

ACT Ombudsman—Quarterly Report

A REPORT ON THE ACTIVITIES OF THE ACT OMBUDSMAN

1 APRIL TO 30 JUNE 2019

Report by the ACT Ombudsman
Michael Manthorpe PSM

REPORT NO. **3** | **2019**

Introduction from ACT Ombudsman

I am pleased to introduce the fourth quarterly report for the ACT Ombudsman for 2018-19. In this last quarter, my Office has continued to focus on:

- raising awareness of our role overseeing public administration in the ACT
- building stronger networks with ACT agencies
- taking up new opportunities to influence systemic improvements in the ACT in administrative decision-making, complaint-handling, Freedom of Information (FOI) and Reportable Conduct processes.

During the quarter we:

- launched a new ACT Ombudsman Facebook page on 11 June 2019, which already has over 160 'followers'
- implemented a new ACT Ombudsman phone line (02 6276 3773), separate from the Commonwealth Ombudsman phone line.

This quarter, the Office also made the following arrangements for the commencement of our new function as Inspector of the ACT Integrity Commission:

- creation of a new email address (actinspector@ombudsman.gov.au) for individuals or agencies to contact us
- new website information available about our role¹
- the first Inspector-related complaints policies — the *Integrity Commission Complaint Investigation Guidelines 2019*² and the *Integrity Commission Personal Interest Guidelines 2019*³ — published as notifiable instruments.

In addition, we conducted two inspections of ACT Policing's records regarding its use of certain covert and intrusive powers under ACT legislation. A summary of findings from these inspections will be included in the ACT Ombudsman 2018–19 annual report.

We welcome feedback to the Office about our ACT Ombudsman activities and these quarterly reports, as we continue to explore the most effective ways to influence improvements in ACT public administration and make a positive difference for the people of Canberra.

Feedback can be provided to Ms Cathy Milfull, Director of the ACT Strategy and FOI section at cathy.milfull@ombudsman.gov.au.

Michael Manthorpe PSM
ACT Ombudsman

¹ See *ACT Inspector of the Integrity Commission* at <http://www.ombudsman.act.gov.au/act-inspector-of-the-integrity-commission>.

² See *Integrity Commission Complaint Investigation Guidelines* at <https://www.legislation.act.gov.au/ni/2019-437/>.

³ See *Integrity Commission Personal Interest Guidelines 2019* at <https://www.legislation.act.gov.au/ni/2019-438/>.

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Part 1: OUR STRATEGY IN THE ACT

The role of the ACT Ombudsman is to influence systemic improvements in public administration in the Australian Capital Territory, as well as providing assurance that ACT Government agencies which fall within our jurisdiction act with fairness and integrity. We work with agencies to help ensure they provide accessible and effective complaint-handling processes to the public.

Our focus this quarter has been on improving the accessibility of the ACT Ombudsman's Office, including promoting awareness of the different functions performed by our Office.

We launched the ACT Ombudsman Facebook page on 11 June 2019. This page is designed to improve the community's understanding of the work we do, and encourage the sharing of information regarding community events and opportunities for engagement with our Office and ACT Government agencies. To date, posts about our activities relating to ACT Policing oversight and the Reportable Conduct Scheme have received the most interest.

On 1 July 2019 we debuted a new, direct ACT Ombudsman phone line (02 6276 3773). This has been created so the community can contact our Office easily and receive a tailored service, with five ACT-specific options for callers to choose from:

- make a complaint about an ACT directorate or agency
- make a complaint about ACT Policing
- contact the Office about a FOI or information access matter
- contact the Office about reportable conduct
- contact the Office about the Inspector of the ACT Integrity Commission.

In June 2019, we wrote to all the members of the ACT Legislative Assembly, the directors general of ACT directorates, and a number of community stakeholders to advise them of these initiatives.

These initiatives provide clearer messaging to the ACT community and will improve service delivery. They will be complemented by the launch of a redeveloped ACT Ombudsman website in late 2019.

Part 2: COMPLAINT TRENDS

Complaints received

During this reporting period, as outlined in Figure 1, the Office received a total of 110 complaints⁴:

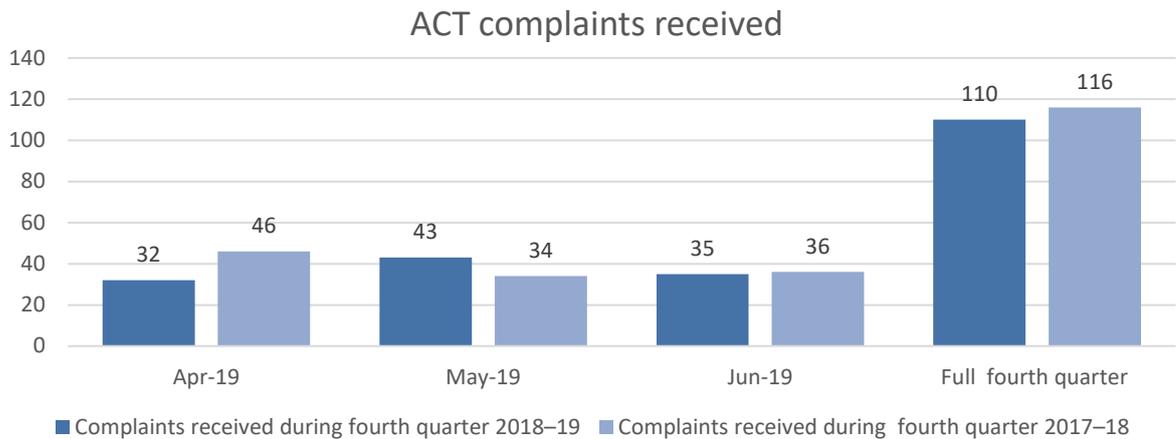
- 94 complaints related to ACT agencies
- 16 complaints related to ACT Policing.

