

ACT Ombudsman – Quarterly Report

A REPORT ON THE ACTIVITIES OF THE ACT OMBUDSMAN

1 OCTOBER TO 31 DECEMBER 2018

Report by the ACT Ombudsman
Michael Manthorpe

REPORT NO. **1 | 2019**

Introduction from ACT Ombudsman

I am pleased to introduce the second quarterly report for the ACT Ombudsman for 2018–19.

As the ACT Ombudsman, I am personally committed to ensuring that we do a good job holding ACT Government agencies to account in the interests of the people of the ACT.

In this quarter, we have particularly sought to:

- ensure that ACT residents are aware of our role overseeing public administration in the ACT
- build stronger networks with ACT agencies and take up new opportunities to influence systemic improvements in the ACT
- contribute to continual improvement in administrative decision-making, complaint-handling, Freedom of Information (FOI) and Reportable Conduct processes in our jurisdiction.

A significant achievement of this reporting period was our publication of the first annual report about the current FOI Scheme. This report, which is also available on our [website](#), reflects on early experiences of the new FOI legislative framework, which is designed to promote a culture of openness and transparency through the ACT Government. My Office will continue to monitor identified trends and report on these matters more comprehensively in the 2018–19 annual report.

During the quarter, we also assisted the Judicial Council and acquired a new role as Inspector of the ACT Integrity Commission, when it comes into operation this year.

I note that the ACT Ombudsman report for this quarter is published in a revised format, which reflects the growing number of functions that my Office now undertakes in the ACT, from more traditional complaint investigation functions, to newer functions related to Reportable Conduct and FOI, which have continued to mature during this reporting period. It also provides additional statistical information and commentary in relation to a number of our functions.

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

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

Michael Manthorpe PSM
ACT Ombudsman

CONTENTS

PART 1: OUR STRATEGY IN THE ACT	1
PART 2: COMPLAINT TRENDS	1
PART 3: ACT COMMUNITY OUTREACH ACTIVITIES	5
PART 4: AGENCY ENGAGEMENT	6
PART 5: REPORTABLE CONDUCT	7
PART 6: FREEDOM OF INFORMATION (FOI).....	10
APPENDIX A	12
APPENDIX B	14

Part 1: OUR STRATEGY IN THE ACT

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

Our role has broadened in recent years to capture not only complaint handling, but also responsibilities in relation to Freedom of Information (FOI) and reportable conduct pertaining to allegations of harm to children. We also oversee aspects of how the Australian Federal Police (AFP) undertakes law enforcement activities. We play a support role for the Judicial Council and will be commencing a role as Inspector of the ACT Integrity Commission, when it commences its work in 2019.

Given the diversity of our work in the ACT, we aim to:

- ensure that ACT residents are aware of our role
- be accessible to ACT residents and help them resolve complaints that they may have with public administration in the ACT
- build strong networks with ACT Government agencies
- contribute to continual improvement in administrative decision making, complaint-handling, FOI and reportable conduct processes, informed by the systemic issues our complaints work and other activities identify.

Part 2: COMPLAINT TRENDS

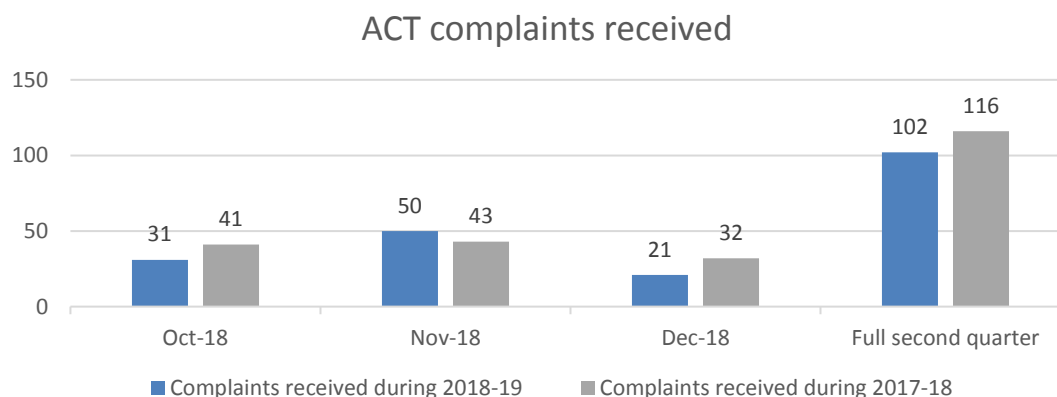
Complaints received

During this reporting period, as outlined in Figure 1, the Office received a total of 89 complaints that related to ACT agencies and 13 complaints that related to ACT Policing.

