attended by a total of 12 representatives from ACT agencies, Ombudsman staff and others)
- conducting two seminars for ACT contact officers in November 2003 and June 2004, looking at the office’s role in handling and investigating complaints, and at agencies’ internal complaint handling processes
- making presentations to the AFP about the role of the Ombudsman and strategies to respond effectively to complaints
- commenting on a range of departmental and agency submissions and discussion papers raising issues of administrative practice as outlined earlier in this report.



Investigators Training Course, August 2003



Group work at the ACT Government contact officers seminar, June 2004

### **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](http://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 decision on a complaint, a more senior officer not previously involved in the matter will conduct a review.

During the reporting period, we received two complaints about our service delivery and finalised seven reviews of our complaint handling. Of the reviews finalised, the original decision was affirmed in six complaints, whereas in one matter we conducted further investigation on the basis of new information provided by the complainant. The latter investigation resulted in a changed decision, with the agency making an Act of Grace payment to the person.

In May 2004, we commissioned a market research company to conduct a Client Satisfaction Survey of 2,000 complainants across all jurisdictions of the Commonwealth and ACT Ombudsman's office. Of the 2,000 complainants, a small sample was taken from the ACT Ombudsman and AFP jurisdictions.

The overall results were pleasing, with the survey finding the majority of complainants were satisfied with the service they received from the Ombudsman's office. Where the office investigated complaints, 65% of complainants were satisfied that staff had done as much as they should have done to help. In the cases where we decided not to investigate a complaint and referred the complainant to the relevant agency in the first instance, 74% said they would consider using the Ombudsman's office for future complaints. The great majority (87%) of complainants followed our advice to take up their complaint directly with the agency.

## ACT GOVERNMENT AGENCIES OVERVIEW

Each year we receive a variety of 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.

Common themes identified across agencies during 2003–04 included procedures and guidelines either being inadequate or not being followed, responsiveness and timeliness to requests from Ombudsman staff, professional standards, and public interest disclosure matters.

## Applying best practice

Legislation, internal policies and guidelines, and processes define the responsibilities of agencies to the public, and provide assistance in discharging them. A number of our investigations found that agencies had not followed their own internal guidelines in dealing with matters. The *Addressing insufficient explanations* case study illustrates the effect that this can have upon a routine matter. On the other hand, such practices could result in more serious consequences, as the *Inadequate internal reporting processes* case study demonstrates.

## CASE STUDY inadequate internal reporting processes

Ms K complained to the Ombudsman about the failure of the then Department of Education, Youth and Family Services to act on a disclosure by a child about alleged abuse while under the care of the Department. Ms K had raised the matter with the AFP Sexual Assault and Child Abuse Team and her lawyer prior to bringing her concerns to the Ombudsman.

A childcare worker had reported the child's disclosure to the Department, meeting the requirements of the *ACT Children and Young People Act 1999*. The then Director of Family Services wrote to the Ombudsman confirming that the Department had been notified of the disclosure and that 'the nature of the disclosure was assessed [at that time] and not considered to require an immediate response. The delay in commencing an appraisal is acknowledged.' The letter also stated that the child was unable or unwilling to discuss the matter again.

Ombudsman staff contacted the Department on numerous occasions to seek additional information and documents. The Ombudsman subsequently wrote, seeking a response to his concerns that the Department's processes did not appear to ensure that a notification of suspected abuse was followed through or appraised in a timely manner. That is, the events that appeared to have triggered departmental action were external to the agency. The new Director of Family Services responded, advising that the department was 'taking steps to review its procedures to ensure that appraisals are undertaken in an appropriate and timely manner'.

The Ombudsman wrote to the Department suggesting that an apology be offered to Ms K for the distress caused by the delay in commencing an appraisal of the child's disclosure of abuse. Ombudsman staff followed up with the Department's contact officer, who agreed to send a letter of apology to Ms K. However, the Department recently advised us that no apology has been made to Ms K as they believed that they had responded in an appropriate manner.

The Ombudsman is concerned that the Department's internal processes did not appear to prompt an appraisal of the child's circumstances. If the external prompts had not occurred, it appears possible that the case may not have been appraised for some time.

The Ombudsman will continue to monitor the Department's timeliness and reporting processes in light of this case and the results from broader reviews being conducted by the Commissioner for Public Administration and law firm, Minter Ellison.



### **Responsiveness and timeliness by agencies**

When investigating complaints, Ombudsman staff frequently request agencies to provide information or documents relating to a particular complaint.