⁴ This does not include the following contacts with the Office, which are currently recorded on a yearly basis in the Commonwealth Ombudsman annual report:

- enquiries to the Office that are identified as not within our jurisdiction.
- general requests for information, both formal (such as FOI applications) and informal (such as media enquiries, or requests for copies of our publications).

We aim to include such figures in our ACT Ombudsman quarterly and annual reports in 2019–20.

Figure 1—ACT complaints received during the fourth quarter of 2018–19, compared to last financial year



Complaint numbers increased by 16 per cent compared to last quarter. This included an increase in complaints about the Community Services Directorate (CSD), with 31 complaints received this quarter, compared to 19 complaints in the previous quarter.

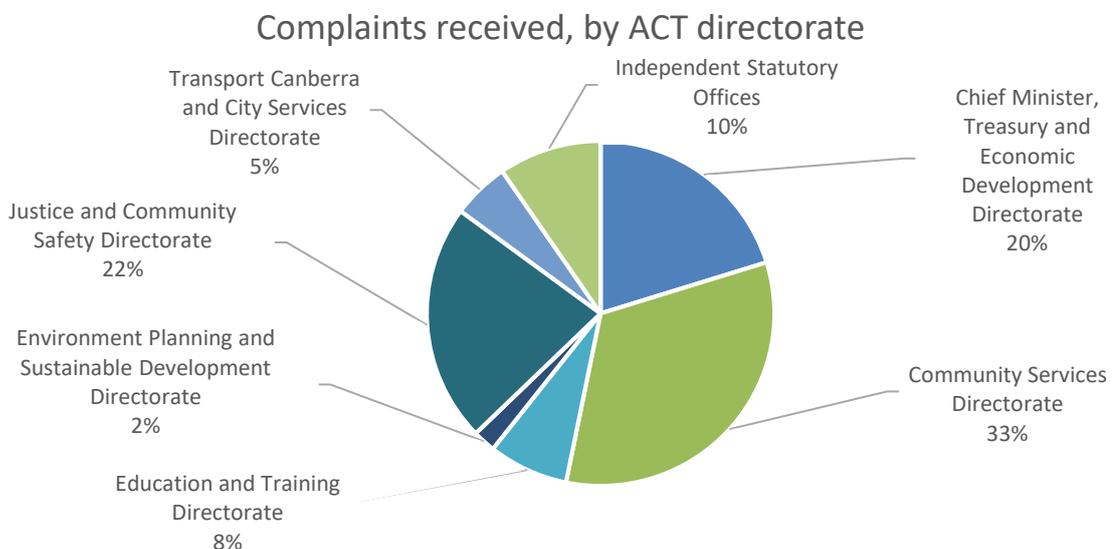
Complaints about ACT Policing also increased with 16 complaints received this quarter—up from 11 complaints in the last quarter. While complaint numbers remain low, this is the first time since 2017–18 that ACT Policing complaint numbers have not decreased.

After rising last quarter, complaints about the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) decreased, with 19 complaints received compared to 28 last quarter.

Complaints about ACT agencies

This quarter, as outlined in Figure 2, the highest number of complaints received by the Ombudsman was about the CSD. Complaints about the Justice and Community Services (JACS) Directorate and CMTEDD were the second and third highest, respectively.

Figure 2— ACT complaints received during the fourth quarter of 2018–19 by ACT Directorate



In terms of individual agencies, as opposed to Directorates, the largest number of complaints received this quarter were about:

- Housing and Community Services ACT (Housing ACT)—29 complaints.
- ACT Corrective Services (ACTCS)—20 complaints.
- Access Canberra—11 complaints.

At **Appendix A** is a more detailed table indicating complaints received by individual ACT agencies.