This figure does not include the following contacts with the Office which are currently recorded on an annual basis in the Commonwealth Ombudsman Annual Report:

- broader enquiries made to our Office that are identified upon receipt as clearly not within our jurisdiction, or
- general requests for information—both formal, such as Freedom of Information applications, and informal, such as media enquiries or requests for copies of our publications.

Figure 1— ACT complaints received during the second quarter this financial year, compared with last financial year



There has been a reduction in complaints this quarter about:

- ACT Policing—only 13 complaints received, this is less than any quarter over the last four years (with generally between 20 and 30 complaints received per quarter)
- the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) — with only 22 complaints received, compared to 39 in quarter one.

Most other Directorates experienced decreases in complaint volumes compared to the first quarter for this financial year as well, with the exception of complaints received about the:

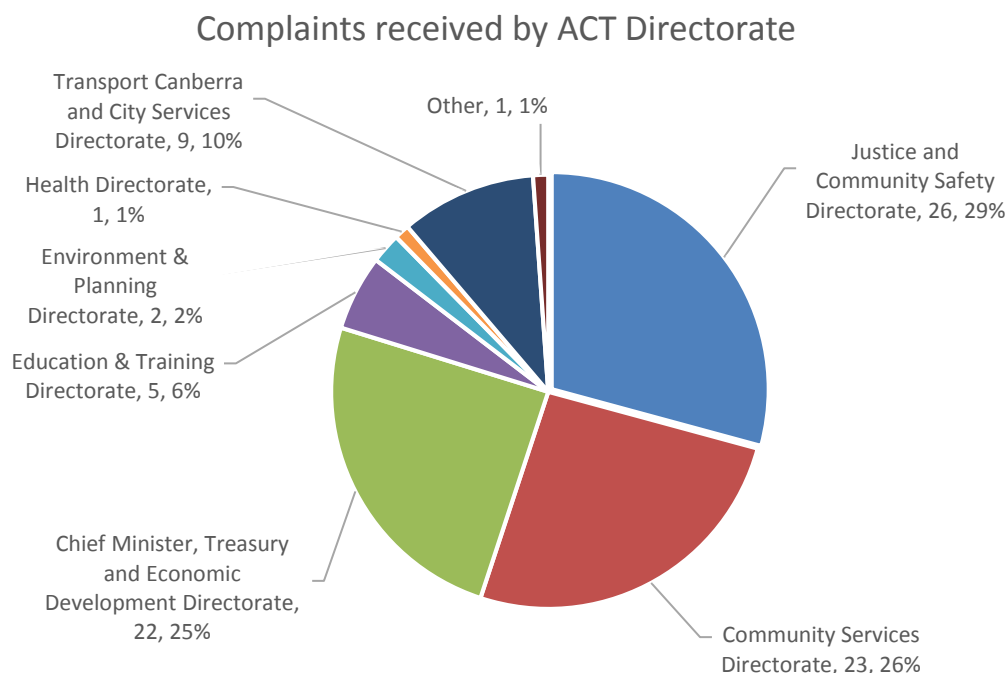
- Community Services Directorate (CSD), which increased by approximately 10 per cent
- Justice and Community Services Directorate (JACS), which increased by approximately 18 per cent.

Complaints about these two directorates made up 53 per cent of all complaints received during the second quarter as outlined below.

Complaints about ACT agencies

As reflected in Figure 2, the largest number of ACT complaints received this quarter in terms of ACT Government Directorates were received about JACS (26 complaints), followed by CSD (23 complaints) and CMTEDD (22 complaints).

Figure 2— ACT complaints received during the second quarter of 2018-19 by ACT Directorate



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

- Housing and Community Services ACT (Housing ACT), 20 complaints
- ACT Corrective Services (ACTCS), 17 complaints
- Access Canberra, 11 complaints.

A more detailed table indicating complaints received by individual ACT agencies, is provided at **Appendix A**.

