

management of organisation

GOVERNANCE

Internal accountability

The Commonwealth Ombudsman is also the ACT Ombudsman in accordance with s 28 of the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth). Services are provided to the ACT Government under a memorandum of understanding. The Ombudsman's office remains independent of the ACT Government.

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

In 2005–06, the Ombudsman delegated day-to-day responsibility for operational matters for the ACT Ombudsman to Senior Assistant Ombudsman Ray Matcham, and responsibility for law enforcement, including ACT Policing, to Senior Assistant Ombudsman Vicki Brown. Both are supported by a team of specialist staff in carrying out these responsibilities for the Ombudsman. The Ombudsman and Deputy Ombudsmen maintain an active involvement in the work of these two teams.

Strategic and organisational planning

During the year, the office's strategic plan was reviewed to build on achievements over the past three years and to reflect priorities for the period 2006 to 2009. Strategic priorities identified for 2006–07 are to:

- consolidate the office's work practice changes introduced in 2005–06
- identify systemic issues for investigation
- continue to build the profile of the office
- increase the emphasis on timeliness, quality assurance and consistency in complaints handling
- exploit the efficiencies of our new complaints management system and work practices to target review of administrative decisions in key agencies.

The office's strategic plan informs its internal business plans. There are clear links between the objectives and the key measures of success of the strategic plan and the goals and directions set in the business plan for all teams and for staff members in their individual performance agreements. As a result, performance agreements are closely linked to business plans.



Executive team (standing from left) Vicki Brown and Ray Matcham; and (seated from left) Ron Brent (Deputy Ombudsman), John McMillan (ACT Ombudsman) and Vivienne Thom (Deputy Ombudsman).

REPORTS REQUIRED BY LEGISLATION

Freedom of information

Complaints about the actions of agencies

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

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

FOI requests to the Ombudsman

In 2005–06, two FOI requests addressed to the ACT Ombudsman were received under section 15 of the FOI Act. The Act mandates a 30-day period for the processing of FOI requests, subject to certain exceptions and extensions. One FOI request was processed within this period, with the other being processed outside that time frame after obtaining the consent of the applicant.

There were no applications for review of our decisions made to the Administrative Appeals Tribunal. The cost of dealing with the requests is so dispersed throughout the office that reliable calculation is not feasible. During the period, no fees or charges were imposed on the applicants.

In March 2006, the Ombudsman released a report on the administration of the *Freedom of Information Act 1982* (Cth) in Australian Government agencies. Twenty-two agencies, including the Australian Federal Police, were selected to participate in the investigation, which was initiated in the interests of focusing attention on good practice as well as areas requiring improvement. The investigation looked at timeliness and consistency and quality of decision making in relation to FOI requests.

The Ombudsman found that while some agencies display a clear commitment to FOI and are supportive of the Act's objective of extending as far as possible the right of the Australian community to

access information in the government's possession, other agencies do not as firmly demonstrate such a commitment. Deficiencies included excessive delays in the processing of some FOI requests, lack of consistency in acknowledging FOI requests in a timely manner, delay in notifying charges and inconsistencies in their application, and variable quality in the standard of decision letters, particularly regarding the explanation of exemptions imposed.

The Ombudsman's report recommended that agency heads issue a clear statement to staff expressing a commitment to sound FOI practice and the goals of the FOI Act, having regard to the kinds of good and bad practice identified in the report.

The investigation supports the view that the FOI Act works well in facilitating public access to personal information, but not so well in providing access to policy-related information.

Public interest disclosure

Under the *Public Interest Disclosure Act 1994* (ACT) (PID Act), a person may make a public interest disclosure (PID) to any ACT Government agency including the Ombudsman. The Ombudsman can become involved directly or at the request of the agency concerned. PID matters are among the most complex cases the Ombudsman deals with in terms of their investigation and resolution.