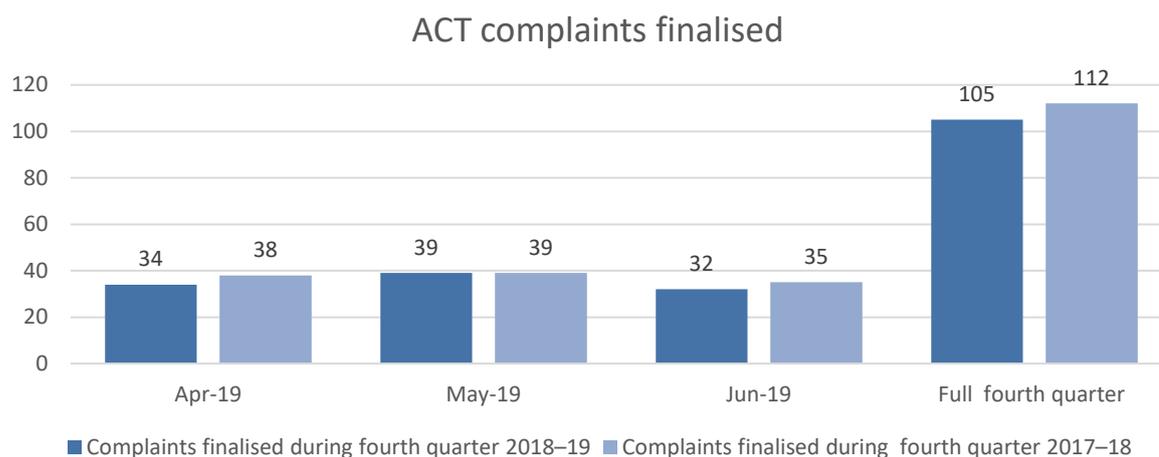
Complaints finalised

Ombudsman investigations can result in different outcomes, such as a better explanation of the decision, an apology, further action taken by the agency, or an expedited process.

As outlined in Figure 3, the Office finalised a total of 105 complaints during this quarter. This included:

- 14 complaints related to ACT Policing matters.
- 91 complaints related to ACT Government agencies.

Figure 3—ACT complaints finalised during the fourth quarter of 2018–19, compared to last financial year



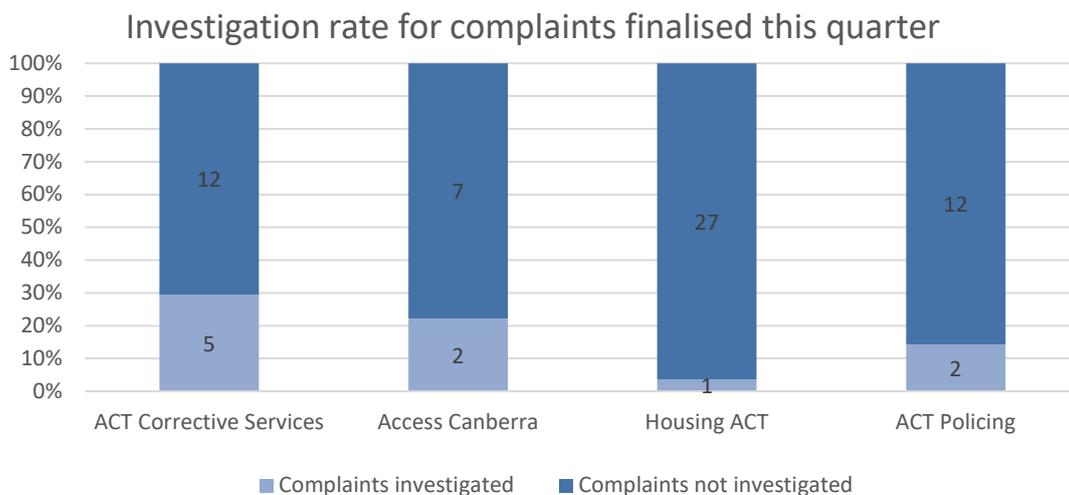
Every complaint is assessed to see if it can be resolved quickly, or whether a more formal investigation is warranted. Our renewed focus on early resolution provides a better service for complainants.

A number of factors determine if we investigate a complaint, such as whether:

- the agency concerned had an opportunity to resolve the complaint
- another oversight body or a tribunal could provide a better outcome
- a reasonable outcome is available for the complainant.

Investigation rates for the most frequently complained-about agencies this quarter are at Figure 4. It should, however, be noted that a positive outcome for the complainant may also be achieved without the Office proceeding to a full investigation.

Figure 4—Investigation rate for the top directorates in terms of complaints received



Outcomes achieved for investigated complaints

More than one outcome can be achieved per complaint investigation. The table at **Appendix B** provides outcomes that resulted from investigations finalised this quarter, by ACT Government agency.

The outcomes achieved this quarter included the Ombudsman being able to provide a better explanation to the complainant in ten investigations. In three cases, outcomes also included that an agency officer was counselled, a change to policy/practice/law occurred and an action was expedited.

An example of a positive outcome this quarter was a case involving a vulnerable individual who had made several complaints to an ACT Government agency. Our investigation identified that staff had not followed required management or complaint procedures. As a result, relevant staff were counselled and the agency prepared communications to remind all staff of the appropriate processes for handling complaints.

New and ongoing complaint trends

The agency with the highest number of complaints received this quarter is Housing ACT, with 29 complaints— up from the previous quarter’s figure of 17 complaints.

Issues raised in complaints about Housing ACT included:

- maintenance problems, especially failures to undertake or complete urgent maintenance
- neighbourhood disputes and safety-related matters
- allocated housing not being in a fit state for residence
- allocated housing not meeting residents’ medical or specialised needs
- transfer requests
- debts and rebates.

Our Office meets regularly with Housing ACT to discuss trends of concern. We are also trialling the transfer of complaints by vulnerable people to Housing ACT who are struggling to get assistance with resolving housing-related issues. Such arrangements aim to ensure the person is put in direct contact with the area that can assist them most effectively. A feedback loop also ensures the ACT Ombudsman is advised of the outcome of the matter and that it is resolved.

Four complaints currently remain open with our Office, with investigations under way in one matter.