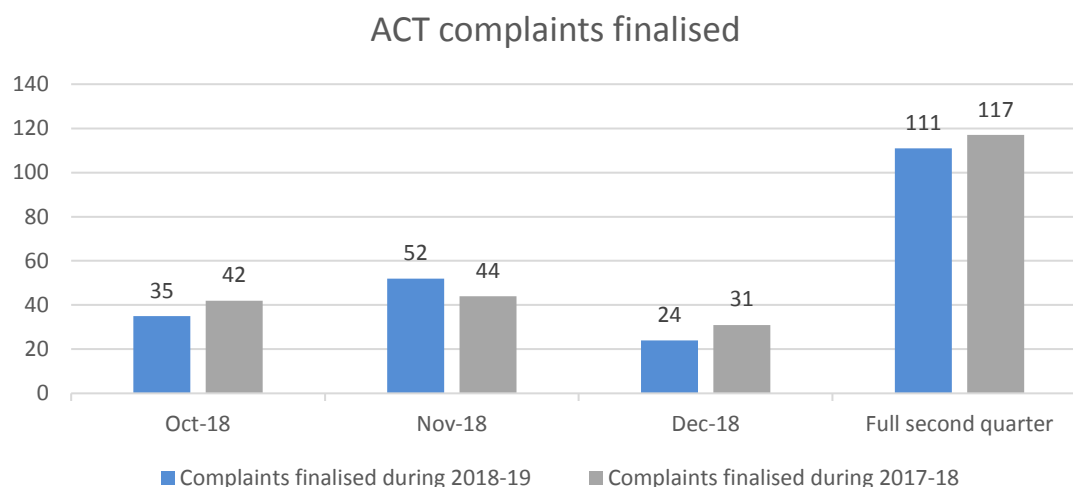
Complaints finalised

Our management of complaints can result in the complainant being given a better understanding of what has occurred. They may also receive an apology, or the agency concerned may decide to take further action or expedite a process already underway.

As outlined in Figure 3, the Office finalised a total of 111 complaints during this quarter:

- 16 ACT policing matters—with five formally investigated
- 95 complaints relating to the ACT jurisdiction—with 13 formally investigated.

Figure 3—ACT complaints finalised during the second quarter (this financial year compared to last financial year)



Every complaint is assessed on its merits to determine whether an investigation is warranted or a remedy can be achieved. A number of factors determine if we investigate a complaint. This includes whether:

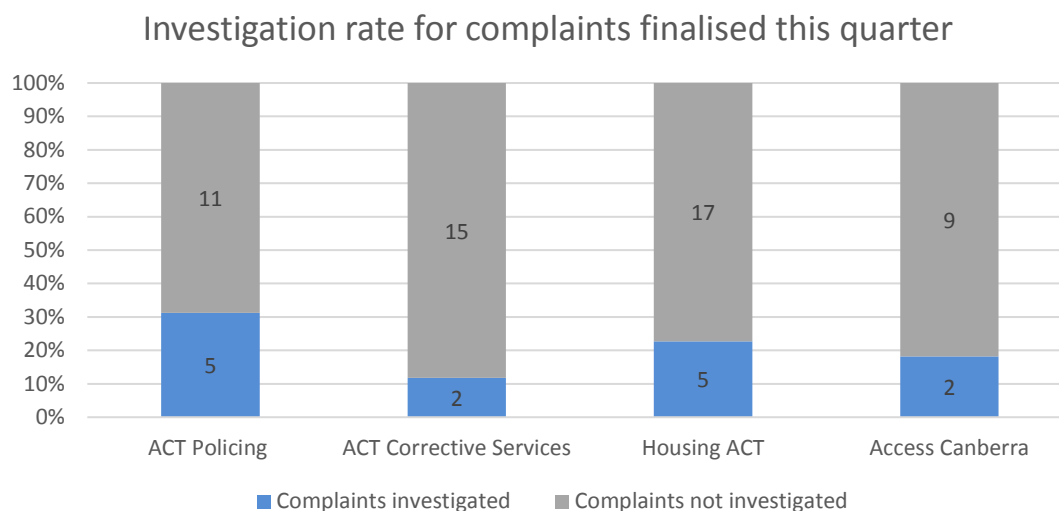
- we can resolve the complaint in another way, for example, by providing a better explanation
- another agency or oversight body can provide a better outcome for the complainant
- the event complained about happened more than twelve months ago, or
- we can see that the agency has made a decision open to them to make in a reasonable way, without the need for us to request additional information.

