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Annual Report Hearing – Executive Background Brief



Attachment A

Public Accounts Committee Member profiles

Name	Role	Background and interest
<p>Ms Vicki Dunne (Chair)</p> 	<p>Canberra Liberals Ginninderra Electorate (elected 20/10/01) Deputy Speaker Shadow Minister for Health Shadow Minister for Arts (former Speaker)</p>	<p>Active in community affairs Education Health Environment</p>
<p>Ms Tara Cheyne (Deputy Chair)</p> 	<p>Australian Labor Party Ginninderra Electorate (elected 26/10/16) Government Whip Standing Committee Education, Employment and Youth Affairs, Administration and Procedure Environment, Transport and City Services Planning and Urban Renewal</p>	<p>Infrastructure Housing Voluntary Assisted Dying Territory Rights Belconnen Marriage Equality Social Media</p>
<p>Ms Bec Cody</p> 	<p>Australian Labor Party Murrumbidgee Electorate (elected 26/10/16) Assistant Speaker Standing Committee Justice and Community Safety, Public Accounts</p>	<p>Small business Domestic violence Schools, local services Community Safety Veterans</p>
<p>Ms Nicole Lawder</p> 	<p>Canberra Liberals Brindabella Electorate (elected 26/6/13) Deputy Leader of the Opposition Shadow Minister for Urban Services, Seniors, Heritage. Standing Committee Justice and Community Safety, Environment, Transport and City Services</p>	<p>Disability, Aged care Accessible public transport, Telecommunications</p>

Biographies

Vicki Dunne

Vicki was born in Lismore, NSW. She studied at St Carthage's School and St Mary's College in NSW, before moving to the University of New England, Armidale, where she obtained a BA and Dip Ed studying languages and history. She has been involved in community radio for over thirty years. She was a Commonwealth public servant between 1979 and 1995, and served previous Chief Ministers of the ACT. Vicki is married and has 5 children, ranging in age from 9 to 27 years.

Tara Cheyne

Tara Cheyne is a Labor member for Ginninderra (covering most of Belconnen) in the ACT Legislative Assembly and Government Whip. Tara was elected to the Assembly in October 2016 and she is proud to be a member of the first majority-female parliament in Australia's history. Prior to being elected, Tara enjoyed a rewarding career in the Australian Attorney-General's Department and the Department of Finance in Canberra

Bec Cody

Ms Cody is a small business owner and active unionist. She is interested in impact of domestic violence and supports building communities to ensure every family is safe. She has raised two sons locally, and supports good schools and local services. She is involved in the Vikings Triathlon Club and Park Run's in Canberra, and understands the social, physical and emotional benefits of keeping fit and healthy.

Nicole Lawder

Nicole graduated from ANU with a degree in Psychology and later went on to post-graduate study and gained a Masters of Business in eBusiness and Communication. Nicole worked in a range of private, public and third sector organisations, including tax, workplace relations, defence, Medicare, a NASA space tracking station, Deloitte Consulting and as CEO of national peak bodies in the areas of homelessness and disability. She has also been a volunteer for a range of organisations including Red Cross, Ronald McDonald House, the Community Fire Unit Fadden, organising Pink Footy Day for her football club, and many other activities.

Jeremy Hanson

While not a member of the Public Accounts Committee, Jeremy Hanson often attends the hearings. He asked a number of questions about the implementation of the Freedom of Information functions at the Estimates Hearing in June 2018. Mr Hanson served as an officer in the Australian Army for 22 years. He is currently the Shadow Attorney-General and the Shadow Minister for Veterans' Affairs.

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Attachment B

Recent Ombudsman appearances before Assembly Committees

Details of appearances

Date	Hearing	Attendees
June 2017	Estimates 2017-2018	Doris Gibb, Erica Welton, Chelsey Bell
July 2017	Select Committee on an Independent Integrity Commission	Michael Manthorpe
November 2017	Public Accounts Committee – Annual Report 2016-17	Michael Manthorpe, Doris Gibb, Erica Welton
June 2018	Select Committee on Estimates 18-19	Michael Manthorpe, Paul Pfitzner
September 2018	Select Committee on Independent Integrity Commission 2018	Jaala Hinchcliffe (Acting ACT Ombudsman), Paul Pfitzner

Transcripts of recent appearances

SELECT COMMITTEE ON ESTIMATES 2018-2019

(Reference: Appropriation Bill 2018-2019 and Appropriation (Office of the Legislative Assembly) Bill 2018-2019)

Members:

MR A WALL (Chair)

MS T CHEYNE (Deputy Chair)

MS C LE COUTEUR

MS E LEE

MS S ORR

TRANSCRIPT OF EVIDENCE CANBERRA WEDNESDAY, 20 JUNE 2018

Appearances:

Office of the Commonwealth Ombudsman

Mr Michael Manthorpe PSM, ACT Ombudsman

Pfitzner, Mr Paul, Senior Assistant Ombudsman, ACT and Defence Branch

THE CHAIR: We have the ACT Ombudsman with us for the final session of today's hearings.

Mr Manthorpe: I am very happy to be here this afternoon to assist the committee.

MS ORR: The budget has allocated \$1.1 million to strengthening the reportable conduct scheme. Can you give an overview of how that money will help in investigating claims?

Mr Manthorpe: Yes, certainly. Reportable conduct is an area where we have picked up new responsibilities this financial year, and those responsibilities will be expanded further next financial year. This financial year we have picked up responsibility for reportable conduct—that is, in essence, allegations of harm or inappropriate conduct directed towards children in the care of a variety of employers in the ACT, such as schools, childcare centres and so forth. We have been active throughout this financial year at working with all of the entities subject to that scheme to ensure that they understand what they are required to do, they have in place arrangements to investigate and report and appropriately manage any allegations that come to their attention, and they are familiar with the way the scheme operates and so forth. That has been very much the focus this financial year in terms of the group of entities subject to the scheme in its initial iteration. From 1 July the scheme expands off the back of legislation passed by the Assembly to churches, and that has required us to work closely with the policy agencies in the ACT as well as Assembly members at times to ensure the churches are aware of what is coming. We have been seeking to train and educate and engage with them. We have been doing some quite active work in that space with the church organisations around Canberra. Once that kicks into play we anticipate we will be receiving reports of reportable conduct from those entities. We will be ensuring, as we have been this year with respect to the narrower group of entities, that reports of harm or allegations of harm and so on are being appropriately handled by the churches as well as by the other entities covered by the scheme.

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MS ORR: How do the tasks you have been delegated go to meeting the implementation of recommendations of the royal commission's report? Is the work you are doing going towards supporting that implementation?

Mr Manthorpe: Yes. It is certainly consistent with the direction of a number of the recommendations. Of course, the national royal commission made many recommendations that go way beyond reportable conduct. Reportable conduct is one of those reform elements not just in this jurisdiction but in certain others, and I hope it will enable us to achieve some of the goals of the royal commission and cover off on some of the recommendations therein.

MS ORR: Given there are new responsibilities and new funding, is there a review period to ensure what is going on is correct and adequately resourced?

Mr Manthorpe: In terms of resourcing I do not think there is a review period per se. Of course, as you are all well aware, there is an annual budget and we will be carefully monitoring the extent of work that comes our way from the reports. Some of the unknowns when you set up a scheme like this are how many reports we are going to get, how much work will be involved in looking at those and how many times we will want to do a deeper investigation into particular matters, for example. So there are some unknowns when you set out on a scheme of this kind. We are comfortable with the amount of money the Assembly allocated to us for the financial year that is about to end. We are comfortable with the additional money the Assembly has allocated to us for the financial year that is about to start. But we will keep that under careful review as the reports come in and we will see how we go from there.

MS LE COUTEUR: So you are not concerned there is nothing for the outyears because you think they will look after themselves? There has only been funding for two years, and presumably this is an ongoing issue?

Mr Manthorpe: Yes, that is right. That is something we will need to come back to the ACT government about between now and two years' time to have a discussion about our experience and what the cost is. It may be something, too, where over time the cost can be reduced. Quite a bit of the activity this financial year with respect to the first part of the scheme and next financial year with respect to the expansion of it is about awareness raising and training and bringing people up to speed with the scheme. One might anticipate that over time the need to do that will come off a little bit. Indeed if the scheme achieves its goals and children are safe then perhaps the scheme will work to mitigate the risk that occurs to children. Let us hope so. We will be keeping all that under review and we will be coming back to the government in the normal budget process, like many other entities, to seek further funding as we need to in the outyears.

MR HANSON: Who are people required to report to? Is it you and/or others? Are there a range of people they can report to?

Mr Manthorpe: Under the scheme they are required to report to my office.

MR HANSON: So you get the report. What do you do with it? Do you investigate? Do you refer? What is the process?

Mr Manthorpe: I will ask Mr Pfitzner to fill in the gaps if I do not cover all the detail. Imagine in a childcare environment someone perceives that a child carer has inappropriately hit a child. The employer is required to report that to us as reportable conduct. We will then be saying to the employer, "Okay, what are you doing about that allegation?" What comes to us typically is an allegation; it is not necessarily proven. We then work with the employer to ensure the allegation is appropriately followed up. We will not investigate ourselves if we are satisfied that everything that needs to be done is being

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done by the employer. There might be circumstances where we choose to investigate, however, where we think there is a systemic issue at play or perhaps the allegation has not been adequately dealt with at first instance. So investigatory powers are available to us, but in the first instance we want to be satisfied that the entity is appropriately investigating it. Then let us imagine the allegation is upheld and the entity comes to the view that some inappropriate harm and treatment of a child has occurred, then we will want to know what they are doing about it by way of perhaps, from one extreme, reporting the matter to the police, which has occurred in some instances, through to less serious remedies such as counselling or training an employee, matters of that sort. That essentially is the process.

MR HANSON: Do you report on your statistics? Is that going to be in an annual report? Where are you going to be saying that you received X number of complaints and conducted X number of investigations?

Mr Manthorpe: I do a quarterly report to the Speaker. Indeed the most recent one was tabled in the Assembly a week or two ago, I think. I will provide more information in my annual report. We are compiling statistics about the number of reports, the broad nature of those reports, the nature of the entities being reported about, and our sense of how the scheme is going. You can certainly expect a good assessment of that in our annual report, but we also report quarterly.

THE CHAIR: Whilst we are on reportable conduct, how many reports do you typically receive on an annual basis, basically in the current financial year?

Mr Manthorpe: I can give you a number to the end of May 2018. For the period from 1 July 2017, when the scheme started, to the end of May, we had had 121 reports. Those had primarily come from out of home care, early childhood education and care, and the schools sector.

THE CHAIR: Are you seeing any sort of trend? Is there a case of over-reporting? The question I am leading to is: what has been the outcome of those reports? Has there been a substantive issue behind them?

Mr Manthorpe: It is a mix. Of that 121, we have closed 57. When I say "closed", we have come to the process that I was describing to Mr Hanson a minute ago. I will come to the outcomes in a second. The ones we have not closed are therefore still in the process of— THE CHAIR: Still active?

Mr Manthorpe: Yes. Someone is going through a process of investigating or looking found to have occurred, the complaint has been sustained, which is 14 per cent; 31, which is about half, where there was insufficient evidence to sustain the complaint; two where there has been a lack of evidence of weight to sustain the complaint; 12 where the matter was found to be, in effect, false, so where an allegation has been made that has just been found not to stack up; and eight where there may have been some conduct occur, but it was not at the threshold of reportable conduct. I should add, though, that although in many of those cases, therefore, we have come to the view that the conduct was not necessarily sustained, in a number of those instances, even though definitive proof might not have been available to sustain the complaint, the entities who are reporting are using the reports and so on to make sure that they have got the procedures in place, the training in place, the know-how in place, to remind their employees to do the right thing.

MS LE COUTEUR: The additional funding that you have been given for the first couple of years, according to the papers, was to enable you to undertake additional investigations and support the introduction of religious institutions into the scheme. Will there be enough time? Come March, the current legislation changes. Is that enough time for these issues or are they going to be determined on a commonwealth level so it is not really an issue for you to consult and deliberate on?

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Mr Manthorpe: I think it is enough time for us to work with all of the religious institutions in the ACT to get the scheme up and running. I may have said this in this committee before—I cannot recall—but one of the pieces of counsel we gave to our colleagues in the ACT government was, “Don’t rush this too much.” It is a worthy thing to have a reportable conduct scheme in place, in my view, and a worthy goal to extend it to the churches, but let us proceed at a speed that we can manage. I think that is being achieved. I cannot really speak in any detail about what is happening at the commonwealth level, though I know that, through COAG, the various states and territories are giving consideration to a whole range of the royal commission recommendations, including whether or not to set up reportable conduct schemes and the like. That is unfolding in the environment. There are a lot of similarities between the ACT scheme and the New South Wales and Victorian schemes. I am not sure that is a very complete answer to your question. The other point, touching back on the question Mr Hanson was asking a minute ago, is that there is a review mechanism in the budget papers for us to consider the funding requirements for the scheme in 2019-20 and going forward. We will just work with that.

MR HANSON: The incoming FOI legislation has been delayed. Are you ready to go, and were you in any way responsible for the delay? Were you one of the organisations that was essentially saying that they were not ready to go, or was that within government?

Mr Manthorpe: I am not aware of a delay. I am familiar with the legislation that is currently in place.

MR HANSON: The original legislation had a start date, and that was delayed, I think, by 12 months.

THE CHAIR: It was delayed from the beginning of 2017 to the middle of 2017. Is that right? Or was it to the beginning of 2018?

Mr Pfitzner: It was originally due to commence on 1 July 2017. I think there was a six-month extension passed by the Assembly. It did commence on 1 January 2018.

MR HANSON: And you are all good with that? It is happening?

Mr Manthorpe: Yes, we are good with that. It is happening. We are now receiving— and have been since 1 January—applications for various forms of intervention off the back of that legislation. The sorts of things that we are receiving applications for include applications for review—that is to say, applications that we review decisions taken by agencies, subject to the FOI Act—to see whether those decisions stack up or not. We are starting to work our way through those. Some of them have been finalised; more of them are underway. We are engaging with agencies on what are known as deemed decisions. If an agency does not deal with an FOI request in the statutory time frame, a decision is deemed to have been made that the agency has refused to hand over the documents. That then triggers engagement with us. We have had an application about extension of FOI processing time, a couple of individual complaints and 11 inquiries relating to the operation of the acts. So we have had a variety of submissions, applications and the like.

MR HANSON: Are the directorates complying with the act?

Mr Manthorpe: As a general principle, my sense is that they are. There is an element of the act that calls for the creation of the disclosure logs. That was part of the open access provisions of the act. We are aware that some agencies are still working their way through that and that they will put some material up but they still have some way to go in some instances. Some of those have written to us. We will be addressing that in our reporting at the end of the financial year.

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MR HANSON: Is the workload as you had anticipated? Is it more? Is it less? Is it plateauing? Mr Manthorpe: I think it is too early to say that it is plateauing. I think it is roughly in accordance with what we anticipated at this stage.

MR HANSON: In terms of general complaints about the ACT government agencies, has there been a spike? Has there been a decrease? Is it pretty much on trend? What has been happening?

Mr Manthorpe: It has gone down a bit this financial year. We are already close to the end of the financial year, so I have a number that anticipates what we think it might be. We think we will receive something in the order of 360 complaints about ACT administration this financial year and about 100 in addition to that about ACT Policing. That is a bit down on last year. For me, that triggers the obvious question: what does that mean? Does it mean that the citizens of the ACT are happier than they were before? I do not know whether I would reach that conclusion. It might be to do with awareness of our services. In that context, we have been putting in a whole lot of effort in the last six months to work with a variety of stakeholders, including stakeholders from minority groups and vulnerable members of the community. We have been working quite closely out at the prison. We have been working with the Indigenous community and a variety of other people to try to engage with appropriate stakeholders. We also have been engaging with ACT agencies themselves to alert them to the fact that we are out there, that we are keen to help people. So perhaps we will see a turnaround in those numbers. But they have gone down a bit. Whilst a lot of our activity has been focused, as the previous questioning highlighted—

MR HANSON: The numbers might have gone down in terms of the complaints, but when you looked at those complaints, what about the severity of them? How many are still being actioned? For how many was there no case to answer? Do you have those stats as well?

Mr Manthorpe: Yes, we do. As is always the case—it is the case for every ombudsman-type entity around the country, and it is certainly true of our commonwealth jurisdiction as well—we do not investigate everything that comes to us. It is a bit like how I was describing what we do with reportable conduct before. A good place to start is to see whether the entity that is dealing with the matter can investigate and appropriately deal with it. If that can happen appropriately, we are happy with that, rather than us having to investigate. We investigate something in the order of 20 per cent of the matters that come to us. In terms of the outcomes of those, I think the trends are broadly consistent with previous years. We are seeing that sometimes what really needs to happen is that the individual just needs to get a better explanation of what has happened to them. They may have been at the end of a decision from some arm of government that they did not like much, where it might have been the right decision at law but it had not been properly communicated or the construct might not have been adequately communicated. That tends to be something that we can help with quite a bit. Then there are smaller numbers where either decisions are reversed—there is a small number of those—or a person might be unhappy about how long it has taken to get a decision. We can nudge the relevant agency and get a decision taken. And sometimes we can extract from the relevant agency an apology to a person for a delay, a mistake or some other aspect of delivery. I do not think there is any sharp worsening or stand-out issue for us at the minute, although I must say that we continue to look. Since I have become the Ombudsman, I have been pressing my focus to try to get underneath the complaints and test whether there are any systemic or other issues that are there. We continue to examine that question.

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MR HANSON: On that, since you have taken over, have you identified any gaps in the service that you are providing? I am not necessarily talking about just internal matters but about things where the Ombudsman could be doing more or areas where perhaps you are wasting effort because it has been duplicated by someone? Have you found any strategic changes that you want to make?

Mr Manthorpe: I certainly do not think we are wasting effort. In this last 12 months, we put a lot of effort into standing up the functions that we have just been talking about. But I want to keep a close eye on a number of things. The outcomes for Aboriginal and Torres Strait Islander people in Canberra, in a variety of ways, are not what you might hope they would be, for example, in terms of their interaction with the police, their presence in the prison and the like. I am keen to ensure that groups such as that one are appropriately heard and engaged with in our work. That would be one. We continue to look carefully at how actively and effectively agencies are engaging with us on things like reportable conduct in our wider jurisdiction. I probably do not want to go any further than that today. What I would say to you is that this question of what the statistics are telling us is something that I am continuing, and will continue, to examine closely.

MR HANSON: I will put my further questions on notice*.

Mr Manthorpe: Sure.

THE CHAIR: Thank you, Mr Manthorpe. That concludes today's public hearing. On behalf of the committee, I would like to thank you and the Ombudsman's office, Minister Fitzharris and the officials from Transport Canberra and City Services, and the Public Cemeteries Authority. With questions that were taken on notice today, I remind everyone that the answers are due back with the committee secretary within five working days, day one being tomorrow. The committee adjourned at 4.59 pm.

* no questions on notice were received

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SELECT COMMITTEE ON INDEPENDENT INTEGRITY COMMISSION 2018

(Reference: Inquiry into the establishment of an Integrity Commission for the ACT)

Members:

MR S RATTENBURY (Chair)

MS E LEE (Deputy Chair)

MS B CODY

MRS V DUNNE

MR C STEEL

TRANSCRIPT OF EVIDENCE CANBERRA MONDAY, 24 SEPTEMBER 2018

THE CHAIR: Good morning and welcome to the second hearing of the Select Committee on an Independent Integrity Commission 2018. On behalf of the committee, I thank you, Ms Hinchcliffe, for attending today. I imagine you have seen the privilege card on the table. You have no reservations with any of that?

Ms Hinchcliffe: No.

THE CHAIR: Proceedings are being recorded by Hansard for transcription purposes and webstreamed and broadcast live. Before we go to questions, do you want to make any opening remarks? Ms

Hinchcliffe: I have a very quick opening remark to make. Thank you to the committee for inviting me today. I am appearing as the Acting Ombudsman, and the Ombudsman apologises for not being able to be here; he is currently away. Our submission talks of some technical issues in relation to the government's bill, but it really goes to the concepts of how integrity agencies work together and how the ACT Ombudsman would work with an independent integrity commission, whatever form that takes. It provides some undertakings to the committee that we would seek to work closely and in a collaborative way with an integrity commission. We work with other integrity agencies in our ACT role and we would seek to work in the same way, which includes information-sharing, the ability to ensure matters go to the right integrity agency to be looked at, and where we have issues around overlapping jurisdiction, to work together to ensure that matters go to the right places.