Complaints about ACT Corrective Services (ACTCS) also remained high. Almost all of the 20 complaints received about ACTCS were made by detainees at the Alexander Maconochie Centre (AMC). Issues raised in these complaints included:

- treatment of people on remand
- multiple complaints not being addressed or managed effectively
- disciplinary arrangements and conditions in the management unit
- access to healthcare, with matters referred to the ACT Human Rights Commission where appropriate
- conduct of AMC staff, particularly in relation to the searching of cells and removal of property
- access to prison programs
- safety and non-association issues
- management of bank accounts and food purchases.

Six of these complaints remained open as at 30 June 2019, with investigations underway in five matters.

Our Office will continue to liaise with ACTCS on these matters. We are also seeking to finalise transfer arrangements for AMC related complaints, following a successful informal trial.

Part 3: ACT COMMUNITY OUTREACH ACTIVITIES

The Office has continued to engage with the ACT community, targeting our outreach activities for maximum impact under our ACT engagement plan.

As detailed earlier in this report, most of our outreach activities this quarter were focused on communicating our new phone line and Facebook arrangements. We also:

- participated in Reconciliation Day activities hosting a stall in Glebe Park, where we were approached by members of the public seeking advice about our role and how they could get help to resolve matters with the ACT Government
- attended a meeting of the ACT Joint Advisory Council Chairs (JACC)
- delivered a presentation to a meeting of Neighbourhood Watch ACT, an active and engaging group, which provided positive feedback on the important role played by the Ombudsman.

Part 4: AGENCY ENGAGEMENT

This quarter we provided a submission to the Healthy Prison Review that is being undertaken by the ACT Inspector of Correctional Services.⁵

In addition, our staff met with:

- representatives of the Australian Federal Police (AFP) to discuss engagement between our agencies and the Aboriginal and Torres Strait Islander communities in the ACT
- Housing ACT to discuss trends of concern and find out more about public housing allocation processes
- ACTCS to discuss proposed new arrangements for transferring complaints between our agencies
- staff and detainees at the AMC, and other AMC oversight bodies.

This quarter, the Ombudsman, the Deputy Ombudsman and a Senior Assistant Ombudsman also appeared before the Select Committee on Estimates 2019–2020.

⁵ See *Submission by the ACT Ombudsman: Healthy prison review of the Alexander Maconochie Centre* at http://www.ombudsman.act.gov.au/_data/assets/pdf_file/0016/102049/ACT-Ombudsman-Healthy-Prison-Review-Submission-A1759165.pdf.

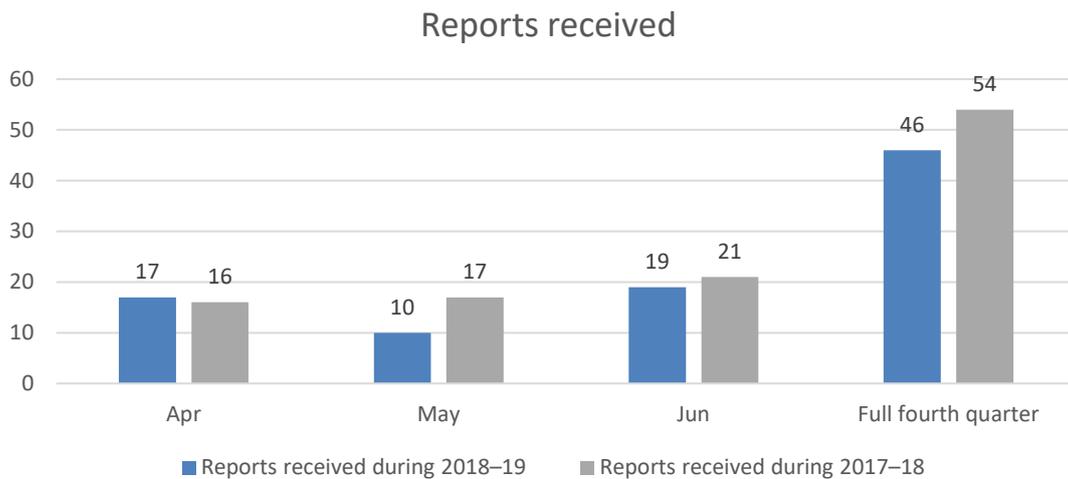
Part 5: REPORTABLE CONDUCT

Reports received

This quarter, the Office received 46 initial reports from entities about allegations of reportable conduct, with ten of these also being notified by entities to ACT Policing.

As outlined in Figure 5, this is a 15 per cent decrease in reporting, compared to the same quarter in the 2017–18 financial year.

