

ANALYSIS OF PERFORMANCE

In 2005–06, the ACT Government paid an unaudited total of \$933,932 (including GST) to the Ombudsman’s office for provision of services. Moneys were received directly from the ACT Government under a memorandum of understanding. Payments (including GST) were for the purposes of the *Ombudsman Act 1989* (ACT) (\$439,646) and the *Complaints (Australian Federal Police) Act 1981* (Cth) (\$494,286).

Performance against indicators is shown in Table 1 and provided in more detail in the ‘Performance’ section under the headings ‘Complaints—ACT Government agencies’ and ‘Complaints—ACT Policing’. The statistical report in Appendix 2 provides details of approaches and complaints received and finalised, and remedies provided to complainants in 2005–06.

The categories of approaches to the office range from simple contacts that can be resolved without investigation through to the formal use of the Ombudsman’s powers. Where a complaint involves complex or multiple issues, we conduct a more formal investigation. The decision to investigate a matter more formally can be made for a number of reasons:

- need to gain access to agency records
- nature of the allegations made by a complainant

- time taken by an agency to respond to our requests for information
- likely effect on other people of the issues raised by the complainant.

As well as handling complaints directly, the Ombudsman’s office plays a valuable role in referring people to the most appropriate agency to deal with their concerns. Where people have an inquiry or complaint outside the Ombudsman’s authority, we try to provide relevant information and contact details to assist them.

In some instances, we refer complainants to other review agencies that can more appropriately deal with the issues they have raised. During the year, these issues included complaints about environment, health and consumer services, as there are special commissioners to deal with these matters. We also received approaches about matters that we are unable to consider because they are outside our jurisdiction, such as complaints about employment conditions.

Approaches and complaints about actions of other police forces were sometimes referred to the relevant state ombudsman, especially where a member of the public was uncertain whether they had interacted with a state police service or the Australian Federal Police.

TABLE 1 SUMMARY OF ACHIEVEMENTS AGAINST PERFORMANCE INDICATORS, 2005–06

PERFORMANCE INDICATORS	ACT GOVERNMENT AGENCIES	ACT POLICING
Numbers of complaints received	512 approaches and complaints (526 in 2004–05)	353 complaints (443 in 2004–05)
Numbers of complaints finalised	522 approaches and complaints and 553 complaint issues (565 and 663, respectively, in 2004–05)	419 complaints and 486 complaint issues (506 and 637, respectively, in 2004–05)
Time taken to finalise complaints	94% of all approaches and complaints finalised within three months (85% in 2004–05)	73% of all complaints finalised within three months (compared to 53% in 2004–05)

Training and liaison

The Ombudsman's office attaches great importance to establishing a cooperative and respectful relationship with government agencies and community sector organisations. This is important in the effective and efficient conduct of our complaint investigation role.

ACT Ombudsman staff participated in a number of formal and informal meetings and training sessions with ACT Government and other agencies.

There were fewer activities in 2005–06 than in previous years due to restructuring within the office and staff turnover. Specific activities included:

- continuing to provide input to the Department of Justice and Community Safety on the ACT Prison Project
- participating in the ACT Free Legal Advice Forum and the Complaint Handlers Forum to discuss topical issues in complaints management
- conducting regular meetings with senior staff in ACT Government agencies to provide feedback on complaints received and to ensure complaints are handled smoothly
- commenting on a range of ACT Government and agency submissions and discussion papers raising issues of administrative practice
- meeting quarterly with the AFP's Professional Standards team to discuss issues relevant to the operation of the complaints management system, and meeting weekly with Professional Standards staff to discuss individual complaints and investigations
- conducting an Integrity Investigation Program jointly with the AFP
- attending workshops on reforms to the AFP complaints-handling system
- lecturing on the role of the Ombudsman in police complaints to the Criminal Practices course of the Legal Workshop at the Australian National University
- co-sponsoring a three-year study entitled 'Whistling while they work' on whistleblower protection laws across Australia.

Members of the Ombudsman's Law Enforcement Team continued to assist other integrity bodies

from the Asia-Pacific region through presentations to and training of international delegations, particularly in discussing the key aspects of our relationship with the AFP. We hosted a range of international guests this year, including high-level delegations from Bangladesh, Canada, China, India, Indonesia, Korea, Laos, Malaysia, Taiwan and Vietnam.

Service charter standards

We are committed to providing the best service possible. The ACT Ombudsman Service Charter is available on our website at www.ombudsman.act.gov.au. The charter outlines the service that can be expected from the office, ways to provide feedback and steps that can be taken if standards are not met.

Where a complainant disagrees with our conclusions and decision on a complaint, they may ask for the matter to be reconsidered and, if they are still not satisfied, for a review of how the investigation was conducted. A more senior officer not previously involved in the matter will conduct a review, and seek to determine whether the conclusion reached was reasonable, justified and adequately explained to the complainant.

During the reporting period, we received five requests for reviews of our complaint handling. We finalised ten reviews—five of the reviews were carried over from the previous year. The original decision was affirmed in seven complaints; in two cases, we conducted further investigation on the basis of new information provided by the complainant; and in one case the outcome was varied.

HUMAN RIGHTS ACT

The ACT Ombudsman continued to work collaboratively with the ACT Human Rights Office on issues concerning the new ACT prison. This contact has naturally led to an exchange of views, information and ideas concerning human rights and the overlapping roles of the Human Rights Commissioner and the Ombudsman in dealing with complaints that touch on issues of human rights. In this way, Ombudsman staff have continued to be involved in human rights issues affecting the ACT community.

ACCESS TO GOVERNMENT STRATEGY

The Ombudsman recognises the importance of the Access to ACT Government Strategy in ensuring equality of access to the services of the ACT Ombudsman for people with disabilities and eliminating discriminatory practices by staff. We meet our obligations under this strategy through our disability action plan.

The Ombudsman's Disability Action Plan 2005–2008 commits the Ombudsman's office to ensuring that people with disabilities are not disadvantaged when attempting to access the services provided by our organisation. The plan outlines the various approaches we are taking:

- being accessible, with the minimum of formality, to all people who believe they have been adversely affected by defective ACT Government administration, regardless of ethnic or cultural background, sex, language differences or disability
- identifying, and overcoming where possible, barriers which might prevent ready access to the Ombudsman's information and services
- ensuring that the office identifies and understands the priorities and needs of the community (particularly those facing disadvantage).