THE CHAIR: I appreciate those remarks. Certainly in the first committee hearing, one of those important considerations was how we fit each of the agencies together to both respect their individual roles and also ensure the linkages between them. One of the observations in your submission is that any staff engaged by an inspector should be engaged under their own governing legislation, rather than under the ACT Public Sector Management Act. Are you able to elaborate on the thinking behind that recommendation?

Ms Hinchcliffe: We have made that recommendation particularly in light of the power the Speaker has to be able to appoint an inspector—I think it is under clause 236 of the bill—who has similar other powers. We would be willing to operate in that kind of role, should the Speaker be so minded, but if the Speaker would be minded to appoint someone like the ACT Ombudsman to that type of role we would need to use our own staff. In our case our staff come under the commonwealth Public Service Act. So that is really the issue we are getting to there—if you want to enliven that provision and use a body such as ours, our staff are not currently employed under the ACT public service legislation. That might also be an issue for another integrity agency if you were to look to appoint them as the inspector. So that is why we have suggested that might be a legislative amendment to think about.

THE CHAIR: So you are essentially suggesting that the Ombudsman could provide that oversight role, rather than necessarily needing to appoint another individual?

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Ms Hinchcliffe: That is right; that is our position. We see that we have similar oversight functions to the ones that would be undertaken by the inspector. At the moment we currently do inspecting roles in relation to various covert powers, both in our ACT Ombudsman role and in our commonwealth Ombudsman role. We also oversight complaints mechanisms, both in our ACT Ombudsman role and our commonwealth Ombudsman role. So we see some synergies there. We are also conscious of the fact that, in a smaller jurisdiction like the ACT, establishing yet another oversight inspectorate role, which would be quite a small role as compared to the integrity role, it may be of benefit for the ACT to be able to pick up an existing oversight function to do that. We see that we would be in a position to do that. We acknowledge that that is a matter for the Speaker to decide and so we leave it there.

MS LEE: You indicate that your office is willing to work with the commission once it is set up, to use best practice. Is it your view that the covert and intrusive powers the commission has should be similar to what the Ombudsman has? Do you have any views on that?

Ms Hinchcliffe: There are a range of covert powers we do not currently have. We have quite strong powers, and we are not looking for any additional powers in our own act. But there are covert powers that we do not have, such as in the ACT we do not have powers under the Surveillance Devices Act to undertake surveillance devices. We have powers under that act to inspect the use of ACT Policing in relation to those surveillance devices. We would assume the commission would have those types of covert powers. There is a question about whether the ACT also seeks for the commission to have TI powers under the commonwealth act. If the commission was given those TI powers then, as I understand the way the mechanism works, the ACT would need to come to an agreement as to who would inspect the commission's use of those powers. In our commonwealth Ombudsman's role we currently inspect commonwealth agencies that use telephone intercept powers. So there needs to be an arrangement in place there. Of course, we would be happy in our ACT Ombudsman's role to discuss inspecting the commission's use of telephone intercept powers, were those powers to be sought for the commission. There are other powers under the commonwealth Telecommunications (Interception and Access) Act you may want to consider to be used by the commission, and they include the stored communications powers and the metadata access powers. Were those to be given to the commission, then in our commonwealth Ombudsman's role we would inspect the commission's use of those powers.

THE CHAIR: Because they sit under commonwealth jurisdiction?

Ms Hinchcliffe: That is right.

MS LEE: You mentioned that perhaps the ACT Ombudsman could play a role in the inspector role. Obviously some other oversight-type offices exist at the moment. Is it your submission that the ACT Ombudsman would probably be best suited for that role?

Ms Hinchcliffe: I have not thought about other agencies. There clearly are other agencies in the ACT that could play that type of role. My submission is merely that we could also play that role and that we have a corresponding role, which I think is the test. They might not be quite the words in section 236, but we have looked at the section in relation to us and we are comfortable that we would be able to undertake that role. Whether other agencies might also is another matter.

MR STEEL: To clarify, your staff are employed under the commonwealth Public Service Act 1999?

Ms Hinchcliffe: That is right.

MR STEEL: So you think the benefit of that is that you basically provide separation, as your staff are employed under that act rather than the ACT's Public Service Act?

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Ms Hinchcliffe: I would put it a little bit differently than that. The way the ACT Ombudsman Act is set up is that when the ACT Ombudsman is the commonwealth Ombudsman then the staff of the ACT Ombudsman are the commonwealth Ombudsman staff who are staff under the commonwealth act. So rather than it being an issue about the separation, it is more of an issue about the reality. The reality is that the ACT Ombudsman staff are employed under the commonwealth legislation. So were we to become the inspector, the benefit of having an agency that already exists to be the inspector is that you get to use the resources of that agency that already exist. Our resources that already exist are resources of employees under the commonwealth act. If we were to become the inspector and that was not amended then we would need to employ staff under the ACT Act to do that work. Whether you would get the economies of scale you would get were you to make the change is another question.

MS LEE: I want to go to the mandatory notification requirement. In your submission you say that there are some aspects of it that are incompatible with the Ombudsman Act. Your submission is that those requirements would need to be amended. Can you please elaborate for the committee why those provisions would need to be amended, as opposed to, perhaps, why the sections of the Ombudsman Act would need to be amended?

Ms Hinchcliffe: The Ombudsman Act continues the general principles of ombudsmen elsewhere, including our powers and functions under the commonwealth act, which include issues to do with the independence of the Ombudsman. The Ombudsman cannot be directed by other agencies to undertake various parts of work, and also the Ombudsman investigates in private. And they are the issues that we raised in our submission. We think that having a mandatory corruption notification requirement then becomes like a direction on the ACT Ombudsman. It is butting against those principles of the Ombudsman undertaking, as I say, investigations in private and the Ombudsman being independent and not compellable.

MR STEEL: Just to clarify that, I do not think that you are suggesting that the bill be amended because it already exempts you. You are essentially supporting the exemption already in there under clause 62(6).

Ms Hinchcliffe: Let me make sure I get this right. Exemption is with one of them and not with the other. Let me work that one through for a moment. There is an exemption in relation to the directions but not in relation to—

THE CHAIR: Notifications. Ms Hinchcliffe: The notifications, thank you.

MR STEEL: I read that bit in the submission.

Ms Hinchcliffe: Yes, that is right. I worked it through on the weekend but then I needed to have a look at it again. Thank you.

MS LEE: Sorry, I should have made my question clearer. Ms Hinchcliffe: No, not at all. I knew exactly the point you were getting to. THE CHAIR: This is an interesting point that has been brought to my attention. I accept the argument that you are making in the broad. But the other side of looking at our independent corruption commission is that they are given extraordinary powers. I think there is an interesting question there. All the points you raised about the Ombudsman are right, except that we are setting something up here that operates out of the ordinary. There is a question mark there, I think, about whether the Ombudsman should be allowed to view it to become aware of corruption. You, alone, would be the only people not required to report it to the corruption commission.

Ms Hinchcliffe: The way that I would answer that is: in our commonwealth jurisdiction already we deal with ACLEI in relation to issues of corruption that we would see in agencies that are covered by ACLEI. It is not all the commonwealth public service; it is a limited jurisdiction that they have. There are

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provisions in our act that allow us to provide information to ACLEI, just like we would expect to see provisions of the Ombudsman Act that would allow us to provide information to this commission as well. Then we ensure that matters that fall within our jurisdiction but relate to corruption go to the correct agency. We would send matters that relate to corruption to ACLEI, just as matters that we saw in the ACT that related to corruption would be sent to the commission.

MS LEE: The main difference being that ACLEI is only limited, obviously, to law enforcement.

Ms Hinchcliffe: That is right.

THE CHAIR: You have only looked at the bill put forward by Mr Barr. There is also a second bill by Mr Coe that the committee is considering. Have you had an opportunity to examine that one? Do you have any comments that you have not addressed in your submission?

Ms Hinchcliffe: I do not have any particular comments. We have looked more closely at the government bill than we have at the other bill, but we are aware of both of them. Our comments are more of a general nature. We picked up some technical points about the government bill but really our comments of a general nature go to both of them, which are really the comments that I made in my opening statement. We are very open to working with a commission, should it be established. We see that there is no difficulty of jurisdiction in having both an ombudsman and an integrity commission. We see that, in other jurisdictions where there are both agencies working, they work well together and we would seek to work in a similar way, should a commission be established in the ACT.

THE CHAIR: Thank you. That has been a very helpful submission and you have been very clear in your evidence. I think you have helped us understand a couple of points of subtlety but of importance nonetheless. We appreciate your time today. Thank you, very much. They are complex matters.

Ms Hinchcliffe: They are complex matters.

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Public Statement about a reportable conduct investigation October 2018

In 2018, I commenced an investigation into the response of the Education Directorate (the Directorate) to an allegation of reportable conduct about a teacher and their interactions with a student.

Given the sensitive nature of reportable conduct matters, we will not provide any further details on the nature of the allegation, other than to note the Directorate had informed ACT Policing of the allegation and after an investigation, ACT Policing did not proceed to criminal charges.

The ACT Reportable Conduct Scheme (the scheme) was introduced on 1 July 2017 to improve organisation-related child protection. My Office has the role of overseeing how organisations prevent and respond to allegations of misconduct by an employee or volunteer against children. The scheme also provides for information relating to child safety to be shared between relevant government agencies, professional registration bodies and organisations covered by the scheme. This investigation was the first use of my powers under s 17K of the *Ombudsman Act 1989* (the Act) to investigate an organisation's response to a reportable conduct allegation.

We have conducted a thorough investigation of this matter and have provided a comprehensive report on our findings to the Directorate. I welcome the Directorate's positive response to our report, which is as follows:

The Education Directorate is committed to the safety and wellbeing of children and young people, and to the effective implementation of the reportable conduct scheme.

The Directorate welcomes the Ombudsman's report, which examines one of the first reportable conduct allegations managed by the Directorate after the reportable conduct scheme was introduced in July 2017.

The Directorate accepts all recommendations and notes that implementation of each recommendation is already under way. The Directorate will continue to work with the Ombudsman's office on this important scheme.

The Directorate will also continue to work to share learnings with other agencies, recognising that the Ombudsman has decided to release this public statement because the issues and recommendations may be equally of benefit to other organisations covered by the scheme.

My Office investigates in private, but I have decided to make this public statement about the investigation, because although our investigation was specific to the actions of the Education Directorate, some of the issues we discovered, and some of the recommendations set out below, may be equally of benefit to other organisations covered by the scheme.

The interplay between reportable conduct and workplace relations

Many employment relationships are governed by some form of industrial agreement. Many of these include provision for how allegations of employee misconduct are to be investigated. An Enterprise Bargaining Agreement governs these matters for employees of the Directorate.

Employee misconduct investigations and processes to respond to allegations of reportable conduct are different. The former is focused on the duties and rights of an employee, while the latter is ultimately about the safety of children.

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Done well, a single process can fulfil both purposes. However, just because a workplace investigation complies with the governing industrial framework, it does not mean it will necessarily be satisfactory as a response to an allegation of reportable conduct.

Of most importance is that allegations of reportable conduct should be responded to in a way which does not limit the ability to share information. Information sharing could be limited by ceasing a reportable conduct investigation prior to it being completed, or by agreeing not to disclose information to relevant agencies.

Sharing child safety information—such as findings made at the conclusion of an investigation—with relevant employment regulators helps ensure that appropriate decisions can be made about any future risk to children that a person might pose, and therefore the appropriateness to work in that field. For teachers working in the ACT, the relevant regulators are the Office of the Commissioner for Fair Trading, which administers the Working with Vulnerable People (WWVP) scheme, and the Teacher Quality Institute (TQI), the regulatory body responsible for teacher registration.

An incomplete investigation, or an agreement not to disclose information, can limit the quality and the extent of information available to these regulators when making decisions about appropriateness to teach.

In this matter, my Office subsequently provided relevant information to WWVP and TQI that was not provided by the Directorate, which has been, and will continue to be, used to inform their assessments and decision-making.

While information was subsequently shared by this Office, I am of the view that it is the responsibility of the employer to share such information, rather than to rely on others doing so. All organisations covered by the scheme may wish to consider whether any changes to policies or processes are required to ensure their decision-makers consider the implications for the gathering and dissemination of information before ceasing an investigation before it is complete, or before agreeing not to disclose information.

Knowledge and understanding of reportable conduct

I do not doubt the Directorate's firm commitment to the scheme and the principles of child safety, which was reiterated during the course of this investigation. I note, too, that the incident that was subject to this investigation was identified, and appropriately reported, early in the life of the scheme.

However, our investigation did reveal that, despite this commitment, some teachers and staff did not appear to have a clear understanding of what constitutes reportable conduct, or what to do if such conduct was observed. I acknowledge that some reportable conduct behaviours can be difficult to identify and define. In particular, it became apparent after the event that other staff had felt concerned about actions they had witnessed, but had not taken steps to raise these concerns with the Principal or the Directorate.

The Directorate has informed us it is in the process of reviewing the Teachers' Code of Professional Practice and that it is incorporating elements of the scheme in this document. This is an excellent opportunity to consider also reflecting the scheme in other relevant policies, procedures and practices. I encourage other organisations to consider whether their own policies should be updated. My Office has developed a series of practice guides which may be of use in this process, available from our website.¹

¹ <http://www.ombudsman.act.gov.au/reportable-conduct-scheme/resource-kit>

Recommendations

I made seven general recommendations to the Directorate, which are outlined below along with the Directorate's response. I encourage other organisations covered by the scheme to also consider these recommendations.

Recommendation 1

The Directorate should develop and provide guidance that clarifies how a reportable conduct investigation can continue when an employee, who is the subject of investigation, separates from their employer. This should be considered as appropriate in consultation with Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

Directorate response

Agreed and under way

Policy and guidance documentation is already in the process of being reviewed. The relevant information will be included in any new/revised reference materials. The Directorate will consult with the Chief Minister, Treasury and Economic Development Directorate about the preparation of whole-of-government guidance material and will share information prepared by the Education Directorate to inform this.

Recommendation 2

The Directorate should update its policies and guidance material to ensure decision-makers explicitly consider the implications for the gathering and sharing of information before:

- ◆ deciding not to investigate an allegation of reportable conduct
- ◆ ceasing an investigation which is underway, or
- ◆ deciding to use a deed or agreement that limits such information sharing, and exercise caution before making any such decisions in response to a reportable conduct allegation.

Directorate response

Agreed and under way

This information is being included in the updated policy and guidance documentation referred to in Recommendation 1.

Recommendation 3

The Directorate should develop and implement a formal risk assessment process and associated templates, which guide decision-making in responding to reportable conduct matters.

Directorate response

Agreed and under way

Further work on risk assessment procedures across the Directorate is already under way. Outcomes from this work will be used to inform best practice in relation to the development of risk assessment processes and procedures specific to reportable conduct matters. This information will be included in the updated policy and guidance documentation referred to in Recommendation 1.

Recommendation 4

The Directorate should review the use of the preliminary assessment toolkit and its application in reportable conduct matters and provide updated training to staff.

Directorate response

Agreed and under way

The development and use of appropriate templates is being reviewed as part of the updated policy and guidance documentation referred to in Recommendation 1, with consideration given to training in the use of templates where appropriate.

Recommendation 5

The Directorate, in its review of the Teacher's Code of Professional Practice and associated policies, should clearly articulate the expectations of appropriate professional practice in teachers' conduct with students consistent with the Reportable Conduct Scheme.

Directorate response

Agreed and under way

The Teachers' Code of Professional Practice is a document which outlines the standards of professional conduct and integrity expected of teachers in ACT Public Schools. The document is currently under review, with the next version to have a specific reference to reportable conduct.

Recommendation 6

The Directorate should amend its policies and procedures to ensure that a broader 'lessons learnt' review should be considered as part of its response to a reportable conduct allegation.

Directorate response

Agreed and under way

The Directorate is implementing a continuous improvement approach and include, in reportable conduct policies and procedures, regular reviews of cases to inform future best practice.

Recommendation 7

The Directorate should provide training regarding the prevention, identification, reporting of and response to allegations of reportable conduct.

Directorate response

Agreed and under way

Key Directorate officers have already attended training specific to key aspects of reportable conduct, with further training occurring in September and November 2018. The Directorate is also working with the Ombudsman's Office to identify further training opportunities for other identified staff including school principals. Building the capabilities of staff in the all aspects of reportable conduct will be considered more broadly in accordance with the strategic priorities outlined in the Directorate's Annual Action Plan 2018–2019.

I thank the Education Directorate for its assistance and cooperation during this investigation.

Michael Manthorpe
ACT Ombudsman

ACT Policing Inspections – Secrecy Provisions

ACT Policing Controlled Operations

Section 26 of the *Crimes (Controlled Operations) Act 2008* (ACT) states that a person commits an offence if they disclose information regarding a controlled operation; or if the disclosure is intended to endanger the health and safety of any person; or if the disclosure is intended to prejudice the conduct of a controlled operation.

ACT Policing Surveillance Devices

Section 34 of the *Crimes (Surveillance Devices) Act 2010* (ACT) states that a person commits an offence if they use, communicate or publish protected information.

Protected information means any information obtained from the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or any information relating to an application for, issue of, existence of or expiry of a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or an application for approval of powers exercised under an emergency authorisation; or an application under a corresponding law for approval of powers exercised.

ACT Policing Child Sex Offender Register

Section 133A of the *Crimes (Child Sex Offenders) Act 2005* (ACT) states that a person commits an offence if they make a record or communicate protected information. In addition, there are strict controls under Chapter 4 of the Act which regulate who can access the child sex offenders register.

Protected information under s 133A means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

Section 33 of the *Ombudsman Act 1989* (ACT) states that any officer engaged must observe confidentiality of information they receive and that they may only disclose this information if it's for the exercising of official powers.

Under s 20A of the *Ombudsman Act 1989* (ACT), the Ombudsman:

- ◆ must provide the CPO with a copy of the inspection report
- ◆ may provide the Minister with an inspection report
- ◆ must provide the Minister with an inspection report, if the Minister requests a report.

The Minister for Police and Emergency Service is responsible for this Act and the report provided is not made public. Currently, Mr Mick Gentleman, MLA is the Minister for P&ES.

ACT Policing Assumed Identities

Section 37 of the *Crimes (Assumed Identities) Act 2009* (ACT) states that a person commits an offence if they disclose information regarding an assumed identity and that information reveals or is likely to reveal that an assumed identity has been acquired or used by someone.

Crimes (Surveillance Devices) Act 2010

Division 5.1 Restrictions on use, communication and publication of information

33 What is *protected information*?—div 5.1

In this division:

protected information means—

- (a) any information obtained from the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
- (b) any information relating to—
 - (i) an application for, issue of, existence of or expiry of a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
 - (ii) an application for approval of powers exercised under an emergency authorisation; or
 - (iii) an application under a corresponding law for approval of powers exercised under a corresponding emergency authorisation.

34 Prohibition on communication or publication of protected information

- (1) A person commits an offence if—
 - (a) the person uses information; and
 - (b) the information is protected information; and
 - (c) the use of the information is not permitted by this section; and
 - (d) the person is reckless about whether the use of the information is not permitted by this section.

Maximum penalty: imprisonment for 2 years.

Note The fault element of recklessness can be satisfied by proof of intention, knowledge or recklessness (see Criminal Code, s 20 (4)).

- (2) A person commits an offence if—
 - (a) the person communicates information; and
 - (b) the information is protected information; and
 - (c) the communication of the information is not permitted by this section; and
 - (d) the person is reckless about whether the communication of the information is not permitted by this section.

Maximum penalty: imprisonment for 2 years.

- (3) A person commits an offence if—
 - (a) the person publishes information; and
 - (b) the information is protected information; and
 - (c) the publication of the information is not permitted by this section; and
 - (d) the person is reckless about whether the publication of the information is not permitted by this section.