It should, however, be noted that a positive outcome for the complainant may also be achieved without our Office proceeding to a full investigation.

- For example, during this quarter, a Housing ACT tenant complained that a request made to the maintenance provider to fix a garage door had not been actioned for a number of months. The garage allowed direct access to the ground floor of an apartment complex, where disabled and vulnerable people lived. As a result, the broken door was a significant security issue. Two days after our Office referred this matter to Housing ACT, the garage door was repaired.

The investigation rate for agencies receiving the largest number of complaints this quarter is demonstrated in Figure 4.

Figure 4—Percentage of complaints investigated for the top four agencies in terms of complaints received

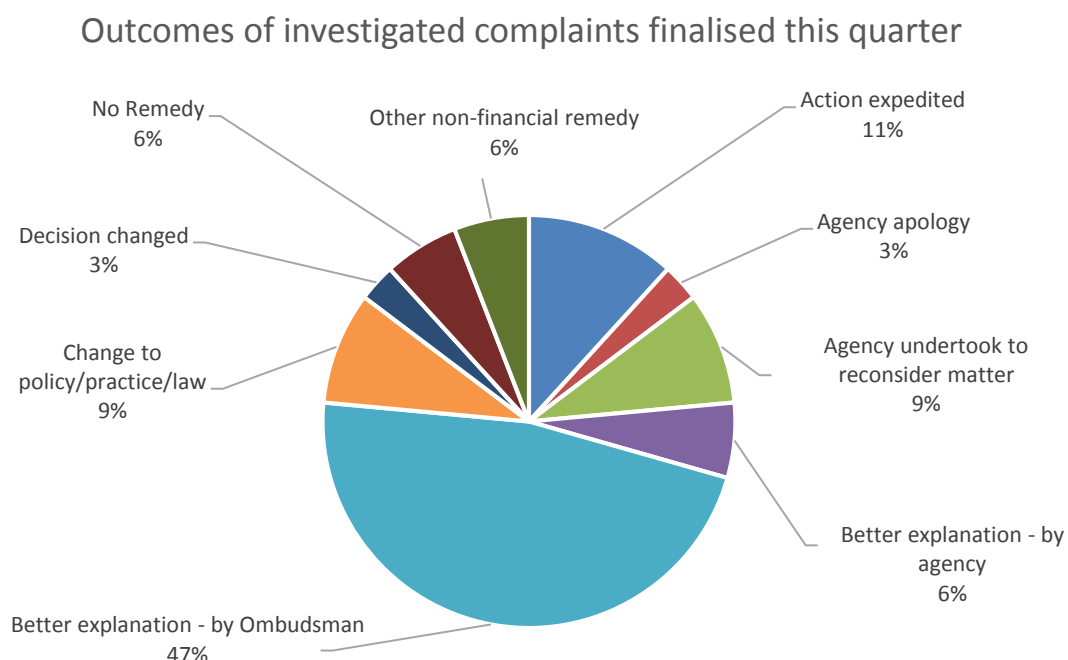


Outcomes achieved for investigated complaints

Figure 5 below outlines the outcomes that resulted from our complaints investigations that were finalised this quarter. The table at **Appendix B** also provides this information by ACT Government agency.

Note: More than one positive outcome can be achieved per complaint investigation.

Figure 5—Outcomes of investigated complaints finalised in the first quarter of 2018–19 (for example, remedies achieved)



New and ongoing complaint trends

Housing ACT continued to be the agency with the highest number of complaints received this quarter—with complaints received increasing by 25 per cent, in comparison to the overall decrease in complaints received this quarter.

- Complaints received this quarter related to access to public housing including from individuals who appeared to be at risk of homelessness and/or family violence. Existing public housing tenants complained about lack of maintenance, poor security and debt issues. Neighbourhood disputes also gave rise to a number of complaints.
- The Office has written to Housing ACT in relation to possible systemic issues identified through recent complaints received and investigations conducted. We also raised new issues recently referred to our Office, including in relation to public housing services for Alexander Maconochie Centre (AMC) detainees who have been successful in being granted parole, and allocation procedures for public housing.
- We will continue to work closely with Housing ACT in the next quarter to facilitate improvements in public administration where possible and monitor identified issues.

Complaints about ACTCS increased by 55 per cent this quarter — with complaints received from detainees at the AMC higher than at any time in the last four-year period.