During the year, some agencies were increasingly unable to meet our requests for information within the requested time frame. This particularly applied to complaints about family services and planning matters, where we considered the complaints

had generally taken longer to resolve than was necessary. The number of complaints received about these areas is relatively small, but this placed an extra burden on the Ombudsman's office to resolve these complaints. Delay in agency responses has the potential to undermine the effectiveness of the Ombudsman's office.

We will work more closely with agencies over the next twelve months to improve responsiveness and timeliness in complaint handling and resolution.

## **CASE STUDY** addressing insufficient explanations

In April 2003, Mr L disputed a Parking Infringement Notice (PIN) and was dissatisfied with the explanation given by ACT Road User Services (ACTRUS). Mr L complained to the Ombudsman, resulting in the agency addressing the issue of insufficient explanations in review letters as part of its Road User Services Review Office Quality Assurance Program. This included a commitment by ACTRUS to issue review staff with the Administrative Review Council (ARC) booklet *Practical Guidelines For Preparing a Statement of Reasons*. Changed procedures were subsequently implemented in mid-2003, requiring agency staff to provide more detailed responses to complainants, including the facts and reasons for decisions.

In July 2003, another complainant, Mr B, sought review of a PIN. ACTRUS promptly undertook a review and wrote to Mr B informing him that the Review Officer was upholding the original decision. Mr B complained to the Ombudsman that ACTRUS had not provided sufficient explanation in its letter and he did not understand how the agency's decision had been reached.

An investigation by Ombudsman staff determined that insufficient explanation had been provided to Mr B. The ACTRUS Review Office Manager concurred with this finding. An apology was provided to Mr B. The Manager also took other action to address the broader issue, undertaking to remind Review Officers of their responsibilities and to apply the principles set out in the ARC booklet in preparing letters in response to review requests.

## Professional service

It is expected that agency officers will maintain a professional attitude towards their clients, addressing and treating people with courtesy and respect.

This year we received complaints about 19 issues concerning the behaviour of Corrective Services officers and 14 issues relating to ACT Housing staff. There were nine other agencies about which from one to seven similar issues were raised concerning the professionalism of their staff.

Complaints about the behaviour of Corrective Services officers are not surprising, given that most relate to treatment within the Belconnen Remand Centre where the proximity, frequency of contact and relationships between prisoners and officers can sometimes result in conflict. We have generally been satisfied with the manner in which the ACT Corrective Services deals with complaints when matters are brought to its attention.

It is of particular concern that we received such a large number of complaints about comments made by ACT Housing officers to its clients. These complaints are often difficult to substantiate, as the complainant's recollection of an incident is usually different from that of the officer, and often there are no independent witnesses or other

evidence to support one version over the other. In most cases, Ombudsman staff were unable to form a view about whether an officer had acted appropriately or inappropriately. This is an area we will be monitoring in the coming year.

The *Inappropriate comments* case study below provide examples of inappropriate behaviour.

## Setting an example

It is important that an Ombudsman's office is itself committed to principles of good decision-making. A complainant who is not satisfied with the consideration given to their matter may ask for the decision to be reviewed by a senior officer. Legislation does not require the Ombudsman to provide an internal review of the office's decisions. We do provide one review of our decisions on request.

Our Service Charter provides information about the right of internal review, as well as the right to complain about Ombudsman's service and actions. We also advise complainants about their right of internal review if they express, or are likely to express, dissatisfaction with our decision.

The *Act of Grace payments* case study shows how we reviewed a decision and obtained a more favourable outcome for the complainant.

## CASE STUDY inappropriate comments

### ACT Housing

Mr S complained about comments made by an ACT Housing officer. Mr S claimed that the officer made a derogatory comment about his daughter when the officer attended the property. In response to our inquiries, the officer admitted making an inappropriate comment.

ACT Housing accepted our suggestion that a written apology be made to Mr S.

### ACT Corrective Services

Ms T was a detainee in a remand centre, when she contacted the Ombudsman to complain about a senior custodial officer who had made an inappropriate comment about her and another detainee. Ms T alleged the custodial officer referred to them as 'dogs who when they lie down bark and yap'.

When we asked for an explanation and response to the incident, the custodial officer provided a statement that he told Ms T to 'stop barking like a dog' because she was interrupting his conversation with another detainee.

As a result of our investigation, the custodial officer was counselled about the appropriate way to speak to detainees.