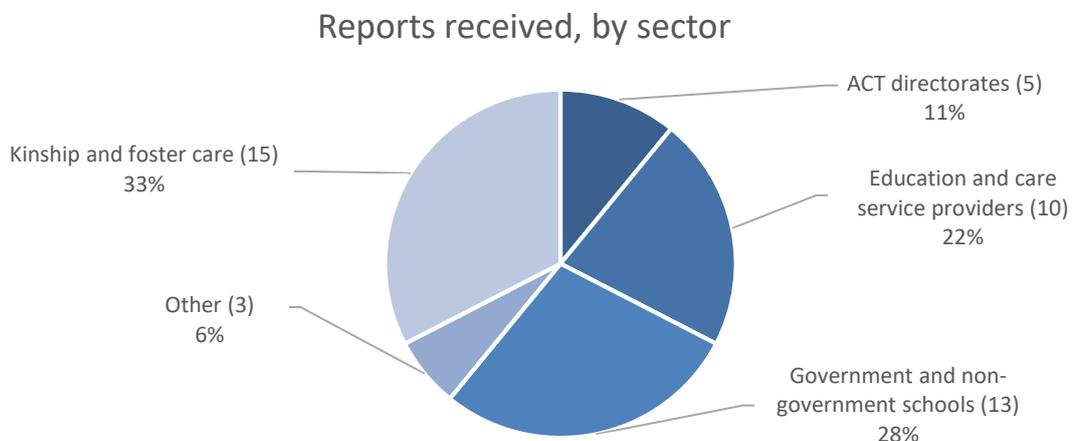
Figure 5—Reports received in the fourth quarter of 2018–19, compared to previous financial year



Ill-treatment of a child involving hostile use of force/physical contact remains the most common allegation type. The next most common allegation category is ill-treatment involving emotional abuse.

Figure 6 outlines the number of reports received this quarter, by sector. The largest number of reports received were from kinship and foster care organisations (13 reports). The 'other' category includes residential care organisations and religious bodies.

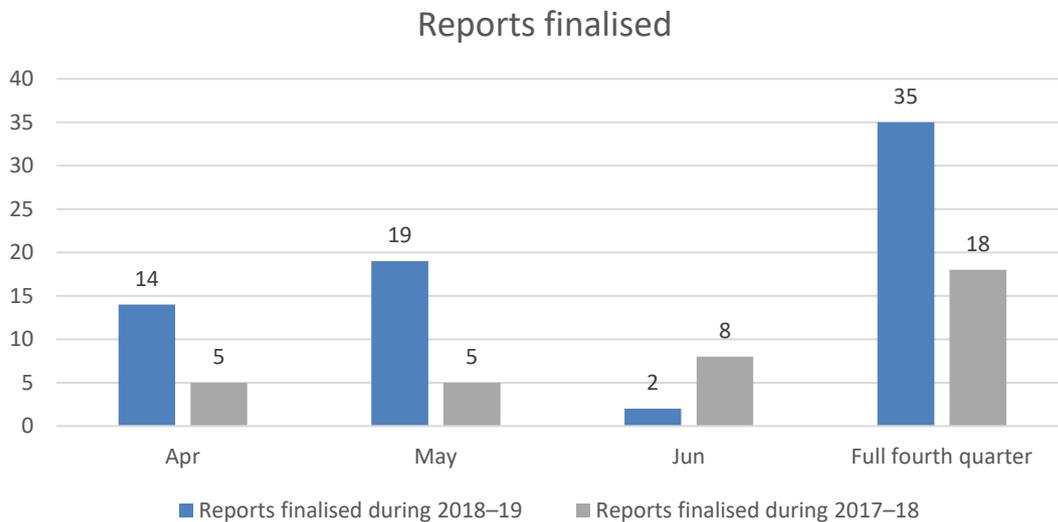
Figure 6—Reports received in the fourth quarter of 2018–19, by sector.



Reports finalised

In this quarter, as outlined in Figure 7, the Office finalised 35 matters—a 94 per cent increase in finalised cases compared to the same quarter for the previous financial year.

Figure 7—Reports finalised in the fourth quarter of 2018–19, compared to previous financial year



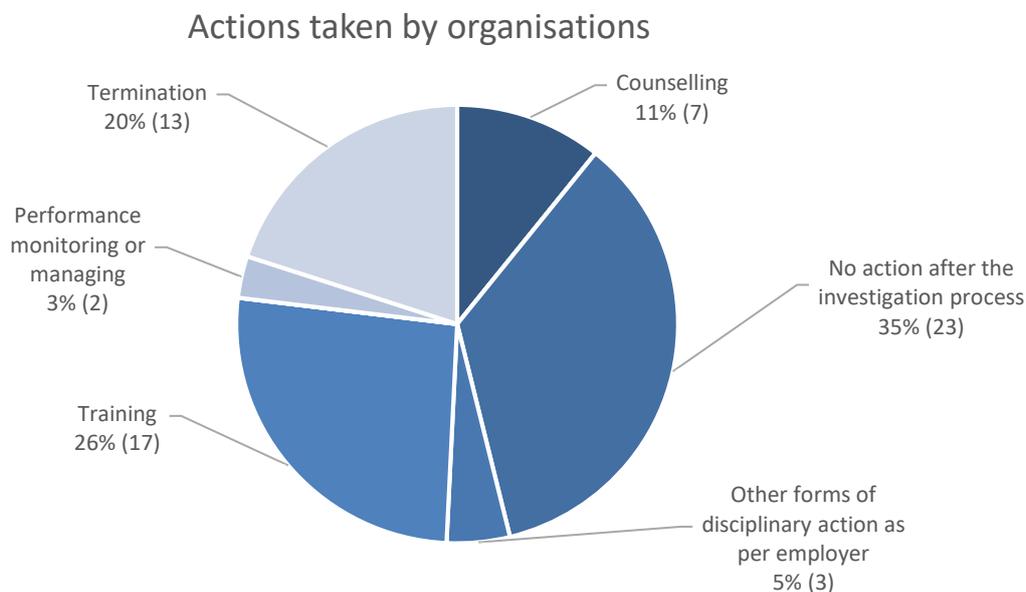
After notifying the Office of a reportable conduct allegation, an organisation must update the Ombudsman on the outcome of its investigation and say what action it has taken as a result. Figures 8 and 9 summarise the outcomes for each allegation and the actions taken by organisations, as provided to us in reports finalised this quarter⁶.

