



OMBUDSMAN AN OFFICER OF
THE ACT LEGISLATIVE ASSEMBLY 

2021-22

ACT OMBUDSMAN

ANNUAL REPORT



2021–22 HIGHLIGHTS



Received



Finalised



Complaints

524

426



Reportable
conduct
notifications

136

154



Freedom of
Information
reviews

26

30



ACT Ombudsman

Credits

Australian Capital Territory

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Produced by the ACT Ombudsman, Canberra.

Transmittal Certificate

7 October 2022

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

Dear Speaker

I present to you the *2021–22 ACT Ombudsman Annual Report*.

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

I certify the *2021–22 ACT Ombudsman Annual Report* is an honest and accurate account of the work of the ACT Ombudsman's Office (the Office) and that all material information on the operations of the Office has been included for the period from 1 July 2021 to 30 June 2022.

As I am an Officer of the Assembly, this report is not subject to the *Annual Reports (Government Agencies) Directions 2022*. Where relevant to the Office, I sought to include similar information in this report to the information required under these directions.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Iain Anderson', written in a cursive style.

Iain Anderson
ACT Ombudsman

Contacting the ACT Ombudsman

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If you would like further information about the ACT Ombudsman, please go to:

Website ombudsman.act.gov.au

This *ACT Ombudsman Annual Report 2021–22* is available on the above website.

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Part 1: Review by the ACT Ombudsman



We are pleased to introduce the *2021–22 ACT Ombudsman Annual Report*.

During 2021–22, the ACT Ombudsman (the Office) again felt the impact of COVID-19. We adjusted the way we work and continued to deliver and remain true to our purpose to provide assurance that the ACT Government entities we oversee act with integrity and treat people fairly while influencing systemic improvement in public administration. Ensuring better administration is at the heart of what we do.

The number of complaints we received about ACT agencies decreased in 2021–22, compared to the previous year. We commonly see variation in complaint numbers across financial years and the number of complaints received in 2021–22 was similar to the number the Office received in 2019–20. Details are provided in Part 3 of this report: Performance analysis.



We were pleased to be able to recommence face-to-face community outreach activities towards the end of the year. In May 2022, we attended the Council on the Ageing (COTA) ACT's 2022 Silver is Gold Expo and we look forward to increasing this type of outreach in 2022–23.

Our monitoring of agencies' implementation of recommendations continued during the year. This included reviewing the implementation of recommendations made in our published reports between 1 July 2019 to 30 June 2021. Our review covered recommendations in 3 ACT Ombudsman reports. Once the analysis is complete, we will publish a report outlining the findings of our review.

In January 2022, the ACT Government announced that our Office, the ACT Inspector of Correctional Services and ACT Human Rights Commission will form the ACT's National Preventive Mechanism (NPM) to support the implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in Australia.

OPCAT is an international treaty designed to strengthen protections for people in situations where they are deprived of their liberty and may be vulnerable to mistreatment or abuse. OPCAT requires countries to establish independent bodies known as NPMs to undertake regular preventive visits to places of detention – to monitor treatment and conditions and strengthen protections against torture and other ill treatment. The deadline for implementing the ACT NPM is now January 2023, and in 2021–22 the Office began meeting regularly with the ACT Inspector of Correctional Services and ACT Human Rights Commission to discuss our joint implementation of this important new function.

This year, the Office continued working with agencies to share better practices and provide guidance on dealing with complex issues in Freedom of Information (FOI) and the Reportable Conduct Scheme. The Office hosted our first virtual FOI and Reportable Conduct practitioners' forums. It was a great opportunity to see the relevant stakeholders come together after a lengthy period of working remotely during 2020 and 2021.

In FOI, all 9 ACT Government Directorates provided both mandatory and optional data for our reporting, allowing us to build on our understanding of the operation of the FOI Act. This year we completed 30 Ombudsman reviews – 18 decisions were published on our website and AustLII. Our total of 85 published decisions as of 30 June 2022, contribute to a growing body of precedent on the FOI Act and will guide practitioners in their future decision making.

The Reportable Conduct Scheme commenced on 1 July 2017 and has just completed its fifth year of operation. It is pleasing to see the Scheme maturing and the Office working closely with our stakeholders to support them build capability and meet their obligations. The number of overall contacts continues to decrease compared to previous years. Notification volumes decreased by 20 per cent, while enquiries decreased by 6 per cent. We consider the decrease in all contacts may reflect the impact of the lockdown in the ACT from August to October 2021 and the ongoing impact of COVID-19 and associated restrictions on the community resuming ‘normal’ activity. The Office will continue to monitor emerging trends in the numbers of notification, enquiries and complaints.

During the year, the Office also commenced its first complaint investigation as Inspector of the ACT Integrity Commission and provided our first set of recommendations to the Integrity Commission to influence improvements in the way they communicate with the community.

The Office continued to engage with the ACT Legislative Assembly in 2021–22 through submissions to Committee inquires and appearances at Committee hearings. As well as our appearances at ACT Budget and Annual Report Estimates, we provided submissions and appeared at hearings for the Inquiry into Community Corrections, the Inquiry into Financial Management Amendment Bill (No 2), and the Inquiry into Petition 32–21 (No Rights Without Remedy). We also made a submission to the ACT Inspector of Correctional Services’ *Healthy Prison Review of the Alexander Maconochie Centre 2022*.

Looking ahead, we will continue to engage closely with our stakeholders and bring professional curiosity to every issue to deliver this important role for the ACT community.

In presenting this report, I (Iain) would like to acknowledge the work of Penny McKay as Acting ACT Ombudsman from 1 August 2021 to 31 July 2022. Under her leadership, the ACT Ombudsman continued to assist those who seek our help and hold agencies to account through fair and effective oversight.

It is a great privilege and pleasure to be appointed as Ombudsman on 1 August 2022 for a 5-year term. I have a deep interest in the role and contribution of the Ombudsman. One measure of a fair and equal society is that people can raise concerns about the actions of government agencies with an independent body such as the Ombudsman that can investigate those concerns. I look forward to fulfilling this role and providing independent and impartial assurance to the ACT Legislative Assembly and the ACT community.



Iain Anderson
ACT Ombudsman



Penny McKay
Acting Ombudsman (1 Aug 21 – 31 Jul 22)

Part 2: Annual Report Requirements

Organisational overview

The role of the ACT Ombudsman

The role of the ACT Ombudsman (the Ombudsman) is to influence systemic improvement in public administration in the ACT and provide assurance that ACT Government agencies (agencies) and other designated entities in our jurisdiction act with fairness and integrity.

The Office also works with agencies to support their provision of accessible and effective complaint handling processes to the public.

We undertake this role through our traditional complaint handling activities, as well as our oversight of:

- the ACT Freedom of Information (FOI) framework
- the ACT Reportable Conduct Scheme
- ACT Policing
- the ACT Integrity Commission (as the Inspector).

We also play a support role for the Judicial Council, through the ACT Ombudsman's role as Principal Officer.

The following sections provide an overview of each of these functions.

For more detailed performance information about these functions during 2021–22, see Part 3: Performance Analysis.

A copy of our organisational chart is available on the [ACT Ombudsman](#) website.¹

2021–22 funding

The 2021–22 ACT Budget, released on 6 October 2021, allocated funding of \$2,855,704 (GST exclusive) to the ACT Ombudsman. Funding provided for the ACT Ombudsman in 2021–22 was \$176,948 less than funding received in 2020–21.

Given these funding parameters, in 2021–22 the Office focused on performing our core legislative obligations and deliverables required under our Services Agreement with the ACT Government. Some of the Office's additional and/or discretionary oversight and engagement work was also reduced in scale.

The 2022–23 ACT Budget included funding of \$3,925,266 (GST exclusive) to fund ACT Ombudsman functions in 2022–23. This increase in funding in 2022–23, compared to funding received in 2021–22, is largely attributed to the ACT Government's agreement to fund standard staffing on-costs in 2022–23, based on the Commonwealth Department of Finance costing model.

¹ ACT Ombudsman, *Organisational chart*, www.ombudsman.act.gov.au/dev/about-us/who-we-are?a=105930

Managing complaints about public administration

The Ombudsman receives complaints from people who consider they have been treated unfairly or unreasonably by an ACT Government agency or ACT Policing.

Each complaint we receive is assessed to determine the most appropriate course of action. Complaints that are not in our jurisdiction may be referred to an organisation that is in a better position to assist the complainant. Complaints in our jurisdiction undergo further assessment to determine if the agency has been made aware of the issue, and if preliminary enquiries or an investigation of the matter is required. When making these assessments, we focus on resolving the individual complaint, while also identifying any potential systemic issues.

There are several outcomes that can help resolve a complaint. These include a better explanation of an agency's action, an apology, a refund, or a change of decision. Sometimes agencies may take further action or expedite a process already underway.

A vital part of complaints management is the ongoing improvement of administrative processes. We provide feedback to agencies to help avoid unfair or unreasonable decisions or actions and to ensure better communication with the public. Ensuring better administration is at the heart of what we do.

Improving complaint processes

An important role for the Ombudsman is to support accessible and effective complaint handling systems in agencies. We work strategically with agencies to help develop a healthy complaints culture. This includes valuing complaints as a tool to improve service delivery. For example, the Ombudsman can provide advice and support to Directorates when they are reviewing their complaint management practices.

Biennial Recommendations Implementation Monitoring report

The Office regularly monitors the implementation of recommendations arising from our investigations.

In September 2020, we published our inaugural [Did They Do What They Said They Would?](#) report.² The report analysed agencies' implementation of recommendations made by our Office in reports published between July 2017 and June 2019.

The Office is currently reviewing the implementation of recommendations made in reports published from 1 July 2019 to 30 June 2021 (for both Commonwealth and ACT functions). This review includes:

- the 15 recommendations made in the report [Parole processes at the Alexander Maconochie Centre – Investigation into the administration of parole by ACT Corrective Services](#)³, published in November 2020
- the 9 recommendations made to the ACT Revenue Office in the [Investigation into the transparency of commercial land valuation decisions in the ACT](#)⁴, published in August 2020

² ACT Ombudsman, [Did They Do What They Said They Would?](#), www.ombudsman.gov.au/__data/assets/pdf_file/0013/111460/Did-they-do-what-they-said-they-would-report.pdf

³ ACT Ombudsman, [Parole processes at the Alexander Maconochie Centre – Investigation into the administration of parole by ACT Corrective Services](#), www.ombudsman.act.gov.au/__data/assets/pdf_file/0014/112073/ACTCS-administration-of-parole-processes.pdf

⁴ ACT Ombudsman, [Investigation into the transparency of commercial land valuation decisions in the ACT](#), www.ombudsman.act.gov.au/__data/assets/pdf_file/0018/111384/Investigation-into-the-transparency-of-commercial-land-valuation-decisions-in-the-ACT_V2.pdf

- the 9 recommendations made in the report [ACT Policing's administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community volume 1 and volume 2⁵](#), published in March 2021.