An objective of the Ombudsman's office is to foster good public administration by making suggestions and recommendations to address broad issues across ACT agencies and to reduce complaints

generally (as in the *Act of Grace payments* case study). The *Making changes* case study is a good example of an agency's willingness to improve its practices as a result of complaints.

## CASE STUDY act of grace payments

Mr S received an age pension entitling him to reductions in his rates and utilities accounts for his primary place of residence. He did not lodge applications for these reductions with ActewAGL or the ACT Revenue Office for some years, and complained to us when the agencies refused to backdate his claim.

Our original investigation revealed that the agencies considered he was not living in the ACT because his mailing address for Centrelink was in Sydney and he was not on the ACT electoral roll. Legislation prohibits the agencies from accepting applications for reductions made for previous years, and they can only apply a discount from the time that an application is lodged. Consequently, we decided not to suggest that ActewAGL or the Revenue Office backdate the reduction or make an Act of Grace payment for the discounted amounts.

Mr S approached us at a later date seeking a review of the decision not to investigate the matter further. Mr S contested the view that he lived in Sydney. While he spends a substantial period in Sydney undergoing medical treatment, he advised that a friend accommodates him and his only property is in Canberra, which is his home. He also advised that ActewAGL had reconsidered its decision and he had received an Act of Grace payment for his electricity accounts for this period.

We decided to investigate the matter further and advised the ACT Revenue Office of ActewAGL's decision to make an Act of Grace payment. Mr S also sent a letter to the ACT Treasurer requesting a review of his case. The ACT Treasurer reconsidered Mr S's claim and agreed to make an Act of Grace payment for the additional rates he had paid.

We also expressed concern that the relevant legislation did not provide for any discretion to backdate applications for pensioner rebates of rates. The ACT Revenue Office advised that the amalgamation of two statutes into a single Rates Act, to apply from 1 July 2004, will contain justice and equity provisions for the Minister to remit an amount of rates in cases where there are special circumstances.

## CASE STUDY making changes

Belconnen Remand Centre implemented a new telephone system in November 2002. Following implementation we received a flurry of complaints from detainees.

Detainees complained of being charged for their calls to this office, being cut off after 10 minutes and needing to have money in their telephone account to make 'free' calls. During our investigation we also found that detainees were not able to contact the ACT Human Rights Office or the Community and Health Services Complaints Commissioner.

Following a number of recommendations from the Ombudsman, the Belconnen Remand Centre has implemented several changes that:

- provide detainees with access to a pre-determined list of welfare and legal agencies (including the Ombudsman's office) without needing any money in their accounts
- allow detainees to make free calls to specified agencies with no time limit
- add the telephone numbers for the ACT Human Rights Office and the Community and Health Services Complaints Commissioner to the list of telephone numbers of welfare and legal agencies.

## ACT POLICING OVERVIEW

Responsibility for investigating complaints about the AFP's ACT Policing is shared between the AFP and the Ombudsman's office. Members of the AFP provide the following policing services for the ACT:

- enforcing traffic laws
- maintaining peace and order
- undertaking crime prevention activities
- responding to critical incidents
- investigating serious crime.

Members of the AFP, including those assigned to ACT Policing, are subject to the provisions of the *Complaints (Australian Federal Police) Act 1981* (Cth). Approximately 70% of all complaints received 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's Annual Report.

A high number of complaints are made about ACT Policing because of the level of public interaction involved in community policing work. Most complaints are of a relatively minor nature and concern alleged conduct of police, such as incivility or rudeness.

The AFP's Professional Standards investigates most complaints about AFP members. The Ombudsman reviews all AFP investigations and conducts independent inquiries and investigations, if appropriate.

The Complaints Act allows the AFP to conciliate complaints of a minor nature directly with complainants through its workplace resolution process. This process combines the benefits of direct accountability with the opportunity to learn from mistakes. The Act also provides information to assist the AFP to improve practices and procedures and the performance of individual members. When a complaint is finalised through the workplace resolution process, the AFP provides a report to the Ombudsman explaining how it was managed or investigated.

**This process combines the benefits of direct accountability with the opportunity to learn from mistakes.'**

For serious complaints about police actions, either the AFP or the Ombudsman will conduct a formal investigation. 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.

### ACT Policing complaints

In 2003–04, we received 503 complaints about ACT Policing compared to 513 in 2002–03. As stated earlier in this report, fluctuations in complaint numbers have occurred over the past six years, with a 2% decrease this year. Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in various outcomes. An analysis of complaint complexity, as indicated by the number of issues raised per complaint, shows that on average complainants are consistently including between one and two issues per complaint.