Maximum penalty: imprisonment for 2 years.

- (4) A person commits an offence if the person commits an offence against subsection (1), (2) or (3) in circumstances in which the person—
 - (a) intends to endanger the health or safety of anyone; or
 - (b) is reckless about whether the disclosure of the information endangers or will endanger the health or safety of anyone.

Maximum penalty: imprisonment for 10 years.

- (5) A person commits an offence if the person commits an offence against subsection (1), (2) or (3) in circumstances in which the person—
 - (a) intends to prejudice the effective conduct of an investigation; or

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- (b) is reckless about whether the disclosure of the information prejudices or will prejudice the effective conduct of an investigation.
Maximum penalty: imprisonment for 10 years.
- (6) Subsections (1) to (5) do not apply to—
 - (a) the use, communication or publication of—
 - (i) any information if the information has been disclosed in proceedings in open court; or
 - (ii) any information if the information has entered the public domain; or
 - (b) the use or communication of protected information by a person if the person believes on reasonable grounds that the use or communication is necessary to help prevent or reduce the risk of serious violence to a person or substantial damage to property; or
 - (c) the communication to the Director-General (within the meaning of the *Australian Security Intelligence Organisation Act 1979* (Cwlth)) of protected information if the protected information relates or appears to relate to activities prejudicial to security (within the meaning of that Act); or
 - (d) the use or communication of information mentioned in paragraph (c) by an officer of the Australian Security Intelligence Organisation if the use or communication is in the performance of the officer's official functions; or
 - (e) the use or communication of information to a foreign country or an appropriate authority of a foreign country if the use or communication is in accordance with the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth).
- (7) Protected information may be used, communicated or published if it is necessary to do so for any of the following purposes:
 - (a) the investigation of a relevant offence within the meaning of this Act or a relevant offence within the meaning of a corresponding law;
 - (b) the making of a decision whether or not to bring a prosecution for a relevant offence within the meaning of this Act or a relevant offence within the meaning of a corresponding law;
 - (c) a relevant proceeding within the meaning of this Act or a relevant proceeding within the meaning of a corresponding law;
 - (d) an investigation of a complaint against, or the conduct of, a public officer within the meaning of this Act or a public officer within the meaning of a corresponding law;
 - (e) the making of a decision in relation to the appointment, re-appointment, term of appointment, termination or retirement of a person mentioned in paragraph (d);
 - (f) the keeping of records and the making of reports by—
 - (i) a law enforcement agency in accordance with the obligations imposed by division 5.2 (Reporting and record-keeping); or
 - (ii) a law enforcement agency (within the meaning of a corresponding law) in accordance with the obligations imposed by provisions of the corresponding law that correspond to division 5.2;
 - (g) an inspection by the ombudsman under section 42 (Inspection of records by ombudsman) or an inspection under a provision of a corresponding law that corresponds to section 42;
 - (h) an investigation under the *Information Privacy Act 2014* or another law of the Territory, a participating jurisdiction or the Commonwealth concerning the privacy of personal information.
- (8) Subsections (6) (c) and (d) and (7) (a), (b) and (c) do not authorise the use, communication or publication of protected information in relation to an emergency authorisation or corresponding emergency authorisation unless the use of powers under that emergency

authorisation has been approved under section 29 (Judge may approve emergency use of powers) or the provisions of a corresponding law that correspond to section 29.

- (9) A reference in subsection (8) to a relevant offence (whether of the ACT or another jurisdiction) is a reference to any relevant offence of the relevant jurisdiction, whether or not it is the offence of the relevant jurisdiction in relation to which the relevant warrant or emergency authorisation was issued or given.

Division 5.3 Inspections

42 Inspection of records by ombudsman

- (1) The Ombudsman may inspect the records of a law enforcement agency to determine the extent of compliance with the Act by the agency and law enforcement officers of the agency.

Crimes (Controlled Operations) Act 2008

Division 4.1 Restrictions on disclosure of information

26 Unauthorised disclosure of information

- (1) A person commits an offence if—
- (a) the person is a participant in, or is otherwise authorised to have information about, an authorised operation or a corresponding authorised operation; and
 - (b) the person discloses information; and
 - (c) the information relates to the authorised operation or corresponding authorised operation; and
 - (d) the disclosure is not made—
 - (i) in connection with the administration or execution of this Act or a corresponding law; or
 - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this Act or a corresponding law or of any report of any such proceeding; or
 - (iii) in accordance with any requirement imposed by law.

Maximum penalty: imprisonment for 2 years.

- (2) A person commits an offence if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to endanger the health or safety of any person; or
 - (b) is reckless about whether the disclosure of the information endangers or will endanger the health or safety of any person.

Maximum penalty: imprisonment for 10 years.

- (3) A person commits an offence if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to prejudice the effective conduct of an authorised operation or a corresponding authorised operation; or
 - (b) is reckless about whether the disclosure of the information prejudices or will prejudice the effective conduct of an authorised operation or a corresponding authorised operation.

Maximum penalty: imprisonment for 2 years.

Division 4.3

Inspections

31 Inspection of records by ombudsman

- (1) The ombudsman must, from time to time and at least once every 12 months, inspect the records of a law enforcement agency to determine the extent of compliance with this Act by the agency and law enforcement officers of the agency.

Crimes (Child Sex Offenders) Act 2005

4C Functions—generally

The functions of the ombudsman are—

- (a) to investigate complaints made under this Act; and
- (b) to exercise other functions given to the ombudsman under this Act; and
- (c) to exercise other functions given to the ombudsman under the *Public Interest Disclosure Act 2012*; and
- (d) to monitor compliance with the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) by the chief police officer and other officers and people assisting in exercising functions under that part; and
- (e) to monitor compliance with the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register) by the chief police officer and other people authorised by the chief police officer to have access to the child sex offenders register.

118 Access to child sex offenders register restricted

- (1) The chief police officer must ensure—
 - (a) that the child sex offenders register, or a part of the register, is only accessed by people who are authorised by the chief police officer or under a regulation; and
 - (b) that personal information in the child sex offenders register is only disclosed by a person with access to the register, or the relevant part of the register—
 - (i) for law enforcement functions or activities and then only to an entity prescribed by regulation; or
 - (ii) as otherwise required or authorised by a regulation or under an Act or other law.
- (2) The chief police officer must develop guidelines about access to, and disclosure of, personal information in the child sex offenders register to ensure that access to the personal information in the register is restricted to the greatest extent that is possible without interfering with the purpose of this Act.
- (3) For this section, the child sex offenders register includes information from a register maintained under a corresponding law that is accessible by the chief police officer, whether or not the information is physically part of the register.
- (4) This section has effect despite any other Act or law to the contrary.

120 Offence—unauthorised person must not access child sex offenders register

A person commits an offence if the person—

- (a) accesses the child sex offenders register; and
- (b) is not authorised to have access to—
 - (i) the register; or

(ii) the part of the register that the person accesses.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

17B Police to give ombudsman reasonable assistance

- (1) The chief police officer, and other officers and people assisting in exercising functions under the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) must give the ombudsman any assistance that the ombudsman reasonably requires to exercise the ombudsman's functions in relation to that part.
- (2) The chief police officer must ensure that police officers and other people authorised by the chief police officer to have access to the child sex offenders register give the ombudsman any assistance that the ombudsman reasonably requires to exercise the ombudsman's functions in relation to the *Crimes (Child Sex Offenders) Act 2005*, chapter 4 (Child sex offenders register).

17C Power to enter police premises

- (1) The ombudsman or a police officer may, after notifying the chief police officer of the intended entry, enter, at any time, any premises occupied by the Australian Federal Police where the ombudsman reasonably believes there are documents that contain, or relate to, the child sex offenders register or that are relevant to the ombudsman's functions in relation to the *Crimes (Child Sex Offenders) Act 2005*, part 3.11 (Entry and search warrants) or chapter 4 (Child sex offenders register).

33 Officers to observe confidentiality

- (1) In this section:
officer means—
 - (a) the ombudsman; or
 - (b) a person who is a member of the staff referred to in section 30; or
 - (c) a person, not being a person referred to in paragraph (b), to whom the ombudsman has delegated any of his or her powers under section 32 or who is an authorised person.
- (2) Subject to this section, an officer must not, either directly or indirectly, and either while the person is, or after ceasing to be, an officer, make a record of, or divulge or communicate to any person, any information acquired because of the person being an officer, being information that was disclosed or obtained under the provisions of this Act, including information provided by the Commonwealth ombudsman or the ombudsman of a State or information disclosed to or obtained by the ombudsman in the exercise of a power of the Commonwealth ombudsman or of the ombudsman of a State delegated to the ombudsman as provided by section 32 (3).

Maximum penalty: 50 penalty units, imprisonment for 6 months, or both.

(3) Subsection (2) does not prevent an officer—

- (a) from making a record of, or divulging or communicating to any person, information acquired in the performance of the officer's duties as an officer for purposes connected with the exercise of the powers and the performance of the functions of the ombudsman under this Act; or
- (b) from divulging or communicating information to a person—
 - (i) if the information was provided by an officer of an agency in the performance of the person's duties as such an officer—with the consent of the principal officer of the agency or of the responsible Minister of the agency; or

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- (ii) if the information was provided by a person otherwise than as set out in subparagraph (i)—with the consent of the person who provided the information.
- (4) Subsection (2) does not prevent the ombudsman from disclosing, in a report prepared under the *Annual Reports (Government Agencies) Act 2004*, matters that, in the ombudsman’s opinion, should be disclosed in the course of setting out the grounds for the conclusions and recommendations contained in the report.

34 Disclosure of information by ombudsman

- (1) Nothing in this Act precludes the ombudsman from disclosing information or making a statement to any person or to the public or a section of the public with respect to the performance of the functions of, or an investigation by, the ombudsman under this Act if, in the opinion of the ombudsman, it is in the interests of any agency or person, or is otherwise in the public interest, so to disclose that information or to make that statement.
- (2) The ombudsman must not disclose information or make a statement under subsection (1) with respect to a particular investigation where the disclosure of that information, or the making of that statement, is likely to interfere with the carrying out of that or any other investigation or the making of a report under this Act.
- (3) The ombudsman must not, in disclosing information or making a statement under subsection (1) with respect to a particular investigation—
 - (a) set out opinions that are, either expressly or impliedly, critical of an agency or person unless the ombudsman has complied with section 9 (6) in relation to the investigation; or
 - (b) disclose the name of a complainant or any other matter that would enable a complainant to be identified unless it is fair and reasonable in all the circumstances to do so.
- (4) This section has effect notwithstanding sections 9 (3) and 33.

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15 October 2018	Sharp rise in police use of Tasers	ACT Policing
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Who's afraid of a starving watchdog?

The Commonwealth's tiny law-enforcement integrity agency has failed to keep up with the demands put upon it.

By Richard Mulgan

2 October 2018 — 12:04am

A recent Australian National Audit Office [report shines a welcome spotlight](#) on the Australian Commission for Law Enforcement Integrity. ACLEI is a low-profile but important regulatory agency that lies at the centre of a contested issue of government policy: how to combat corruption in government?

As the prospect of a federal anti-corruption commission becomes ever more likely, thanks to the Greens-led strategy of blaming every instance of impropriety by a federal politician or public servant on the absence of such a commission, ACLEI's role will come into sharper focus. As an existing federal anti-corruption commission, albeit highly circumscribed in its jurisdiction, how will it fit into a new anti-corruption regime? Does its performance carry any lessons for how a federal ICAC should be designed and resourced?

The law-enforcement watchdog is taking on more investigations but finishing fewer.

Much will depend on a judgment of how effectively ACLEI has performed so far. On this question, the ANAO report avoids direct comment, ruling out assessment of the commission's operational effectiveness as well as comment on the adequacy of its funding. Instead, in line with its usual methodology, the ANAO confines itself to matters of operational efficiency, not effectiveness, concentrating on identifying issues such as identification of relevant inputs and outputs, the appropriateness of performance measures, the prioritisation and allocation of resources, and the use of benchmarks to assess relative efficiencies. Within these limits, however, the ANAO brings together useful information about ACLEI that can help assess its overall effectiveness.

ACLEI has existed for just over a decade. It was established in 2006 to detect, investigate and prevent corruption in law-enforcement, concentrating on serious and systemic corruption. Its original jurisdiction included the Australian Federal Police and the then Australian Crime Commission. Customs and Border Protection was added in 2011 (since incorporated into the Australian Border Force and now the Department of Home Affairs), with further additions in 2013, including AUSTRAC (the Australian Transaction Reports and Analysis Centre), the (eventual) Australian Criminal Intelligence Commission, and certain quarantine-related functions from the Agriculture Department. Of these agencies, Home Affairs (including the Border Force) and the AFP (including ACT Policing) are by far the largest and occupy the bulk of the agency's attention.

ACLEI's main operations consist of investigating instances of corruption arising from its own inquiries or referred to it either by agencies under its jurisdiction or by individuals. When an issue is referred to it, the commission assesses it to decide whether to investigate it and, if so, whether to investigate on its own or jointly with another agency (more than half of the investigations are conducted jointly). In 2016-17, according to its annual report, the commission worked on more than 100 investigations and was instrumental in five successful prosecutions.

ACLEI is a small agency with a budget in 2016-17 of \$10.8 million and about 47 full-time-equivalent staff. Though its budget grew steadily over the past decade, including significant increases to meet periodic extensions of its jurisdiction, its capacity is still constrained considering the extent of its jurisdiction. Setting priorities about what cases to pursue and what to turn down is therefore essential. On this point, the ANAO is particularly critical. It notes that, over the last five years, ACLEI accepted for investigation a growing proportion of issues referred to it, up from about 10 per cent in 2012-13 to over 50 per cent in 2016-17. Over the same time, the proportion of investigations begun but not concluded grew correspondingly (in 2016-17, the commission began investigations of 107 corruption issues but concluded only 14).

The obvious result, as the commission recognises, is that fewer resources are available for each investigation. The problem is compounded by a steady increase in the complexity of investigations and the sophistication of corrupt officers, factors that call for more, not fewer, resources per investigation.

The commission is well aware of these problems of stretched resources and, as the ANAO acknowledges, has taken steps towards managing its caseload better. But, in the ANAO's view, more must be done to impose a more rational allocation of resources, which will bring its activities under better control. It suggests a "more structured" review process for individual investigations, including more formal assessments of potential risk and value in each case. It also proposes regular assessment of ongoing investigations to be triggered by pre-set times or milestones.

The commission, while generally accepting the report's tenor, balked at some of the recommendations. One relates to performance information. The ANAO, consistent with its drive to make all agencies fully adopt the performance framework set out in the Public Governance, Performance and Accountability Act, deplores what it sees as ACLEI's lack of adequate performance measures to indicate whether it is operating efficiently in terms of outputs produced. ACLEI, in turn, is unrepentant, arguing there are no generally accepted measures of efficiency for policing and anti-corruption agencies. It even obtained an opinion to that effect from international consulting firm McKinsey & Company. (This tactic, incidentally, is a depressing indication of the spurious authority attributed to the big consulting firms, which charge large fees for opinions to order. Why should a small, beleaguered agency spend scarce funds on questionable support for an argument that could easily stand on its own merits?)

Another issue of disagreement concerned the ANAO's view that ACLEI should benchmark its performance against that of other anti-corruption agencies. To demonstrate the value of such an approach, the ANAO itself conducted a brief comparison of ACLEI with four other Australian state-based agencies, including three public sector-wide anti-corruption agencies, in Victoria, NSW and Western Australia, and NSW's Law Enforcement Conduct Commission. Comparison over the last three years for which data are available indicate that ACLEI generally took longer over initial assessments (determining whether to proceed with an investigation), though it improved significantly in the last year. In terms of actual investigations, ACLEI has a much lower ratio of concluded investigations to commenced investigations, which suggests less efficiency.

Law-enforcement and border agencies prefer ACLEI's light touch to that of an independent anti-corruption agency.

In response, the commissioner, Michael Griffin, cast doubt on the comparisons' validity, pointing out that different anti-corruption agencies operate in different jurisdictions in different ways. "Complete isomorphism" between agencies that would allow unambiguous comparison was unlikely. The rebuttal was a straw-man knock-down, given the ANAO never suggested the comparisons were perfect nor that context was unimportant. One detects a whiff of the usual Canberra disdain for learning anything from analogous state and territory institutions.

Making due allowance for the ANAO's zealotry over performance information, the overall impression is that ACLEI has been struggling unsuccessfully to keep abreast of the demands put upon it. Though this failure may be partly due to inefficiency in imposing priorities, some blame must also fall on successive governments for under-resourcing the agency while steadily increasing its jurisdiction. It is all very well to insist that ACLEI focus only on serious and systemic corruption, as its legislation requires. But without sufficient staff, even that goal becomes elusive. Though the ANAO explicitly avoids comment on the level of ACLEI's funding, it is hard not to draw the conclusion that resources are inadequate.

One can also question an anti-corruption agency's independence when so many of its investigations are conducted jointly with the agency whose staff are under investigation. It is unsurprising that many agencies within ACLEI's jurisdiction (including ACT Policing) prefer its light touch to that of an independent service-wide anti-corruption commission. The royal commission into banking and financial services is providing a strong reminder about the dangers of regulators that get too close to

their regulatees under the comforting delusion that scarce resources are better spent cooperating rather than prosecuting.

There is another important lesson here as governments contemplate establishing a federal anti-corruption commission. Such a commission will fuel high hopes of dealing firmly with every instance of possible corruption that comes to light (the latest example being Peter Dutton's intervention on visas for au pairs). Will the new commission have the resources to handle issues that come within its jurisdiction promptly and effectively? How will that jurisdiction be defined? Without sensible limits, the commission's job will be impossible. But every limit guarantees disappointment for those whose complaints are rejected. For the advocates of a federal ICAC, who are now about to achieve their goal, the next important task will be to start dampening expectations.

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Talks stall about corruption commissioner's jurisdiction over cops

By [Katie Burgess](#)

29 September 2018 — 12:00am

Australia's revolving door of prime ministers has been blamed for the stagnation in talks between the ACT and Commonwealth governments over whether police will have to answer to the territory's new anti-corruption commission.

Legislation to create the commission is expected to be introduced into the ACT Legislative Assembly next month, so it can begin cracking down on corruption in mid-2019.

Workforce capability and governance deputy director-general Meredith Whitten with ACT Chief Minister Andrew Barr at the final hearing into the proposed integrity commission on Friday.

The bill gives the integrity commissioner the power to investigate potentially corrupt behaviour from police, but the clause will be delayed by a year to give the territory government time to negotiate with the Commonwealth over the inclusion.

The ACT's self-government act prevents the territory making laws about the Australian Federal Police, or amending Commonwealth legislation without its agreement.

But Chief Minister Andrew Barr told the final committee hearing into the proposed commission on Friday that the recent Liberal party spill had delayed negotiations.

"The prime minister has advised he's seeking advice from the Commonwealth attorney-general and the minister for home affairs and [will] inform the territory government of the Commonwealth's position as soon as possible," Mr Barr said.

"Clearly the change in prime ministers has delayed this somewhat but we will get a firm view from the Commonwealth sooner rather than later, noting that if they don't amend the Self Government Act then we can't [include police] so we'll await that advice and make a further determination."

Mr Barr said a national integrity body could instead have oversight of police if Labor won the federal election next year.

MLAs Chris Steel, Vicki Dunne, Bec Cody, Elizabeth Lee, and Shane Rattenbury are the committee scrutinising the proposed integrity commission.

"There is a scenario next year in 2019 where if there is a change of government federally, the current federal opposition has committed to establishing a federal integrity commission," Mr Barr said.

"My understanding at the moment although I've not heard directly from the new prime minister, I've not heard him make a statement on this but the former prime minister was as I understand it not supportive of a federal integrity commission.

"That position may change under Prime Minister Morrison, it's very clear it would under a Shorten prime ministership so we would need to have a watching brief on developments federally next year."

The Australian Federal Police and ACT Policing remain opposed to their inclusion in the bill, saying the extra oversight is unnecessary as they already have "robust" internal and external integrity mechanisms.

In its most recent submission to the inquiry, ACT Policing says references to police should be completely scrubbed from the legislation until the jurisdictional question is resolved.