The review process involves agencies completing a self-assessment to provide information about actions taken in response to the Office's recommendations. The Office analyses these responses and provides agencies with our preliminary views for comment. Following the provision of further information from agencies, we prepare our final views regarding implementation. Agencies featured in this review, including ACT Corrective Services, the ACT Revenue Office and ACT Policing, have the opportunity to comment on our proposed findings, prior to finalisation of our report. We expect our report to be completed in the second half of 2022.

The Office also continues to monitor the implementation of recommendations through our regular and ongoing engagement with agencies.

Complaints Education Program

This year, the Office delivered a Complaint Handling Forum (CHF), titled *Complaint Handling: Embracing Challenges and Change*, virtually over 4 days from 20–24 June 2022. The forum focused on challenges and changes in complaint handling, and opportunities to learn about, improve and enhance complaint handling services.

The forum featured a mix of industry experts and representatives from complaint handling agencies, who presented four 90-minute sessions on:

- practical strategies to improve and control client interactions through vocal techniques and active listening
- workforce planning in the complaint handling context
- supporting and promoting wellbeing for complaint handling staff remotely: challenges and lessons learned
- psychology behind challenging behaviours.

The forum was open to complaint handlers and other staff from industry and government nationally. ACT Government employees represented approximately 10 per cent of the total number of attendees at forum sessions.

Complaints Assurance Program

The Complaints Assurance Program (CAP) is a tool we use to help agencies improve complaint handling processes. This collaborative program allows agencies to self-assess their complaint policies and practices and provide a random sample of complaints to the Office for analysis. It enables us to provide targeted recommendations for improvement to participating agencies. The CAP supports agencies to use complaints to improve service delivery and allows us to share best practice initiatives.

In 2021–22, the Office did not commence a new CAP. As discussed below, during the year the Office continued to monitor Housing ACT's response to a CAP conducted in 2020.

⁵ ACT Ombudsman, [ACT Policing's administrative framework for engagement with the ACT Aboriginal and Torres Strait Islander community volume 1 and volume 2](#), www.ombudsman.act.gov.au/__data/assets/pdf_file/0010/112411/Attachment-A-FINAL-Report-Vol-1-ACT-Policing-OMI-accessible-A2147380.pdf
www.ombudsman.gov.au/__data/assets/pdf_file/0017/112409/Attachment-A.1-FINAL-Report-Vol-2-ACT-Policing-OMI-accessible-A2147381.pdf

Reportable Conduct Scheme

The ACT Reportable Conduct Scheme (the Scheme) commenced on 1 July 2017 and has just completed its fifth year of operation.

Under the Scheme, which is set out in Division 2.2A of the *Ombudsman Act 1989* (the Ombudsman Act), the Office oversees how designated entities⁶ prevent and respond to allegations of child abuse and child-related misconduct by employees.

In addition to reporting to ACT Policing, Child and Youth Protection Services (CYPS), and/or any other relevant professional or regulatory bodies, designated entities covered by the Scheme must:

- report to the Office allegations or convictions relating to child-related misconduct by employees, including volunteers and contractors, in the context of their professional or private activities⁷, and
- have practices and procedures in place to prevent reportable conduct, respond to such allegations and convictions, and to handle and share information in accordance with provisions in the *Children and Young People Act 2008* (CYP Act).

Our Office's role is to:

- receive and assess designated entities' responses to reportable conduct allegations or convictions, including whether there was appropriate action by the designated entity in its response and the adequacy of any investigation carried out by the designated entity, and
- monitor the above practices and procedures a designated entity has in place to meet its obligations under the Scheme.

The Scheme does not replace or interfere with police investigations.

To enhance designated entity-based child protection outcomes and encourage best practice, we may also:

- monitor an investigation carried out by the designated entity
- investigate any reportable conduct allegation or conviction, or the response of an organisation to a reportable conduct allegation or conviction, and
- disclose information about investigations to a child, parent and carer, the Office of Fair Trading and other entities specified in the CYP Act.

More information about our work under the Scheme in 2021–22, including trends in reports received from designated entities and investigation outcomes, is set out in Part 3: Performance Analysis.

Freedom of Information

The Office oversees the ACT *Freedom of Information Act 2016* (the FOI Act) and promotes its objects by:

- conducting independent merits review of decisions on access applications
- publishing guidelines to assist Freedom of Information (FOI) practitioners who make access decisions
- granting extensions of time to decide access applications
- investigating complaints about an agency or Minister's actions under the FOI Act, and

⁶ 'Designated entities' covered by the Scheme include ACT Government Directorates, health services, kinship and foster care organisations, residential care organisations, government and non-government schools, childcare services, education and care services including after school care, and religious organisations.

⁷ ACT Ombudsman's Office, *ACT Ombudsman Practice Guide No. 2 Identifying Reportable Conduct*, February 2018, viewed 16 June 2022, www.ombudsman.act.gov.au/data/assets/pdf_file/0009/81000/No.-2-Identifying-Reportable-Conduct.pdf

- monitoring the compliance of agencies and Ministers with their open access obligations.

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

We resolve review matters informally where possible. For example, by facilitating a compromise where an agency and applicant agree to some additional information being provided to the applicant and the review application is withdrawn.

We also work closely with agencies through regular forums, to support them to build capability and to meet their obligations under the FOI Act.

More information about our work under the FOI Act in 2021–22 is set out in Part 3: Performance Analysis. The Office also publishes a separate report every year on the operation of the FOI Act. This report is available on our [Reports](#) webpage on our website.⁸

Inspections

The Office oversees the use of certain covert and intrusive powers under ACT legislation by ACT Policing, the Australian Criminal Intelligence Commission (ACIC), and the ACT Integrity Commission, as well as monitoring ACT Policing's compliance with Part 3.11 (Entry and search warrants) and Chapter 4 (Child sex offenders register) of the *Crimes (Child Sex Offenders) Act 2005* (ACT).

This report covers the results of our inspections of ACT Policing finalised in 2021–22 under the *Crimes (Surveillance Devices) Act 2010* (ACT), the *Crimes (Controlled Operations) Act 2008* (ACT) and compliance with Chapter 4 of the *Crimes (Child Sex Offenders) Act 2005* (ACT).

The Office did not conduct or finalise any inspections in 2021–22 of the ACIC or the ACT Integrity Commission under the *Crimes (Surveillance Devices) Act 2010* (ACT) or the *Crimes (Controlled Operations) Act 2008* (ACT) as the agencies advised our Office these powers were not used. Similarly, the Office did not conduct an inspection of any law enforcement agencies under the *Crimes (Assumed Identities) Act 2009* (ACT) or ACT Policing's compliance with Part 3.11 of the *Crimes (Child Sex Offenders) Act 2005* (ACT), as these powers were not used.

Information about our inspections in 2021–22 is set out in Part 4 of this report.

ACT Integrity Commission

The Ombudsman is the Inspector of the ACT Integrity Commission (the Commission).

To help improve public confidence, the function of Inspector was set up to ensure the Commission operates within its legislative powers. The Inspector can:

- assess and investigate complaints about the Commission and its staff
- make recommendations to the Commission, and
- assess and report on the Commission's compliance with the *Integrity Commission Act 2018* (IC Act).

The Inspector must prepare a separate annual operational review and annual report under the IC Act. This report is available on our [Reports](#) webpage on our website.⁹

⁸ ACT Ombudsman's Office, [Reports](#) webpage, www.ombudsman.act.gov.au/publications/reports

⁹ ACT Ombudsman's Office, [Reports](#) webpage, www.ombudsman.act.gov.au/publications/reports

ACT Judicial Council

The Office provides support to the ACT Judicial Council (the Council).

The Council is a separate entity established under the *Judicial Commissions Act 1994* with powers to receive and examine complaints about the conduct or capacity of ACT judicial officers (judges and magistrates). The Council has 4 members:

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

The Ombudsman is the Council's Principal Officer. Together with nominated staff, the Ombudsman is responsible for:

- receiving the Council's enquiries and complaints
- assisting the Council to conduct preliminary inquiries and other examinations, and
- facilitating communication between the Council, complainants and judicial officers.

Ombudsman staff also perform secretariat services for the Council.

The Council issues its own annual report to the ACT Attorney-General, published on the [ACT Judicial Council](http://actjudicialcouncil.org.au) website at actjudicialcouncil.org.au.¹⁰

¹⁰ ACT Judicial Council, [Annual Report](http://www.actjudicialcouncil.org.au/annual-report) webpage, www.actjudicialcouncil.org.au/annual-report

Part 3: Performance analysis

Contacts

In 2021–22, 849¹¹ contacts were made to the Office, comprising:

- 524 complaints about ACT agencies, organisations or ACT Policing, and
- 325 program specific matters (for example, FOI review requests or Reportable Conduct notifications).

These are discussed in more detail in the sections below.

Complaints management

Complaints received

In 2021–22, as outlined in Table 1, the Office received a total of 524 complaints, comprising:

- 418 complaints related to ACT agencies and general public administration matters
- 88 complaints related to ACT Policing
- 10 complaints related to the ACT Reportable Conduct Scheme
- 5 complaints related to our work as Inspector of the ACT Integrity Commission
- 3 complaints related to the FOI Act.

Table 1: ACT complaints received during 2021–22, compared to the previous 2 financial years

	2019–20	2020–21	2021–22
Complaints received about ACT agencies	423	500	418
Complaints received about ACT Policing	70	103	88
Complaints received related to ACT Reportable Conduct Scheme	15	21	10
Complaints received about ACT Integrity Commission	1	4	5
Complaints received related to FOI Act	11	6	3
TOTAL complaints received	520	634	524

There was a 16 per cent¹² decrease in complaints received about ACT agencies, compared to the previous financial year, with 418 complaints received in 2021–22 and 500 complaints received in 2020–21.

Complaints received about ACT Policing decreased by 15 per cent, with 88 complaints received in 2021–22, compared to 103 complaints received in 2020–21.

¹¹ This figure includes ACT complaints received, FOI requests, notifications, notices and complaints, and Reportable Conduct notifications, enquiries, and complaints.

¹² Percentages rounded to nearest whole number.