The office's Occupational Health and Safety Committee is monitoring the plan's implementation.

COMMUNITY ENGAGEMENT

The Ombudsman's office maintains contact with the community in a variety of formal and informal ways. This aspect of our work is important in raising public awareness of the right to complain to the Ombudsman and building confidence in the role of the office in managing and investigating complaints about ACT Government agencies and ACT Policing.

Significant activities included:

- Contact Canberra 2006 (part of the National Multicultural Festival)—our information stall attracted 350 enquiries (127 enquiries in 2005)
- Youth Week 2006—we operated an information stall to raise awareness about the Ombudsman's office and services.

The Dennis Pearce Competition was expanded in 2005–06 in an attempt to reach a wider range of students in Year 11 and Year 12. Students were asked to produce a television advertisement, create a poster or write an essay about the Ombudsman's role and services.

Aimed at educating young people in the ACT in an entertaining and thought-provoking way about the right of all Australians to complain about unfair treatment by government agencies, the competition was promoted within schools and colleges and through libraries and youth centres.



ACT Ombudsman information booth at Contact Canberra 2006 (part of the National Multicultural Festival)

As the response to the competition was disappointing, we are looking at other ways to engage with young people in the ACT in 2006–07.

Members of the office's ACT Ombudsman Team and Law Enforcement Team visited the Belconnen Remand Centre to work with administrative staff to address detainees' concerns. Ombudsman staff again provided induction training for new ACT Correctional Services officers.

In March 2006, the Law Enforcement Team visited the City Watch House to give our staff the opportunity to understand the way in which ACT Policing processes people who are charged with offences or held in custody. We were particularly interested in the closed circuit television (CCTV) and procedures adopted by police in monitoring the CCTV equipment at the City Watch House. Later in 2006, our staff will 'go on the beat' with police on night shift during peak periods. This will afford Ombudsman staff a unique opportunity to gain insight into the challenges that face police on a day-to-day basis.

We will continue to develop this program in 2006–07 by participating in community events and forums, hosting and participating in seminars and workshops, and visiting ACT Government agencies and community, business and professional organisations.

MULTICULTURAL FRAMEWORK

The Ombudsman provides information sheets in 29 community languages that set out the role of the Ombudsman and how to make a complaint about a government agency. The languages are Albanian, Amharic, Arabic, Bosnian, Chinese (simplified and traditional), Croatian, Dari, Dutch, Farsi, Filipino, German, Greek, Hindi, Indonesian, Italian, Khmer, Korean, Lao, Macedonian, Pashtu/Pashto, Polish, Russian, Serbian, Sinhalese, Somali, Spanish, Turkish and Vietnamese. The information sheets are available via a link on our website homepage at www.ombudsman.act.gov.au.

In 2005–06, a tendering process was conducted to provide the office with translation, interpreting and transcription services for complainants who do not speak English. A panel of providers has been set up for this purpose.

ABORIGINAL AND TORRES STRAIT ISLANDER REPORTING

In November 2005, the Ombudsman established an Indigenous Working Group to review the office's service delivery to Indigenous Australians. We recognise that we cannot by ourselves overcome the cultural and other barriers that lead to Aboriginal and Torres Strait Islander people being underrepresented in approaches to the Ombudsman's office. Implementing a culturally appropriate service is a long-term process requiring initiative in addressing issues of concern to Indigenous people and the development of partnerships with Aboriginal and Torres Strait Islander organisations and communities.

The working group is developing a program of consultation with a range of Indigenous groups and individuals. This program is designed to improve our understanding of:

- Indigenous people and communities' experiences with and perceptions of the Ombudsman's office
- forms of communication that work best for Indigenous people who might want to complain to the Ombudsman
- key issues about how government agencies deliver services to Indigenous people and communities.

It is intended that the outcomes of this consultation program will inform the office's handling of complaints from Indigenous Australians and our program of own motion investigations.

ACT WOMEN'S PLAN

The Ombudsman's office contributes to the achievement of the ACT Women's Plan by:

- promoting the rights of all individuals, including women and girls, to complain about the administrative actions and decisions of government agencies
- providing a flexible, sensitive and responsive complaints service that can deal effectively with complaints from women and girls.

ACT government agencies

Each year, we receive complaints across a range of issues about many government agencies. Many complaints are resolved quickly, requiring only a phone call; others can require detailed examination of agency files and procedures and interviews with agency officers.

COMPLAINTS RECEIVED

There was a small decrease in approaches and complaints received about ACT Government agencies (512, compared to the 526 approaches and complaints received in the previous year; Table 1). Figure 1 provides a comparison of approaches and complaints received about ACT Government agencies since 2001–02.

Due to the transition within the office to a new complaints management system and changes to work practices, we have combined in Figure 1 the number of approaches and complaints received in 2003–04 and 2004–05 to provide a comparison with the way we have recorded approaches and complaints received in 2005–06.

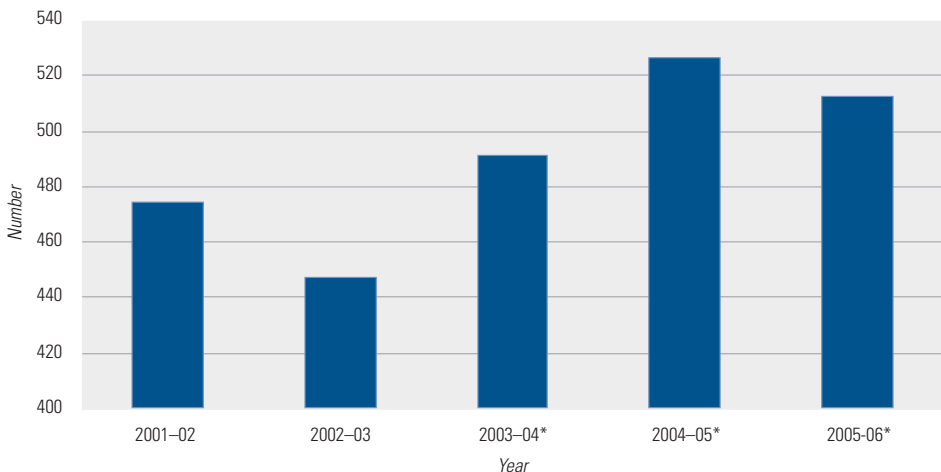
Of the 512 approaches and complaints received, a large number were about two agencies: Housing ACT (105, compared to 94 in 2004–05—an increase of 12%); and ACT Corrective Services (97, compared to 107 in 2004–05). The bulk of complaints about