Meanwhile, the territory's top bureaucrats have defended the high bar set for the role of the new integrity commissioner, amid concerns the selection criteria is so tight will exclude everyone except a handful of retired judges.

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The commissioner must have been a Supreme Court or Federal Court judge, or a justice of the High Court and cannot have been a politician, public servant or member of a political party in the previous five years.

Former ACT Bar Association president Ken Archer told the committee on Monday the criteria was so strict that the only viable candidates would be men aged 70 years or older.

Workforce capability and governance deputy director-general Meredith Whitten told the hearing that seniority was vital.

"Look what we think is really important is there's sufficient experience for someone to take on this role," Ms Whitten said.

"Because the bill covers a range of officials not just the public service we thought it was important to have someone with extensive skills and experience to take on this really important role."

Delegates from the Community and Public Sector Union also expressed concerns about requirements for commission staff to disclose their membership of political parties and other relevant interests.

CPSU ACT secretary Brooke Muscat-Bentley said forced disclosures would likely deter commission staff from exercising their right to be a member of a political party.

I wouldn't want to see a situation where you're diminishing someone's right to be a member of a political party," Ms Muscat-Bentley said.

"So long as they were performing their duties to a high standard ... there doesn't need to be that exposure of what their political affiliations might be."

However committee chair Shane Rattenbury said the disclosures were vital to the integrity of investigations, especially in cases that were politically "hypersensitive".

"If we had an investigation where member of a political party was investigated, and it was the later on revealed a staff member working on the investigation was a member of the same or different political party it would potentially undermine the whole investigation," Mr Rattenbury said.

Sharp rise in police use of Tasers

By [Alexandra Back](#)

15 October 2018 — 12:00am

More police officers with access to Tasers has resulted in a sharp increase in use of the conducted energy weapons, ACT Policing's annual report reveals.

ACT Policing saw a 342 per cent increase in use of force reports in relation to Tasers compared to the year before, from 45 reports up to 199 in 2017-18.

The number of times a police officer used discharged the weapon without authorisation also rose dramatically, from one instance to 10 instances the 2017-18 year.

Overall use of force reports decreased in 2017-18 by about 8.5 per cent, including the use of batons (down 53 per cent), pepper spray (down 24 per cent) and handcuffs (down 17 per cent).

The report suggests the increase in Taser use of force reports could be attributed to more police officers being issued the weapons. A rollout over this year and into next will see an extra 281 Tasers in use.

As at November last year, there was a shared pool of 94 Tasers.

The ACT Coroner's Court will hear an inquest into the death of Anthony Caristo, who died after being Tasered by police at his Waramanga home on November 1 last year.

"Use" in a use of force report includes drawing and aiming the weapon, not just firing it.

The annual report shows reports of alleged corruption breaches have also doubled since 2016-17, with 19 matters reported in the last financial year compared to nine in the year before.

The allegations of corruption were referred to the Australian Commission for Law Enforcement Integrity.

Police officers have also increased dobbing themselves and their colleagues in for conduct breaches, with the internal complaints making up a total of nearly 40 per cent of all complaints received.

But in 2017-18, 73 per cent of all conduct breaches were not established, compared with 57 per cent of breaches the year before. There has also been an increase in established breaches, from 31 to 62 in the last financial year.

But the report notes the cause of the increases was not fully understood, and that police were working with Professional Standards to analyse the trends and identify any underlying causes.

ACT Policing's controlled operations annual report shows undercover officers bought guns and ammunition in a series of controlled operations, however made no arrests and laid no charges as a result.

In five controlled operations, four of which went ahead, police bought eight firearms and ammunition. They purchased six firearms during just one of those operations.

Analysis confirmed the guns were stolen though no charges were laid.

But police did seize 1289 firearms in the 2017-18 financial year, including the firearm amnesty, 1515 illicit drug seizures and more than \$13 million in criminal assets and proceeds of crime.

ACT Policing's anti-bikie gang arm Taskforce Nemesis laid 107 charges related to gang activity, 93 raids and seizing 28 guns from gang members and associates.

The ACT government paid ACT Policing \$158 million for delivery of policing services in 2017-18.

The report also notes the impact of a rising population on policing, saying that in five years there had been a 30.8 per cent increase in calls requiring urgent police help.

Overall authorities received 29,291 triple-0 calls, police took 1050 intoxicated people into custody and attended 2697 family violence incidents, according to the report.

Discrimination complaints in the ACT more than double: report

By Finbar O'Mallon

17 October 2018 — 12:00am

- ✦ *The ACT Human Rights Commission saw a 166 per cent increase in complaints.*
- ✦ *Complaints from Indigenous Canberrans rose 344 per cent.*
- ✦ *The report continues calls to raise the ACT's criminal age from 10 to 12.*
- ✦ *The United Nations recommends the criminal age should be set at 14 years old.*

A blind man refused service by a taxi driver because of his guide dog was among 166 discrimination complaints made to the ACT Human Rights Commissioner in 2017-18.

In the incident described in the commission's annual report, the driver refused to give his taxi number, even though it would have been visible to a sighted person.

After the man complained to ACT Human Rights Commission, the driver and the company gave a written apology and explained the driver was unaware he couldn't refuse service because of the guide dog.

The annual report revealed discrimination complaints more than doubled and complaints from Indigenous Canberrans tripled last financial year.

ACT Human Rights Commissioner Dr Helen Watchirs also used the report to double down on calls to raise the capital's criminal age of responsibility from 10 to at least 12 years old.

Former ACT attorney-general Simon Corbell and Aboriginal Legal Service chairman Bunja Smith have previously called for Canberra's age of criminal responsibility to be raised to 14.

The commission's annual report revealed discrimination complaints rose from 76 in the 2016-17 financial year to 166 in 2017-18 financial year - a 118 per cent increase.

The report also revealed complaints from Aboriginal and Torres Strait Islanders rose from nine in 2016-17 to 40 in 2017-18 - a 344 per cent increase.

The report identified as discrimination on the grounds of disability, race, sex and age, in that order, as the top four reasons for complaints.

The majority was based on the grounds of people being deprived of access to services or facilities because they had a disability, according to Dr Watchirs.

One woman complained her son faced an 18-month wait for a therapist by a Canberra provider and was billed twice despite never receiving care.

Another woman complained her uncle with a disability was left unattended for long periods of time at a specialised accommodation service.

After incidents where the uncle had harmed himself by drinking too much water, the accommodation service told the uncle he was to vacate in two weeks, despite having nowhere lined up to go.

One woman alleged her contract was terminated by her employer as she faced discrimination because of her race. She was eventually paid \$3000 in lost wages and the employer agreed to provide cultural awareness training to its ACT employees.

Dr Watchirs said the rise in complaints showed a better community awareness of the commission's work.

"Human rights on paper aren't as good as human rights enforced so the fact that people are doing something about actually having them implemented is a good thing," Dr Watchirs said.

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Dr Watchirs said the commission still remained unhappy an 11-year-old girl was detained twice at the Bimberi youth detention centre this year.

She said a rise in the criminal age of responsibility from 10 to 12 would have to be met with an increase in therapeutic services available for Canberra's young people.

The Human Rights Law Centre, the Aboriginal Legal Service, Amnesty International and former ACT attorney-general Simon Corbell have called for the age to be raised to 14.

The United Nations recommends countries raise the criminal age of responsibility to 14 on the basis children that age and under are unable to comprehend the consequences of their actions.

Australian Bureau of Statistics data shows Aboriginal children in the ACT between 10 and 14 years old are up to seven times more likely to be charged than non-Indigenous children the same age.

The majority of complaints by Aboriginal and Torres Strait Islanders were off the basis of race but some, according to Ms Watchirs, were related to disabilities.

She said the commission now had two staff dedicated to handling complaints made by Indigenous Canberrans and said complaints just weren't being made before

ACT public housing demand forecasts not updated for six years

By Daniel Burdon

8 October 2018 — 12:00am

The ACT government has not updated its forecasts of demand for public housing dwellings for more than six years, despite a 2012 estimate tipping a potential shortfall of about 2000 dwellings by 2020.

Demand for public housing dwellings is set to hit 12,950 households by 2020, based on the now-expired 2012 public housing asset management strategy, up about 17.7 per cent since 2010.

ACT Housing Minister Yvette Berry has been unable to explain why the territory's demand forecast for public housing was not updated for more than six years.

But that five-year strategy, which guides how Housing ACT runs its 10,902 public housing dwellings, expired in January last year, and only in August this year did Cabinet agree to develop a new one, as it was a requirement of signing up to the new national housing agreement.

While the government is replacing about 1288 dwellings, in order to sell off land to help fund the light rail project, it faces continued criticism for not growing the total pool of dwellings, given rising demand.

The demand forecast in the 2012-15 strategy estimated a need for 11,000 dwellings in 2010, rising to 12,030 by 2015 and again to 12,950 in 2020.

There were 1778 households on the waiting list as at the end of September, and only 10,902 dwellings available.

The government would need to build a further 2048 public housing dwellings in the next 14 months, if it was to meet the demand expected by 2020.

When the *Canberra Times* asked Housing ACT about the current level of demand earlier this year, a spokeswoman said the forecast had not changed, but the government was considering potential improvements to the methodology.

But the government has not responded to the question as to why the strategy was not updated sooner, nor why there was no reconsideration of the real level of demand in the intervening six and a half years.

Public housing advocates have previously cited concerns the level of demand may be much greater than estimated, but people were not bothering to apply, given wait times of more than 1000 days for most applicants.

The spokeswoman did say in a statement the government was developing a long-term strategic plan for the asset management of public housing in the ACT, but there was no response to interview requests with senior Housing ACT staff to help explain the matter.

Asked last week why the government took 18 months to make a decision to develop a new strategy, a spokeswoman for Housing Minister Yvette Berry said in a statement "while the strategy officially drew to a close in January 2017, we have continued the work of the strategy through the delivery of the public housing renewal program".

"At the same time, there has been a coordinated effort across government to identify new and emerging issues facing public housing," she said.

Ms Berry's spokeswoman also said the government acknowledged a number of dynamic factors influenced demand for public housing, and the new five-year plan would "respond to a range of emerging drivers and trends affecting the demand for public housing, including the type and volume of stock that will be required to meet contemporary tenant need".

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But the statement also said the new plan would not be completed until after the renewal program ended next July, indicating the government might be preparing to release its new affordable housing strategy without updated demand forecasts.

ACT Council of Social Service director Susan Helyar said the government had to ensure the demand forecast was completed before the strategy was announced, because the government would not know what the current or future demand would be without it.

She said if the forecast was not completed until July, it would be several more years before the stock was in place to meet current demand, let alone future growth in population.

"Every year people have to wait for new stock to be available is another year they can't get ahead financially because they're spending such a high proportion on housing, they can't afford to save a deposit to buy a house, and they're often compromising on health, education and expenses," she said.

"[We] paint a bleak picture because our members have told us it has been urgent since 2016 for the government to deal with the lack of affordable housing in this city.

"We really need the new strategy to set some ambitious targets and allocate the level of resources needed to deal with the scale of the problem this city faces."

New firm to maintain ACT public housing stock, after audit

By Daniel Burdon

27 July 2018 — 8:51pm

- ★ *There is a new contractor to maintain 11,800 public and community houses.*
- ★ *An audit of current contractor Spotless' work found failures in its maintenance of public housing.*
- ★ *The new contractor will have to meet targets to employ people facing employment barriers.*

The ACT government has secured a new contractor to maintain its almost 11,000 public housing dwellings, two years after a damning audit into current contractor Spotless' poor maintenance record.

The contract is the territory government's single largest ongoing contract, worth some \$48 million last year alone, with Housing Minister Yvette Berry assuring the city it will be more tightly managed than the Spotless.

Deputy Chief Minister Yvette Berry says the new contract will be better managed, for tenants and the community.

Spotless had held the contract since 2005, but a report by the Auditor-General in late 2016 found the contractor had failed to properly oversee its own, and its subcontractors, work; also revealing a series of wider inadequacies in Spotless' work.

Despite the audit, the government renewed Spotless's contract for a further two years - set to expire on October 30 - as it went about undertaking a lengthy and detailed tender process to secure a new contractor.

While the government boosted the number of audits of Spotless work since the 2016 audit, the government hopes the new contractor will manage the properties better for tenants, as well as cost less than the current contractor.

Ms Berry on Friday said the government had chosen NSW-based Programmed Facility Management as the winner, with the firm to manage 11,800-odd public and community housing dwellings, Narrabundah Long Stay Park and Bimberi Youth Justice Centre for six years from November 1.

Ms Berry said in a statement the new contractor would also need to meet new targets to employ public housing tenants, people with disabilities, Indigenous residents and other culturally-diverse Canberrans, though neither the contract, nor the targets have yet been released publicly.

ACT Council of Social Service executive director Susan Helyar backed news of the new employment targets, saying it was a practical example of how the territory government could improve social outcomes for people facing employment barriers.

The council, unions and others have pushed for such targets on territory government contracts through a Legislative Assembly inquiry into insecure work in Canberra, as well as the creation of the proposed new "local jobs code".

But Ms Helyar said the sector also wanted to see transparent reporting on the employment targets, including de-identified data on the numbers of people employed with barriers to jobs, the level and security of their roles and the number of people with a disability employed in award wage jobs.

Ms Berry said the contract would include a new performance management system to encourage the firm to achieve the best possible services, tenant engagement and satisfaction and meet industrial relations and ethics requirements.

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The contractor will spend the next three months setting up the new system, which will help Housing ACT monitor its performance, through ongoing reports on the firm's performance against the contract key performance indicators.

Ms Berry said ahead of the transfer, the government would also be setting up a transition team to ensure the current levels of service were retained as the new contractor took over.

The performance management system will monitor the firm's work, but the government also plans to review the entire contract and performance in three years' and five years' time, to ensure the firm is meeting government objectives.

Any potential cost over-runs, beyond the \$48 million annually budgeted for the contract, will be borne by the contractor, rather than ACT taxpayers.

All contact details for repairs and maintenance services for tenants will remain the same, with the call centre operating 24 hours a day, seven days a week on 6207 1500 or via SMS on 0438 100 500.

South Canberra 'gets shafted' in bus route changes

By Finbar O'Mallon

1 August 2018 — 12:05am

Narrabundah residents will face difficulties accessing medical appointments, including drug support programs, in Woden under new bus routes.

Old Narrabundah Community Council chair John Keeley said the government should be trying to help the lower socio-economic people living around Narrabundah, Symonston and Fyshwick.

John Keeley from the Old Narrabundah Community Council is hoping to convince the government to change their minds about the bus route changes.

"You've got to look after the people that are in need," Mr Keeley said.

"My clientele base is the frail and the disadvantaged, I'm not interested in those who have got two cars parked in their garage.

"I think our government members have been sold a lemon by whoever has put forward the proposal."

The government is proposing cutting bus routes 80 and 88 in the Narrabundah area in 2019, which would mean from 2019 buses would no longer service the Alexander Maconochie Centre, Geoscience Australia or other Symonston stops which take residents directly into Woden.

The government has already cut the route five bus from Narrabundah, which travelled directly to Woden. Residents in Red Hill or Narrabundah have to catch a route four bus to another stop to then swap on to a rapid route six bus into Woden.

"There are swathes through the Red Hill area that are being shafted. There's Symonston. The socially disadvantaged in Narrabundah Lane are being shafted," Mr Keeley said.

He said a lot of people in the area needed easy access to Woden so they could get to the hospital, undergo their rehabilitation programs, methadone programs, day surgery or other medical appointments.

"If they want to use a bus, and a lot of them are now choosing not to, they have to now hop on a bus, go about a kilometre, wait in the cold and get on a rapid," Mr Keeley said.

Residents can travel direct to the city from the route four bus, but Mr Keeley said a lot of their preferred services were in Woden.

In Gordon, Suzanne Millar said changes to the local bus routes has added 20 minutes extra commute time to workers travelling from Tuggeranong to Belconnen.

"They seem to be putting all these new buses on for Gungahlin, we're just getting shafted out in the southside," Ms Millar said.

Ms Millar said her husband currently commutes on the 718 bus to Civic, before changing to another bus into Belconnen, taking about an hour. However, the government is set to cut the 718, with changes indicating Ms Millar's husband would have to change three times to travel to Belconnen.

The government was contacted about changes to the buses servicing the Narrabundah area and said the network was being redesigned from the ground up to focus on more frequent, rapid services.

"Transport Canberra is also proposing demand responsive services, including to service the correctional facility," a transport spokesman said.

The government also recommended the elderly or people with mobility issues make use of the flexi bus, a free community shuttle. The flexi bus requires users to book two days in advance and only operates weekdays between 9.30am and 1.30pm.

Rapid buses better use of resources than Xpressos: Transport Canberra

By [Katie Burgess](#)

8 August 2018 — 12:00am

- ✦ The Xpressos were introduced in the early 2000s
- ✦ The Xpressos services are not part of Canberra's new bus network
- ✦ Instead there will be 10 Rapid routes on the new network
- ✦ Commuters say the change will add to their travel time

Canberra's peak hour Xpressos are unlikely to be revived as part of Canberra's new bus network, because of the drain the commuter buses place on the network.

Xpressos have been controversially dumped in favour of more Rapid buses as part of the incoming network, which goes live in January.

There will be 10 Rapid routes on the new network - including light rail - with services at least every 15 minutes from 7am to 7pm Monday to Friday.

However patrons have slammed the removal of the peak hour Xpresso buses, saying their commutes will nearly double in time.

Transport Canberra declined to release the raw data that underpinned the design of the new network, but gave *The Canberra Times* an insight into some of its more controversial aspects.

The Xpressos were introduced in the early 2000s to provide fast, direct trips for peak commuters.

There are about 73 morning Xpresso trips and 70 afternoon trips on 19 different routes.

Transport Canberra commercial policy manager Patrick Fischer-Reid said Xpresso services averaged about 20 passengers while rapids averaged about 40 at peak times.

"Our four existing rapid routes will carry around 7.4 million customers in 2017-18, or about 40 per cent of our total boardings. Today's 19 Xpresso routes carry less than 4 per cent of our customers," Mr Fischer-Reid said.

"The average number of customers on each Xpresso bus trip is about 20, when a standard size bus carries more than 60 customers at a time.

"As a result, the average number of people on each bus is 24 in the morning peak and 18 in the afternoon peak.

"On Transport Canberra's existing Rapid services, the average number of people boarding each bus in the morning peak is 42 and in the afternoon peak is 40."

Mr Fischer-Reid said redeploying those buses into the Rapid network was a "better use" of resources, while providing a similar service.

"That same [Xpresso] bus deployed on a Rapid route between Tuggeranong and the city can carry people from Tuggeranong to Greenway, Wanniassa, Woden and the city, with additional passengers boarding and stopping along the way," he said.

"This bus may carry upwards of 100 people over the course of an hour, serving far more passenger trips with the same amount of resources."

He said retaining the Xpressos would "significantly reduce" Transport Canberra's capacity to provide more frequent services across the whole network.

"Rapid routes can carry more people per trip than direct Xpresso routes because the same seats can be used by several passengers along the way," Mr Fischer-Reid said

"For example, a Rapid bus could start at Lanyon, drop off passengers at Greenway and pick up more, then drop off passengers at Woden and pick up more and then carry passengers to the city."

However the communities that rely on the Xpressos believe the Rapids pale in comparison.

"The Xpressos and the Rapids serve different purposes," Woden Valley Community Council president Fiona Carrick said.

"Hopefully they'll make some modifications to the current proposal. You shouldn't have to change once you're on a Rapid, it should run from Tuggeranong to Belconnen or Tuggeranong to Gungahlin."

Tuggeranong Community Council president Glenys Patulny said the Rapid and Xpresso buses were like "apples and oranges".

She said the problems with the network were exacerbated for Tuggeranong residents because of the extra distance.

"We are a whole extra bus route length away from everyone else. The removal [of the Xpressos] adds an extra half an hour for each trip," Ms Patulny said.

Belconnen Community Council chair Glen Hyde said Belconnen residents were "defensive" of their Xpresso services, as the buses took commuters directly to employment hubs on the southside.

"We're not seeing that connectivity in the new network," Mr Hyde said.

Community consultation on the new network closes this weekend.