Complaints about agencies

Table 2 outlines the number of complaints received by the Ombudsman that relate to ACT Directorates, ACT Policing, and other independent ACT agencies, and reports this number as a percentage of total complaints received.¹³

Table 2: ACT complaints received during 2021–22, by agency

Agency	Number	Percentage ¹⁴
Community Services Directorate	140	28%
Chief Minister, Treasury and Economic Development Directorate	113	22%
ACT Policing	88	17%
Justice and Community Safety Directorate	67	13%
Independent Statutory Offices	26	5%
Transport Canberra and City Services Directorate	24	5%
Health Directorate	20	4%
Education Directorate	15	3%
Canberra Health Services	6	1%
Environment Planning and Sustainable Development Directorate	5	1%
Territory-owned corporations	1	<1%
Officers of the Legislative Assembly	1	<1%
Prescribed authorities	0	-
Total	506*	100%

* Does not include complaints related to the FOI Act, Inspector of the ACT Integrity Commission and Reportable Conduct Scheme.

The largest number of complaints received by the Ombudsman in 2021–22 related to the Community Services Directorate (CSD). Together, complaints about CSD and the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) made up 50 per cent of all complaints about ACT agencies.

When reported by individual agency, as opposed to the Directorate, the largest number of complaints received were about:

- Housing ACT with 133
- Access Canberra with 74
- ACT Corrective Services with 65.

A detailed table of the number of complaints received about individual agencies is provided at **Appendix 1**.

How complaints were received

Figure 1 shows the most common method for contacting the Office in 2021–22 was via our online complaint form (41 per cent).¹⁵

Comparing the proportion of contacts, methods of contacting the Office were broadly consistent with the previous financial year. There was an increase in complainants' use of our online complaint form (from 34

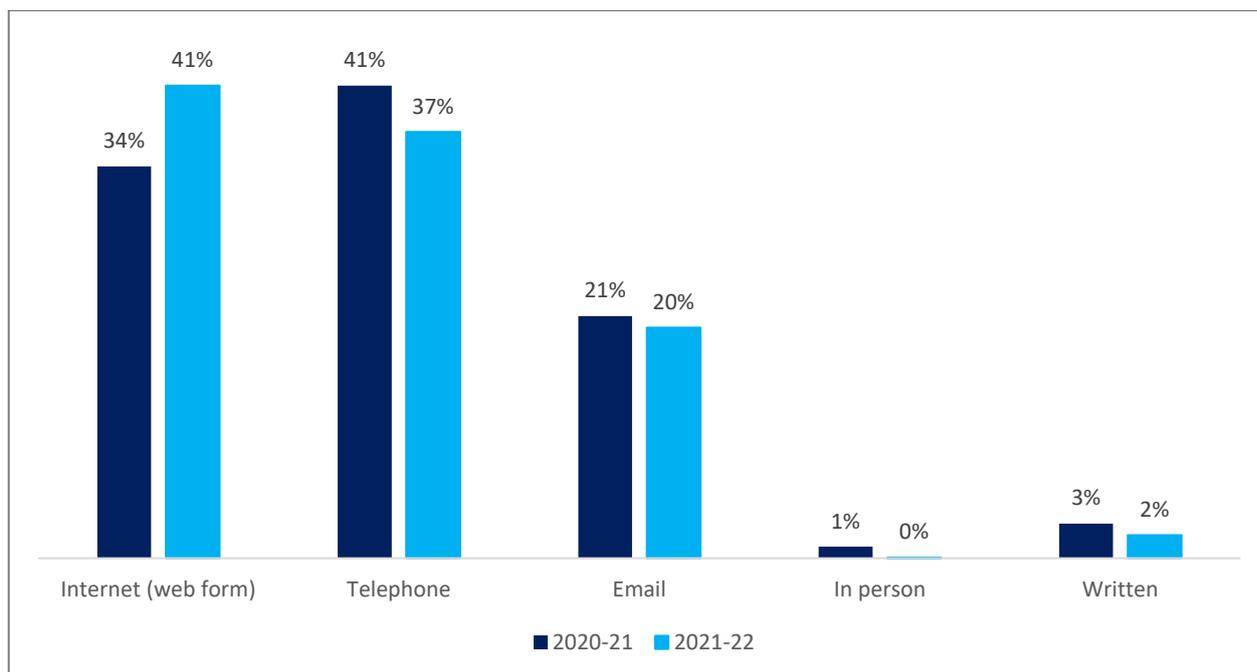
¹³ This table does not include complaints related to the FOI Act, Inspector of the ACT Integrity Commission and Reportable Conduct Scheme, which are discussed separately in this report.

¹⁴ Percentages may not add up to 100 due to rounding.

¹⁵ Includes complaints received about ACT Policing and ACT agencies.

per cent in 2020–21, to 41 per cent in 2021–22) and complainants’ use of the telephone to contact us decreased slightly (from 41 per cent in 2020–21, to 37 per cent in 2021–22).

Figure 1: How ACT complaints were made during 2021–22, compared to the previous financial year¹⁶



Note: This data is dynamic and may be updated. For this reason, there may be minor differences when compared to previous published reports.

Complaints finalised

As outlined in Table 3, in 2021–22 the Office finalised a total of 426 complaints comprising:

- 335 complaints related to ACT Government agencies
- 70 ACT Policing matters
- 13 complaints related to the Reportable Conduct Scheme
- 6 complaints related to our work as Inspector of the ACT Integrity Commission
- 2 complaints related to the FOI Act.

Table 3: ACT complaints finalised during 2021–22, compared to the previous 2 financial years

	2019–20	2020–21	2021–22
ACT Government agencies	424	483	335
ACT Policing	70	107	70
ACT Reportable Conduct Scheme	16	21	13
ACT Integrity Commission	-	4	6
FOI Act	11	7	2
TOTAL complaints finalised	521	622	426

¹⁶ Includes complaints received about ACT Policing and ACT agencies.

Every complaint is assessed to determine whether it can be resolved quickly, or a formal investigation is required. Often, positive outcomes can be achieved for complainants without the Office proceeding to a full formal investigation.

Outcomes achieved for formally investigated complaints

The table at **Appendix 2** provides information about outcomes resulting from investigations finalised in 2021–22. More than one outcome can be achieved in a single complaint investigation.

The outcomes achieved in 2021–22 included:¹⁷

- better explanation by Ombudsman in 11 cases
- remedy provided by agency in 7 cases
- action expedited by agency in 4 cases
- apology issued in 2 cases.

During 2021–22, the Office finalised 36 formal investigations¹⁸. In most matters, the complainant's concerns were resolved after we started our investigation and raised the matter with the relevant agency. In some cases, we were able to provide independent assurance to complainants that agencies had acted reasonably and lawfully and/or could give a better explanation of what had occurred.

COMPLAINT EXAMPLE – Education Directorate

A member of the public complained to the ACT Education Directorate (the agency) about the behaviour of an unidentified public servant. The complainant was unhappy with the response they received when they complained to the agency, remained dissatisfied with the agency's handling of their complaint and made a formal complaint to the ACT Ombudsman.

The ACT Ombudsman investigated the complaint, using our formal powers under the Ombudsman Act 1989 to request information from the agency on how it dealt with the initial complaint.

After analysing the information received from the agency, our Office concluded the agency had acted appropriately and its decision making was proportionate to the circumstances. We were able to provide assurance to the complainant that the agency had acted appropriately during consideration of their complaint.

Performance against service standards

The Office has service standards that apply to complaints we receive about ACT agencies. Our service standard timeframes are:

- 55 per cent finalised in 7 days
- 85 per cent finalised in 40 days
- 90 per cent finalised in 90 days
- 99 per cent finalised in 12 months.

In 2021–22, 38 per cent of complaints finalised about ACT agencies were closed in 7 days, with 54 per cent of complaints finalised in 40 days and 99 per cent of ACT complaints were finalised in 12 months.

¹⁷ Includes outcomes of investigations related to ACT Government agencies and ACT Policing.

¹⁸ Includes investigations finalised related to ACT Government agencies and ACT Policing.

Our complaint handling functions faced significant challenges as a result of COVID-19, including managing employee wellbeing.

Since early 2020, a range of factors have impacted the Office's capacity to handle complaints as quickly or effectively as we aim to. In particular, the 2020 response to COVID-19, including lockdowns across all states and territories, at one point resulted in 70 per cent of the Office's overall staff in lockdown. With our staff and their families affected by illness, home schooling responsibilities, remote working and concerns about their welfare, we introduced a limited-service complaint handling model.

While this model demonstrated agility by the Office and a focus on employee welfare as it adjusted processes to enable services to continue, it also reduced our ability to investigate and manage complaints as efficiently as we otherwise would.

Reducing our phone hours and providing an email address as an alternative means to contact us resulted in increased timeframes as it reduced our ability to communicate with complainants and decreased the quality of information we were able to illicit from complainants.

In 2021–22, the Office implemented several changes to improve our service delivery, including contracting a surge team to boost our capacity to handle complaints and prioritising the efforts of new/surge staff on inbound contacts, while more experienced staff deal with older complaints.

Complaint trends and agency engagement

The sections below provide information on complaint trends about specific agencies during 2021–22 and our Office's engagement activities.

Complaints made about FOI or Reportable Conduct matters are discussed separately in this report. Complaints about the ACT Integrity Commission are discussed in the *ACT Inspector of the Integrity Commission Annual Report 2021–22*.

In 2021–22, the Office continued our regular liaison with Directorates and agencies across the ACT as part of our oversight role, to monitor possible systemic issues and identify improvements in public administration. For example, we met regularly with the ACT Human Rights Commission, ACT Inspector of Correctional Services, Housing ACT, Access Canberra, ACTCS, and continued our regular engagement with ACT Policing.

Housing ACT

During 2021–22, the Office received 133 complaints about Housing ACT, a 2.5 per cent increase in complaints compared to 2020–21. The most common issues raised in complaints included:

- maintenance and repair issues
- issues about the administration of public housing waitlists
- anti-social behaviour and neighbourhood disputes
- debt and refund issues
- the Housing ACT Growing and Renewing program.

COMPLAINT EXAMPLE – Housing ACT

A social housing tenant with disabilities disagreed with a Housing ACT decision that required the tenant to pay for the costs of a broken household fixture.

Our Office investigated the tenant's complaint and requested information from Housing ACT on the decision-making process that resulted in the complainant being liable to pay for repairing the damage.

Housing ACT explained that, while tenants are generally liable for the cost of this type of repair, it does depend on the specific circumstances.

As a result of our investigation, Housing ACT considered its decision-making process and concluded that discretion was incorrectly applied in this case. For this reason, Housing ACT committed to strengthening its staff training on reviewable decisions.

We meet regularly with Housing ACT and also attend the 'Who's new on the street' forum, which brings together various community providers of housing and homelessness services, to build a greater understanding of the economic and social environment in which these services and Housing ACT operates.