This year, we increased our focus on the effectiveness and efficiency of the police complaints system. Allocating resources to ensure that complaints can be resolved and that police remain accountable for their use of powers is sometimes a balancing exercise for the Ombudsman. Many complainants, after receiving an explanation for police use of powers, remain dissatisfied with the resolution of their complaint and request that Ombudsman staff continue to investigate the complaint, which is sometimes expressed as 'corruption' or 'brutality'.

Even when the result of a workplace resolution process may not be the outcome sought by the complainant, the process is often beneficial. Improved understanding is achieved and the complainant is given an opportunity to discuss the matter directly with senior police. For example, a person may believe that police should not be able to place an intoxicated person in protective custody when no offence has been committed.

The complainant may not accept the decision made in the individual case, but will be better informed as to the difficulty of the issue.

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 if the nature of the complaint has not been properly detailed.

The increase in the number of issues we decided not to investigate on receipt or after making preliminary inquiries (113 or 17.5%, compared with 12.5% the previous year) allowed Ombudsman staff to devote more time to ensuring that issues warranting investigation received appropriate attention.

Taking this approach resulted in a decrease in the number of conciliations attempted and an increase in successful outcomes, with a corresponding increase in the number of preliminary inquiries and decisions not to investigate at the outset. These results reflect the level of scrutiny and analysis Ombudsman staff applied to each complaint received and the accuracy of their decisions about how each should be handled.

Some complaints are best dealt with as management issues for the AFP without the direct involvement of the Ombudsman's office. This approach is supported by *A Review of Professional Standards in the Australian Federal Police* by the Hon. William Fisher, AO, QC (the Fisher Review), which was tabled in the Federal Parliament in December 2003. Under the Fisher model, the Ombudsman's involvement in minor complaints about the AFP would be reduced and attention would be focused on handling more serious complaints. This model is well established in New South Wales and Queensland and is to be introduced in Western Australia.

The Australian and ACT Governments have yet to respond to the Fisher Review, and details of implementing the Fisher model are yet to be finalised. Subject to the accountability audits recommended in the Review, the Ombudsman considers the model to be a natural progression from the present complaint system, especially in the ACT Policing context.

## Responding to intractable complaints

A problem for the Ombudsman's office is that some complaints become a significant drain on complaint management resources. This year the Ombudsman's powers were used under section 24(4A) of the Complaints Act about a certain class of actions by the AFP. These complaints are now considered under an arrangement with the Commissioner of the AFP. The arrangement specifies that complaints about the AFP's response to a particular complainant's neighbourhood disputes will be determined 'a class not warranting investigation'.

This arrangement was used for a complainant who had a history of neighbourhood disputes and made frequent complaints of dissatisfaction with the AFP's response to those disputes. When conciliation of this person's complaints was attempted, further complaints about the conciliation process were then made. This cycle of complaints reached a peak when the complainant made 15 complaints about the AFP in one weekend. The number of these complaints and the experience of trying to conciliate them represented a significant administrative and cost burden for both the AFP and our office.

## Traffic Infringement Notices

This year there was a marked increase in the number of complaints made about AFP officers issuing Traffic Infringement Notices. The complaints were often made in letters seeking withdrawal of a notice. In seeking to understand these complaints and possible reasons for the increase, we identified the following factors behind the complaints:

- improper conduct by an AFP member
- misunderstandings about police powers and the manner in which a traffic notice can be contested
- differing expectations about the way in which police can and should use their discretionary powers.

AFP members have been contacting complainants to assess the reason for their complaints and are developing strategies, in consultation with Ombudsman staff, to reduce complaints about AFP officers.

## Workplace resolutions

The majority of AFP complaints deal with issues about conduct, such as allegations of rudeness, or misuse of police powers. The AFP successfully manages these complaints in the workplace, as Table 1 shows.

A significant proportion of complaints concerning ACT Policing were assessed as suitable for conciliation using the workplace resolution process, as shown in Figure 4.