- Over half the complaints received about ACTCS raised concerns about what was considered to be an excessive number of lock-ins within the jail and access to ‘outside time’. Other ACTCS complaints related to difficulty in accessing funds and missing property.
- The Office has raised these matters with ACTCS both directly and via other relevant oversight agencies, including the ACT Inspector of Correctional Services.
- We will continue to liaise closely with ACTCS on these matters. We are also seeking to progress new complaint transfer arrangements with ACTCS in 2019 to ensure that complaints made by detainees are re-directed to the most effective channel to deal with the issues they have raised.

While complaint volumes are low, the Office is also continuing to monitor an increase in complaints received in relation to the ACT Revenue Office since 2016–17, particularly in the context of:

- issues raised in the context of a recent FOI review application around valuation processes and rates payments¹
- the current inquiry into Commercial Rates being undertaken by the Public Accounts Committee of the Office of the Legislative Assembly.²

Part 3: ACT COMMUNITY OUTREACH ACTIVITIES

It has been a busy quarter in terms of community outreach activities, with the Office continuing to seek opportunities to engage with the ACT community about our role and provide assistance in relation to empowering people to resolve their issues with ACT agencies.

¹ See: http://www.ombudsman.act.gov.au/_data/assets/pdf_file/0021/95142/Karen-Paxton-and-Chief-Minister,-Treasury-and-Economic-Development-Directorate-2019-ACTOFOI-1-9-January-2019.pdf

² See: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-commercial-rate-in-canberra>

In October 2018, the Office held a stall at the Mental Health and Wellbeing Expo, which aims to encourage people to seek help early to help reduce the impact of mental illness on an individual's life.³ The aim was to alert potentially vulnerable members of the ACT community to the services of the Office.

At the beginning of November 2018, the Office held a joint stall with the ACT Human Rights Commission at the CBR Fair Day. This fair is the largest celebration of Canberra's LGBTIQ communities.⁴ The stall was a valuable opportunity to speak directly to these communities about the work the Office does in both its Commonwealth and ACT jurisdictions and how we can assist where individuals have concerns about decisions made, or the processes of, government agencies.

In late November, Office staff attended a 'What's new on the street' group meeting and the opening of the ACT Aboriginal Legal Services' new premises. They also delivered presentations to the Belconnen Energetic Seniors on Tuesday (BEST) club at the West Belconnen Leagues Club and Positive Links, a group of Belconnen residents recovering from stroke and other physical life changing experiences. These presentations were organised through Belconnen Community Services. We hope to engage more closely with Canberra's community service organisations this year to ensure their clients know about our services, and to ensure that we are aware of any issues commonly being experienced by vulnerable community members.

In December 2018, the Office held a stall at the Annual Comorbidity Interagency Day organised by Catholic Care and held at the Blackfriars campus in Watson. This day brought together people experiencing both mental health issues and problematic drug and alcohol use, as well as relevant service providers. It was a great opportunity for our staff to hear people's experiences of managing their lives and families through difficult times, and explain in which situations our Office can assist.

Part 4: AGENCY ENGAGEMENT

The Office delivered two presentations to Housing ACT in October 2018 regarding complaint-handling best practice principles and the work of our Office. These were the first of these type of presentations to be delivered to an ACT Government agency and were very well received.

Liaison meetings were also held this quarter with Access Canberra, ACTCS, Transport Canberra and City Services, ACT Revenue and the ACT Human Rights Commission.

During this quarter, the ACT Ombudsman met with all Director-Generals of ACT Directorates and addressed a leadership forum for all ACT SES officers.

The Deputy Ombudsman and the Director, ACT Strategy and FOI, also attended the ACT Joint Advisory Chairs Meeting. We hope to participate in these meetings on an ongoing basis in 2019 to help ensure that the Office is alerted to common issues of concern identified by the various advisory ministerial councils in the ACT.

Representatives of our Office also attended the launch of the new Winnunga Health Care Model at the AMC and we continued to be represented at AMC oversight agency meetings, detainee delegate meetings and relevant briefings from ACTCS on current issues at the prison.