In 2020, Housing ACT took part in our Complaints Assurance Program (CAP) which identified areas where improvements could be made to its complaint management system. These areas included ensuring it developed internal guidance to implement broader CSD initiatives related to complaint handling procedures.

Our engagement with Housing ACT in 2021–22 included monitoring its response to our CAP suggestions. Some of the suggestions were incorporated into a broader CSD review of overall complaint handling policies and procedures. Our Office participated in CSD's consultation on its revised complaint handling policies and procedures. We will continue to monitor Housing ACT's progress in developing internal guidance to implement CSD's initiatives, as they are finalised.

Access Canberra

The number of complaints received about Access Canberra slightly decreased this reporting period, from 79 in 2020–21 to 74 in 2021–22 (a decrease of 6 per cent).

Similar themes were evident in complaints about Access Canberra, compared to the previous financial year. Complaints covered a broad range of issues including:

- licencing and registration
- parking and traffic infringement notices
- building and property issues, approvals and allegations of not following policy or procedure
- working with vulnerable people registration practices
- investigating fair trading complaints.

COMPLAINT EXAMPLE – Access Canberra

A complainant was concerned that an infringement notice was not issued by a properly authorised officer.

We investigated these claims and determined that Access Canberra's processes complied with the relevant legislation and the infringement notice was lawful.

Our Office engages with Access Canberra through regular meetings that include discussion of complaint trends.

ACT Corrective Services

In 2021–22, the Office received 65 complaints about ACTCS, 44 per cent less than in 2020–21.

All but one of the 65 complaints was about the Alexander Maconochie Centre (AMC). These complaints were made by detainees, their friends and families. Common AMC complaints related to:

- management of the AMC
- medical treatment
- segregation of detainees
- access to visitors, and
- parole processes.

Just over 10 per cent of all complaints received about the AMC in 2021–22 related to its management of COVID-19. The issues raised mainly related to allegations of staff not complying with COVID-19 regulations and unnecessary isolation of detainees.

As part of our oversight role in relation to the AMC, the Office:

- continued to attend bimonthly meetings with ACTCS, the Official Visitors, the ACT Human Rights Commission, the ACT Inspector of Correctional Services, and the ACT Public Advocate
- presented information sessions about the Ombudsman’s role and jurisdiction during induction training for ACTCS Custodial Officer recruits
- as a member of the ACT NPM (together with the Inspector of Correctional Services and the ACT Human Rights Commission) participated in meetings to discuss the implementation of OPCAT
- developed arrangements for our investigation officers to have the option of using video conferencing to speak with detainees about their complaints.

Transport Canberra and City Services

In 2021–22, the number of complaints received about Transport Canberra and City Services (TCCS) decreased by 25 per cent. We received 24 complaints this financial year, compared to 32 complaints received in 2020–21.

Complaints about TCCS covered a range of issues including:

- property matters, such as damage caused by trees and works to neighbouring properties
- domestic animals, such as nuisance animals and issues with Domestic Animal Service staff
- transport and traffic issues, such as vehicle registration, cancellations and defect notices.

ACT Revenue Office

We received 18 complaints about the ACT Revenue Office (ACTRO) in 2021–22, an increase compared to 13 complaints received in 2020–21. The most common complaint issues in 2021–22 included:

- landholder duty
- late payment penalties
- matters relating to rental bonds.

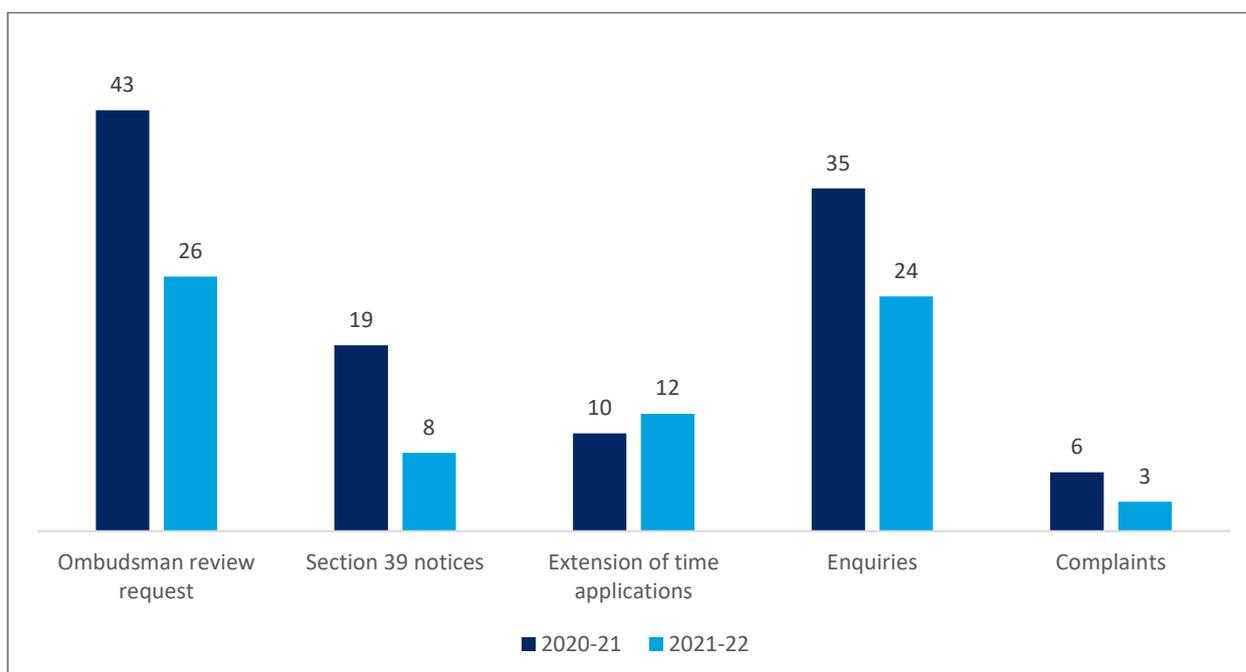
Freedom of Information oversight

FOI contacts received

In 2021–22, the Office received 73 contacts related to our role as the independent oversight agency for FOI, compared to 113 contacts in 2020–21. This was a 35 per cent decrease compared to last financial year. As outlined in Figure 2, this included:

- 24 FOI related enquires
- 26 applications for Ombudsman review
- 8 notices under s 39 of the FOI Act (notices given to the ACT Ombudsman to advise that a decision on an access application was not made in time)
- 12 extension of time requests
- 3 FOI related complaints.

Figure 2: Contacts received under the FOI Act in 2021–22, compared to 2020–21



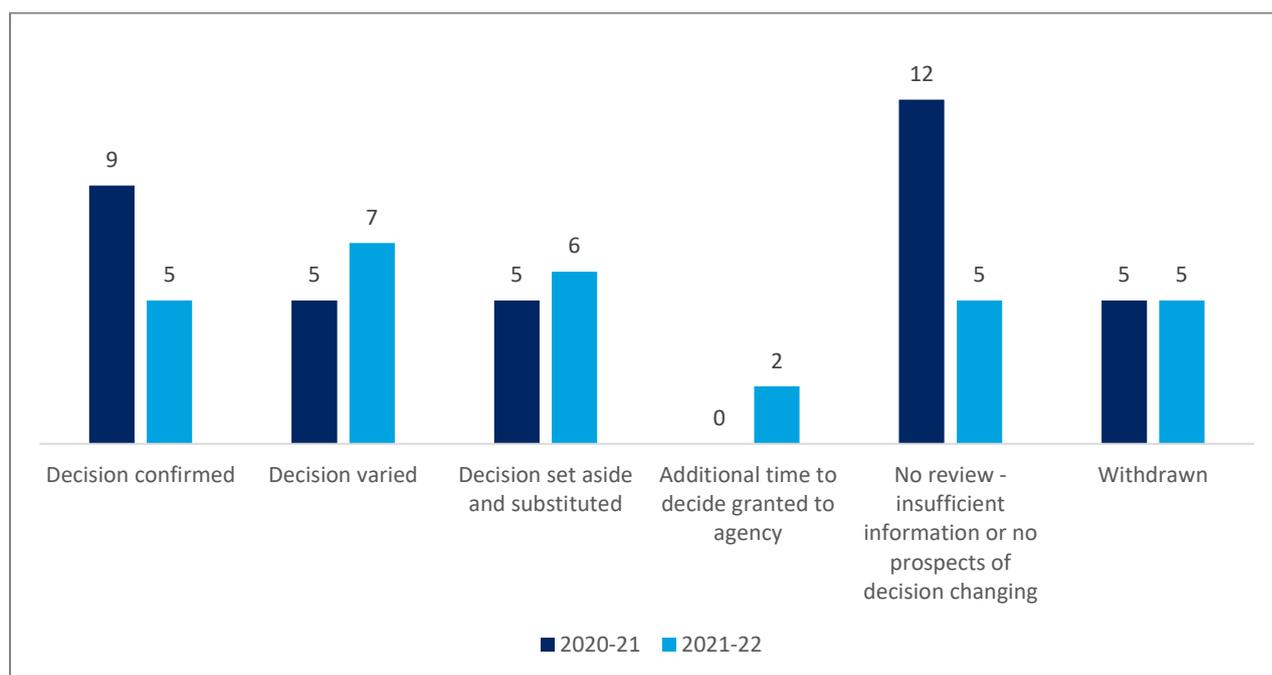
Finalised FOI reviews

As shown in Figure 3, the Office finalised 30 Ombudsman reviews in 2021–22.

The outcomes of these reviews were:

- the original decision was **confirmed** in 5 cases
- the original decision was **varied** in 7 cases
- the original decision was **set aside** in 6 cases
- **additional time to decide** was granted to the agency in 2 cases
- 5 matters were **closed** without review because they were invalid requests or there was no reasonable prospect of success
- 5 matters were **withdrawn** following informal resolution activities.

Figure 3: FOI review requests finalised in 2021–22, compared to 2020–21



Performance against service standards

The Office established service standards for our FOI review applications from 1 July 2019.¹⁹

In 2021–22, we did not meet our service standards:

- 23 per cent of FOI review matters finalised within 6 weeks (below the standard of 30 per cent)
- 47 per cent finalised in 12 weeks (below the standard of 60 per cent), and
- 70 per cent finalised in 6 months (below the standard of 95 per cent).

FOI review matters can generally be finalised within 6 weeks, where informal resolution is successful. Our ability to meet the 30 per cent service standard is expected to vary depending on the number of cases finalised through informal resolution processes.

Where a formal decision is required, matters are expected to take 12 weeks to finalise and complex matters can take longer. Timeframes may also be delayed where agencies are slow to provide copies of relevant documentation to enable a review to commence.