**TABLE 1** AFP—issues raised in complaints to the Ombudsman managed and resolved by conciliation, 2000–04

Year	Proportion of issues managed by conciliation	Proportion of issues successfully conciliated
2003–04	71% (455 issues)	60% (272 issues)
2002–03	67% (537 issues)	50% (269 issues)
2001–02	48% (394 issues)	60% (238 issues)
2000–01	59% (513 issues)	56% (287 issues)

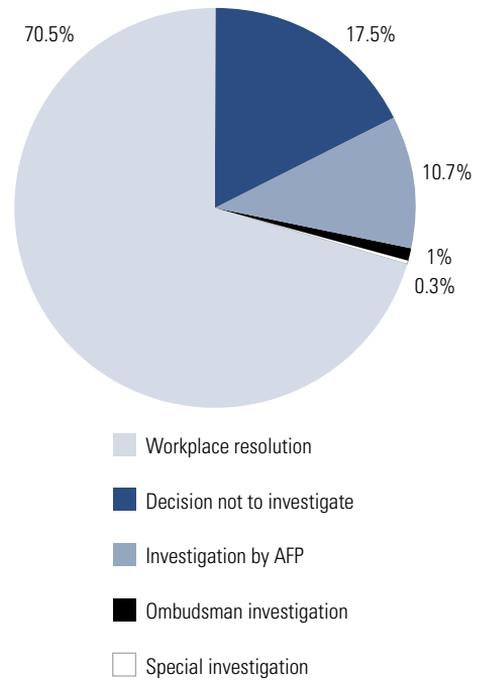
## Managing property

Managing exhibits and lost property is a significant logistical task for the AFP. While this year there was a general decrease in complaints about property management, the ongoing number of errors in exhibit handling and property management caused concern.

During the year, Ombudsman staff provided input to the revision of the ACT Policing Practical Guide for Property, Exhibit and Drug Handling. The resulting code includes:

- more appropriate storage for firearms
- video monitoring of storage facilities
- formalised audit processes and random stocktakes
- protocols for accurately recording transfer of property between AFP members
- clarification of roles and responsibilities of case officers and property registrars.

**FIGURE 4** ACT Policing—method of handling complaints issues finalised, 2003–04



In April 2004, Ombudsman staff inspected the AFP's main ACT property storage facilities and noted significant progress in implementing the new guide. The AFP had completed a full stocktake and upgraded the database to support the audit. They had also made significant improvements in the security and maintenance of impounded vehicles.

A complaint conciliated by the AFP during the year highlighted the practice of conducting searches under the *Drugs of Dependence Act 1989* (ACT) where the occupant of a house is not present, as illustrated in the *Conducting searches* case study.

## Custody

The management of people in custody remained a strong focus for the Ombudsman's office. ACT Policing sought our contribution in developing new guidelines for managing people in AFP custody. Based on information gathered from complaints made about treatment in custody and from considerable research, we made a number of recommendations. The AFP accepted the recommendations and implemented a new guideline.

During the year, we visited the Jervis Bay (ACT) Watch House to assess whether it complied with the new custody guidelines. This facility services a population with a high proportion of Indigenous Australians. We found no apparent shortcomings during our review.

Video monitoring plays an essential role in the investigation of Watch House custody-related complaints. Normally, video evidence allows Ombudsman staff to reach a conclusive view. During the year, two investigations were hampered by failures in the video-recording equipment at the City Watch House as the *Theft of property* and *Evidence after the fact* case studies demonstrate.

### **ACT Family Violence Intervention Program**

In recent years, in consultation with many community representatives, ACT Policing developed a special program for police response to family violence incidents. This program was the subject of an own initiative investigation by the Ombudsman in July 2001.

The resulting report, *Policing Domestic Violence—Own Initiative Investigation into Policing Domestic Violence in the ACT*, foreshadowed that the Ombudsman would consider a further investigation of this issue during 2003–04. Due to resource constraints and a decrease this year in the number of complaints about the response of ACT Policing to family violence matters, we did not proceed with further investigation of this issue. Our staff are aware that such complaints are often distressing for all involved, and are keen to ensure that we continue to develop knowledge to deal with these types of complaints. This year, two members of the office’s Law Enforcement Team participated in a course delivered to all AFP ACT Region officers as part of implementing the ACT Family Violence Intervention Program.

We will continue to take a special interest in family violence complaints during 2004–05 and to monitor the type and number of complaints.

## **CASE STUDY** conducting searches

Mr K complained his bedroom had been turned into an ‘utter shambles’ following the AFP’s execution of a search warrant. He also complained that personal items were left in clear view of his flatmates when they entered the home because of the position of the bedroom in relation to other rooms in the house.

The matter was successfully conciliated, with Mr K accepting the AFP’s explanation for the condition of the room. The AFP advised that in future the areas being searched would be videotaped before and after the search, wherever possible, to ensure that the police leave premises in a comparable condition at the conclusion of a search.