Transport Canberra defends scrapping of school buses as principals flag safety concerns

By [Jake Evans](#)
8 August 2018

Catholic and independent schools across Canberra have raised concerns that the loss of some dedicated school buses will endanger young students, as they will be forced to "mix" with public commuters.

Key points:

- ◆ 49 dedicated primary school buses are earmarked to be scrapped
- ◆ Figures show just eight primary school students are on each affected bus
- ◆ Transport Canberra says most primary school students already use the regular network

St Mary MacKillop College principal Michael Lee said schools had been urging parents to express their concerns before consultation closes.

"My community is really concerned and has heightened anxiety about the safety of kids under the new bus route," he said.

"We have 14 dedicated bus routes to this school every morning and afternoon — under the proposed changes we will have five."

But Transport Canberra has defended the move, saying that more than half of primary school students who travel by bus already safely ride on the regular network.

Figures compiled by Transport Canberra, and seen by the ABC, showed, on average, there were just eight students catching each of the 49 dedicated primary school buses slated to be scrapped.

Estimates from MyWay ticketing data indicated about 1,160 primary school students used regular network buses and 840 used dedicated school buses.

About half of those on dedicated buses would be forced onto the regular network under the proposed redesign.

'Our dedicated buses aren't great': Transport Canberra

Transport Canberra boss Duncan Edghill said many of the existing dedicated school buses were part of legacy decisions that no longer made sense.

"We've seen our dedicated school bus network evolve over many years now, and where we've ended up is something that we think is sub-optimal, both for school students but also for the broader travelling public," he said.

"Our dedicated school bus services at the moment aren't particularly great."

Mr Edghill said the new network would see 30 per cent more buses servicing schools and more students within walking distance of a 'Rapid' express bus service.

"If we allow any part of our network to grow in a way that doesn't have regard to the totality of what we're doing, we can find ourselves in a situation where we're not using the finite resources that we have as efficiently as we can," he said.

In March the ABC reported that fewer than 75 per cent of ACTION buses arrived on time in any week over the past year, excluding Christmas and New Year's.

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Annual Report Hearing – Executive Background Brief



Mr Edghill said buses ran late, in part, because of long circuitous routes that had some students travelling an hour and a half to get to school — something the new network had been designed to solve.

Principals 'not reassured' by agency's safety message

But some school principals said their concerns lay with the safety of students who would be moved onto the regular bus network.

On Monday, Radford College principal Fiona Godfrey wrote to parents that the school would lose two of its six dedicated buses, despite repeated requests for more.

She said students would be forced to wait at "unsafe" bus interchanges and "mix with members of the public ... with no supervision".

"It will not be practical or safe for Radford College Junior School students," Ms Godfrey wrote.

Other schools, such as St Clare's College and St Edmund's College in Canberra's inner south, raised concerns that students would now have to cross busy roads like Canberra Avenue to catch the bus.

And St Mary MacKillop College principal Michael Lee said a meeting on Tuesday between principals and Transport Canberra left him with more questions than answers.

"Under the proposed changes [students will] have to find their way to a bus stop, which is not necessarily in a school zone, which will not be supervised by a teacher and in fact could be on a major road like Ashley Drive that is 80 kilometres an hour," Mr Lee said.

"Tell me that's safe and I'll stop supervising the kids now."

Mr Lee said the message from Transport Canberra was not reassuring.

"When the gentleman running the meeting said 'I travelled on buses and trains when I was a school boy in Sydney and it was fine' — we're in a different space and a different time, and we know more now, and I'm not sure that's been taken into account," he said.

But Mr Edghill said Transport Canberra was "alive" to safety concerns and had already taken on suggestions from parents, such as introducing 'buddy benches' at interchanges for students who feel unsafe.

He said new infrastructure and more transit officers at stations would be considered in light of feedback given through their consultation period, but defended the safety of Canberra's bus interchanges.

"There are thousands of students per day who are actually changing at our interchanges between buses already," Mr Edghill said.

Consultation on the proposed new network closes on Sunday.

More private school principals join calls against school bus cuts

By Sherryn Groch

8 August 2018 — 12:00am

- ✦ **10,000**-school students travel by bus every weekday
- ✦ **58%**-use public buses
- ✦ **30%**-change buses
- ✦ **42%**-use dedicated school buse
- ✦ **47**-dedicated school bus routes will remain out of the current 109

More private school principals in Canberra have sounded the alarm over planned cuts to dedicated school bus services, saying enrolments could drop where bus stops are placed further away from campuses as concerns about student safety grow.

Under the ACT government's public transport overhaul, more than half of all dedicated school routes will be slashed, in return for more public buses travelling past schools more often. Fifty-nine schools, including 49 primary schools, will lose all their dedicated services in the new network, due to come online in January.

St Edmund's College is losing more than half of its dedicated school services in the change, and sister school St Clare's is also affected.

But a growing number of principals, including at St Edmund's, Brindabella and Radford, have hit out at a lack of information and consultation offered to affected schools.

Students as young as eight at St Edmund's College will now have to catch up to three buses and then cross a major road without traffic lights to get to class each morning, principal Joe Zavone said, as the college's dedicated services more than halve under the plan.

The school had since been inundated with messages from concerned parents, he said.

"We're likely to lose some enrolments over this," Mr Zavone said.

"Why would you send your kid to a school where they have to make three bus changes just to get there, especially coming from northside?"

Mr Zavone said he was particularly concerned about the impact on students with disabilities or autism.

"Some kids they just won't cope at interchanges."

Michelle, whose last name could not be published for legal reasons, said her two boys with autism relied on their school bus to get to St Edmund's safely each day.

"My 11-year-old has no road sense at all," she said. "I don't know what we'll do."

Principal at Brindabella Christian College Christine Lucas said the school was set to lose all 17 of its current services but had yet to see detail on what that would mean for students on the ground.

Transport Canberra confirmed the services would go but said the school would also gain two new "hub and spoke" school services which would ferry students directly to the college from interchanges, providing access to about 180 students on top of the public network.

While Transport Canberra said there was still room to improve the network for students, Ms Lucas said her impression after consultation was it seemed to be a "done deal".

"They're [restricting] parent choice...They won't give us the proper data we've asked for [on the changes]. Without that..they're forcing us into a no man's land."

Calls for more park and ride spaces for overhauled bus network

By Andrew Brown

26 August 2018 — 12:00am

- ◆ There are park and rides at Cooleman Court, Cotter Road and Weston Group Centre
- ◆ The area's community council has said there's a lack of park and ride spaces
- ◆ A review into park and ride areas is happening later this year

Changes to the proposed bus network in Canberra won't work unless existing infrastructure is significantly upgraded, according to a community council.

In a submission to the government, the Weston Creek Community Council argued streets surrounding bus interchanges have been under pressure due to a lack of park and ride services.

A review into park and ride spaces is being conducted later this year.

Weston Creek Community Council chair Tom Anderson said increasing rapid bus services as part of the network changes would require park and ride areas at the Weston group centre and Cooleman Court to be significantly upgraded.

"There are only 10 park and ride parking spaces at the present time at the centre. Parking at Cooleman Court has been under pressure since 2009," Mr Anderson said

"Starting rapid services at Cooleman Court without the infrastructure has the potential to have a large negative economic impact on the centre and the businesses located there."

A 2009 Roads ACT survey found existing parking at Cooleman Court was full, and while 76 more spaces have been introduced, Mr Anderson said parking around park and ride areas is still at capacity.

"To run such rapid services from Cooleman Court requires a major increase in park and ride parking. It cannot be taken from the current parking," he said.

"The increased services does look good on paper, but it's a question of how people utilise it."

Weston Creek Community Council chair Tom Anderson says a lack of park and ride spaces in the area is creating a strain on surrounding infrastructure.

Similar park and ride areas on Cotter Road are already full on weekdays, with its 45 spaces all used up on a regular basis, according to the community council chair.

With some local bus routes being scaled back in the area due to the changes, Mr Anderson said it would drive more people to park and ride areas in order to catch buses and increase the strain.

"The suburban route only runs hourly, and so commuters could spend 50 or so minutes waiting for the suburban bus to take them home on that last stage," he said.

"This is only likely to further discourage travel by bus."

A Transport Canberra spokesman said it regularly monitors park and ride services in Canberra for usage and is looking into upgrading existing facilities.

A review into park and ride demand across Canberra will be conducted in coming months, which includes assessing current sites and scoping for future areas.

"Transport Canberra carefully plans the location of new park and ride facilities and when to upgrade existing facilities to support its integrated public transport network," the spokesman said.

"Customer feedback has shown that older users choose park and ride more often when it's serviced by an all-day route to access to city to avoid the hassle of parking

Unjust': Principals say schools still left behind under revised bus network

By [Sherryn Groch](#)

22 October 2018 — 12:00am

- ✦ The government has partially backed down on plans to radically cut school services.
- ✦ More than half of school trips will now pass through a bus interchange.
- ✦ Concerns raised about kids travelling through interchanges.
- ✦ Transport Canberra says thousands of students already travel through interchanges each day

Fourteen-year-old Anna Connolly doesn't know how she will get to school next year.

The Merici College student, who has Down syndrome, spent 18 months learning how to catch her dedicated school bus each day and was ready to make the journey solo when her sister graduated at the end of the year.

But last week the ACT government revealed Anna's bus will be one of many services dumped under its public transport overhaul.

Merici College student, Anna Connolly, 14 of Campbell, has down syndrome is not sure how she will get to school next year

Following community backlash over student safety and consultation with schools, Transport Canberra partially pulled back from earlier plans to slash daily school bus trips from 246 to 145 when the new network comes online in January.

Under the revised plan, about half of schools will still lose all their dedicated buses, 51 compared to the original proposal of 59 and most schools will lose at least one bus, but an extra 78 school trips will be added to the network's design as rapid buses also expand.

Non-government schools, hit especially hard by the cuts, have slammed the revision as disappointing, saying that while some schools have been granted a reprieve, others are still missing out, putting students at risk.

Brindabella Christian College principal Christine Lucas said one of her secondary students had been assaulted while catching a public bus in Lyneham over the school holidays. Police were now investigating the incident but the student was not seriously injured.

Slashing dedicated bus services amid a string of recent assaults on school children was particularly concerning, Ms Lucas said, as the new network would have more students walking further to bus stops and passing through busy public interchanges.

"I don't understand why the risk for students at some schools has now been reduced while others haven't," she said.

Of 222 daily school services now set to run in 2019, many will also operate differently than those today, with more than half passing through an interchange:

- ✦ 48 per cent of all school trips (106) will carry students from their home suburb to a school (compared to 76 per cent in the current network)
- ✦ 50 (22 per cent) will be "hub and spoke" services carrying students directly from an interchange to school (compared with 10 per cent in today's network)
- ✦ 66 (30 per cent) will perform both functions – running through one or more suburbs but also stopping at an interchange on the way to schools (compared with 15 per cent in today's network)

A spokesman for Transport Canberra said all schools losing a bus would still be served by a public connection, as more general buses ran past schools. Extra customer service officers will also be out at interchanges during school times but thousands of students already pass through the hubs each day.

Anna's mother Helen Connolly, who works in disability services, said she couldn't imagine how she would teach her daughter to navigate the risks along her new route, which will involve walking to the light rail, then walking from an interchange in the city out to her school in Braddon.

"It's just horrifying," Ms Connolly said.

"We're putting a huge number of people who need support to access services at risk. I'll have to cut down my hours at work to drive her, I don't know what we'll do."

Transport Canberra said it had taken on board community concerns about safety but the new network would make better use of its fleet and keep transport sustainable for a growing city, as a number of school services were currently under-utilised.

Principals have questioned the MyWay data used to draw such conclusions, saying head-counts conducted by Transport Canberra at a number of non-government schools after the original network was unveiled revealed sharp discrepancies in their estimated patronage and the actual number of students boarding buses.

Transport Canberra used MyWay estimates and enrolment information from public schools when building the new network from scratch, but said non-government schools "have not traditionally shared [enrolment] information with the ACT government".

Private school principals say they weren't asked, learning of the cuts only after they were announced in June. In some cases, such as at Marist College, discrepancies in MyWay estimates revealed during head-counts led the government to back down on bus cuts at the school altogether.

But at Brindabella, Merici and Radford College as well as others, packed buses had still been cut in the final design.

From next year, Transport Canberra is planning to request enrolment data from all ACT schools annually, in a regular review of school bus services, the spokesman said, and recruitment for a special school liaison officer was also underway.

Ms Lucas said the government seemed genuinely willing to engage with schools going forward.

"That's terrific but they've already made this fundamental shift to school transport," she said.

"I've got big pockets of students affected by this, [especially] south of the lake."

Radford principal Fiona Godfrey said she had received no such opportunity for consultation, despite submitting her school's bus requirements in July 2017 and then lodging another submission in August this year, citing concerns about student safety and increased traffic congestion.

After learning Transport Canberra had been in contact with other schools, Ms Godfrey said the college had asked for the same opportunity. But the meeting had been pushed back until the day after the revised network was announced, when the school was told no new changes could be made.

At Merici, principal Loretta Wholley acknowledged her school would be well served by public transport so near the light rail corridor, but said students travelling from the south were still missing out and Transport Canberra had not given any assurances about safeguards for younger students or those with complex needs.

Ms Connolly said the suggestion students with disabilities could buy a support worker to take them on the new network was a step backwards - and another drain on limited disability support funds.

"It's unjust," she said.

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Andrew Wrigley of the Association of Independent Schools of the ACT said the revised network was certainly an improvement on the original plan, but it was unclear why some schools had been given back buses and others hadn't.

The Catholic Education Archdiocese of Canberra is still scrutinising the final network but has previously raised concerns about the safety of students pushed onto public buses and travelling through interchanges.

Transport Canberra did not answer questions about supports for students with complex needs before deadline. The existing special needs transport program, which operates as an independent service, will not be affected by the network changes.

With Han Nguyen



OMBUDSMAN AN OFFICER OF
THE ACT LEGISLATIVE ASSEMBLY 

MINUTE

File Ref: A1691446

31 October 2018

Michael Manthorpe
ACT Ombudsman

Through: Jaala Hinchcliffe, Deputy Ombudsman
Chelsey Bell, A/g Senior Assistant Ombudsman, Program Delivery

Subject: Briefing for the 2017-18 Annual Report hearing

I recommend that you:

1. note the attached briefing

Noted /please discuss

Michael Manthorpe
ACT Ombudsman
October 2018

Purpose

To provide you with briefing materials for your attendance at the 2017-18 Annual and Financial Reports Hearing.

Issues

1. You have been requested by the Standing Committee on Public Accounts to attend the 2017-18 Annual and Financial Reports Hearing to discuss the 2017-18 Annual Report from 2.30 to 3pm on **Monday, 12 November 2018**.
2. It is anticipated that the additional witnesses in this hearing will be the Deputy Ombudsman, the Senior Assistant Ombudsman Program Delivery Branch and Senior Assistant Ombudsman Assurance Branch. Other staff will attend and be available to provide additional information if required.

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3. Briefing materials for this appearance are attached.
 - ◆ The briefing pack covers topics raised in the ACT Ombudsman Annual Report for 2017-18, as well as additional items of possible interest.
 - ◆ Three illustrative case studies for reportable conduct have also been provided as requested. These are intended for background only as they contain identifying detail.

Consultation

4. The Complaints Management and Education Branch, National Assurance and Audit Branch, the Social Services Team, the Reportable Conduct team, and Finance were consulted in the preparation of this briefing material.
5. Paul Pfitzner has reviewed these briefs previously.

Cathy Milfull
Director
ACT Strategy and FOI
Program Delivery

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Public Accounts Committee 2017-18 Annual Report Hearing – Brief

Public Accounts Committee – 2017-18 Annual Report Hearing
Monday, 12 November 2018, 2:30-3:00pm

Index Item	Topic of Brief
1	<u>Opening Statement</u>
2	<u>Resourcing</u>
3	<u>Complaints</u>
4	<u>Community Engagement</u>
5	<u>Reportable Conduct Scheme</u>
6	<u>Freedom of Information</u>
7	<u>ACT Policing</u>
8	<u>Law enforcement agency inspections</u>
Additional Issues of possible interest	
9	<u>Independent Integrity Commission</u>
10	<u>Changes to the ACTION Bus Network</u>
11	<u>Housing ACT</u>
12	<u>ACT Corrective Services</u>
13	<u>Our role in the NDIA</u>
14	<u>Dangerous Dogs</u>
15	<u>Judicial Council</u>
Attachment A	Committee Members' profiles
Attachment B	Recent Appearances – most recent Hansard
Attachment C	Public Statement – s 17K investigation
Attachment D	Inspections – Secrecy Provisions (1) and media (2 & 3)
Attachment E	Media

Public Accounts Committee 2017-18 Annual Report Hearing – Brief

Topic: Opening Statement

Index item: 1

Current issue

- ◆ The ACT Ombudsman Annual Report was published on 15 October 2018.

Talking points

- ◆ I would like to make a short opening statement that I hope will provide some context to our hearing this afternoon.
- ◆ The ACT Ombudsman Annual Report for 2017-18 was provided to the Legislative Assembly on 12 October 2018 and subsequently published on 15 October 2018. It outlines the activities undertaken by my Office during a period that has seen a significant expansion of our activities in the ACT in my role as the ACT Ombudsman.
- ◆ During 2017-18, we commenced important new functions which aim to provide the community with improved assurance about child safety and public administration.
- ◆ The range of work undertaken by my Office as the ACT Ombudsman now includes:
 - investigating and referring complaints regarding ACT Government agencies or ACT policing
 - receiving, and dealing with, allegations of Reportable Conduct
 - reviewing the merits of decisions made on access applications and monitoring the implementation of the *Freedom of Information Act 2016*,
 - providing support to the ACT Judicial Council, and
 - monitoring the police use of covert powers.
- ◆ I am proud of the wide ranging services that we are now able to offer the people of the ACT.
- ◆ This annual report includes the first published annual statistics in relation to the Office's functions related to Reportable Conduct and Freedom of Information.
- ◆ Looking forward, we hope to continue to mature management of our more recently adopted functions, as well as adopting a renewed approach to our more traditional functions – with the Office committed to take up increased opportunities to influence systemic improvements in administration in the ACT.

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Public Accounts Committee 2017-18 Annual Report Hearing – Brief

Topic: Resourcing

Index item: 2

Current issue

- ✦ We will receive \$3,146,847 (including GST) in funding from the ACT Government in 2018–19.

Talking points

If asked about view on current resourcing

- ✦ The Office is currently comfortable with its funding arrangements.
- ✦ If we become concerned about the level of funding, we can seek review of this under our Agreement with the ACT government. Some funding arrangements are already due to be reviewed (see table below).

Function	2017-18	2018-19	2019-20
ACT Ombudsman	\$552,089	\$510,180	TBC - funding is indexed under the Service Agreement based on figures from ACT treasury in the 2019-20 budget.
ACT Policing	\$620,707	\$573,589	
Reportable Conduct	\$897,000	\$833,000	\$854,000
Judicial Council	\$88,000	\$80,000	To be negotiated
ACT FOI	\$954,000	\$864,000	To be negotiated
Total	\$3,111,796	\$2,860,770	N/A

If asked about how funding is used

- ✦ We have seen our staffing numbers grow in line with our increasing responsibilities and increased funding from the ACT.
- ✦ Currently, there are approximately 16 FTE working on ACT Ombudsman matters in our Office, with approximately:
 - 6 FTE on general ACT Ombudsman functions (including oversight of ACT policing)
 - 5 FTE on ACT FOI functions
 - 4 FTE on the Reportable Conduct Scheme, and
 - 1 FTE in support of the ACT Judicial Council.

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- ✦ We expect this to remain relatively stable over 2018-19.
- ✦ Funding also contributes to senior executive staff, legal officers and corporate functions to support the work of the ACT Ombudsman.
- ✦ In addition to staffing for ACT Ombudsman functions, we contract with specialists from time to time. For example, in 2017-18 we contracted specialists to:
 - develop and deliver training for organisations covered by the reportable conduct scheme in workplace investigation and interviewing skills, as well as deliver introductory child safeguarding information sessions; and
 - support our engagement with religious organisations, who entered the Reportable Conduct scheme in 2018-19.