In 2021–22, the number of reviews resolved by informal resolution and withdrawal were consistent with 2020–21. However, far fewer were resolved by deciding there was insufficient information or there were no reasonable prospects of the original decision changing than in 2020–21. In 2021–22, where we may have previously decided not to conduct a review, we attempted to resolve more reviews informally. When informal resolution was unsuccessful this did contribute to the overall length of time taken to finalise our reviews and this accounts for some discrepancies between the service standards and real outcomes in 2021–22.

¹⁹ For more information about Freedom of Information service standards, go to www.ombudsman.act.gov.au/improving-the-act/freedom-of-information/foi-complaints-and-reviews,

Published decisions

At 30 June 2022, the Office had published 85 FOI decisions on the [ACT Ombudsman](#) website, of which 18 were published during the reporting period.²⁰

Publishing decisions contributes to the body of precedent for FOI law and provides agencies and applicants with guidance on the FOI Act, including the application of the public interest test and transparency in decision-making.

Open access monitoring strategy

In 2021–22, the Office faced a number of challenges related to COVID-19, resourcing and managing other competing priorities. As a result, we did not progress our open access monitoring strategy as planned in this reporting period. We continue to consult with stakeholders and provide assistance on areas for improved practice.

We anticipate progressing our open access monitoring strategy in 2022–23, with a focus on agency education.

Engagement activities

Throughout the 2021–22 financial year we engaged with stakeholders in a variety of ways, considering the changing circumstances resulting from COVID-19. We continue to communicate informally with agencies, providing advice and clarification on FOI matters. As part of our ongoing engagement with government stakeholders, we provided input on proposed amendments to the FOI Act.

To mark International Access to Information Day on 28 September 2021, we released a joint statement with Information Commissioners and Ombudsmen across Australia.²¹ The joint statement detailed the new ‘Open by Design’ Principles. These principles are designed to encourage and authorise the proactive release of information by government agencies. This statement was accompanied by a consumer video to raise public awareness of information access rights.

The Office circulated a newsletter to ACT FOI practitioners in December 2021, providing updates on current events and trends and advising practitioners on dealing with access applications.

The ACT Ombudsman attended 2 meetings of the Association of Information Access Commissioners, in September 2021 and April 2022.

The Office hosted a virtual FOI practitioners’ forum in February 2022, with more than 30 Information Officers from agencies attending. The forum was an opportunity to reconnect with ACT agencies and involved discussion on the feedback from a survey on community attitudes towards FOI and FOI matters that had recently received media attention.

²⁰ ACT Ombudsman, [FOI Review decisions](#) webpage, viewed 16 July 2021, www.ombudsman.act.gov.au/improving-the-act/freedom-of-information/foi-review-decisions

²¹ ACT Ombudsman, [Information Access Commissioners and Ombudsmen make recommendations to support Open by Design Principles](#) webpage, viewed 14 June 2022, <https://www.ombudsman.act.gov.au/home/home-news/Information-Access-Commissioners-and-Ombudsmen-make-recommendations-to-support-Open-by-Design-Principles>.

Reportable Conduct Scheme

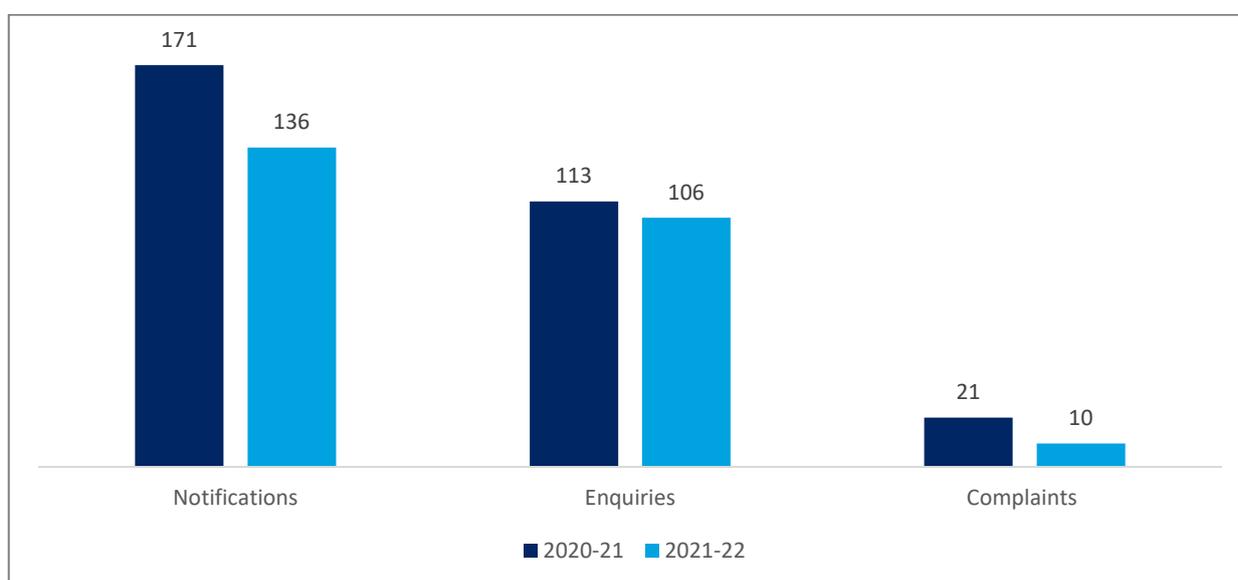
Reportable Conduct – contacts received

The Office received 252 contacts relating to reportable conduct in 2021–22, a decrease on the 305 contacts received in 2020–21.

Figure 4 shows:

- 136 notifications from designated entities²² about allegations of reportable conduct
- 106 enquiries, and
- 10 complaints.

Figure 4: Contacts received related to Reportable Conduct in 2021–22, compared to 2020–21



The number of overall contacts continues to decrease compared to previous years, as Figure 4 shows. Notification volumes decreased by 20 per cent, while enquiries decreased by 6 per cent. We consider the decrease in all contacts may reflect the impact of the lockdown in the ACT from August to October 2021 and the ongoing impact of COVID–19 and associated restrictions had on the community resuming ‘normal’ activity.

Of the 136 notifications this year, 47 were also reported to ACT Policing. This is an increase in not only the number, but also the proportion of matters reported to the police compared to the previous reporting period. This may indicate the reportable conduct allegations related to more serious matters, potentially of a criminal nature. We noted an increased complexity in the matters received during this reporting period, including the nature of the allegations, cross-jurisdictional issues and challenges for organisations progressing investigations.

Table 4 shows the number of notifications received in 2021–22, by sector.

In 2021–22, we continued to receive the largest number of notifications from government and non-government schools (43 reports), followed by the kinship and foster care sector (34 matters), and the education and care service providers (31 reports). While we received fewer notifications during this

²² The term ‘designated entity’ is defined under s17EA of the *Ombudsman Act 1989*.

reporting period across our top 3 sectors, we have seen an increase in notifications from Health Service Providers and Residential Care Organisations.

Table 4: Notifications received in 2021–22 by sector and percentage of total notifications received

	Number	Percentage
Government and Non-Government Schools	43	32%
Kinship and Foster Care	34	25%
Education and Care Service Providers	31	23%
Residential Care Organisations	12	9%
ACT Directorates	7	5%
Health Service Providers	7	5%
Religious Organisation	1	1%
Non-designated entity (Out of Jurisdiction)	1	1%

Timeliness of notification reporting

Under s 17G(2) of the Ombudsman Act, a designated entity is required to notify the ACT Ombudsman’s Office within 30 days after becoming aware of a reportable allegation or reportable conviction of an employee.

In 2021–22, designated entities’ compliance with this obligation decreased from 77 per cent from the last reporting period to 69 per cent. We are alert to this issue and timeliness has been addressed with designated entities, with the most common explanation being the challenges presented by COVID-19 impacting staffing levels and the sharing of information between designated entities. We have been encouraging designated entities to contact us if they anticipate a delay.

It is important designated entities notify the Office within 30 days as the Office can add most value to a designated entity’s response when approaches are made early. Where we identify a designated entity is not making timely notifications, the Office may encourage the designated entity to review its processes and resourcing dedicated to handling allegations of child abuse or child related misconduct by employees.

We published Practice Guide No. 1²³ to assist designated entities with the process of notifying the Office about reportable allegations and convictions against employees.

²³ ACT Ombudsman, *ACT Ombudsman Practice Guide No.1 – How the ACT Ombudsman Responds to Notifications and Reports*, viewed 16 June 2022, www.ombudsman.act.gov.au/data/assets/pdf_file/0035/80999/No.-1-How-the-ACT-Ombudsman-responds-to-notifications-and-reports.pdf

Cases finalised

Under s 17J of the Ombudsman Act, designated entities must provide the Office with a written report of the results of its investigation, including actions taken.

The Office assesses the designated entity's overall response, in consideration of a range of factors outlined in our Practice Guide No. 9,²⁴ to determine if the designated entity made sufficient inquiry and took appropriate action(s). The Office may seek further information to be satisfied of the response. We may also provide feedback to the designated entity for it to consider in terms of ongoing practice improvement.

The Office finalised 154 matters in 2021–22, a 21 per cent decrease in finalised cases compared to 2020–21 (196 matters). Table 5 also shows the allegation type²⁵ of all finalised matters reported to the Office in 2021–22. The most common allegations reported to the Office in 2021–22 were the same as in 2020–21 and 2019–20, namely ill-treatment (involving hostile use of force/physical contact) (148 allegations).

Table 5: Allegation type for matters finalised in 2021–22 and percentage of all allegations and convictions reported

	Number	Percentage
Ill-treatment – hostile use of force	148	36%
Ill-treatment – emotional abuse	85	21%
Neglect	56	14%
Misconduct of a sexual nature – crossing professional boundaries	55	13%
Misconduct of a sexual nature – Sexually explicit comments and other overtly sexual behaviour	23	6%
Ill-treatment – inappropriate restrictive intervention	14	3%
Offences against the Education and Care Service National Law	13	3%
Offences against a person	7	2%
Misconduct of a sexual nature – grooming behaviour	6	1%
Sexual offences where a child is a victim or is present	4	1%
Psychological harm	2	<1%
Other	1	<1%

Performance against service standards

Our focus in 2021–22 continued to be the management of immediate risks associated with incoming notifications and monitoring current reportable conduct investigations by designated entities.