## **CASE STUDY** theft of property

Mr U was taken into custody at the City Watch House and a sum of money was recorded as part of his property. The next day it was discovered that \$50 appeared to be missing and an investigation was conducted as to whether a member of the Watch House staff had taken the \$50 from Mr U’s property.

Ten or so AFP members were involved in the arrest, transport and detention of Mr U, and video surveillance of the property cupboard failed for over an hour during Mr U’s custody. Therefore, Ombudsman staff were not able to determine who had stolen the money.

The AFP compensated the complainant for the missing money and made a number of recommendations about procedural improvements relating to recording and storing property, and upgrading of the surveillance equipment in the Watch House.

### **Own initiative investigation— administering Traffic Infringement Notices**

For two years, Ombudsman staff have been working collaboratively with the AFP on a project to investigate the AFP's role in deciding whether individual Traffic Infringement Notices should be withdrawn or disputed in court. The project was initiated because of the high level of complaints over a number of years about the AFP's traffic adjudication responsibility.

It has been beneficial to run the project for a two-year period, and to map and address the range of issues that historically caused people to complain. The AFP adopted new procedures for traffic disputes, resulting in these types of complaints reducing significantly. We hope that agreement will be reached early in 2004–05 on a new policy to guide decision makers in traffic adjudication. We also expect that lessons learned from this investigation will be applied to other government agencies facing similar challenges in administrative decision-making.

### **Critical incidents**

Critical incidents are incidents in which a fatality or significant injury has occurred or where the AFP has been required to respond to an incident on a large scale, as might occur during a public demonstration.

During the year, the Ombudsman's office considered the AFP's role in two critical incidents: a fatal high speed pursuit and an incident during US President George Bush's visit to the ACT.

It is pleasing to note that the AFP has proactively notified the Ombudsman of issues arising from critical incidents where no complaint has been made. This approach provides the opportunity for the Ombudsman to assess the AFP's response. While the Complaints Act requires the Ombudsman to be notified about complaints, critical incidents are not necessarily the subject of a complaint.

In the coming year, we will develop a more formal arrangement with the AFP to ensure that there is a clear basis for proactive notification of issues arising from critical incidents.

## **CASE STUDY** evidence after the fact

Mr M complained about Watch House staff failing to obtain medical treatment for him after he was injured in the course of his arrest.

A significant failure of the Watch House video system occurred for 36 hours during Mr M's period in custody. The Watch House videotapes would have assisted Ombudsman staff in determining whether the injury would have been obvious to custodial staff, and if there was support for Mr M's claim of requesting medical assistance while being charged. The lack of corroborative evidence prevented a conclusion being reached about the negligence or otherwise of the Watch House staff.

The AFP has assured us that a new tamper-proof digital recording system will be installed in the Watch House in the coming year. Apart from remedying intermittent video failure, the system will also rectify the current problem of video 'blind spots' in the Watch House.

As an interim measure, the Ombudsman has asked to be advised immediately by Watch House staff of all video failures as they occur.

# organisational governance

## INTERNAL ACCOUNTABILITY STRUCTURES AND PROCESSES

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

## STRATEGIC AND ORGANISATIONAL PLANNING

Each year, the Ombudsman's office develops strategic and business plans, which identify priorities for the year. Progress against these

plans is monitored and assessed on a quarterly basis, and adjustments are made accordingly.

Each specialist team and office throughout Australia develops detailed business plans outlining strategies and activities to support the Strategic Plan. 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.

The Strategic Plan for the office is being reviewed and business plans are being developed for 2004–05.

## 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 Chapter 2 for more information.



# information and access

## FREEDOM OF INFORMATION

### Complaints about the actions of agencies

Subsection 53(3) of the *Freedom of Information Act 1989* (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 seven complaints in which the handling of requests made under FOI provisions by five agencies was raised as an issue. These complaints mostly related to concern about delays in providing documents and/or reasons for exemption. Frequently our intervention seeks to have the agency expedite a response.

### Freedom of Information requests to the Ombudsman

In 2003–04, we received two FOI requests under section 14 of the *Freedom of Information Act 1989*. No fees or charges were collected from the applicants. One matter resulted in all information requested being released within the required time limit. In the other, there were partial exemptions to exclude telephone numbers and email addresses, resulting in the information being released seven days outside of the time limit.

There were no requests for internal review, and no applications for review of decisions were made to the Administrative Appeals Tribunal. We incurred costs totalling \$426.81 in processing FOI requests in 2003–04.