If asked about the additional funding for new functions

- ✦ The last budget increased funding for our Reportable Conduct function.
 - We will be receiving a total of \$833,000 for this function in 2018-19 and \$854,000 in 2019–20.
- ✦ This increased funding reflects the expansion of the scheme, and ensures that we are able to support organisations covered by the existing scheme.

Background

- ✦ The table below outlines the annual funding and FTE levels for specific ACT Ombudsman functions undertaken by the Office.

Function	Annual amount (\$)	FTE
ACT Ombudsman complaints and strategy	510,180 for ACT Ombudsman general oversight	6
AFP (ACT Policing) complaints, strategy and inspections	573,589 for AFP/ACT Policing oversight	(3.33 FTE in ACT Strategy Team; 2 FTE in Intake and Ops Central 0.6 in NAA)
Reportable Conduct	833,000	4.27
Judicial Council	80,000	0.57
ACT FOI	864,000	5
Total	2,860,770	Approx. 15.77
Total including GST	3,146,847	

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- ◆ Our internal workings indicate that the salary and non-salary staffing costs for current staffing levels (as set out above), plus around 14.5% of non-salary costs (including senior executive staff, project overheads, consultants, legal advice etc.) are likely to expend, but not exceed, our ACT funding envelope.
- ◆ We had asked for more money for Reportable Conduct than we ultimately received (we bid for \$967,000 and will receive \$833,000). This means we are not funded for, nor are we filling, one of the additional positions we sought for the scheme.

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Public Accounts Committee 2017-18 Annual Report Hearing – Brief

Topic: Complaints

Index item: 3

Current issue

- ◆ We received 447 complaints in the ACT jurisdiction in 2017-18.
- ◆ This represents a decline in approaches received compared to the previous financial year. Statistics for the first quarter of 2018-19 have, however, stabilised.

Talking points

- ◆ We received 447 complaints in 2017-18:
 - 349 relating to ACT Directorates and agencies, and
 - 98 about ACT Policing (22 per cent of all ACT complaints received).
- ◆ Of the ACT Directorates, most complaints received concerned the Chief Minister, Treasury and Economic Development Directorate (22 per cent of all ACT complaints received).
- ◆ This represented a 15% decline in approaches since 2016-17.
- ◆ While this may indicate improved satisfaction with ACT Government services, there is a risk that this is reflective of a lack of awareness of the role of the ACT Ombudsman.
- ◆ As a result, the Office has expanded in its outreach activities in the ACT in order to ensure that both ACT Directorates and agencies, as well as the ACT community, are aware of our role in assisting with complaint management, and in investigating complaints.
[See Index item 4 on Community Engagement for more detailed information]
- ◆ This may already have had a positive impact with the complaint statistics for the first quarter of 2018-19 **not** reflecting a further continuation of this downward trend.

If asked what can an Ombudsman investigation achieve

- ◆ Frequently, an investigation assists a complainant by giving them a better understanding of the decision that was made, or the process that the agency is undertaking.
- ◆ Other remedies include the agency making an apology or taking action faster than they may have done otherwise.
- ◆ Importantly, an investigation helps us to identify and communicate to agencies better ways to deliver their services or make particular administrative decisions.
- ◆ Our investigations can result in agencies identifying issues with their processes – issues that sometimes can be resolved very quickly, or alternatively require more comprehensive review and change with an agency.

If asked why some complaints are not investigated

- ◆ Each and every complaint is assessed on its merits. Consideration is given to whether investigation is warranted or a remedy can be achieved.
- ◆ There are a number of matters that are specifically excluded from Ombudsman investigation by the legislation. For example, under the *Ombudsman Act 1989 (ACT)* I am not authorised to investigate some complaints related to actions taken:
 - by a Minister

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- by a judge, registrar, magistrate or coroner
 - by the commissioner for sustainability and the environment
 - by the human right commissions in the exercise of the commission's deliberative functions
 - by the auditor-general
 - with respect to the employment of persons in the public service, or
 - for the purpose of providing a disability service, a health service and service for children or young people or a service for older people.
- ◆ Our general approach is that a complainant should raise their complaint with the agency first, before we will conduct an investigation. This is because the agency is most likely to be able to provide the best remedy for the complainant in the most efficient way.
 - ◆ In 2017-18, we investigated about 16% of finalised matters.

If asked for views on public administration in the ACT

- ◆ I do not think it is useful for me to generalise about the standard of public administration in the ACT.
- ◆ It is important to remember that complaints to my Office do not necessarily reflect the broader ACT public's experience with an agency.
- ◆ Many complaints relate to circumstances particular to the complainant, and we receive complaints about a small proportion of the ACT public's interaction with government.

If asked why the Human Rights Commission complaint numbers are rising while ours are falling

- ◆ My Office is aware of the complaints statistics published by the ACT Human Rights Commission in their 2018-19 annual report, which indicate a 166 per cent increase in their complaints.
- ◆ It is difficult to compare the experiences of both organisations with the factors that influence complain numbers. The Human Rights Commission also deals with a number of matters that are excluded from the jurisdiction of my Office, this includes complaints related to health services.
- ◆ My Office has nevertheless recently reached out to the Human Rights Commission as we are keen to share our experiences in this space and work closely with them, as we already do in the context of oversight of the Alexander Maconochie Centre.

If asked about the Ombudsman's role in relation to Public Interest Disclosures

- ◆ We have received a small number of complaints that may relate to the handling of an ACT Public Interest Disclosure (PID). We have, however, referred these to the Public Sector Standards Commissioner, who is responsible for monitoring and reviewing management of PID disclosures by public sector entities; where they were not already under consideration by the Commissioner.

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If asked for further details of the case studies in the Annual Report

- ◆ The case studies were provided to indicate the range of issues that can arise in public administration and the work undertaken by my Office to assist people who approach us.
- ◆ I cannot provide further details of these specific matters as my Office investigates in private. Canberra can seem like a small community at times; we do not want people to be able to be identified by their complaints.

Background

- ◆ We remain concerned about the number of approaches to this Office in the context of the ACT jurisdiction, with:
 - informal feedback received from community groups which suggests that ACT residents lack awareness about our services and/or are confused about our jurisdiction
 - the annual report from the ACT Human Rights Commission (HRC), who provide a complaints handling service for ACT residents regarding issues outside of our jurisdiction (e.g. health, services for young/old people) indicates that they have seen a 166 per cent rise in complaints, and
 - preliminary discussions and monitoring of ACT agencies suggest that they are receiving increasing numbers of complaints and at significantly higher volumes.
- ◆ It is, however, pleasing to see some improvement in the first quarterly figures for 2018-19 – with 137 approaches that relate to ACT agencies and ACT policing received between 1 July and 30 September 2018.
- ◆ To assist the Office to address these issues and exercise greater influence over public administration in the ACT, the ACT Strategy and FOI section is currently preparing a draft ACT Strategy for 2018-19 and covering paper. Consultation on this paper will commence in November 2018, with the aim of this matter being discussed at the Strategic Policy Board in December 2018.
- ◆ The tables below provide more detail in terms of the complaints received by the ACT Ombudsman in 2017-18 in comparison to previous financial years and by Directorate/Agency.

Financial Year	ACT Ombudsman	ACT Policing	Total	% Change
2017-18	349	98	447	-15%
2016-17	393	133	526	-7.4%
2015-16	446	122	568	-4%
2014-15	465	125	590	+ 3.9%
2013-14	446	122	568	-4%

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Directorate/Agency	2017-18	2016-17
Chief Minister, Treasury Economic Development Directorate	98	128
✦ ACT Revenue Office	22	15
✦ University of Canberra	19	22
✦ Access Canberra	39	64
✦ CMTEDD	18	27
Community Services Directorate	89	95
✦ Housing ACT	69	80
✦ Community Services Directorate	20	15
Education and Training Directorate	22	10
✦ Canberra Institute of Technology	10	4
✦ Education Directorate	12	6
Environment and Planning Directorate	16	21
Health Directorate	16	17
Justice and Community Safety Directorate	84	101
✦ ACT Corrective Services	50	51
✦ ACT Court or Tribunal	8	8
✦ Human Rights Commission	3	4
✦ Legal Aid ACT	7	11
✦ ACT Law Society	0	3
✦ Public Advocate of the ACT	0	0
✦ Public Trustee of the ACT	10	10
✦ Justice and Community Safety Directorate	6	14
Transport Canberra and City Services Directorate	24	21
✦ ACTION Bus	2	2
✦ Transport Canberra and City Services Directorate	22	19
Total – ACT Directorates	349	393
ACT Policing	98	133
Grand Total	447	526

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Public Accounts Committee 2017-18 Annual Report Hearing – Brief

Topic: Community Engagement

Index item: 4

Current issue

- ◆ Under our Service Agreement with the ACT government, we are committed to undertaking outreach activities to inform the public and ACT agency staff about the role of the ACT Ombudsman.
- ◆ The Office has also expanded these activities in 2017-18 in an effort to address the decreasing approaches received from ACT residents.

[for more information see Index Item 3: Complaints]

Talking points

- ◆ My Office is committed to promoting all ACT Ombudsman services to ensure that all ACT residents are aware of all our services - particularly those from vulnerable groups, such as Aboriginal and Torres Strait Islander (ATSI) people, culturally and linguistically diverse people, recent arrivals and young people.
- ◆ We actively engage with the ACT community, by attending forums and meetings, delivering training, giving presentations and holding stalls at community events.
- ◆ The feedback we receive from our engagement is generally positive, and importantly, helps shape our service delivery.
 - We have recently re-designed our brochures for ACT residents to make them more appealing and to cover both Commonwealth and ACT Ombudsman services, and are ensuring that they are available in community information centres.
 - We have used the artwork created by Leah Bridson to make outreach materials directed towards the ACT's Aboriginal and Torres Strait Islander communities.
- ◆ We also continue to build stronger networks with ACT agencies to help ensure that ensure that complaints, Freedom of Information and Reportable Conduct processes in our jurisdiction are best practice.

Background

- ◆ During 2017-18, we have held stalls at the:
 - Multicultural Festival (February)
 - CIT Orientation Week (February)
 - the National Seniors Expo (March)
 - Women's Multicultural Expo (June)
 - NAIDOC week (July), and
 - Mental Health Expo (November).
- ◆ We have also delivered a presentation to the Council for the Aging.
- ◆ We have engaged with the Indigenous communities of the ACT by attending the NAIDOC Flag raising ceremony, holding a NAIDOC week stall at the University of Canberra, meeting the

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Indigenous Client Service Officer at the ACT Corrective Services and the Indigenous Field Officer at ACT Legal Aid.

- ◆ We recently met with a number of welfare and community organisations that provide services to the homeless and those experiencing housing vulnerability.
- ◆ We are currently developing a new external stakeholder engagement plan as part of the new ACT Strategy for 2018-19. We have, however, already increased our program of community engagement over the past year, including meeting with senior's groups and welfare and community organisations

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Topic: Reportable Conduct Scheme

Index item: 5

Current issue

- ◆ The Reportable Conduct scheme commenced on 1 July 2017 and was expanded to include religious organisations from 1 July 2018.
- ◆ On 17 October 2018, our Office released a public statement about its first s 17K investigation into an organisation's response to an allegation of reportable conduct.

Talking points

- ◆ We have engaged closely with entities covered by the scheme and work with other professional oversight agencies and child protection services.
- ◆ We see our role as facilitating better practice in addressing child protection concerns in organisations.
- ◆ In addition to looking at individual allegations and organisation's response, we support organisations by providing information sessions and training and publishing practice guides.

If asked about reports received

- ◆ In 2017-18, we received 143 notifications of alleged reportable conduct, which is broadly consistent with the numbers we had anticipated.
 - These primarily came from out of home care (29 per cent), early education and care (25 per cent) and schools (23 per cent).
 - This suggests employers are aware of the need to notify the Ombudsman of certain allegations they become aware of – that is, that an employee has engaged in child abuse or child related misconduct.
 - The number of reports received also indicates that our efforts to reach employers during the implementation phase and early stage of the scheme have been effective.
- ◆ Of the 143 cases, 68 were closed in 2017-18. In relation to the cases closed:
 - The type of alleged misconduct (see *Definitions* in background below) has been predominantly ill-treatment of a child involving hostile use of force, or physical contact that is unreasonable and seriously inappropriate (39 allegations in cases closed in 2017-18).
 - The next most common allegation types in cases closed in 2017-18 were allegations of ill-treatment involving emotional abuse of a child and misconduct of a sexual nature in connection with a child (12 allegations for each).
 - Organisations made the following finding against each allegation: sustained – 17 per cent; not sustained – 71 per cent; and not reportable conduct – 12 per cent.
 - Even where the findings were not 'sustained', many organisations still acted upon risks to child safety as part of their investigation process.
- ◆ As I set out in the opening of my report, while the headline number of 143 reports may seem significant, a range of factors should be considered, such as:
 - the fact that reports are being made by entities indicates that those entities are alert to their responsibilities to notify my office of allegations

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- the number of reports is within the range of anticipated numbers for the first year of operation - taking into consideration similar schemes in other jurisdictions
 - these notifications in the first instance are of allegations—which, upon investigation, may be sustained or not
 - when we group the conduct reported into categories, the majority of the reports pertain to relatively less serious matters within those categories, and
 - we know that entities respond to the more serious allegations by making referral to the police.
- ◆ In the first quarter of 2018-19, we saw an increase in the rate of notifications (54 for quarter). We also closed 45 cases in the quarter. Our current caseload is roughly 90 cases – all at various stages.

If asked about our experience and how we work with organisations

- ◆ Our experience of the scheme so far is that we are able to add value to organisations' investigation processes by viewing a matter from an external perspective, analysing information and asking questions of an organisation while a matter is underway.
- ◆ On many occasions, we have provided feedback to the entity to enhance their future practices, such as on their investigation techniques, procedural fairness, record keeping, interview practices and bias or conflict issues.
- ◆ These early experiences have also included some challenges. Many organisations use their existing misconduct processes to investigate reportable conduct, but we have seen a range of organisations that have not yet adapted their practices to meet the expectations of the scheme.
- ◆ We anticipate that organisations will improve their handling of these matters as the scheme matures. In the meantime, the Office has provided close support to many organisations to assist them to conduct proper investigations and take appropriate action.
- ◆ We are accessible to entities and communicate our expectations and requirements. We have published a range of guidance material on our website, hold information sessions, send periodic newsletters, and encourage entities to contact us directly.
- ◆ We host a quarterly reportable conduct practitioner's forum to facilitate collaboration on relevant practices across sectors and for us to provide and receive feedback on issues related to the scheme.
- ◆ We have also supported organisations by providing free training on conducting reportable conduct investigations and holding interviews.
 - The training was provided by a consultant with strong experience in child protection and reporting under the NSW scheme.
 - It has enhanced understanding about the expectations of the Ombudsman under the scheme. 330 people attended these sessions last financial year.

If asked about the supports provided to the expansion of the scheme – religious organisations

- ◆ We are keen to support religious organisations' entry to the scheme, which began from 1 July.
- ◆ We have engaged with religious organisations by:
 - holding tailored information sessions about the scheme
 - providing information by email and our website

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- engaging a consultant to raise the awareness of religious bodies about the scheme, assess their preparedness to become part of the scheme and their training and information needs – with a focus on the ‘hard to reach’ organisations.
- offering religious bodies training in investigations, conducting interviews and child safeguarding.
- ◆ We are aware that religious bodies may have particular challenges coming into the scheme. They are unlikely to have experienced working with our Office and may have complex or informal governance structures.
 - A focus for 2017-18 year will be working closely with religious bodies.
 - It may be that we develop a practitioner group for religious organisations within the Scheme to share good practice and provide feedback to our Office.

If asked about the breaking of confessional seal from April 2019

- ◆ This was a policy decision of the Government.

If asked about the s 17K investigation of the Education Directorate

- ◆ In January 2018, the Ombudsman commenced an investigation into the Education Directorate’s (the Directorate) handling of a reportable conduct matter which it had reported to us in accordance with the Act. This investigation was the first use of my powers under s 17K of the Act to investigate an organisation’s response to a reportable conduct allegation.
- ◆ We have conducted a thorough investigation of this matter and have provided a comprehensive report on our findings to the Directorate. This investigation has now been finalised.
- ◆ As a result of the investigation, I identified opportunities for the Directorate to improve its investigation processes and to better inform its staff about the operation of the Reportable Conduct Scheme.
- ◆ I made eight recommendations to the Directorate which it has accepted in full. I welcomed the Directorate’s positive engagement with my Office and its response to our investigation.
- ◆ We meet regularly with the senior executive of the Directorate and will be monitoring the implementation of these recommendations through those forums.
- ◆ We often publish information about major investigations, such as through a public report, at the conclusion of the investigation. I released a public statement (**Attachment C**) about the findings at the conclusion of this investigation, in a manner which has regard to the sensitive nature of reportable conduct matters.
- ◆ I considered a public statement was warranted given the investigation raised issues of broader relevance to the operation of the scheme and to the practices of other organisations covered by the scheme, including ACT government directorates.
- ◆ The public statement highlights issues arising from the interplay between responses to reportable conduct allegations and other workplace relations investigations, and particularly the implications of ceasing inquiries into allegations of reportable conduct or entering into agreements that might restrict the sharing of child safety information. It also highlights the importance of ensuring that information about the scheme is readily available to staff, through policies and guidance material, and reinforced through training.
- ◆ I am encouraged to hear that the ACT Government is committed to continually reviewing and improving its policies and processes in relation to reportable conduct and information sharing between relevant entities.

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- ◆ I appreciate the willingness of all ACT Directorates to work with us in continuing to build awareness, capacity and capability of the scheme across the ACT Public Service.

If asked about the specifics of the matter:

- ◆ To preserve confidentiality and protect those involved, I won't provide any details about the matter.

Background

- ◆ The Scheme requires 'designated entities', certain employers who work with children, to report to the Ombudsman allegations or convictions of reportable conduct by employees.
- ◆ It covers:
 - all ACT directorates
 - certain health services (e.g. hospitals and ambulance services)
 - out of home care, kinship and foster care
 - residential care organisations
 - government and non-government schools
 - child care services, and education and care service providers, such as after school care
 - religious organisations.
- ◆ The scheme covers both professional and private conduct of employees (which includes contractors and volunteers engaged by the entity to provide services to children).
- ◆ Organisations have a positive duty to have policies and practices to prevent reportable conduct and respond to allegations and convictions, and the Ombudsman has a duty to monitor these.
- ◆ The ACT Reportable Conduct Scheme is set out in Division 2.2A of the Act. The Office:
 - must monitor the practices and procedures of entities for the prevention of reportable conduct and for dealing with reportable allegations or reportable convictions (s 17F)
 - receives reports from designated entities about reportable allegations or reportable convictions of an employee and the action the entity has taken in response, including the results of the investigation (s 17G and s 17J)
 - may monitor an investigation carried out by the entity (s 17I)
 - may, on its own initiative or in response to a complaint, conduct an investigation into any reportable allegation or reportable conviction or the response of a designated entity to the allegation or conviction (s 17K)
 - may disclose information about investigations to a child, parent and carer (s 17L) and Office of Fair Trading (s 17M), and may disclose child safety and reportable conduct information it receives under the Act to specified entities (s 34M, and s 863C of the Children and Young People Act 2008).
- ◆ As at 24 October 2018, there were 91 reportable conduct cases on hand. Between 1 July – 24 October 2018:
 - 78 enquiries were received (10 from religious organisations), and
 - 65 s17G notifications were received (1 from a religious organisation).

Note: It appears likely that the total number of notifications for 2018-19 will increase to over 200 from 143 in 2017-18. The increase relates to increased reporting activity from entities covered in the initial scheme design, and not the expansion of the scheme to cover religious organisations.

- ◆ In 2017-18, the Office offered without charge:

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- 14 two hour information sessions on reportable conduct, with four for religious organisations
 - 15 one day training sessions on investigating reportable conduct (Halloran Morrissey)
 - five one day training sessions on investigative interviewing (Halloran Morrissey), and
 - five two hour child safeguarding sessions in June.
- ◆ The Office contracted Melhem and Beckett, Legal and Consulting to do stakeholder engagement with religious organisations in the ACT. Four two-hour forums were held by Melhem with a representative sample of religious organisations. Their report about the capacity of religious organisations to comply with the scheme informs our stakeholder engagement planning.
 - ◆ The following illustrative three case studies are **for background only; not to be disclosed**.