Section 17G notifications

When the Office receives a new s 17G notification from a designated entity about an allegation of reportable conduct, we assess the initial response by the designated entity – including whether it has reported to other authorities – and its risk assessment and investigation plan. This allows the designated

²⁴ ACT Ombudsman, *ACT Ombudsman Practice Guide No.9 – How the Ombudsman Assesses an Employer's Response/Investigation*, viewed 16 June 2022, www.ombudsman.act.gov.au/_data/assets/pdf_file/0015/81006/No.-9-How-the-ACT-Ombudsman-assesses-an-employers-response_investigation.pdf

²⁵ A notification may contain multiple allegations.

entity to consider our feedback during its investigation. We aim to assess notifications within 7 calendar days in 80 per cent of cases.

In 2021–22, 92 per cent of notifications were assessed within the required timeframe (being 7 calendar days).

Section 17J final reports

When we receive a final report from a designated entity following its investigation into reportable conduct allegations or convictions (s 17J report), we consider whether the allegation or conviction was properly investigated and appropriate action taken and whether we need further information from the designated entity. This gives the designated entity reasonable opportunity to act on our feedback or provide further information. We aim to complete this within 28 calendar days in 80 per cent of cases.

In 2021–22, 76 per cent were assessed within the required timeframe (being 28 calendar days).

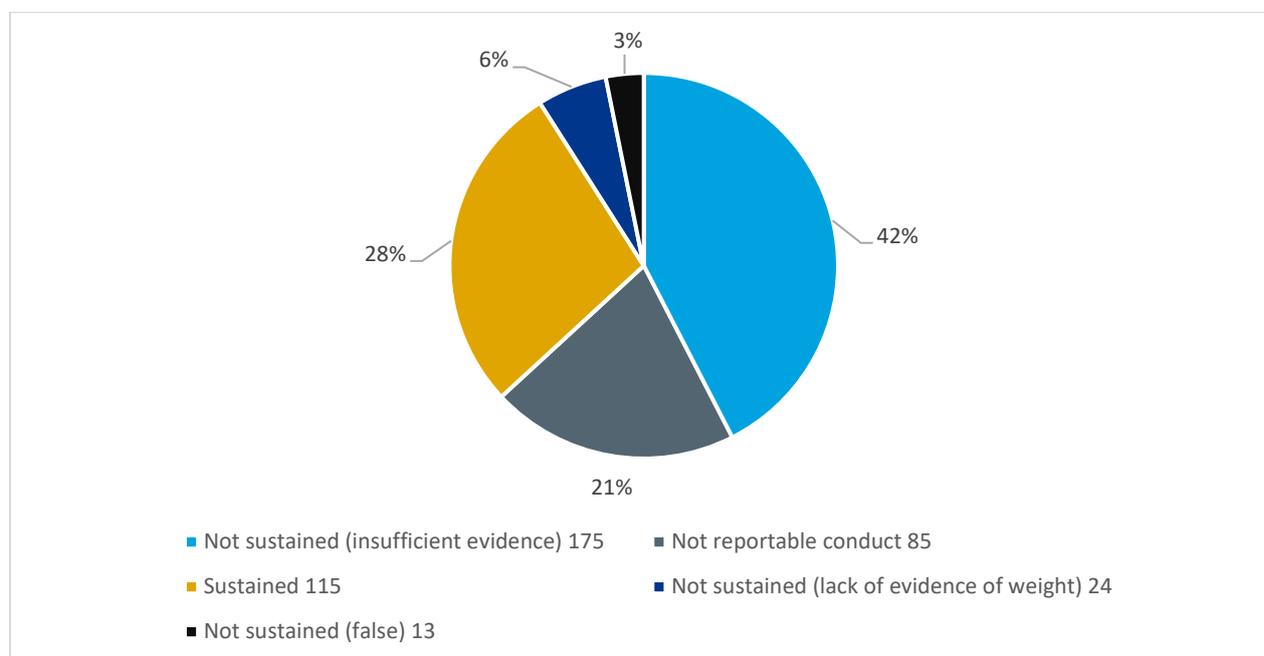
We will continue to strive to meet these service standards – recognising the importance of providing timely consideration to designated entities on assessments.

Outcomes

After notifying the ACT Ombudsman of a reportable conduct allegation or conviction, and on conclusion of its investigation, a designated entity must provide the Ombudsman with the outcome of its inquiries and what action it takes as a result. Designated entities are required to report on whether an allegation has been sustained or not sustained.

Figure 5 and Table 6 show the outcomes for each allegation and conviction, and the actions taken by designated entities, as provided to us in reports finalised in 2021–22.²⁶

Figure 5: Outcomes reported by designated entities—finalised investigations in 2021–22²⁷



²⁶ A notification may contain multiple allegations, each having a finding and action recorded. The total number of allegations is 414. 2 of the 414 were recorded as no information for the Outcomes.

²⁷ There were two allegations with no findings.

Table 6: Actions taken by designated entities—finalised in 2021–22 and percentage of all actions taken

	Number	Percentage
No action after the investigation process	173	42%
Training	51	12%
Termination	46	11%
Counselling	45	11%
Other forms of disciplinary action as per employer	44	11%
Letter of warning	19	5%
Performance monitoring or managing	19	5%
No information provided	10	2%
Transfer/demotion	6	1%
A formal apology	1	<1%

Investigations and complaints

The Ombudsman may, on their own initiative or in response to a complaint, choose to investigate any reportable conduct allegation or conviction against an employee of a designated entity considered under the Scheme. The Ombudsman may also investigate a designated entity’s response to a reportable conduct allegation or conviction.

In 2021–22, the Office received 10 complaints about designated entities’ handling of reportable conduct matters. All of these were handled by either contacting the relevant designated entity and facilitating pathways for complainants to access internal processes or information; or providing further information directly to the complainant.

Monitoring activities

Our ‘Practice Guide No. 9 – How the Ombudsman Assesses an Employer’s Response/Investigation’ provides information to designated entities about how the Office monitors practices and procedures for preventing reportable conduct and how designated entities deal with reportable allegations and convictions.

As outlined in Practice Guide No. 9, we consider the following aspects of a designated entity’s response:

- initial response
- planning
- information gathering
- employee response
- making a finding, and
- taking action.

We provide written feedback to designated entities on the s 17J final reports provided to the Office under the Ombudsman Act. Where we identify systemic feedback concerns, we raise these at liaison meetings. Designated entities are also invited to contact us for further discussion about feedback and we encourage designated entities to revisit previous feedback provided when handling new matters.

During 2021–22, our feedback continued to address:

- providing procedural fairness to those involved in an investigation
- allegations needing to be clearly defined, clarified and recorded correctly before an investigation is conducted
- the articulation and mitigation of risk, based on a broad assessment
- timely investigation plans
- understanding that reporting obligations under the Scheme may include allegations concerning an employee’s private life, where the conduct impacts on the employee’s behaviour in the workplace.

Through future practitioner forums, the development of an e-learning module, stakeholder liaison and our published information, we continue to focus on how we can better support designated entities to implement our feedback and facilitate improvement. We recognise that managing reporting obligations can be complex and time consuming.

Engagement activities

During the year we maintained regular engagement activities with designated entities, ensuring quarterly liaison with key stakeholders and more regular liaison with designated entities with high notification numbers. This engagement helped us provide timely feedback and support to designated entities to build their capacity to prevent, report and respond to allegations of reportable conduct. It also provided our Office with a greater understanding of the challenges designated entities face and how they may have been impacted by COVID–19.

Introducing virtual meetings as our usual platform has proved successful. It has allowed us to conduct regular facilitated feedback discussions with some designated entities to help them better understand their obligations under the Scheme and develop a better understanding of the support we can provide.

We maintained regular liaison with Access Canberra’s Working with Vulnerable People (WWVP) team, ACT Policing Sexual Assault and Child Abuse Team (SACAT), ACT Together Barnardos, the CSD, the Education Directorate, and the Public Advocate and Children and Young Person Commissioner.

We continue to attend meetings with the Bimberi oversight group (convened by CSD), the Children and Young People Oversight Agencies Group (convened by the Public Advocate and the Children and Young People Commissioner); and the ACT Government’s Redress Implementation Group (convened by the Justice and Community Safety Directorate).

In the next financial year, we plan to expand our stakeholder engagement to include religious organisations and the early education and care sector.

Practitioner Forums

We hosted two practitioner forums, one in August 2021 and the second in March 2022.

The August Practitioner forum was held in-person and included a presentation from ACT Policing’s SACAT to provide information to designated entities about its role and the information sharing provisions in relation to reportable conduct matters. We also facilitated a practice discussion on procedural fairness, which was supported by a case study presented by the Education Directorate.

The March Practitioner forum was held virtually and included two presentations. Access Canberra’s Working with Vulnerable People (WWVP) Scheme, with whom we regularly share information, provided information about its assessment process in relation to reportable conduct information and notifications.

The ACT Policing Family Violence Unit provided a presentation about family violence matters in the ACT, which was particularly relevant as we saw an increase in notifications from employers concerning private life matters as a result of family violence incidents. ACT Together Barnardos also provided a case study to inform best practice and lessons learned to enable shared learning for the designated entity practitioners at the forum.

We will continue to involve designated entities in upcoming forums, encouraging a 'community of practice' approach, with designated entities presenting case studies and sharing their investigation practices.

Online information

We have published 2 newsletters and conducted information sessions virtually when requested by designated entities. We have not had a running schedule for information sessions as in previous years due to uncertainty caused by COVID-19. We therefore reviewed and updated information on our website and are developing an e-learning module that we hope to make publicly available on our website before the end of 2022.

We also prepared a new information sheet 'An Introduction to the Reportable Conduct Scheme for the ACT Community (including parents)', which was drafted in consultation with designated entities. This information sheet is due to be published on our website early in 2022-23.

Community Engagement and Support

Community engagement is an essential part of our work. In 2021–22, the COVID–19 pandemic reduced opportunities to engage face-to-face with the community.

With the lifting of public health measures, in the latter part of the year we recommenced face-to-face engagement. In May 2022, we attended the Council on the Ageing (COTA) ACT 2022 Silver is Gold Expo held at Exhibition Park in Canberra. This provided an opportunity to explain the role of the ACT Ombudsman and to learn more about issues that may be of concern to attendees.

We look forward to increasing our face-to-face engagement in 2022–23.