Figure 8— Outcomes reported by organisations – finalised investigations in the fourth quarter of 2018–19



⁶ A notification may contain multiple allegations.

Figure 9—Actions taken by organisations—finalised in the fourth quarter of 2018–19⁷



Engagement and monitoring activities

In this quarter, we supported entities to build their capacity to prevent, report and respond to allegations of reportable conduct by:

- holding the first Reportable Conduct Scheme practitioners’ forum with representatives from religious bodies, to raise awareness about the scheme and help build capacity within religious organisations to respond to Reportable Conduct
- holding two Reportable Conduct Scheme practitioners’ forums for other entities:
 - one facilitated a discussion about interviewing children and was attended by officers from the Sexual Assault and Child Abuse Team of ACT Policing
 - the other accommodated presentations from both Access Canberra (Working With Vulnerable People registration) and the ACT Senior Practitioner for the elimination and reduction of restrictive practices, and their respective intersection with the Reportable Conduct Scheme.
- delivering two information sessions about the Reportable Conduct Scheme for entity representatives across all sectors covered by the scheme
- presenting to the ACT Government’s human resource directors forum, and to detectives at the ACT Policing’s sexual assault and child abuse training course
- continuing to provide constructive comments through our casework and entity liaison.

⁷ The other forms of disciplinary actions employers can take include mediation, mentoring, restorative action, demotion, reclassification of duties, and increased case management activities (for carers).

The Ombudsman also offered free, one-day specialist training courses on ‘undertaking reportable conduct investigations’ and ‘investigative interviewing skills’. These sessions, nine in total, were delivered by Halloran Morrissey and attended by more than 200 people. Four of the sessions were provided specifically to Education Directorate principals. The training was well received, with 96 per cent of participants, who responded to the evaluations, being either ‘satisfied’ or ‘very satisfied’ with the training.

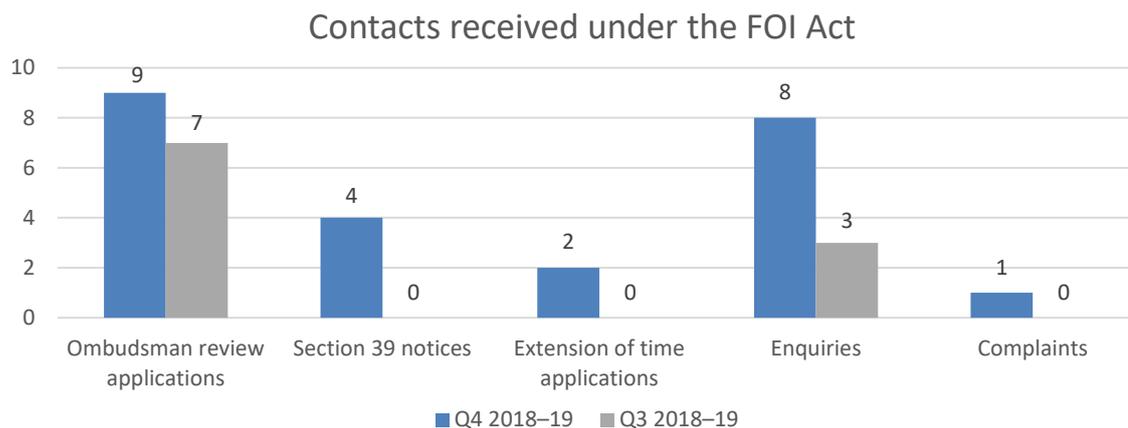
We have also developed a new form for religious bodies to nominate a head of entity, as is required by recent amendments to the *Ombudsman Act 1989*.

Part 6: FREEDOM OF INFORMATION (FOI)

FOI contacts received

As outlined in Figure 10, the Office received 24 contacts relating to our role under the *Freedom of Information Act 2016* (the FOI Act) during the fourth quarter. This comprised of nine applications for Ombudsman review, four section 39 notices, two requests for an extension of time, eight enquiries, and one complaint.