Housing ACT related to maintenance, waiting lists and behaviour of other tenants. Issues about ACT Corrective Services related to property, maintenance of amenities and allegations of harassment. See further details on complaints about these agencies on pages 10 and 11.

There was an increase in approaches and complaints about ActewAGL (27, compared to 11 in 2004–05) and the Department of Urban Services (36, compared to 21 in 2004–05). The main complaint issues about ActewAGL related to electricity matters, which we referred to the Essential Service Consumer Council, as complaints were not within our jurisdiction. The main complaint issues about the Department of Urban Services (DUS) related to infrastructure and animal services. We decided not to investigate over half of the complaints we received about DUS, advising the complainants to first raise their concerns with the department.

There was a decrease in approaches and complaints about Roads ACT (42, compared to 57 in 2004–05); Office for Children, Youth and Family Support (37, compared to 53 in 2004–05); and ACT Planning and Land Authority (37, compared to 53 in 2004–05). These reductions in complaint numbers are at a time when there has been continuing work by those agencies to improve their complaints-handling policies and procedures.

FIGURE 1 APPROACHES AND COMPLAINTS RECEIVED ABOUT ACT GOVERNMENT AGENCIES, 2001–02 TO 2005–06



*The numbers of approaches and complaints received about ACT Government agencies have been combined for 2003–04, 2004–05 and 2005–06. For 2001–02 and 2002–03, the numbers relate only to complaints received.

COMPLAINTS FINALISED

During 2005–06, the Ombudsman’s office finalised 522 approaches and complaints which contained 553 issues about ACT Government agencies, compared to 526 approaches and complaints and 596 issues in 2004–05. Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in different outcomes.

Of the 553 complaint issues that were finalised during the year, 37% were investigated compared to 39% in 2004–05.

Most decisions not to investigate were because complainants had not first tried to resolve their problem with the relevant agency. The rationale for deciding not to investigate is that matters in dispute should first be raised and clarified at the source of the problem. This practice provides an agency with the opportunity to resolve any issues before an external body, such as the Ombudsman, becomes involved.

For those complaint issues we did investigate, remedies included agency explanation (explaining to the complainant why the agency acted the way it did); action to expedite the matter; an agency apology; agency reconsideration of an earlier decision; or changes in agency administrative policy and procedure.

TIME TAKEN TO FINALISE COMPLAINTS

During the year, of the 522 approaches and complaints about ACT Government agencies that were dealt with, 94% were finalised within three months of receipt (see Figure 2). This compares with 85% finalised within three months of receipt in 2004–05.

Of the remaining complaints, 3% were completed in three to six months and 3% took over six months to complete. Complaints taking more than six months to complete were more complex and usually required extensive involvement of senior staff.

OVERVIEW OF COMPLAINTS

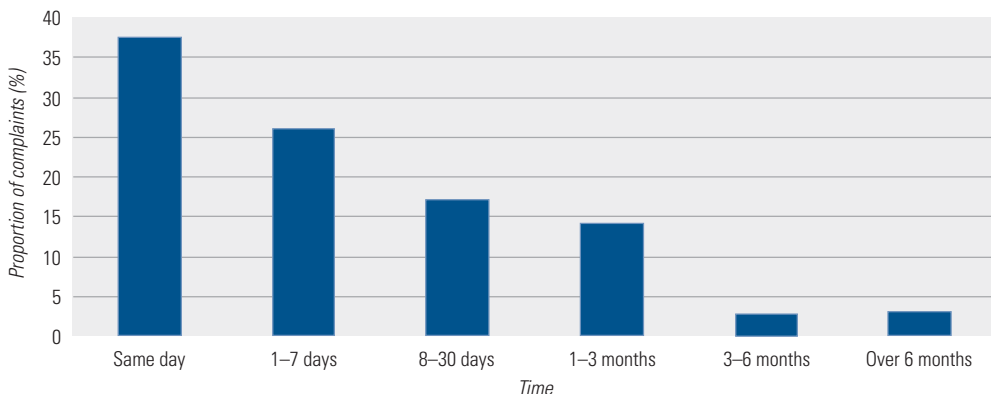
In last year’s annual report, we highlighted areas of concern relating to two agencies about which we receive a relatively high number of complaints each year.

Housing and Community Services

The main complaint issues related to maintenance, the behaviour of other tenants, and waiting lists for tenants needing to move to more suitable premises; it is not clear whether these issues are part of an emerging pattern. In 2004–05, we worked closely with Housing and Community Services (HCS) staff to develop proactive approaches to resolving complaints, and there was a marked decrease (12%) in the number of complaints to the Ombudsman in that year. We have continued the same collaboration with HCS this year, although there has been a 12% increase in complaints.

HCS has indicated that it is addressing the waiting list issue by reviewing the priority-housing list and the procedures for progressing matters. This should result in a reduction of complaints in this area in 2006–07. We will continue to work with the agency to assist with complaint handling and to monitor trends in complaints.

FIGURE 2 TIME TAKEN TO FINALISE APPROACHES AND COMPLAINTS ABOUT ACT GOVERNMENT AGENCIES, 2005–06



Belconnen Remand Centre

Of the 98 complaint issues finalised in 2005–06 about ACT Corrective Services, 81 issues were about the Belconnen Remand Centre (BRC). Some of the complaint issues related to:

- access by detainees to their property—in one case, a detainee complained that BRC staff had not allowed him access to his own clothes when he requested them; in this case, it was because the detainee had not made his request within the specified timeframe
- maintenance of amenities in the facility—an example is a series of complaints about cooling of the BRC during the summer months
- allegations of harassment by BRC staff—for example, one detainee complained that he was simultaneously approached by several custodial officers concerning the resolution of an issue he had with only one of them.