Scrutiny

The Office made several appearances before, and submissions to, Legislative Assembly Committees between 1 July 2021 and 30 June 2022. These were:

- Standing Committee on Public Accounts
 - appearance before the Inquiry into the ACT Budget 2021–22 (in October 2021)
 - submission and appearance before the Inquiry into the Financial Management Amendment Bill 2021 (in February 2022)
 - appearance before the Inquiry into Annual and Financial Reports 2020–21 (in March 2022).
- Standing Committee on Justice and Community Safety:
 - as Inspector, appearance before the Inquiry into the ACT Budget 2021–22 (in October 2021)
 - submission to and appearance before the Inquiry into Community Corrections (in November 2021 and February 2022)
 - as Inspector, appearance before the Inquiry into Annual and Financial Reports 2020–21 (in February 2022)
 - submission to and appearance before the Inquiry into Petition 32-21 (No Rights Without Remedy) (in April 2022)
 - submission to the Inquiry into the Terrorism (Extraordinary Temporary Powers) Amendment Bill 2022 (in May 2022).

One Committee made a recommendation to the Office. In November 2021, the Standing Committee on Public Accounts in its *Report 2—Appropriation Bill 2021–2022 and Appropriation (Office of the Legislative Assembly) Bill 2021–2022*, recommendation 19 states:

The Committee recommends the ACT Ombudsman provide to the Standing Committee on Public Accounts a copy of the report evaluating the ACT Government’s progress against adopted recommendations from ACT Ombudsman’s inquiries once completed.

The Office agreed in principle, noting the work was still underway and subject to approval by the Ombudsman. We expect our report to be completed in the second half of 2022 (progress is discussed in more detail in Part 2).

Financial management reporting

In 2021–22, the ACT Government paid \$2,855,704 (GST exclusive) to the Office to undertake its functions.

This funding was used on, and supported, functions provided by the Office to the ACT. Detailed financial statements for the Office of the Commonwealth Ombudsman, an Australian Public Service entity which currently performs the role of the ACT Ombudsman, are published in the Office of the *Commonwealth Ombudsman's Annual Report 2021–22*.

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

- \$1,381,595 for ACT Ombudsman services, including complaint handling, and oversight in relation to ACT Policing
- \$875,850 to perform functions under the Reportable Conduct Scheme
- \$429,632 to implement and perform functions under the FOI Act²⁸
- \$63,358 to perform functions as the principal officer to support the ACT Judicial Council
- \$105,269 to implement and perform functions as the Inspector of the ACT Integrity Commission.

Note: All figures above are exclusive of GST.

²⁸ Note: Due to an administrative oversight by the ACT Government (that was later corrected) the amount of funding to implement and perform functions under the FOI Act listed in the 2020–21 annual report was incorrect. The correct figure for funding received by the ACT Ombudsman in 2020–21 to implement and perform functions under the FOI Act is \$839,000 (GST exclusive).

Part 4: Annual report requirements for specific reporting entities

The Office oversees the use of certain covert and intrusive powers under ACT legislation by ACT Policing, the ACIC, and the ACT Integrity Commission, as well as monitoring ACT Policing's compliance with Chapter 4 and Part 3.11 of the *Crimes (Child Sex Offenders) Act 2005* (ACT) (the CCSO Act).

The Office has not conducted an inspection of the ACIC or the ACT Integrity Commission under the *Crimes (Surveillance Devices) Act 2010* (ACT) (the Surveillance Devices Act) or the *Crimes (Controlled Operations) Act 2008* (ACT) (the Controlled Operations Act) as the agencies have advised our Office these powers have not been used. The Office has also not conducted an inspection of any law enforcement agencies under the *Crimes (Assumed Identities) Act 2009* (ACT) (the Assumed Identities Act) for the same reason.

The Office's 2020–21 Annual Report did not include the results from our inspections of ACT Policing conducted in March 2021, covering records for the period 1 July 2020 to 31 December 2020, under the Surveillance Devices Act and the Controlled Operations Act. The report about this inspection was provided to ACT Policing in July 2021, and the results of these inspections have been included in this report.

As outlined further below, our Office made a recommendation following our March 2021 inspections of the controlled operations and surveillance devices regimes, that ACT Policing revise its inspection preparation practices and the administrative processes of its compliance area, to ensure it can demonstrate that it has considered and taken appropriate action to address the findings arising from previous inspections. We were particularly concerned that ACT Policing was unable to demonstrate the action it previously advised our Office that it would take or had taken, in addition to concern about findings where ACT Policing has not taken sufficient action to remediate the issue across several inspection periods.

During the April 2022 inspections, ACT Policing demonstrated considerable improvement in addressing issues from our previous inspections. ACT Policing had taken appropriate action to identify, disclose and resolve several compliance issues. These improvements indicate to our Office that ACT Policing has a maturing compliance culture in relation to the use of these powers.

Controlled operations

A controlled operation is a covert operation to obtain evidence that may lead to the prosecution of a person for a relevant offence or be used in an integrity investigation. A controlled operation provides protection from civil and criminal liability for law enforcement officers and civilians who engage in certain conduct that would otherwise be unlawful or lead to civil liability. Participants may engage in a variety of types of conduct, so long as that conduct is directly authorised or appropriately related to authorised conduct. Examples of conduct include transporting illicit goods, interfering with a consignment or entering false data into a system.

The Controlled Operations Act allows ACT Policing, the ACIC and the ACT Integrity Commission to conduct controlled operations in the ACT and in other participating jurisdictions. The Office is required to inspect a law enforcement agency's records regarding controlled operations at least once every 12 months to assess the extent of its compliance with the Controlled Operations Act.

Inspection findings

The March 2021 controlled operations inspection raised concerns about ACT Policing's administrative practices and approach to our inspection findings. As outlined in Table 7, below, we made 10 suggestions and 4 better practice suggestions on ACT Policing's use of powers under the Controlled Operations Act, in addition to our more general recommendation discussed above, on ACT Policing's administrative and inspection preparation powers.

In the April 2022 controlled operations inspection, we were satisfied ACT Policing took appropriate action to address our previous recommendation and suggestions. As outlined in Table 7, below, as a result of our inspection we made 2 better practice suggestions to ACT Policing. We will monitor these issues at future inspections.

Table 7: Overview of controlled operation inspections

When were inspections conducted?	When did the records date from?	Recommendation	Suggestions	Better practice suggestions
March 2021 (2020–21)	1 July 2020 to 31 December 2020	<p>We made one recommendation for both the controlled operation and surveillance devices inspections:</p> <p>ACT Policing should revise its inspection preparation practices, and the administrative processes of its compliance area, to ensure it can demonstrate that it has considered and taken appropriate action to address the findings arising from previous inspections.</p>	<p>We made 10 suggestions, including that ACT Policing:</p> <ul style="list-style-type: none"> • Seek legal advice in relation to identified compliance issues, including those identified in the previous 2019–20 report. • Amend templates to ensure law enforcement participants and undercover controllers included in any authorities refer to their ability to give instructions to participants, and ensure that records demonstrate that action taken by participants was under the direction of a law enforcement officer. • Review quality assurance processes to ensure the information provided in applications is accurately reflected in the corresponding authorities. • Ensure that investigative records maintained are accurate, complete and appropriately detail whether controlled conduct occurred and if it was done under the requirements of the authority. 	<p>We made 4 better practice suggestions in relation to ACT Policing’s Better Practice Guide, to update templates and ensure accuracy of guidance provided.</p>

When were inspections conducted?	When did the records date from?	Recommendation	Suggestions	Better practice suggestions
April 2022 (2021–22)	1 January 2021 to 31 December 2021	Nil	Nil	We made 2 better practice suggestions , on: ACT Policing introducing a quality control check to ensure consistency between the conduct specified on controlled operation applications and authorities; and ACT Policing implementing a quality assurance check to ensure accuracy of records and reporting.

Surveillance devices

The Surveillance Devices Act provides a framework for law enforcement officers to use surveillance devices in the ACT. Surveillance device means a data device, a listening device, an optical device, a tracking device, or a device that is a combination of these devices.

The Office may inspect the records of ACT Policing, the ACIC and the ACT Integrity Commission to assess the extent of their compliance with the Surveillance Devices Act.

Inspection findings

The March 2021 surveillance devices inspection raised concerns about ACT Policing's administrative practices and approach to our inspection findings. As outlined in Table 8, below, we made 5 suggestions and 3 better practice suggestions on ACT Policing's use of powers under the Surveillance Devices Act, in addition to our more general recommendation discussed above, on ACT Policing's administrative and inspection preparation powers.

In the April 2022 surveillance devices inspection, we were satisfied ACT Policing took appropriate action to address our previous recommendation and suggestions. As outlined in Table 8, below, as a result of this inspection, we made 2 suggestions and 1 better practice suggestion. We will monitor these issues at future inspections.

Table 8: Overview of surveillance device inspections

When were inspections conducted?	When did the records date from?	Recommendation	Suggestions	Better Practice Suggestion
March 2021 (2020–21)	1 July 2020 to 31 December 2020	<p>We made one recommendation for both the controlled operation and surveillance devices inspections:</p> <p>ACT Policing should revise its inspection preparation practices, and the administrative processes of its compliance area, to ensure it can demonstrate that it has considered and taken appropriate action to address the findings arising from previous inspections.</p>	<p>We made 5 suggestions, that ACT Policing:</p> <ul style="list-style-type: none"> • Provide an addendum to its annual report to the Minister with corrected figures. • Require staff to assess the privacy impact of continuing use of the surveillance device(s) in applications for the extension of warrants. • Develop and implement procedures to inform the Chief Officer when a surveillance device under warrant is no longer necessary. • Take various steps in relation to individual warrants or surveillance activities where we identified compliance issues or risks (for example, amending action sheets and Final Effectiveness Reports to ensure accuracy). 	<p>We made 3 better practice suggestions, relating to the level of detail included in ACT Policing’s warrant applications and affidavits, and to keep sufficient records to demonstrate compliance.</p>

When were inspections conducted?	When did the records date from?	Recommendation	Suggestions	Better Practice Suggestion
April 2022 (2021–22)	1 January 2021 to 31 December 2021	Nil	<p>We made 2 suggestions, that ACT Policing:</p> <ul style="list-style-type: none"> Review all surveillance device holdings to determine if any product should be destroyed in accordance with the Surveillance Devices Act. Develop a process and mechanism for recording where surveillance device product has been disseminated and stored within the agency. 	<p>We made 1 better practice suggestion, that ACT Police identify on a periodic basis whether surveillance device product should be destroyed in accordance with the Surveillance Devices Act.</p>

Assumed identities

The Assumed Identities Act facilitates investigations and intelligence-gathering in relation to criminal activity by providing for the lawful acquisition and use of assumed identities in the ACT. Our Office may inspect the records of ACT Policing, the ACIC, and the ACT Integrity Commission to assess the extent of their compliance with the Assumed Identities Act.

To date, we have not conducted any inspections under the Assumed Identities Act as agencies have advised these powers have not been used.