Figure 10—Contacts received under the FOI Act in the fourth quarter of 2018–19, compared to the third quarter

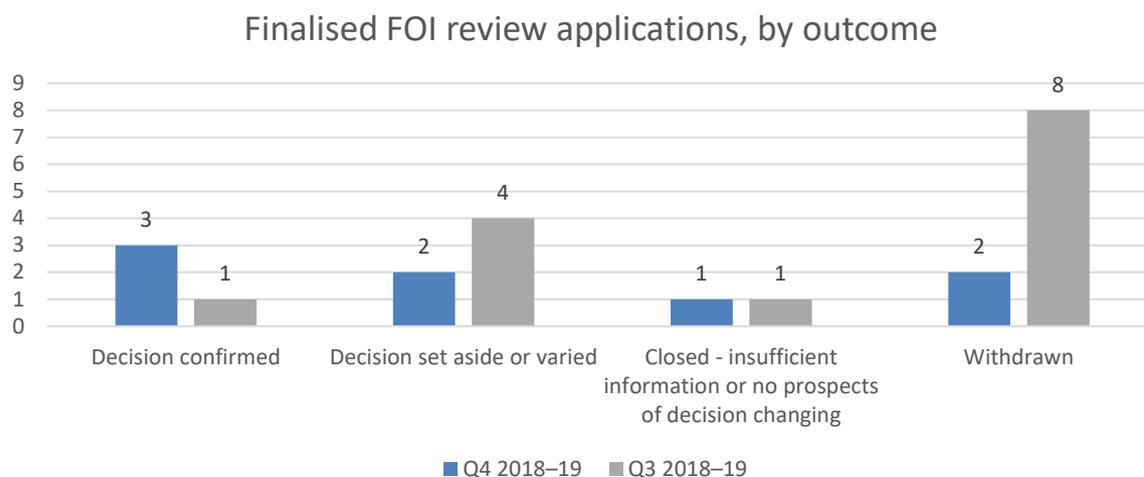


Finalised FOI reviews

As shown in Figure 11, the Office finalised eight Ombudsman reviews this quarter. The outcomes of finalised reviews included:

- confirming the original decision in three cases
- setting the decision aside in one case
- setting the decision aside and substituting the decision in one case
- one matter was finalised as there were no reasonable prospects of the decision changing
- two matters were withdrawn, largely due to informal resolution activities.

Figure 11—FOI review applications finalised in the fourth quarter of 2018–19, by outcome (compared to the third quarter)



Informal resolution

We continue to focus on informal resolution wherever possible. Case officer assessments are now used to resolve matters before progressing to a final decision, by giving applicants information about the likely outcomes of the review and options for resolution.

In cases where an agency decision is likely to be confirmed by the Ombudsman, the case officer assessment gives the applicant the opportunity to make further relevant submissions, accept proposed options for resolution, and/or withdraw their application for review.

This approach has resulted in cases being resolved ahead of a formal decision, reducing the overall timeframe for our review, and potentially saving the applicant additional legal fees where they are represented by a lawyer. In some cases, additional information has also been released to the applicant where the agency has been willing to release further information administratively.

Published decisions

As at 30 June 2019, we have published 24 decisions on the ACT Ombudsman website.⁸ Six of these decisions were published during this reporting period.

These decisions provide agencies and applicants with guidance on the FOI Act, including the application of the public interest test.

⁸ See ACT Ombudsman, Freedom of information at <http://ombudsman.act.gov.au/Freedom-of-Information>.

Guidelines project

A priority for our Office in 2019 is the development of a set of FOI Guidelines to assist agencies to implement and improve their processes under the FOI Act.

During the reporting period, the Office published its first two draft guidelines on the topics ‘Open Access Information’⁹ and ‘Dealing with informal requests for government information’¹⁰ on the ACT Ombudsman website for public consultation.

These draft guidelines were developed in consultation with ACT Government agencies. In June, the Ombudsman wrote to all directors general and heads of ACT Government agencies, formally inviting them to give feedback on these documents. Invitations to give feedback were also sent to information commissioners in other jurisdictions and FOI specialists. Feedback was also invited from the broader public via our website and ACT Ombudsman Facebook page.

Development of four other guidelines has progressed during this reporting period, with drafts of the next two guidelines scheduled for publication in the first quarter of the 2019–20 financial year. The next two guidelines focus on processing access applications and assessing public interest considerations. A total of six guidelines are to be developed in 2019.

Engagement activities

During this quarter, the Office held our regular quarterly catch up on FOI matters with JACS and organised a meeting of the ACT FOI working group. The working group is an opportunity for ACT agencies to meet and discuss common issues and share lessons learned.

The ACT FOI team also regularly holds FOI practitioners’ forums to encourage collaboration between ACT Government agencies and give our Office an opportunity to provide feedback and learn about the experiences of each agency. The forums are run regularly, with the next forums taking place in July and August 2019.

⁹ See *Freedom of Information Guideline 1 of 6 Open Access Information* at: http://ombudsman.act.gov.au/_data/assets/pdf_file/0009/100620/Vol-1-of-6-Draft-Ombudsman-Guidelines-Open-Access-Information.pdf

¹⁰ See *Freedom of Information Guideline 2 of 6 Informal Requests* at: http://ombudsman.act.gov.au/_data/assets/pdf_file/0010/100621/Vol-2-of-6-Draft-Ombudsman-Guidelines-Informal-Requests-for-Government-Information.pdf