Very few of the complaints were substantiated upon investigation and ACT Corrective Services took appropriate action in relation to all matters investigated. The issues of overcrowding and lack of exercise facilities identified last year appear to have been successfully addressed, even though this has not resulted in an overall reduction in complaints. It is not clear why complaint numbers have remained

steady despite the action taken by ACT Corrective Services to address the issues. We will continue to work with senior staff at the BRC to monitor and resolve issues arising in complaints, particularly as work proceeds on establishing the new ACT prison.

COMPLAINT THEMES

The main themes identified across agencies during 2005–06 were:

- confidentiality of communications
- clarity of procedures
- timely responses by agencies
- getting a remedy
- existing complaint procedures
- ‘falling through the cracks’.

Confidentiality of communications

The Ombudsman conducts investigations in private and treats the confidentiality of complainants very seriously. Arrangements have been put in place to ensure that people in custody can communicate confidentially with our office. The *Telephone monitoring* case study illustrates how we responded to an issue of confidentiality and how ACT Corrective Services cooperated in resolving the matter.

CASE STUDY

telephone monitoring

The ACT Ombudsman communicates with detainees in the BRC and in other ACT detention facilities via secure telephone lines. Installation of these lines was intended to prevent third parties from having access to Ombudsman conversations with detainees who complain to the office.

A detainee telephoned the Ombudsman’s office from the BRC to discuss his complaint. At the end of his conversation with an Ombudsman staff member, the voice of a third party was heard to interject a comment. Both the detainee and the staff member heard this comment.

This possible compromise of the confidentiality of communication with a complainant was regarded as a grave matter. In this instance, ACT Corrective Services took prompt and thorough action to address our concern.

The third party’s interjection was made possible by a technical fault in the BRC phone system which allowed the third party—also a detainee—to access the conversation on a crossed line. The technical fault was due to the age and poor condition of the relevant phone lines in the BRC.

These phone lines have been repaired, and there has been no recurrence of the problem. We suggested to ACT Corrective Services that, in future, immediate notice be given to our office, to other relevant agencies and to detainees of any similar technical fault in the phone system of a detention facility. ACT Corrective Services has accepted this suggestion.

Clarity of procedures

All agencies have policies and procedures for carrying out their responsibilities and responding to matters that arise from discharging those responsibilities. As in previous years, we received complaints where the relevant agency had followed its procedures but the procedures themselves were ambiguous. The *Unclear procedures* case study is one example of how this can cause difficulty to a complainant.

Timely responses by agencies

It is a continuing challenge for some agencies to respond to complaints from individuals and to our office about complaint investigations we are conducting. Many complaints arise or are exacerbated by agency delay in responding to the issues raised by a person.

Many complaints to our office took longer than necessary to finalise and required substantially more effort to resolve because agencies were not responsive to requests for information from the Ombudsman's staff. These delays can undermine

the role of the Ombudsman, and ultimately do not benefit anybody as they only reflect poorly on the agency concerned. Fortunately, agencies have been open to developing procedures to better manage the complaint investigation process. We will continue to work with agencies to refine these procedures over the coming year.

Getting a remedy

While the overall aim of the Ombudsman is to improve public administration, the focus in investigating an individual complaint is on obtaining an effective remedy for the complainant. In some cases, a person has suffered detriment and seeks the Ombudsman's help to redress the situation. The Ombudsman has no power to change decisions but is often in a position to persuade an agency to make good whatever has gone wrong. The *Loss reimbursed* case study is one example of where intervention by the Ombudsman meant that the complainants were compensated for the loss they had incurred. The case study also illustrates that an apology can sometimes be an appropriate remedy for a problem.

CASE STUDY

unclear procedures

Mr A contacted the Ombudsman's office after the Department of Urban Services (DUS) refused to pay for damages of \$2,500 to his nephew's vehicle. The vehicle was parked on Mr A's property when a limb from a tree on the adjoining nature strip fell onto the car.

The DUS employees who removed the tree after the damage occurred advised the owner of the vehicle to obtain three quotes for the repair of the vehicle. After submitting the quotes, the vehicle owner received a letter from DUS, some 14 months later, stating that no payment would be forthcoming as the limb falling was considered an 'Act of God' and there was no liability.

However, Mr A had contacted DUS four months before the incident because the tree was dropping branches and there was some concern that the tree was unstable.

After investigating the complaint, we found that the inspection carried out at the time the concern was initially reported had not been thorough. We also noted that the policy on 'Procedure for claiming for tree damaged property and applying for reimbursement' was unclear in a number of important respects. We recommended that reimbursement for the repairs would be an appropriate remedy.

DUS accepted the Ombudsman's recommendation and offered full reimbursement to the vehicle owner for repairs. DUS is also drafting clearer procedures for dealing with claims for damage from falling tree branches.

Existing complaints procedures

Often when people approach the Ombudsman, they have not earlier raised the matter with the agency concerned. The Ombudsman generally will not investigate a matter unless the complainant has already given the agency an opportunity to deal with the complaint. During the year, many complainants were advised to take this course of action. A variation on this theme is where a complainant approaches the Ombudsman to investigate but has not yet allowed the agency's internal processes to be finalised and resolved. An example of this is the *Objection process available* case study.

'Falling through the cracks'

There continued to be complaints about which of two agencies was responsible for an issue. In last year's report, we drew attention to a lack of coordination between the ACT Planning and Land Authority (ACTPLA) and ActewAGL that led to a complainant incurring substantial costs. A delay in obtaining legal advice by one of the agencies means that issue is still not resolved. The *Lack of interagency consultation* case study is another example of a matter falling between the cracks.

CASE STUDY loss reimbursed

Mr B and his daughter (who lived overseas) were the beneficiaries of a deceased estate administered by the Public Trustee of the ACT. A delay in payment of moneys meant that Mr B and his daughter received significantly reduced distributions from the estate, due to a shift in exchange rates.