The PID complaints investigated by the Ombudsman tend to be closely connected with workplace disputes and grievance processes; disputes sometimes broach differing views on the wider operations of the agency involved. This trend continued this year.

In previous years, there was an increase in the number of PID complaints made to the Ombudsman—six complaints in 2003–04 and four complaints in 2004–05. Almost all of these complaints have now been finalised.

The Ombudsman received two PID complaints in 2005–06, representing a move back towards the historical average for this office of one PID complaint per year. The two PID complaints received this year relate to workplace disputes. One of these complaints has been finalised and the other remains ongoing.

This year we finalised the investigation of a complaint of unlawful reprisal that is outlined in the *Unlawful reprisal* case study.

The PID Act continues to provide our office with important insights into the operation of ACT Government agencies and is a crucial means by which complainants can seek investigation and review of matters that are potentially of public significance. The ACT Government is considering the terms of a revised PID Bill, and the Ombudsman anticipates a continued role under the revised legislation.

In 2004–05, we reported that the Commonwealth Ombudsman’s office is collaborating in a national research project: ‘Whistling while they work’. This is a three-year national research project into the management and protection of internal witnesses, including whistleblowers, in the Australian public sector.

The project is being led by Griffith University and is jointly funded by the Australian Research Council, six participating universities and 14 industry partners, including the ACT and Commonwealth Ombudsman. Details of the project’s aims are available at www.griffith.edu.au/centre/slr/whistleblowing/.

CASE STUDY	unlawful reprisal
<p>Mr J was employed under a fixed-term contract by the University of Canberra (UC) Union. His employment was terminated before the expiration of the contract on the ground of redundancy. Mr J alleged unfair dismissal, which was denied by the UC Union and the university. Mr J then entered into a settlement with the university under which he accepted compensation for early termination of his employment and released the university from any further claims in that regard. Mr J later complained to the Ombudsman that the termination of his employment was an unlawful reprisal for disclosures he had made under the PID Act about financial mismanagement in the UC Union.</p> <p>The investigation of Mr J’s complaint was complicated by legal doubts about the relationship of the UC Union to the university, and whether the PID Act applied to either. The university agreed to accept for the purpose of this investigation that the PID Act did apply.</p> <p>Those doubts were nevertheless relevant in assessing the action that had earlier been taken by the UC Union and the university in response to Mr J’s allegations of financial mismanagement. The initial response to the allegations was to treat them as symptomatic of a staffing conflict between Mr J and his supervisor about management issues. The subsequent termination of Mr J’s employment on the ground of redundancy was initiated by the supervisor, without the knowledge of the Board of the UC Union or the university.</p> <p>The investigation concluded that the termination of Mr J’s employment was an unlawful reprisal, because it was connected to the earlier and unresolved disclosures he had made about financial mismanagement. Because the disclosures had not been recognised at the time as falling under the PID Act, the procedures in the PID Act had not been followed in responding to the disclosures. To that extent the investigation underscored the importance of agencies being fully aware of the requirements of the PID Act and being alert to the possibility that a workplace complaint might qualify as a PID disclosure, even when not declared to be a PID disclosure.</p> <p>The University of Canberra and the Ombudsman disagreed as to whether the termination was an unlawful reprisal or was due to redundancy and a conflict over management issues between Mr J and his supervisor. It was unnecessary for the Ombudsman to take this issue further, and the university otherwise accepted the recommendations made in the report. These were that the university hold further discussions with Mr J, and that it review existing policies and procedures of the university relevant to the PID Act and monitor staff awareness of PID Act requirements.</p>	

Territory records

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

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

- the Ombudsman's approved Records Disposal Schedule is implemented and monitored appropriately.

SUSTAINABILITY AND ENVIRONMENT

The Ombudsman continued to encourage staff to manage all resources, including energy, prudently and in an ecologically responsible manner. Policy guidance is provided on conservation of energy in the use of lighting and computer equipment. Material sent for recycling includes toner/printer cartridges, paper and paper products, and classified waste.