Definitions

- ◆ **Case** – a notification from an entity that an allegation(s) has been made
- ◆ **Types of allegations**
 - sexual offences and convictions where a child is a victim or is present
 - offences against the person, including physical offences and convictions, where a child is a victim or is present
 - conviction, or finding of guilt, under a territory law or a state or Commonwealth law, involving reportable conduct
 - offences against the Education and Care Service National Law (inappropriate discipline or offences relating to protecting children from harm)
 - ill-treatment of a child (including emotional abuse, hostile use of force/physical contact, neglect and restrictive intervention)
 - psychological harm
 - misconduct of a sexual nature (can include physical contact or speech, or other communication of a sexual nature, inappropriate touching, inappropriate relationship with attention or focus, grooming behaviour, sharing pornography or pornographic images, voyeurism and crossing professional boundaries).
- ◆ **Findings** – at the conclusion of an entity's inquiry or investigation we ask the entity to tell us the outcome and suggest that they use the following categories to describe the outcome. The options below cover the spectrum of possible outcomes and are consistent with those supported by the NSW Ombudsman.
 - *sustained*: finding that the conduct occurred
 - *not sustained – insufficient evidence*: there is some evidence of weight however, there is insufficient evidence available to reasonably establish that the alleged conduct did occur
 - *not sustained – lack of evidence of weight*: where the evidence is of such poor probative value or lacking in weight that a finding can't be made
 - *not sustained – false*: where inquiries into the matter show reportable conduct or misconduct with a child did not occur
 - *not reportable conduct*: where inquiries into the matter show the conduct did not rise to reportable conduct

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- ◆ The ACT Ombudsman is the independent oversight and review body under the *Freedom of Information Act 2016* (ACT) (FOI Act).

Talking points

- ◆ Since 1 January 2018, my Office has been responsible under the FOI Act for:
 - conducting reviews of FOI decisions made by agencies and Ministers
 - investigating complaints
 - considering extensions of time for processing access applications
 - monitoring the operation of the FOI Act, and
 - reporting to the Legislative Assembly on the operation of the FOI Act.
- ◆ Between 1 January 2018 and 30 June 2018, my Office received 38 approaches from members of the public, agencies and Ministers, and other interested parties. These were:
 - 17 applications for Ombudsman review, with eight finalised by 30 June 2018
 - ☐ As of 24 October 2018, only three of these 17 applications remain open.
 - four complaints, three of which we have declined to investigate on the grounds that an investigation would not be warranted in the circumstances. One was still in progress at 30 June, and closed on 7 September.
 - four section 39 notices for ‘deemed decisions’, which have all been tabled in the Legislative Assembly:
 - ☐ two from Community Services Directorate (CSD)
 - ☐ one from Canberra Institute of Technology (CIT), and
 - ☐ one from Transport Canberra and City Services (TCCS).
 - one application from an agency for an extension of the processing time for an access application, and
 - 12 enquiries relating to the operation of the FOI Act.
- ◆ As at 26 October 2018, we have published five FOI review decisions on our website:
 - four which confirmed the original FOI decision made, and
 - one which substituted a new decision.
- ◆ Consistent with the pro-disclosure objectives of the new FOI Act, we see our role as actively overseeing the FOI practices of ACT agencies and Ministers. As a result, stakeholder engagement opportunities remain a priority:
 - in May, we co-hosted an FOI practitioners’ seminar, which was well attended by representatives from both Directorates and other ACT agencies
 - a further FOI practitioners’ forum, at the assessment officer level, is scheduled for 9 November 2018
 - correspondence was sent to Ministers and agencies introducing the role of the ACT Ombudsman in the FOI scheme and requesting contact details for FOI purposes, and

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- we also continue to engage with ACT Government agencies on FOI Act issues, and as a member of the Association of Information Access Commissioners, attending bi-annual membership meetings.
- ◆ My Office has also already published some guidance materials, including application forms and factsheets, which are designed to assist agencies to comply with the FOI Act.
- ◆ We have now also commenced development of formal guidelines under the FOI Act, with a view to publishing these in 2019, once we have the benefit of a larger number of formal decisions to inform our view.

If asked about view on current resourcing

- ◆ The ACT Government has provided \$864,000 for the ACT Ombudsman's FOI functions for the 2018-19 year (a decrease from \$954,000 in 2017-18).
- ◆ Resourcing will need to be reviewed this current financial year and discussed with the ACT Government to determine the ongoing funding for 2019-20 and beyond.
- ◆ At this time, the current funding levels are appropriate to fulfil our functions.

If asked about Ombudsman reviews – timeframes

- ◆ In 2017, I identified the 30 day timeframe in which I must make a decision on Ombudsman review presents some challenges. This is because of the complexities associated with FOI decisions and our preferred approach to engage with parties to resolve review matters, often without proceeding to a formal Ombudsman review decision.
- ◆ As a result, we are currently seeking legislative amendments for these timeframe provisions of the FOI Act. Presently, my Office is liaising with the Justice and Community Safety Directorate on suggested amendments.
- ◆ In the interim, we are addressing these challenges by taking a proactive approach to our review matters and utilising informal resolution processes where possible. We seek to clarify the scope of the review with the applicant to aspects of an agency's or Minister's decision that they disagree with. This approach has been reasonably successful so far, and ensures that matters are resolved efficiently and with the agreement of both the parties.
- ◆ Of the 17 review matters we received in the first half of 2018, eight matters were finalised within the statutory 30 working day timeframe.
 - Seven of those matters were closed through early resolution without proceeding to a formal decision and one application was found to be invalid.
- ◆ Nine matters exceeded the 30 day timeframe:
 - Three matters were progressing to an Ombudsman decision and are still in progress as of 4 October 2018.
 - Four matters were finalised through an Ombudsman decision. These decisions were decided between 31 to 41 working days outside of the timeframe.
 - ☐ We generally take around 30 working days to produce a draft consideration, which is sent to the parties involved and invite them to make submissions. After considering the

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parties' submissions, we will finalise the review by making a formal Ombudsman review decision.

▣ These four matters have been published after 30 June 2018. I confirmed the agency's decision in three matters. In the fourth matter, I set aside the original decision and made a substitute decision.

- One matter was 54 days over the timeframe, largely because the applicant failed to respond to multiple inquiries about what information they were seeking and what aspects of the agency's decision they disagreed with.
- The final matter was 43 days over the timeframe due to an administrative error, which resulted in the review application not being received by the relevant team until the deadline had passed. Processes have been put in place to avoid this occurring again in future.

If asked about processing timeframes for agencies and Ministers, and extensions of time

- ◆ I am aware that the 20 working day statutory FOI processing timeframe is a concern for some ACT agencies and acknowledge that there are circumstances where it may not be practical to process an access application within this timeframe.
 - The Community Services Directorate (CSD), in particular, has been in discussion with my Office regarding such matters.
- ◆ My Office is continuing to monitor this issue and is liaising with the Justice and Community Safety Directorate on potential legislative amendments.
- ◆ In the interim, agencies should endeavour to meet the 20 working day processing timeframe under the FOI Act.
- ◆ I encourage further consideration of internal resourcing of FOI teams and processing procedures of access applications and, in particular, whether government information can be proactively published as open access information or released informally to the applicant.
- ◆ An agency, or Minister, can make an application to the Ombudsman for an extension of time where the applicant has refused a request for an extension from the agency or Minister.
- ◆ Under the FOI ACT, I am, however, only able to grant such an extension if satisfied that the application involves dealing with a large volume of information, or complex, and potentially conflicting, public interest factors.
- ◆ Consistent with the Explanatory Statement to the FOI Bill, my approach is that it will only be in exceptional circumstances that the processing timeframe should be extended by my Office.

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If asked about open access requirements or disclosure logs

- ✦ Agencies and Ministers are required under the FOI Act to make certain categories of government information publicly available as open access information, unless disclosure would be contrary to the public interest. This information should be made accessible on the website of the relevant agency or Minister.
- ✦ While we understand some of the complexities involved with meeting the requirements, we will be addressing the publication practices of agencies and Ministers as part of our oversight functions in this current financial year.

Background

- ✦ The FOI Act commenced on 1 January 2018. It provides a pro-disclosure framework for determining the public interest in disclosing government information. Access is only refused where disclosing information would be contrary to the public interest – facilitating more open and accountable government administration.

Previous communications with Ministers regarding timeframe issues

- ✦ You raised the 30 day timeframe issue with the Attorney-General Gordon Ramsay on 28 September 2017 and Shane Rattenbury MLA on 18 October 2017.
 - Minister Rattenbury advised you to monitor implementation of the new functions and engage with him should compliance with the 30 day timeframe prove difficult.
- ✦ On 1 November 2017, you wrote to the Attorney-General and Minister Rattenbury, advising of your proposed approach to this issue. A copy of your letter to the Attorney-General was sent to the Speaker of the Legislative Assembly, Ms Joy Burch MLA. These letters outlined that, in order to balance your responsibility to make carefully considered and robust decisions and the objects of the Act in resolving FOI matters swiftly, you propose that:
 - the Office will seek to resolve applications informally wherever possible, and if this can be achieved, make a decision (with the consent of the parties) within 30 working days
 - where parties do not reach agreement through an informal resolution process, it is unlikely that a final decision will be made within the 30 working day timeframe, given the steps necessary to complete a review, particularly where the matter is hotly contested, and
 - where the Office is not able to facilitate agreement between the parties, you propose to make a draft decision within 30 working days, provide relevant parties with an opportunity to comment on the draft decision, and then make a final decision within 60 working days of receiving the application for Ombudsman review.

Legislative amendments

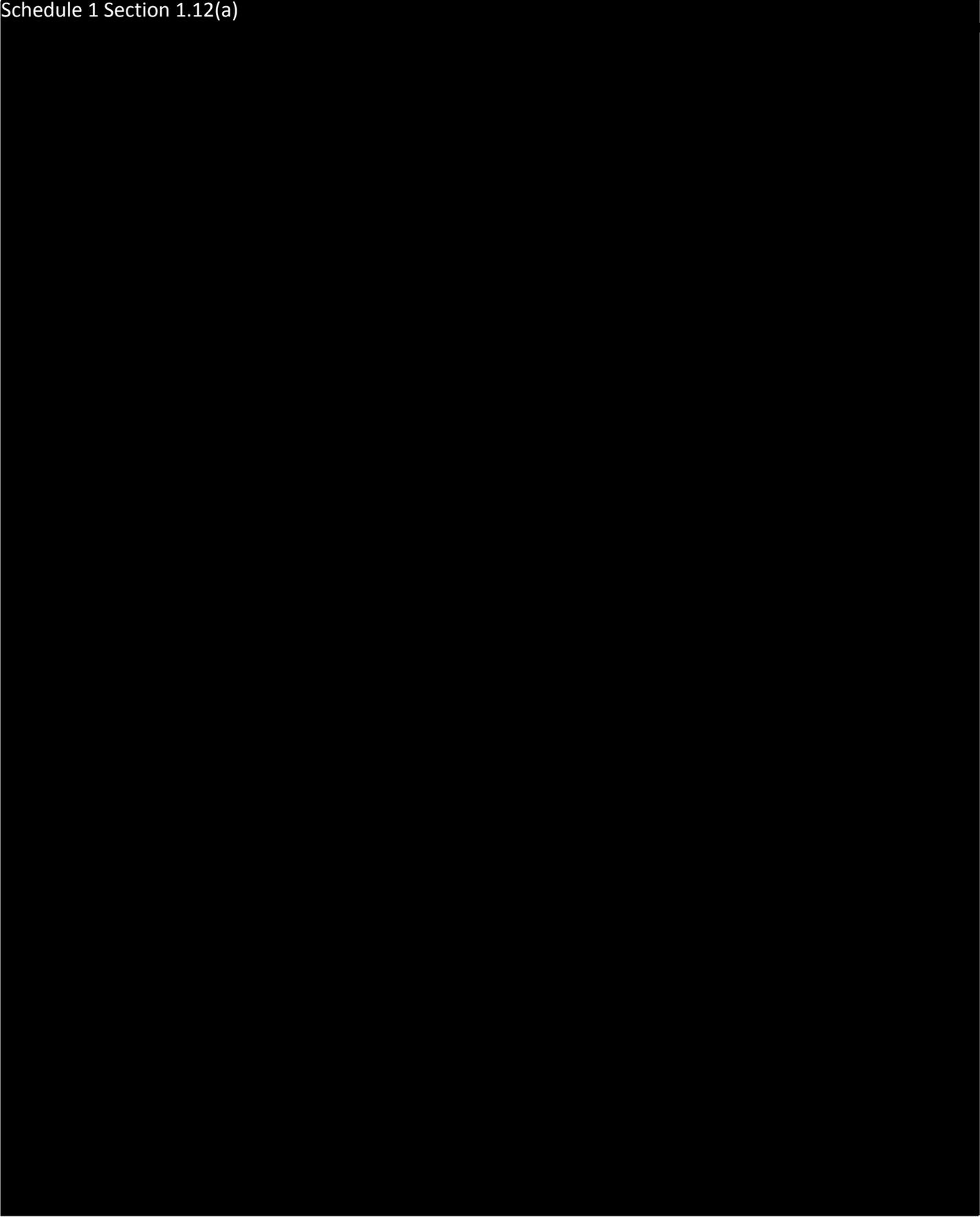
- ✦ On 14 August 2018, you wrote to the Attorney-General and Minister Rattenbury advising of your proposed amendments to the FOI Act and welcomed any comments that they may have.
- ✦ You received a response from the Attorney General on the 24 October 2018 indicating that your letter had been referred to Justice and Community Safety Directorate (JACS) for their consideration.
- ✦ We are working with JACS on the suggested amendment, with a number of other amendments requested by the Directors also being considered.

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Notable reviews

Schedule 1 Section 1.12(a)



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Topic: ACT Policing

Index item: 7

Current issue

- ◆ Complaints we receive about ACT Police – investigations and outcomes.

Talking points

- ◆ My Office, in its capacity as the Office of the Commonwealth Ombudsman, investigates complaints about the Australian Federal Police, including ACT Policing.
- ◆ In 2017-18, we received 98 complaints that relate to ACT Policing.
 - People have complained that police had failed to conduct adequate investigations, about traffic infringement notices and police behaviour during traffic stops and damage or non-return of property.
 - We also receive complaints relating to use of force and misconduct.
- ◆ We have participated in Community Forums attended by ACT Police and representatives from ACT's Indigenous community. These commenced in response to the overrepresentation of Aboriginal and Torres Strait Islander peoples in ACT Policing apprehension rates and in an effort to engage more effectively with the local Aboriginal and Torres Strait Islander communities.
- ◆ We are currently reviewing our strategic Law Enforcement Ombudsman role, particularly in relation to ACT Policing, to consider how we can enhance oversight and provide appropriate assurance to the Legislative Assembly of the ACT and the ACT community.

Background

- ◆ We do not currently investigate ACT Police complaints until they have been investigated by ACT Policing, including their Professional Standards Unit.
- ◆ We investigate approximately 14% of the approaches we receive.
- ◆ Our outreach work with ACT's Aboriginal and Torres Strait Islander people indicates that we have further work to do to provide assurance to these communities that police are acting fairly or in accordance with the law.
- ◆ Our Office wrote to AFP Commissioner Andrew Colvin seeking information about the ACT Policing response to the recommendations made by the Coroner following the inquest into the death of Tara Costigan. Commissioner Colvin has advised that ACT Policing is working with the ACT Family Violence Intervention Program Coordination Committee to implement the recommendations.
 - We will continue to monitor the implementation of the recommendations.
- ◆ The ACT policing stream of the upcoming Multi-Agency Complaint Assurance Project offers a significant opportunity to the Office to take a more pro-active approach to addressing concerns about ACT policing services, particularly in the context of indigenous residents of the territory.

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Topic: Law enforcement agency inspections

Index item: 8

Current issue

- ◆ The ACT Ombudsman's inspections of ACT Policing's use of covert and intrusive powers

Talking points

If asked, do you find many instances of non-compliance during your inspections?

- ◆ In conducting our inspections, we have identified instances of non-compliance; however, the majority of these instances are administrative in nature.
- ◆ ACT Policing usually identifies these issues and discloses them to our Office at the commencement of an inspection.
- ◆ In our experience ACT Policing acts promptly to rectify any identified issues and implement quality assurance measures to minimise risk of future instances of non-compliance.
- ◆ We continue to share a cooperative working relationship with ACT Policing.

If asked, please discuss instances of non-compliance in relation to ACT Policing's use of surveillance devices?

- ◆ At our second inspection conducted in 2017-18, ACT Policing disclosed several instances of non-compliance in relation to the *Crimes (Surveillance Devices) Act 2010*.
- ◆ ACT Policing disclosed that three surveillance device warrants were incorrectly issued by a judge who was not appointed to the ACT Supreme Court as required by the Act. In turn, these warrants were invalid.
- ◆ Our Office has reported on this issue previously. ACT Policing has acknowledged this issue was the result of insufficient awareness of the requirements of the Act and has implemented training to increase awareness and prevent future occurrences.
- ◆ ACT Policing identified this issue prior to the invalid warrants being executed and consequently no protected information was obtained under the invalid warrants.
- ◆ ACT Policing also disclosed one instance where a surveillance device continued to capture information after the relevant warrant expired. ACT Policing deactivated the device and quarantined any unlawfully captured information. ACT Policing has instituted remedial measures to accurately track warrants and remind investigators when surveillance warrants will expire.

If asked, what inspections do you conduct regarding ACT Policing?

- ◆ Depending on ACT Policing's use of the powers we oversight, our Office conducts up to five inspections each financial year. These include:
 - two inspections relating to ACT Policing's use of surveillance devices;
 - two inspections relating to ACT Policing's controlled operations; and
 - one inspection relating to ACT Policing's management of the ACT Child Sex Offenders Register (CSOR).

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If asked, how do you conduct your inspections?

- ◆ Inspections involve on-site inspections of physical and electronic records and assessing ACT Policing's relevant policies, procedures and controls to mitigate non-compliance.
- ◆ My inspection staff also interview staff from relevant governance and operational areas in ACT Policing, to better inform our understanding of the processes ACT Policing employs when using its powers.
- ◆ At the end of each inspection, we provide ACT Policing with our preliminary findings, which enables it to take any necessary remedial action immediately.

If asked, how do you report?

- ◆ ACT Policing is provided with detailed (internal) reports for comment and, once finalised, these reports form the basis of our ACT Ombudsman Annual Report.
- ◆ Under ACT legislation, the information we are able to disclose about the results of our inspections is restricted. For this reason, we do not include specific or detailed information from our inspections in the Annual Report.
- ◆ My Office is naturally cautious about the level of detail we provide in our Annual Report; striking an appropriate balance between providing public assurance and maintaining confidentiality of policing activities (see **Attachment D** for relevant secrecy provisions).
- ◆ In the case of our Child Sex Offenders Register inspections, the finalised report is provided to the Minister for Police and Emergency Services.

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

- ◆ As ACT Policing is a division within the Australian Federal Police (AFP), it is subject to the Commonwealth Ombudsman's bi-annual reviews under Part V of the *Australian Federal Police Act 1979* (AFP Act).
- ◆ These reviews assess the adequacy and comprehensiveness of the AFP's complaint management system and processes for recording and dealing with AFP practices issues, which includes complaints raised in relation to ACT Policing.
- ◆ The Commonwealth Ombudsman reports to the Commonwealth Parliament annually. The most recent Part V report, covering two reviews conducted in the 2016-17 financial year, was tabled in Parliament in June 2018. The Part V report does not contain specifically segregated results regarding ACT Policing.
- ◆ Our records indicate that, of the 431 investigation records raised in response to complaints to the AFP during the relevant reporting period, 32 per cent related to ACT Policing.
- ◆ Of the investigations relating to ACT Policing, 19 per cent were considered by the AFP to be 'established' (substantiated) which is a decrease from the previous reporting period.
- ◆ We found that overall the records indicated the AFP is investigating matters appropriately and demonstrated the AFP's administration of Part V of the Act, relating to how conduct issues are dealt with, is comprehensive and adequate. However, we identified deficiencies in responding to practices issues and recommended that the Commissioner ensures appropriate action is taken in response to all identified practices issues, as required by s 40TX(2) of the AFP Act.