After the Ombudsman drew attention to the matter, the Public Trustee examined it and determined that the problem arose with the bank delaying processing and obtained a refund of the loss from the bank. This refund was given to Mr B and his daughter.

Mr B also complained that his queries about some of the expenses for the deceased's funeral were initially met with claims that Mr B's brother had been consulted over the arrangements for the funeral. His brother denied this. Our investigation showed that Mr B's brother had not been consulted over the specific arrangements, although there had been contact with him about when the funeral would be held. The Public Trustee offered an apology for its inaccurate statements.

CASE STUDY objection process available

Mr C complained about the mismanagement of a development application, which he believed would devalue and significantly change the aspect from his property.

Mr C had purchased a block of land in a new development based on the development plans he was shown of the block and surrounding area by the Land Development Agency. Mr C complained to the Ombudsman about a development application being lodged that proposed a significantly different development, removing trees he understood were to stay and installing floodlighting that would directly shine onto his property.

As Mr C had lodged an objection to the development application, we advised him that we would not investigate his complaint until that process was complete. We also advised Mr C that he could approach us again if he was concerned about the decision-making process. Mr C contacted us again following the decision on the development application, and we are considering his complaint on its merits.

CASE STUDY**lack of interagency consultation**

Mr D complained that a development application was approved by ACTPLA without any public notification and without any objection rights for the people who could be affected by the development.

He also complained that the development application failed to consider the relocation of a bike path and the provision of adequate landscaping and screening along the boundary of his property. He believed that the development application was also inconsistent with representations made by the Land Development Agency (LDA).

It would appear that the problem occurred because the development approval was, according to Mr D, inconsistent with the Deed of Agreement entered into between the developer and the Territory concerning off-site works.

Mr D was able to obtain a remedy (related to the relocation of the bike path and provision of landscaping as agreed to by LDA and ACTPLA), partly due to the Ombudsman's intervention. While Mr D dropped through the cracks of the process for the sale of the land (carried out by LDA) and the grant of development approval (granted by ACTPLA), this happened because of the unusual circumstances of the case. The agencies actively participated in remedying concerns.

The Ombudsman’s office and the Australian Federal Police (AFP) share responsibility for investigating complaints about the AFP’s ACT Policing. AFP members provide policing services for the ACT in areas such as enforcing traffic law, maintaining peace and order, undertaking crime-prevention activities, responding to critical incidents, and investigating serious crime.

AFP members, including those assigned to ACT Policing, are subject to the provisions of the *Complaints (Australian Federal Police) Act 1981* (Cth) (Complaints Act). Approximately 49% of all complaints we receive about the AFP relate to ACT Policing. The remaining complaints relate to the AFP’s corporate, national and international roles and are reported in the Commonwealth Ombudsman Annual Report 2005–06.

Because of the level of public interaction involved in community policing work, it is natural that there is a steady stream of complaints are made about ACT Policing.

The AFP’s Professional Standards team investigates most complaints about AFP members, and formally investigates serious complaints about police actions with involvement from Ombudsman staff. We receive briefings on the progress of investigations, and work with AFP investigators to ensure appropriate management of systemic issues and

contact with complainants. We review all complaint reports and are generally satisfied that complaints are handled in a comprehensive and robust manner. The Ombudsman conducts independent inquiries and investigations, if appropriate.

For some investigations conducted during 2005–06, we requested the AFP to reconsider certain aspects of, or responses to, complaints. In some instances, we identified broader issues not previously considered by the AFP in respect of people in custody. The AFP’s responses to our requests were professional and helpful, which illustrates the mature relationship between this office and the AFP.

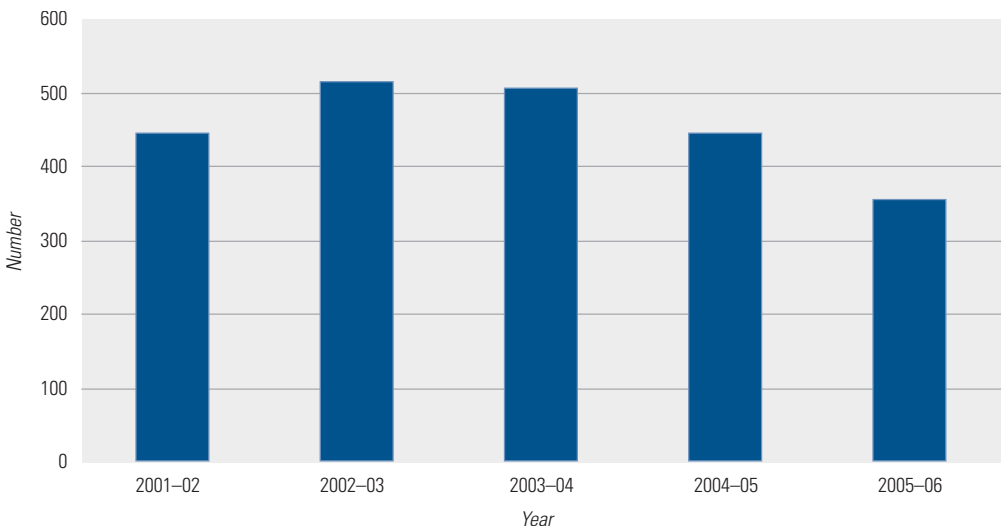
The Ombudsman will generally conduct an investigation when AFP practice and procedure is the central element of the complaint; when it is not appropriate for the AFP’s internal investigation area to investigate the complaint; or when the investigation is instigated under the Ombudsman’s own initiative powers.

An overview of the Ombudsman’s complaints handling is provided below.

COMPLAINTS RECEIVED

There was a 20% decrease in the number of complaints received about ACT Policing (353,

FIGURE 3 COMPLAINTS RECEIVED ABOUT ACT POLICING, 2001–02 TO 2005–06



compared to 443 in 2004–05) (Figure 3). This continues a general decrease in the number of complaints made about ACT Policing since 1998–99. It is likely that the marked decrease in complaints in 2005–06 results from ACT Policing’s continuing emphasis on customer-service issues.

Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in different outcomes.

COMPLAINTS FINALISED

We finalised 419 complaints and 486 complaint issues in 2005–06. Of the 486 complaint issues finalised, a large number of the issues (305 or 63%) were referred to the AFP’s workplace-resolution process for conciliation. A further 30 issues were investigated by the AFP and reviewed by the Ombudsman’s office; we investigated 74 issues after receiving the AFP’s evaluation or conciliation report and decided not to investigate the remaining 77 on receipt of the complaint.

Of the 30 issues investigated by the AFP and reviewed by the Ombudsman’s office (44 in 2004–05): one was substantiated; six were incapable of determination; two were conciliated; and 17 were unsubstantiated. The Ombudsman’s office decided not to review four of the 30 issues for reasons such as the ability of the complainant to raise the matter with a court or a tribunal, jurisdictional issues, or other circumstances.

In reviewing AFP investigation reports, we found most entailed a comprehensive investigation and analysis, resulting in reasonable and appropriate recommendations.

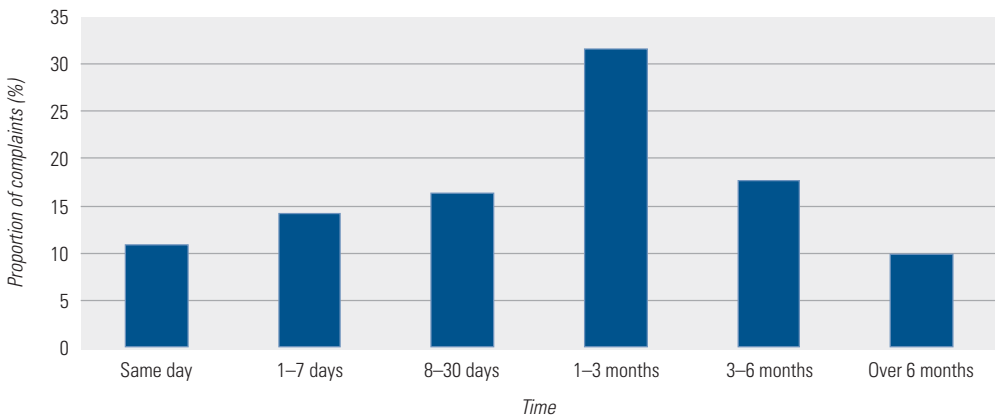
On some occasions, a report was returned to the AFP for further action—such as a quality assurance review of the report, further clarification of a particular issue, or consideration of a broader issue. We also worked with the AFP to ensure that, where appropriate, the investigation outcome considered organisational issues and a response from the AFP directly to the complainant. Overall, we were satisfied that investigation reports represented robust responses to complaint issues.

TIME TAKEN TO FINALISE COMPLAINTS

For complaints about ACT Policing, 73% were finalised within three months of receipt (compared to 53% in 2004–05) and 90% were finalised within six months (compared to 85% in 2004–05). The remaining complaints, which extended beyond six months, were characterised by the size and complexity of the investigations.

We were able to reduce the backlog of cases, resulting in a marked decrease in the proportion of complaints taking three to six months to complete (18%, compared to 33% in 2004–05). The proportion of cases taking more than six months to finalise decreased by 7%.

FIGURE 4 TIME TAKEN TO FINALISE COMPLAINTS ABOUT ACT POLICING, 2005–06



WORKPLACE RESOLUTIONS

The majority of complaints about the AFP's ACT Policing role are handled through workplace resolution. Most complaints are of a relatively minor nature and concern the alleged conduct of police, such as incivility or rudeness. The Complaints Act allows the AFP to conciliate these complaints directly with the complainant and senior operational staff through its workplace resolution process.

Many complaints are effectively resolved with the complainant receiving an explanation of police powers and reason for priorities, or acknowledgment of a minor mistake by a member. When a complaint is finalised through the workplace resolution process, the AFP provides a report to the Ombudsman for review, explaining how it managed or investigated the complaint.

The workplace resolution process also allows members of the public to provide feedback about their experience of interaction with police; provides AFP members with the opportunity to acknowledge and learn from minor mistakes; and facilitates a more timely and flexible response to complaint issues than formal investigation.

Conciliation remained an important aspect of dealing with customer service and minor complaints, with 305 (63%) being managed through

the workplace resolution process, as shown in Table 2.

A significant proportion of complaints concerning ACT Policing were assessed as suitable for conciliation using the workplace resolution process. See Table A3 in Appendix 2.

CHALLENGES

A major challenge for the Law Enforcement Team has been the adaptation of the office's new complaints management system to meet the needs of recording and managing complaints about the AFP. With the passing of the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 in Parliament on 23 June 2006, further work is underway to code a new categorisation model in the complaints management system and adapt work practices to meet the changing role of the Ombudsman in police complaints handling. Detailed information on the Ombudsman's new role is set out in Appendix 1.

With the added benefit of a more intuitive complaints management system, it is expected the system will assist us in recording and tracking matters where we have made recommendations to the AFP, and tracking their responses to those recommendations.

TABLE 2 ACT POLICING ISSUES RAISED IN COMPLAINTS TO THE OMBUDSMAN MANAGED AND RESOLVED BY CONCILIATION, 2001–02 TO 2005–06

YEAR	ISSUES MANAGED THROUGH WORKPLACE RESOLUTION PROCESS	PROPORTION OF ISSUES SUCCESSFULLY CONCILIATED
2005–06	305 issues (63%)	243 issues (80%)
2004–05	460 issues (72%)	246 issues (54%)
2003–04	455 issues (71%)	272 issues (60%)
2002–03	537 issues (67%)	269 issues (50%)
2001–02	394 issues (48%)	238 issues (60%)

USE OF EXCESSIVE FORCE

We are monitoring the AFP's handling of several complaints from people within the ACT community with physical and mental disabilities about the use of excessive force.

One of these complaints highlighted the need for community service personnel, including police, to give particular consideration when dealing with a person with special needs as shown in the *Use of force* case study.