Child Sex Offenders Register

The ACT Child Sex Offenders Register (the register) is established under the CCSO Act. Chapter 4 of the CCSO Act sets out how ACT Policing must manage the register, including the information that must be recorded on the register. Further, Chapter 4 sets out the controls that must be applied to the use and disclosure of information from the register. Under Part 3.11 of the CCSO Act, ACT Policing may apply for a warrant to enter and search the premises of a registrable offender to verify the offender's personal details or to determine whether the offender has breached, or is likely to breach, an order prohibiting certain conduct.

The CCSO Act requires the Office to monitor ACT Policing's compliance with Chapter 4 and Part 3.11 of the CCSO Act. During 2021–22, our Office finalised 1 inspection of the register that was conducted during 2020–21. As a result of this inspection, we were satisfied that ACT Policing's management of the register largely complies with the requirements of the CCSO Act. We made 3 suggestions and 1 better practice suggestion to ACT Policing to ensure compliance in certain areas (see Table 9 below).

During our 2021–22 inspection of the register, we assessed ACT Policing as compliant with Chapter 4 of the CCSO Act and made no recommendations or suggestions to ACT Policing. We were satisfied that ACT Policing had taken appropriate action to address previous suggestions.

To date, we have not made an assessment regarding Part 3.11 of the CCSO Act because ACT Policing advised it has not executed any warrant under these provisions.

Table 9: Overview of Child Sex Offenders Register inspections

When were inspections conducted?	When did the records date from?	Recommendation	Suggestions	Better Practice Suggestion
August 2020 (2020–21)	17 May 2019 to 20 August 2020	Nil	<p>We made 3 suggestions, that ACT Policing:</p> <ul style="list-style-type: none"> • Amend its practice and guidance to ensure details of all class 1 and 2 charges of which a registrable offender is found guilty or are pending are entered. • Ensure the register records permanent travel in instances where a registrable offender leaves the ACT. • Undertake annual reviews of access in the National Child Offender System to ensure that only authorised persons have access to the Register. 	We made 1 better practice suggestion , that ACT Policing should implement measures with all relevant bodies to ensure it is made aware of the sentencing, or release from government custody, of a registrable offender.
December 2021 (2021–22)	20 August 2020 to 24 November 2021	Nil	Nil	Nil

Review of complaint handling under Part V of the Australian Federal Police Act 1979

Under s 40XA of the *Australian Federal Police Act 1979* (Cth) (the AFP Act), the Commonwealth Ombudsman²⁹ is required to review the administration of the Australian Federal Police's (AFP) handling of complaints through inspection of AFP records. This includes reviewing records of the handling of complaints about ACT Policing. Further, under s 40XB of the AFP Act, the Ombudsman may, at any time, inspect the records of AFP conduct and practice issues dealt with under Divisions 3 and 4 for the purposes of reviewing the administration of Part V of the AFP Act.

The Ombudsman reports annually to the Federal Parliament on our review of AFP's activities under Part V of the AFP Act. These reports are available on the Commonwealth Ombudsman's [website](#).

²⁹ The Commonwealth Ombudsman is also the ACT Ombudsman.

Part 5: Whole-of-Government annual reporting

Freedom of Information

Decisions on open access

During 2021–22, we made 12 decisions to publish open access information. This includes the following material:

- updated organisation chart
- ACT Ombudsman Annual Report for 2020–21
- quarterly updates to the ACT Head of Service and key stakeholders (3 updates during the period)
- report on the operation of the *Freedom of Information Act 2016* for 2020–21
- Inspector of the ACT Integrity Commission Annual Report 2020–21
- November 2021: Submission to the Inquiry into Community Corrections
- January 2022: Submission to the Inquiry into the Financial Management Amendment Bill 2021 (No 2)
- June 2021: Relationship Protocol between the ACT Human Rights Commission and the ACT Ombudsman (published 31 March 2022)
- May 2022: Joint statement by Australian Information Access Commissioners and Privacy Authorities
- June 2022: Practice Guide No. 2 Identifying Reportable Conduct (updated).

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

Access applications

The Office received 6 applications for release of information under the ACT FOI Act. Access was granted to all the information sought in 2 applications. The decision in relation to 2 applications was to refuse access. In one application, the Office did not hold the information requested. For one application, a refusal was deemed because the decision was not provided within time.

Charges and application fees

The ACT FOI Act provides that information should be released at the lowest reasonable cost to applicants.

We do not charge for information released under an access application made to the Office. In our oversight role, the Office does not charge any fees for Ombudsman review.

Human Rights

The *Human Rights Act 2004* (ACT) (the Human Rights Act) forms part of the legislative and policy framework relevant to the complaints we receive. The Human Rights Act provides protections for peoples' civil and political rights and requires that agencies act consistently with those rights.

Part 6: State of the Service Report

Public Interest Disclosure

The Office is a 'disclosure officer' under the *Public Interest Disclosure Act 2012* (ACT), which means we can receive disclosures and may investigate disclosable conduct if a disclosure is referred to the Ombudsman by the Integrity Commissioner (under s 19(2)(c)).

Under the *Public Interest Disclosure Act 2012* (ACT), the ACT Integrity Commission is responsible for oversight of the Public Interest Disclosure (PID) Scheme. However, we can take complaints about and review the handling of PIDs by ACT public sector agencies and the Public Sector Standards Commissioner.

During 2021–22 we received 3 disclosures, one of which was referred to the Integrity Commissioner. We received one general PID enquiry and no complaints about the handling of PIDs.

The Integrity Commissioner did not refer any disclosures to the Office for investigation during the reporting period.

Part 7: Appendices

Appendix 1

Table 10: Complaints received or finalised by ACT Ombudsman in 2021–22

Directorate/Agency	Total received 2021–22	Total finalised 2021–22	Finalised with investigation	Finalised without investigation
Canberra Health Services	6	6	0	6
Chief Minister, Treasury and Economic Development Directorate	113	84	7	77
Access Canberra	74	59	4	55
ACT Revenue Office	18	13	1	12
Canberra Institute of Technology	5	3	0	3
University of Canberra	9	5	1	4
Chief Minister, Treasury and Economic Development – other	6	3	0	3
Worksafe ACT	1	1	1	0
Community Services Directorate	140	118	14	104
Housing ACT	133	112	14	98
Community Services – other	7	6	0	6
Education Directorate	15	10	1	9
Environment, Planning and Sustainable Development Directorate	5	4	0	4
Suburban Land Agency	3	1	0	1
Environment, Planning and Sustainable Development Directorate – other	2	3	0	3
Health Directorate	20	20	1	19

Directorate/Agency	Total received 2021–22	Total finalised 2021–22	Finalised with investigation	Finalised without investigation
Justice and Community Safety Directorate	67	58	9	49
ACT Corrective Services	65	56	9	47
ACT Emergency Services Agency	1	1	0	1
Justice and Community Safety – other	1	1	0	1
Transport Canberra and City Services Directorate	24	14	1	13
Independent statutory offices	26	20	0	20
ACT Court or Tribunal	6	4	0	4
ACT Human Rights Commission	5	5	0	5
ACT Teacher Quality Institute	1	0	0	0
Director of Public Prosecutions	1	1	0	1
Legal Aid ACT	6	5	0	5
Public Trustee and Guardian for the ACT	7	5	0	5
Officers of the ACT Legislative Assembly	1	0	0	0
Office of the Legislative Assembly	1	0	0	0
Territory-owned corporations	1	1	0	1
Icon Water	1	1	0	1
TOTAL ACT Government	418	335	33	302
ACT Policing	88	70	3	67
TOTAL ACT	506	405	36	369

a - Note: a further 3 FOI complaints were received, and 2 complaints were finalised. 10 complaints were received and 13 finalised about Reportable Conduct. 5 complaints were received and 6 were finalised about the ACT Integrity Commission. A total of 524 ACT complaints were received by the Office in 2021–22 and 426 complaints were finalised in the same period.

Appendix 2

Table 11: Outcomes of finalised complaint investigations for 2021–22 by agency and by outcome

Directorate /Agency	Investigations finalised	Action expedited	Apology	Better Explanation by Agency	Better Explanation by Ombudsman	Change to law, policy or practice	Decision changed or reconsidered	Fee refunded, waived or reduced	No Remedy	Remedy provided by agency	Total remedies
Chief Minister, Treasury and Economic Development	7		1	1	3	1	1		4		11
Access Canberra	4		1	1	2	1	1		1		7
ACT Revenue Office	1								2		2
University of Canberra	1								1		1
Worksafe ACT	1				1						1
Community Services Directorate	14	2	1		2		1	1	4	4	15
Housing ACT	14	2	1		2		1	1	4	4	15
Education Directorate	1								1		1
Health Directorate	1				1						1
Justice and Community Safety Directorate	9	2		1	2	1	1		2	3	12
ACT Corrective Services	9	2		1	2	1	1		2	3	12
Transport Canberra and City Services Directorate	1								1		1
ACT Government TOTAL	33	4	2	2	8	2	3	1	12	7	41
ACT Policing	3			1	3				1		5
Total	36	4	2	3	11	2	3	1	13	7	46

a - Note: one investigation may result in multiple outcomes

b - Note: this table does not include outcomes for finalised matters in relation to FOI, Reportable Conduct or the ACT integrity Commission. These outcomes are reported separately.

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Glossary

ACAT	ACT Civil and Administrative Tribunal
ACIC	Australian Criminal Intelligence Commission
ACT	Australian Capital Territory
ACTCS	ACT Corrective Services
AFP	Australian Federal Police
Agencies	Administrative units of ACT Government business
AMC	Alexander Maconochie Centre
CAP	Complaints Assurance Program
CMTEDD	Chief Minister, Treasury and Economic Development Directorate
CSD	Community Services Directorate
Directorates	Administrative units of ACT Government business
FOI	Freedom of Information
JACS	Justice and Community Safety Directorate
NPM	National Preventive Mechanism
the Office	ACT Ombudsman's Office
OOJ	Out of jurisdiction
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PID	Public Interest Disclosure
SAB	Sentence Administration Board
SACAT	ACT Policing Sexual Assault and Child Abuse Team
TCCS	Transport Canberra and City Services
WWVP	Access Canberra's Working with Vulnerable People

Compliance statement

Report on omissions and reasons for non-compliance

The Office of the Commonwealth Ombudsman discharges the role of ACT Ombudsman. The ACT Ombudsman is not required to comply with the Annual Report Directions under the Annual Reports Act, but the Commonwealth Ombudsman is required to act in accordance with the Directions under its Services Agreement with the ACT Government. Many omitted items are, where relevant, reported in the *Commonwealth Ombudsman Annual Report 2021–22*, available on the [Annual Reports](http://ombudsman.gov.au) webpage at ombudsman.gov.au.

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