## PUBLIC INTEREST DISCLOSURE

As provided for by the *Public Interest Disclosure Act 1994* (ACT) (the PID Act), a person may make a public interest disclosure, 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 that the facts making something a PID Act matter can be intertwined with other events that have given rise to a disagreement or dispute between a person and a government agency. Often the person is employed by the 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, at least, to be notified formally) some time after the disagreement or dispute is first manifested.

*‘Complaints of this nature are usually sensitive and often complex, and their investigation requires a great deal of care.’*

Notwithstanding these practical and legal difficulties, the PID Act is an important thread in the fabric of democratic, ethical and accountable government in the ACT. The Ombudsman has appropriately been given a role under the PID Act, and it is one that we take 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, with six disclosures received about five agencies, as outlined overleaf.

- Two complaints were referred to the Ombudsman by an agency when it realised it had not initially recognised that certain disclosures had been made under the PID Act. Ombudsman staff met with both the complainant and the agency to determine how best to progress the complaint. Further consideration of this complaint will continue in early 2004–05.
- In March 2004, the Auditor-General referred a complaint for our consideration. This complaint continues to be investigated.
- We referred one complaint to the Auditor-General as the more appropriate authority to consider the matter.
- In one complaint received directly from a complainant, Ombudsman staff decided there was insufficient evidence to determine whether the PID Act had been breached or whether there had been an unlawful reprisal.
- In another complaint received directly from a complainant, the Ombudsman was satisfied that the agency was properly conducting its own investigation and declined to investigate further.

Ombudsman staff also continued to investigate a PID complaint that had been made to the office in 2002–03. A report on that matter will be completed early in 2004–05.

## TERRITORY RECORDS

During the year, the ACT Ombudsman's office implemented a Records Management Program in accordance with the *Territory Records Act 2002* (ACT). This program 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 developed for the Ombudsman's office is used by staff
- the Ombudsman's approved Records Disposal Schedule is implemented and monitored appropriately.



# community and environment

## COMMUNITY ENGAGEMENT

Staff from the ACT Ombudsman Team and the Law Enforcement Team interact in a variety of ways with community sector organisations and individuals. The reason for doing so is to generate public awareness of the right to complain to the Ombudsman and to build confidence in the role of the Ombudsman in managing and investigating complaints about ACT Government agencies and ACT Policing.

The Ombudsman was pleased to receive additional funding from the Australian Government in the 2004–05 Budget for outreach activities.

In 2004–05, strategies will be developed to increase outreach activities in rural and regional communities.

Some of our activities during the year.

- ACT Team and Law Enforcement Team members visited the communities of Wreck Bay and Jervis Bay in conjunction with the NSW Ombudsman's office to provide information about the role of the Ombudsman. This successful visit highlighted a continuing need for the ACT and NSW Ombudsman to maintain a close relationship with the community. Further visits are proposed for the coming year.
- Regular Ombudsman visits to the Quamby Youth Detention Centre, Symonston Temporary Remand and Periodic Detention Centre and Belconnen Remand Centre provided a useful opportunity to outline the role of the Ombudsman and explain how detainees can make complaints.
- Outreach visits were conducted to local libraries, community centres, youth centres, government shopfronts and federal parliamentarians representing electorates within the ACT, as well as to the Federal Member for Eden-Monaro.

## COMMISSIONER FOR THE ENVIRONMENT

Section 23 of the *Commissioner for the Environment Act 1993* requires that ACT agencies report each year against:

- requests made by the Commissioner under section 18 of the Act
- details of any assistance requested
- details of investigations carried out
- recommendations made and action taken by the agency.

During the year, the Ombudsman did not receive any requests from the Commissioner to provide information to assist with his preparation of a state of the environment report.

## 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. Information sheets are available on our website homepage at [www.ombudsman.act.gov.au](http://www.ombudsman.act.gov.au).

A presentation was made at the Annual General Meeting of the ACT Multicultural Council about the role of the Ombudsman.

# statistics

**TABLE 1**—ACT Government departments and agencies complaints received, and complaints and issues finalised, 2003–04, *Ombudsman Act 1989* (ACT) (including Freedom of Information).

**TABLE 2**—ACT Policing complaint issues finalised, 2003–04, *Complaints (Australian Federal Police) Act 1981* (Cth).

**TABLE 3**—ACT Policing method of handling complaint issues finalised, 2003–04, *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 2003–04, including some complaints carried over from previous years.