DETENTION OF MINORS

In last year's report, we described our concerns about the management of young people in custody in the City Watch House and the issue of minors being detained without notification of their parents. A few issues arose again in 2005–06 and we are considering whether an own motion investigation into this issue is warranted.

We received several complaints from young people who were detained by police. While the issues raised by these complaints varied, the failure to

CASE STUDY

use of force

Mr E complained that AFP members failed to identify themselves to him, treated him with undue and excessive force, and detained him in handcuffs in the back of a caged vehicle.

Mr E has multiple impairments, including hearing and sight loss, but is fully independent with the aid of a companion guide dog. He is a regular visitor at his local club and finds his own way home on foot or by taxi.

On the occasion in question, a new staff member, not familiar with Mr E, felt it appropriate to call the police rather than a taxi in view of Mr E's state of intoxication.

AFP members ultimately detained Mr E under the Intoxicated People (Care and Protection) Act 1994 (ACT) (Intoxicated People Act) after he refused to get into the police vehicle. Mr E argued that this was excessive and that the AFP members had not identified themselves as police. Mr E claimed that his hearing aid was damaged and that he and his guide dog were traumatised.

The AFP investigation found Mr E's complaint to be unsubstantiated. The AFP acknowledged the difficulty the officers had in dealing with a person with hearing and sight impairments, and advised that the decision to take Mr E into custody was made in the belief that he was in danger of injury if left to find his own way home.

On reviewing the AFP's investigation report, we identified a number of concerns, including the lack of preparedness of AFP members in dealing with a person with disabilities and the way in which they are applying the Intoxicated People Act.

As part of our role, we have maintained communication with Mr E, keeping him and his family informed of the progress of the investigation and its outcome. Mr E is considering the options available to him.

The matter has not been finally settled. It highlights the complex issues that can arise in determining the appropriate level of force in any particular case. The core issue always in a case of this kind is whether AFP members acted reasonably in dealing with a person with impairment, whether it be a disability or mental or other illness.

notify the parents of the young people was a constant theme, as the *Advising parent* case study illustrates.

In response to our investigation of a complaint included as a case study in last year's annual report, the AFP reviewed its procedures for the City Watch House in January 2006. The review resulted in a new 'Reception and lodgement of prisoner' form. This new procedure ensures that the first

question asked of a person in custody is their age and, if they are under 18 years of age, whether their parent or guardian has been notified of their arrest. While this provides a more systematic approach to notifying parents and guardians, the AFP believes there will be occasions when a young person is either too intoxicated or too aggressive to be asked these questions on their arrival at the City Watch House.

CASE STUDY

advising parent

Mr F was 17 years old when he was arrested in error during a 'drug sting' in the city. Mr F was taken to the ground during his arrest, handcuffed and required to sit in full view of passers-by until the arresting officers could obtain entry to the ACT Policing Beat Office. Mr F was detained for two hours, questioned inside the ACT Policing Beat Office, and subsequently released without charge.

Mr F complained about the manner in which AFP members treated him. He alleged that the arresting officers did not ask him if he wanted a parent or guardian present and that he was questioned without a parent or guardian present.

The AFP advised our office that it had successfully conciliated and resolved Mr F's complaint. As part of our review of the AFP's conciliation report, we contacted Mr F who indicated the matter had not been conciliated to his satisfaction and he had not been provided with an explanation as to whether the AFP had complied with procedures under the *Children and Young People Act 1999* (ACT) (Young People Act).

In our report to the AFP, we concluded that:

- there was a failure of AFP operational members to understand and meet the requirements of the Young People Act when dealing with children or young people
- the AFP may wish to consider whether the individual members involved in the arrest and detention of Mr F should receive training or re-training on the requirements of the Young People Act
- the AFP may wish to consider reviewing its operational guidelines to ensure that a high priority is given to ensuring compliance with the requirements of the Young People Act.

The AFP considered our report and determined that the conciliation addressed some of Mr F's complaint issues, but did not adequately address the alleged non-compliance with the Young People Act and the ACT Policing Guidelines. The AFP undertook to further investigate these aspects of Mr F's complaint.

We are currently awaiting the results of this further investigation.

The AFP also advised that our review highlighted a need for the AFP to refine its conciliation process. The process has been amended to include more rigorous quality assurance of conciliation reports to ensure that all complaint issues have been identified and dealt with appropriately.

RESPONSE PRIORITY MODEL

Some complaints have been received about delays in police attendance after a call, or a complete failure to attend. Because of resourcing constraints, and in accordance with standard practice and procedure, the AFP has adopted a response model that provides for any call received from the public for assistance to be given a priority rating.

Under the response priority model, the AFP has determined that police can decide not to attend certain categories of matters. Where a matter is of an urgent or serious nature, police will give high

priority to attendance. Where a matter is considered less serious and there is a legislative requirement for reporting, it is deemed to be suitable for recording purposes only and police may choose not to attend. As illustrated in the *Attending an accident* case study, this choice can apply to a minor accident where there has not been any injury to a person.

In another complaint, the complainant was dissatisfied with the time frame in which the AFP responded to their call for assistance, as illustrated in the *Unresolved issue* case study.

CASE STUDY attending an accident

Mrs F wrote to the Ombudsman's office to complain about the AFP refusing to investigate an accident in a car park. Two witnesses noted the registration of the car that had been reversed into Mrs F's car.

Mrs F reported the accident to the AFP, who advised that they would not attend the accident scene as no-one had been injured and the vehicle was drivable. Mrs F's concerns about the AFP's refusal to respond stemmed from her insurance company requiring her to pay a \$500 excess, despite her no-fault policy, because she could not provide the personal details of the driver at fault.

We considered the AFP's response priority model and decided the AFP's refusal to respond to the accident was not unreasonable. It appeared that Mrs F's difficulty was with her insurance company rather than the AFP, as she had provided sufficient information for the insurance company to pursue a claim against the responsible driver.

We suggested that Mrs F pursue the matter with her insurance company and if she was not satisfied with its response she could consider contacting the Insurance Ombudsman Service.

CASE STUDY unresolved issue

Mrs G is elderly, lives alone and claims to have had difficulties for some time with young people in her neighbourhood. She claimed that from time to time young people threw eggs at her house or knocked on her door and ran away. She stated that she found this behaviour distressing and she was scared to leave her home.