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Background

Overview of ACT inspection roles

- ◆ The ACT Ombudsman has inspection roles regarding ACT Policing under the following legislation:
 - *Crimes (Surveillance Devices) Act 2010* (ACT) (usually two inspections per year)
 - *Crimes (Controlled Operations) Act 2008* (ACT) (usually two inspections per year)
 - *Crimes (Assumed Identities) Act 2009* (ACT) (no inspections have been conducted as ACT Policing has not yet used these powers), and
 - *Ombudsman Act 1989* (ACT) regarding ACT Policing's maintenance of a Child Sex Offenders Register under Chapter 4 of the *Crimes (Child Sex Offenders) Act 2005* (ACT) (usually one inspection per year).

ACT Surveillance Devices

- ◆ The *Crimes (Surveillance Devices) Act 2010* (ACT) (the CSD Act) allows ACT Policing to use surveillance devices in the ACT to investigate a serious offence. The CSD Act restricts the use, communication and publication of information obtained through the use of surveillance devices whilst also establishing procedures for law enforcement officers to obtain permission to use such devices. The CSD Act also imposes requirements for the secure storage and destruction of records in connection with the use of surveillance devices.
- ◆ Section 42(1) of the CSD Act provides that the ACT Ombudsman may inspect the records of a law enforcement agency to determine the extent of compliance with the Act by the agency and its officers. The term 'law enforcement agency' includes the Australian Federal Police (AFP), which provides policing services to the ACT through 'ACT Policing'.
- ◆ We inspect ACT Policing biannually to determine the extent of compliance with the CSD Act and report publicly on our findings at the end of each financial year, in the ACT Ombudsman's Annual Report, as required by s 42 of the CSD Act.

ACT Controlled Operations

- ◆ The *Crimes (Controlled Operations) Act 2008* (ACT) (the CCO Act) establishes the requirements for the authorisation, conduct and monitoring of controlled operations ("undercover operations") in the ACT. Where a controlled operation is authorised under the Act, law enforcement officers and certain other persons may engage in conduct that would otherwise constitute an offence under ACT law for the purpose of investigating a relevant offence. The CCO Act also provides appropriate protection from civil and criminal liability for these participants, and clarifies the status of evidence obtained in authorised operations.
- ◆ Section 31(1) of the CCO Act provides that the ACT Ombudsman must inspect the records of a law enforcement agency to determine the extent of compliance with the Act by the agency and its officers. The term 'law enforcement agency' includes the Australian Federal Police, which provides policing services to the ACT through 'ACT Policing'.
- ◆ A controlled operation authorisation may be issued by a senior officer within ACT Policing, for a maximum period of three months. Once the initial three month period has expired, ACT Policing must seek an extension from an Administrative Appeals Tribunal member.

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- ◆ We report publically on the results of our inspections at the end of each financial year in the ACT Ombudsman Annual Report, as required by s 31 (4) of the CCO Act and the *Annual Reports (Government Agencies) Act 2004*.

ACT Assumed Identities

- ◆ Under the *Crimes (Assumed Identities) Act 2009* an ACT Policing officer can apply for an assumed identity for the purposes of facilitating investigations and intelligence gathering relating to criminal activity. Essentially, an assumed identity is a secondary identity (for example, a driver licence and/or birth certificate) which is usually used in conjunction with a controlled operations authority.

ACT Child Sex Offenders Register

- ◆ The *Crimes (Child Sex Offenders) Act 2005* (the Act) (the CCSO Act) requires persons who have been convicted of sexual offences against children, released from government custody and reside in the ACT, to keep police informed of their whereabouts and other personal details for a period of time. The purpose of this information is to reduce the likelihood that the person will reoffend, to facilitate the investigation and prosecution of future offences that they may commit, and to prevent these offenders from undertaking child-related employment.
- ◆ Chapter 4 of the CCSO Act provides for the establishment of a register of child sex offenders to maintain this information. The register is kept up to date by offenders regularly reporting to ACT Policing, as specified in the Act.
- ◆ Our inspections are primarily concerned with the accuracy of the register, and the management of access to, and disclosure of, information from the register. The ACT Ombudsman is entitled to any assistance reasonably required from ACT Policing to exercise this function.
- ◆ Our function is limited, and does not extend to furthering the CCSO Act's primary purpose of reducing the likelihood of offenders committing future sexual offences against children. We are also unable to express an opinion on the compliance of offenders with their reporting obligations under the CCSO Act, or on the accuracy of information reported by offenders to ACT Policing.
- ◆ Under s 20A of the *Ombudsman Act 1989* (ACT), the ACT Ombudsman may provide a written report to the Minister for Police and Emergency Services (Mr Mick Gentleman MLA) on the extent of compliance and the results of any inspections carried out. The report to the Minister is also provided to ACT Policing.

Overview of inspections included in the 2017-18 Annual Report			
Inspection Regime	Records within the period	Inspection Date	Report Status
Surveillance Devices	1 July – 31 December 2016	N/A – ACT Policing advised there were no relevant warrants to inspect	N/A
	1 January – 30 June 2017	20 September 2017	Finalised in January 2018: included in 2017–18 Annual Report
	1 July – 31 December 2017	21 March 2018	Not finalised
	1 July – 31 December 2016	22 March 2017	Finalised: details in 2016-17 Annual Report

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Controlled Operations	1 January – 30 June 2017	20 September 2017	Finalised in January 2018: included in 2017–18 Annual Report
	1 July – 31 December 2017	21 March 2018	Finalised June 2018: to be included in 2018-19 Annual Report
ACT Child Sex Offenders Register	18 May 2016 – 22 June 2017	28 and 29 June 2017	Finalised in January 2018: included in 2017–18 Annual report
	23 June 2017 – 26 June 2018	27 & 28 June 2018	Report to be finalised in October 2018 and included in 2018-19 Annual report

Inspections under Commonwealth legislation

- ♦ ACT Policing is also subject to a number of inspections regarding its use of certain Commonwealth covert and intrusive powers. However, these inspections are conducted at the AFP and reported on by the Commonwealth Ombudsman.

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Topic: Independent Integrity Commission

Index item: 9

Current issue

- ◆ The establishment of an Independent Integrity Commission by mid-2019 and how it will impact on our work, particularly in relation to the oversight of ACT Policing.

Talking points

- ◆ The ACT's integrity framework has been prominent this year with the pending establishment of an Independent Integrity Commission, as well as the appointment of Mr Neil McAllister as the first Inspector of Custodial Services.
- ◆ I note that the Select Committee on an Independent Integrity Commission 2018 (the Committee) released its final report on 31 October 2018.
- ◆ My Office has welcomed the opportunity to be part of the ongoing conversation about the introduction of the commission and we are keen to continue working together to ensure its integration into the existing integrity framework in the ACT.
- ◆ We have a lot of experience working with a variety of other oversight bodies. My staff and I liaise regularly with the other integrity bodies in the ACT to avoid duplication, to facilitate information exchange and to refer matters where appropriate.

If asked about the Committee's report

- ◆ My comments and feedback in relation to the Committee's report are more appropriately addressed to the ACT Government at this time and my Office continues to work closely with the government on the development of its legislation as appropriate.

Inspector of the Commission

- ◆ The Acting Ombudsman, Ms Jaala Hinchcliffe, appeared before that Committee on 24 September 2018. The Committee was interested in the potential for my Office to perform the functions of Inspector of the Commission and recommended in its report that the bill be amended to support this as an option.

ACT Policing

- ◆ Our current oversight of ACT Policing invokes both our ACT and Commonwealth jurisdictions (so that we can oversee the AFP as a Commonwealth body).

Background

- ◆ The Committee released its final report on 31 October 2018, recommending that the amended bill be tabled and debated in the final sitting week of the year (27-29 November 2018).

Timing

- ◆ The Committee recommended the commencement of legislation be staggered to allow for the relevant appointments to be made before receipt of complaints and expects that the structural provisions of the legislation would come into effect on 1 January 2019, with all remaining provisions (aside from those relating to AFP) to follow by 1 July 2019.

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Inspector

- ◆ The Committee's report notes the Ombudsman's offer to take on the functions of the Inspector and recommended that the bill be amended to allow support staff to be employed under Commonwealth legislation should the Speaker so choose to make such arrangements – recommendation 46 refers.

Mandatory corruption notifications

- ◆ The Committee has recommended that the Ombudsman be excluded from the requirement to make mandatory corruption notifications as suggested by the Office at the Hearing on 24 September 2018 – recommendation 23 refers.

Recommendations of note

- ◆ The Committee made 54 recommendations, other recommendations of note include:
 - Recommendation 19 – the legislation be amended to make previous investigation by another body a consideration in the Commissioner's determination as to whether an investigation is in the public interest, but not a bar to investigation by the Commission.
 - Recommendation 21 – the definition of public official include members of the judiciary and judicial officers.

Other

- ◆ The Canberra Times recently reported that talks between the ACT and Commonwealth governments about including ACT Policing within the scope of the new body had stalled.
 - The Commonwealth is currently seeking advice from the Attorney-General and the Minister for Home Affairs.
- ◆ The Chief Minister has noted that if Labor wins the Federal election in 2019, a national integrity body may be established and the AFP would be covered by that body.

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Topic: Changes to the ACTION bus network

Index item: 10

Current issue

- ◆ Media monitoring indicates considerable dissatisfaction with proposed changes to the ACTION bus network.
- ◆ The most recent media attention relates to the impact of the changes on certain school bus routes.

Talking points

- ◆ Disquiet was expressed in social and traditional media about the proposed changes to the bus network, but we have not seen this reflected in approaches to my Office.
- ◆ We receive very few complaints about the ACTION bus network; 27 in the past five years.
- ◆ My Office is working with Transport Canberra and City Services Directorate (TCCS) to better understand their complaint processes and will continue to monitor this issue.

Background

- ◆ TCCS decided to reform the ACTION bus network in 2017. The first phase of public consultations closed on 15 December 2017; the second phase closed on 12 August 2018.
- ◆ We met with TCCS on 29 August 2018 to discuss these changes.
- ◆ TCCS receives about 300 complaints a month; the number rising to about 800 a month at times of community concern.
 - Very few of these complaints appear to be escalated, either internally to the Director General or externally to the ACT Ombudsman.
- ◆ Options for providing a more flexible service for the AMC are being considered as the existing route (88/988) is not well utilised and not providing a good service to visitors to the prison.
 - TCCS is considering utilising a minibus in 2019 to provide higher frequency services with good connections to major bus interchanges and other flexible and community bus services, with a possible stop at the Winnunga Nimmityjah Aboriginal Health Service in Narrabundah.
- ◆ The Office raised the possibility of running an ACT complaint forum in 2019, with TCCS to consider presenting at such an event. This suggestion received muted agreement.
- ◆ Regular liaison meetings with TCCS are not yet in place, however, the Office is planning to initiate further more pro-active engagement with TCCS before the end of the calendar year.

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Topic: Housing ACT

Index item: 11

Current issue

- ✦ The Office has some concerns around record keeping, assurance and allocation practices within Housing ACT.

Talking points

- ✦ As indicated in our Annual Report, we received 69 complaints about ACT Housing in 2017-18, the largest number received for a single ACT agency.
 - Of the 17 complaints my Office formally investigated, the bulk of cases were resolved with a better explanation provided by Housing ACT (11), expedited action (7) or a non-financial remedy (4).
- ✦ The Housing ACT issues we see in our complaints generally relate to maintenance, allocation of unsuitable properties and issues related to neighbourhood disputes.
- ✦ Our community engagement has however, alerted us to other issues which we are watching closely, including in relation to communities where there is hostility and resistance to public housing, and concerns about accessibility of properties in new suburbs to services such as transport, shops and medical facilities.
- ✦ We continue to monitor issues such as the allocation and appropriate maintenance of Housing ACT properties.

If asked about evictions before planned demolition of ACT Housing stock

- ✦ We have not received any complaints from tenants about being evicted from these properties.

Background

- ✦ Schedule 1 Section 1.12(b)

- ✦ We have also had complaints about tenants being allocated unsuitable properties that do not take account of physical, social or mental health needs.
 - For example, a woman with complex medical needs was offered a property in a new suburb with no public transport links, local shops or medical services. Housing ACT advised that this woman has now been moved to a more suitable, centrally located property.
- ✦ There is also concern that Housing ACT tenants are being moved to suburbs without infrastructure and resources – with for example, no local shops at Coombs, Wright and Moncrieff and Moncrieff not on a regular bus route.

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Topic: ACT Corrective Services

Index item: 12

Current issue

- ✦ The Officer regularly engages detainees held at the Alexander Maconochie Centre (AMC), as well as agencies that oversight ACT Corrective Services.

Talking points

- ✦ In February 2018, the Office began monthly visits to AMC to improve the accessibility of our services to detainees.
 - These visits have been undertaken in the company of Official Visitors and we have seen improved awareness of the role of my Office.
 - We have also noted an increase in the number of approaches to our Office from ACT Corrective Services; from an average of 4.4 per month before the visits to 8.5 per month after the program of monthly visits began.
- ✦ In the majority of cases, ACT Corrective Services are best placed to address the complaints of detainees in the first instance, and we will usually refer detainees who have not complained directly to AMC or Corrective Services to those channels. As part of our oversight, we want to be sure that complaint handling with the AMC is functioning well and our visits also provide valuable insight in this regard.
- ✦ We also regularly meet other AMC oversight agencies.
 - In particular, we will continue to work closely with the Inspector of Correctional Services, Mr Neil McAllister, to avoid duplication and ensure clarity around our roles and priorities going forward.

Background

- ✦ Following the Moss inquiry into the death of Mr Stephen Freeman, a detainee at the AMC, we reviewed our engagement and service delivery to detainees at the AMC.
- ✦ We have committed to a program of monthly visits to the AMC to increase awareness of our role and to support better investigations of complaints made by detainees.
- ✦ These visits are aimed at addressing the barriers facing detainees who may wish to contact our Office, including:
 - long queues for the phone
 - investigation officers being unable to call detainees
 - challenges detainees face with literacy, and
 - inability to access the internet to complete web forms.

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Topic: Our role in the NDIA

Index item: 13

Key issues

- ◆ The ACT was one of the ‘trial’ sites for the National Disability Insurance (NDIA) and the first fully-transitioned jurisdiction, with all known eligible ACT residents transitioned into the NDIS by 30 June 2016.
- ◆ The Commonwealth Ombudsman has jurisdiction to handle complaints about NDIA and its contracted providers in the ACT.
- ◆ The ACT Human Rights Commission (HRC) has indicated that it also has jurisdiction to handle complaints about the NDIA.
- ◆ The Standing Committee on Health, Ageing and Community Services is currently conducting an Inquiry into the implementation, performance and governance of the NDIS in the ACT. It is due to report back to the Legislative Assembly by the last sitting day of 2018.

Talking points

- ◆ My Office, in its role as the Office of the Commonwealth Ombudsman, has jurisdiction to handle complaints about the National Disability Insurance Agency (NDIA) and its contracted providers in the ACT.
- ◆ My Office received 98 complaints about the NDIA from people who provided an ACT address during 2017-18, compared to 37 complaints in 2016-17.
 - In 2017-18, we recorded that approximately 6% of all complaints about the NDIA were from people who provided an address in the ACT, although ACT residents make about 4.9% of total participants in the scheme.
 - So far this financial year, complaints from people who provided ACT postcodes made up less than 4% of the approaches about the NDIA. It must, however, be noted that not all people who approach my Office provide postcode details. I am therefore unable to make definitive comparisons between the states and territories.
- ◆ The types of complaints made by ACT residents are consistent with those from other states and territories, including:
 - *Service delivery* – phone delays, unanswered correspondence
 - *Reviews* – delays, poor reasons for decision, confusing information about review pathways
 - *Assistive technology and home modifications* – delays in decision making, confusion about the process
 - *Planning process* – plan does not represent the supports needed/requested
 - *Intersection with ACT Government services* - for example, health, education, transport and justice.

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If asked about the intersection between our jurisdiction and that of the HRC

- ◆ In its Commonwealth jurisdiction, my Office handles complaints about the administrative actions and decisions of Australian government agencies and their contracted service providers.
 - This means my staff can handle complaints about the NDIA and its contracted Community Partners, otherwise known as Local Area Coordinators (LACs) and Early Childhood Partners.
- ◆ The ACT Disability and Community Services Commissioner (ACTDCSC), Ms Karen Toohey, within the HRC, handles complaints about services provided to people with disability in the ACT, including NDIS-funded service providers.
 - Responsibility for handling complaints about ACT NDIS-funded service providers will move to the NDIS Quality and Safeguards Commission from 1 July 2019.
- ◆ In all jurisdictions, my Office aims to work collaboratively with the relevant state or territory disability complaints body to share information and intelligence about the NDIS.
 - In the ACT, my Office has:
 - ▣ jointly conducted stakeholder engagement activities with Ms Toohey's office to raise awareness of NDIS complaints options; and
 - ▣ developed and distributed jointly branded NDIS complaints pathway materials

If asked about the ACT inquiry into the NDIS and associated Canberra Times coverage

- ◆ My Office did not make a submission to the inquiry. But I am aware, from its submission that the ACT Government considers there are gaps in the NDIS complaints arrangements.
 - Any questions about that position are better answered by ACT Government representatives.
- ◆ In May 2018, my Office released a report into the NDIA's administration of reviews, which included 20 recommendations for improvement in timeliness, communication and process. We are monitoring the NDIA's implementation of the recommendations.
- ◆ ACT residents voluntarily exiting the NDIS – My Office is aware of this issue through media coverage of the inquiry. We have not received direct complaints or stakeholder feedback that shed light on this issue.
- ◆ Delays in people in prison accessing NDIS plans – My Office is aware of this issue through media coverage of the inquiry. We have recently received and are investigating a small number of complaints about similar issues (in the ACT and elsewhere).

Background

The Office is currently undergoing a review of processes to ensure we are accessible to people with disabilities. Changes that are currently being implemented include:

- ◆ updating the communication strategy to include specific guidance for communicating with people with a disability;
- ◆ ensuring we identify and record complainant's support and communication needs; and
- ◆ developing a set of case studies to promote the work of the Office.

Part of the impetus for these changes came from our role in receiving complaints about the NDIA/ NDIS.

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Topic: Dangerous Dogs

Index item: 14

Current issue

- ★ The issue of dangerous dogs continues to receive media attention in the ACT with further proposed amendments to domestic animals legislation proposed by the Opposition.

Talking points

- ★ My Office receives a small number of complaints about the management of animals, particularly dogs. These issues are often complex; people are understandably emotional and multiple government agencies can become involved.
- ★ These complaints do not only come from people who are concerned about dangerous dogs, but also from the owners of dogs that have been seized or are being considered dangerous. It is also notable that many decisions relating to dogs are reviewable at ACAT.
- ★ My Office continues to maintain a watching brief on dangerous dogs noting that:
 - the Independent Review into the Management of Dogs in the ACT has now been completed
 - Transport Canberra and City Services Directorate (TCCS) published its response to this review on 19 September 2018 - with 22 recommendations agreed to, six agreed to 'in principle' and six noted, and
 - further possible legislative changes are being discussed in the Legislative Assembly.

Background

In May 2018, TCCS provided our Office with a copy of its 'Independent Review into the Management of Dogs in the ACT' (the Review). This Review considered the operations of Domestic Animal Services (DAS) and how it implements domestic animal laws, including in respect of dangerous dogs. It followed:

- ★ the death of Ms Tania Klemke in her home in Watson on 24 October 2017, as a result of an attack from her own dog
 - As at 26 September 2018, the Coronial Inquest into this event remains open, with no listing date set at this stage.
- ★ increased community concern in the ACT regarding the dangerous dogs and a campaign calling for tighter restrictions, and
- ★ the commencement of the *Domestic Animals (Dangerous Dogs) Legislation Amendment Bill 2017* on 14 December 2017, which was introduced in response to the above community concerns.