**Complaints received**—complaints received in 2003–04.

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

**Defect**—defective administration 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**—complaint not warranted for one of the following reasons: 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 defective administration.

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

**Substantiated/Unsubstantiated**—complaint issue was found to be true or there were no grounds for the complaint.

**TABLE 1** ACT Government departments and agencies complaints received, and complaints and issues finalised, 2003–04, *Ombudsman Act 1989* (ACT) (including Freedom of Information).

Agency	Complaints		Outcomes 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 Canberra Institute of Technology	4	4		1		1		1	1	4
ACT Chief Minister's Department		1	2						1	3
ACT Community Advocate	4	4		1		1	2			4
ACT Corrective Services	102	114	9	26	8	85	24	9	10	171
ACT Department of Disability, Housing and Community Services	1	1		1	1					2
ACT Department of Education Youth and Family Services	60	56	3	8	5	26	27	6	3	78
ACT Department of Public Prosecutions	1	2		3		1				4
ACT Department of Treasury	9	7		1		4	1		1	7
ACT Department of Urban Services	22	19		4	1	10	3	3		21
ACT Emergency Services Bureau	1	1					1			1
ACT Gambling and Racing Commission	1	1							1	1
ACT Health	8	9			1	3	5			9
ACT Housing	93	102	2	19	4	71	35	8	1	140
ACT Legal Aid Office	9	8		2	1	3	2	1	1	10
ACT Legislative Assembly	2									0
ACT Magistrates Court	18	18	1	4	1	7	4	2	8	27
ACT Office of Fair Trading	3	3				2		1	1	4
ACT Planning and Land Authority	29	22	1	8		6	12	7		34
ACT Planning and Land Management	3	5		1	2	5				8
ACT Public Trustee	16	16				16	4	1		21
ACT Registrar General's Office	3	3				2		1		3
ACT Road User Services	43	40	2	6	1	21	14	2		46
ACT Supreme Court	3	3		2			2			4
ActewAGL	2	2			1	1	1			3
ACTION	1	1		2					1	3
ACTTAB Limited	1	1							1	1
Australian International Hotel School		1		1						1
Environment ACT	7	4		4		1		2		7
Independent Competition and Regulatory Commission		1							1	1
Office of the Occupational Health and Safety Commissioner and ACT Workcover	4	4				3	1			4
University of Canberra	2	4	5	3		2	2		5	17
<b>Total</b>	<b>452</b>	<b>457</b>	<b>25</b>	<b>97</b>	<b>26</b>	<b>271</b>	<b>140</b>	<b>44</b>	<b>36</b>	<b>639</b>

**TABLE 2** ACT Policing complaint issues finalised, 2003–04, *Complaints (Australian Federal Police) Act 1981* (Cth).

<b>Complaints</b>	Received	<b>503</b>
	Finalised	<b>484</b>
<b>Outcome of issues finalised</b>	Conciliated	<b>275</b>
	Incapable of determination	<b>5</b>
	Substantiated	<b>10</b>
	Unsubstantiated	<b>44</b>
	Ombudsman investigation not warranted	<b>243</b>
	Advised to pursue elsewhere	<b>8</b>
	Complaint not pursued	<b>58</b>
	Out of jurisdiction	<b>2</b>
	<b>Total issues finalised</b>	<b>645</b>

**TABLE 3** ACT Policing method of handling complaint issues finalised, 2003–04, *Complaints (Australian Federal Police) Act 1981* (Cth).

<b>Method of handling complaints</b>	Ombudsman decision not to investigate	<b>77</b>
	Ombudsman preliminary inquiries	<b>36</b>
	Ombudsman investigation	<b>6</b>
	AFP workplace resolution	<b>455</b>
	AFP investigation	<b>69</b>
	Special investigation	<b>2</b>
	<b>Total issues finalised</b>	<b>645</b>

Note: The office continually 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

<b>ACT</b>	Australian Capital Territory
<b>ACTRUS</b>	ACT Road User Services
<b>ActewAGL</b>	Australian Capital Territory electricity, water and gas utility
<b>AFP</b>	Australian Federal Police
<b>ARC</b>	Administrative Review Council
<b>Cth</b>	Commonwealth
<b>FOI</b>	Freedom of Information
<b>GST</b>	Goods and Services Tax
<b>MLA</b>	Member, Legislative Assembly
<b>PID</b>	Public Interest Disclosure
<b>PIN</b>	Parking Infringement Notice

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