After each such incident, Mrs G made a complaint to the AFP. As there was no imminent threat to life, the AFP responded in accordance with its response priority model. Unfortunately, this was often long after the offenders had left and as a result there was little that the AFP could do to identify or deal with the youths. On at least one occasion, the AFP failed to respond at all.

Mrs G sometimes calls our office, frustrated that the AFP does not stop the harassment. In these and similar circumstances, we explain that we can only consider the conduct of the AFP members who respond and whether the response was in accordance with the AFP's response priority model. As neither AFP members nor the Ombudsman's office can change the behaviour of Mrs G's neighbours, we have suggested that she may wish to consider using the services of a mediator or a dispute resolution service or contact Housing and Community Services ACT to complain about nearby tenants.

IMPERSONATING AN OFFICER

Several complaints during the year stemmed from individuals impersonating an AFP member, which is a criminal offence. The complaints varied from the attempted use of police powers by the impersonator, attempting to influence witness statements, gaining information unlawfully, and attempting to receive preferential treatment.

Investigation into these complaints revealed that some AFP Protective Service officers were removing their cap badges, or insignia from wall plaques available from the AFP Association office, and using them to create proof of identity as an AFP member when they were not entitled to make such a claim. The AFP subsequently implemented a process of checking uniforms and the AFP Association arranged for badges on plaques to be made one third larger than official badges. The Association also requires purchasers of plaques to sign a declaration that the attached badge will not be used for identification purposes.

Since this measure was introduced, no complaints about the impersonation of an AFP member have been received.

REVIEW OF COMMUNICATION PROCESSES

A woman complained to the AFP that her vacant house scheduled for demolition was used without her knowledge or consent as a training venue for the AFP Specialist Response and Security (SRS) Team.

Normal practice was for the demolition company to notify the AFP SRS Team when a suitable property became available for SRS training activities. The AFP previously relied upon the demolition company informing the property owners prior to an exercise taking place. In this instance, neither the demolition company nor the AFP advised the owners before or after the event, resulting in concern and distress.

The outcome of the complaint was a review of communications and processes for obtaining authorisation before using training venues that have been scheduled for demolition. The AFP SRS Team will now contact building owners in person and seek prior written authority from both the

owners and the demolition company, setting out the extent of permissible damage.

The complainant advised the Ombudsman's office that she is satisfied with the outcome of her complaint and the knowledge that future communication arrangements will ensure that property owners will be included in the plans made between the AFP and the demolition contractors.

CRITICAL INCIDENTS

The AFP notifies the Ombudsman of all critical incidents involving the actions of AFP officers. Critical incidents are incidents in which a fatality or significant injury has occurred or where the AFP has been required to respond to an incident on a large scale, as might occur during a public demonstration. During 2005–06, two such incidents were reported to the Ombudsman about AFP ACT Policing matters.

On 30 July 2005, a vehicle being pursued by an AFP vehicle in Canberra struck a pedestrian. The victim, Ms Clea Rose, was in a critical condition and later died.

It is generally not our policy to become actively involved in the investigation of critical incidents. In this case, the Ombudsman requested regular updates on the investigation due to the seriousness of the incident and community concern about police pursuits.

The regular updates allowed our office to monitor the police investigation and to clarify issues as they arose. The AFP also provided a copy of the final report of its internal investigation for our comment. We were generally satisfied with the quality of the investigation, but felt that further consideration should be given to certain aspects of the report, particularly in relation to the police pursuit. The AFP agreed to address these issues in a subsequent report.

Further involvement by this office in the AFP's investigation was discontinued after the matter was referred to the Coroner. At the end of June 2006, a decision was yet to be made by the Coroner on whether an inquest would be held. The Ombudsman supported the review of this matter in

a public forum, where all interested parties would have an opportunity to make submissions.

The AFP notified the Ombudsman about the second incident in May 2006, which involved an intoxicated person with disabilities who was taken into custody under the *Intoxicated People (Care and Protection) Act 1994* (ACT) (Intoxicated People Act). The person sustained a broken collarbone during the intake process at the City Watch House. The Ombudsman decided not to investigate, as the AFP advised the complainant had withdrawn the complaint. This matter is within the scope of an own motion investigation the Ombudsman is considering conducting in 2006–07 (as outlined below).

EXERCISE OF RESPONSIBILITIES UNDER THE INTOXICATED PEOPLE ACT

The Ombudsman is considering whether to conduct a review of the exercise of responsibilities by ACT Policing under the Intoxicated People Act.

The Ombudsman has conducted two previous own motion investigations into the management of intoxicated people by ACT Policing under the Act. The first investigation report, released in December 1998, focused on the need for police to adopt practices and procedures commensurate with the ‘care and protection’ elements of the legislation. The second investigation report, released in 2001, aimed to determine the extent to which the AFP had implemented the recommendations of the 1998 investigation and how effective the new practices and procedures had been.

At the time of the 2001 report, there was no sobering-up shelter operating in the ACT. A shelter

has since been opened at Ainslie Village, but the availability of the shelter in itself raises new issues. The 2001 report found that, in relation to many of the 1998 recommendations, the AFP had adapted their guidelines to reflect the ‘care and protection’ elements of the legislation. It is an issue in which we will necessarily maintain a continuing interest.

The Ombudsman is considering the conduct of a further own motion investigation in 2006–07 to consider current practices and procedures in relation to a number of systemic issues identified in complaints received involving the processing of intoxicated people since 2001.

REVIEW OF MANAGEMENT OF PROPERTY AND EXHIBITS

The Ombudsman conducted an own motion investigation into the procedures for handling property and exhibits in 1999 following an AFP internal review. The investigation commented on the implementation of internal recommendations and identified areas for further improvement. Consideration included proposed improvement of registry practices and procedures to improve these exhibit recording and management systems.

Following complaints received about the loss of property seized by the AFP, we are considering a review to assess the adequacy of the AFP’s current guidelines on handling property and exhibits and how effectively changes resulting from the recommendations of the 1999 own motion investigation have been implemented.