APPENDIX A - COMPLAINTS RECEIVED BY DIRECTORATE AND AGENCY FOR THE FOURTH QUARTER OF 2018—19: 1 APRIL TO 30 JUNE 2019¹¹

Directorate/Agency	Total received	Total finalised	Finalised with investigation	Finalised without investigation
Chief Minister, Treasury and Economic Development Directorate	19	23	4	19
Access Canberra	11	9	2	7
ACT Revenue Office	2	2	0	2
Canberra Institute of Technology	1	3	1	2
University of Canberra	2	3	0	3
Chief Minister, Treasury and Economic Development - other	3	6	1	5
Community Services Directorate	31	30	1	29
Housing ACT	29	28	1	27
Community Services - other	2	2	0	2
Education Directorate	7	7	1	6
Environment Planning and Sustainable Development Directorate	2	2	0	2
Health Directorate	0	0	0	0
Justice and Community Safety Directorate	21	17	5	12
ACT Corrective Services	20	17	5	12
ACT Emergency Services Agency	0	0	0	0
Justice and Community Safety - other	1	0	0	0
Transport Canberra and City Services Directorate	5	3	1	2
ACTION Bus	0	0	0	0
Transport Canberra and City Services - other	5	3	1	2

¹¹ Amendments have been made to the above table, in comparison to the report for last quarter, to provide separate figures for independent statutory offices.

ACT Ombudsman—Quarterly report, 1 April to 30 June 2019

Directorate/Agency	Total received	Total finalised	Finalised with investigation	Finalised without investigation
Independent statutory offices	9	9	0	9
ACT Court or Tribunal	1	1	0	1
ACT Human Rights Commission	1	1	0	1
Director of Public Prosecutions	0	0	0	0
Legal Aid ACT	4	5	0	5
Public Trustee and Guardian for the ACT	3	2	0	2
Prescribed authorities	0	0	0	0
ACT Law Society	0	0	0	0
Territory-owned corporations	0	0	0	0
ACT Long Service Leave Authority	0	0	0	0
Icon Water	0	0	0	0
Total ACT Government	94	91	12	79
ACT Policing	16	14	2	12
Total ACT	110	105	14	91

APPENDIX B - OUTCOMES OF FINALISED COMPLAINT INVESTIGATIONS FOR FOURTH QUARTER, BY ACT GOVERNMENT AGENCY AND BY OUTCOME

Directorate or agency	Investigations finalised	No remedy	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better explanation by Ombudsman	Better explanation by Agency	Agency officer counselled/ disciplined	Remedy provided by agency	Penalty waived or reduced	Total positive remedies achieved
Chief Minister, Treasury and Economic Development Directorate	4	0	0	0	1	0	3	0	0	0	0	4
Access Canberra	2	-	-	-	-	-	2	-	-	-	-	2
ACT Revenue Office	0	-	-	-	-	-	-	-	-	-	-	0
Canberra Institute of Technology	1	-	-	-	-	-	1	-	-	-	-	1
University of Canberra	0	-	-	-	-	-	-	-	-	-	-	0
Chief Minister, Treasury and Economic Development	1	-	-	-	1	-	-	-	-	-	-	1
Community Services Directorate	1	0	0	0	0	0	0	1	0	0	0	1
Housing ACT	1	-	-	-	-	-	-	1	-	-	-	1
Community Services Directorate	0	-	-	-	-	-	-	-	-	-	-	0
Education Directorate	1	0	0	0	0	0	0	0	0	0	0	0
Environment Planning and Sustainable Development Directorate	0	0	0	0	0	0	0	0	0	0	0	0
Health Directorate	0	0	0	0	0	0	0	0	0	0	0	0
Justice and Community Safety Directorate	5	1	0	0	0	0	8	0	1	2	0	11
ACT Corrective Services	5	1	-	-	-	-	8	-	1	2	-	11
ACT Emergency Services Agency	0	-	-	-	-	-	-	-	-	-	-	0
Justice and Community Safety – other	0	-	-	-	-	-	-	-	-	-	-	0

Directorate or agency	Investigations finalised	No remedy	Action expeditied	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better explanation by Ombudsman	Better explanation by Agency	Agency officer counselled/ disciplined	Remedy provided by agency	Penalty waived or reduced	Total positive remedies achieved
Transport Canberra and City Services Directorate	1	0	0	0	0	0	1	0	0	0	0	1
ACTION Bus	0	-	-	-	-	-	-	-	-	-	-	0
Transport Canberra and City Services - other	1	-	-	-	-	-	1	-	-	-	-	1
Independent statutory offices	0	0	0	0	0	0	0	0	0	0	0	0
ACT Court or Tribunal	0	-	-	-	-	-	-	-	-	-	-	-
ACT Human Rights Commission	0	-	-	-	-	-	-	-	-	-	-	-
Director of Public Prosecutions	0	-	-	-	-	-	-	-	-	-	-	-
Legal Aid ACT	0	-	-	-	-	-	-	-	-	-	-	-
Public Trustee and Guardian for the ACT	0	-	-	-	-	-	-	-	-	-	-	-
Prescribed authorities	0	0	0	0	0	0	0	0	0	0	0	0
ACT Law Society	0	-	-	-	-	-	-	-	-	-	-	0
Territory-owned corporations	0	0	0	0	0	0	0	0	0	0	0	0
ACT Long Service Leave Authority	0	-	-	-	-	-	-	-	-	-	-	0
ICON Water	0	-	-	-	-	-	-	-	-	-	-	0
Total ACT Government	12	1	0	0	1	0	12	1	1	2	0	17
ACT Policing	2	0	1	0	0	0	1	0	0	0	0	2
Total ACT	14	1	1	0	1	0	13	1	1	2	0	19