³ See: <https://www.mentalhealthmonthact.org/expo>

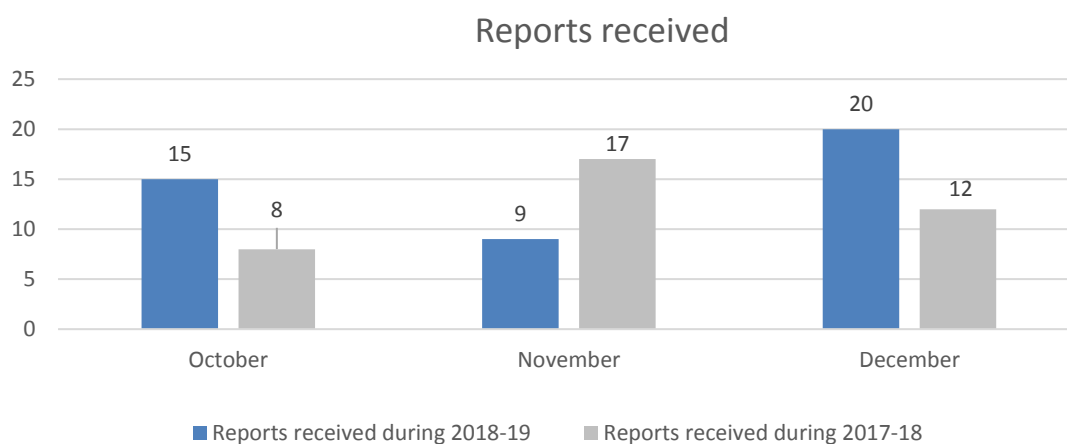
⁴ See: <https://aidsaction.org.au/news/blog/225-cbrfd2017.html>

Part 5: REPORTABLE CONDUCT

Reports received

This quarter, the Office received 44 initial reports from entities about allegations of reportable conduct with seven of these also being notified by entities to ACT Policing. As outlined in Figure 6, this was an increase of 27 per cent in reporting compared to the same time period in the last financial year.

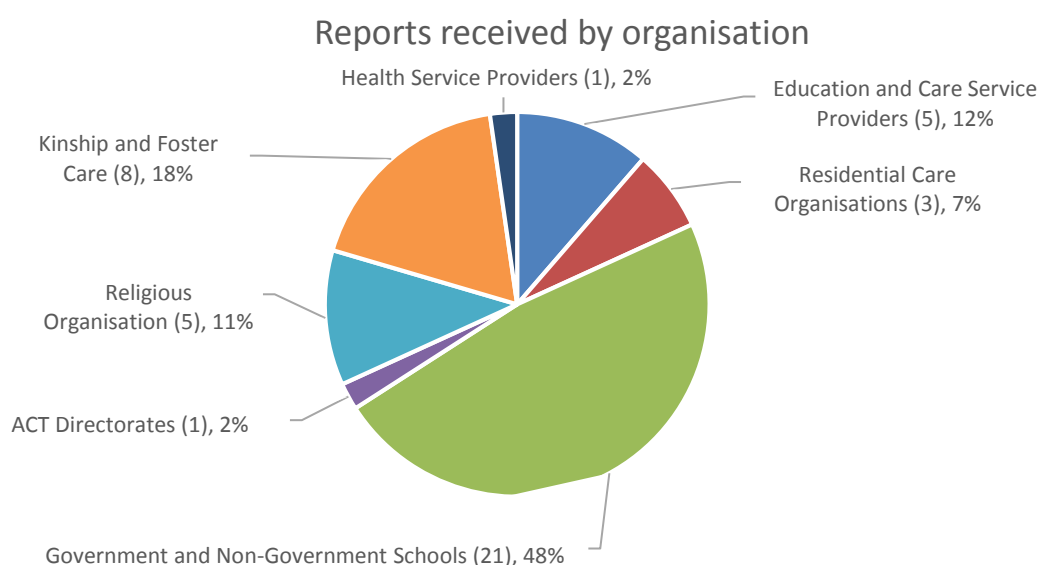
Figure 6—Reports of abuse received in the second quarter this financial year, compared to previous financial year



Ill-treatment of a child involving hostile use of force remains the most common allegation type, with misconduct of a sexual nature and ill-treatment emotional abuse being the next most common allegation categories.

Figure 7 below outlines the number of reports received this quarter by organisation, with the largest number of reports received from ACT Government or Non-Government schools (21 reports).

Figure 7—Reports received in the second quarter of 2018–19 by organisation



Reports finalised

In the same quarter, as outlined in Figure 8, the Office closed 36 matters, a 24 per cent increase in complaints finalised compared to the same quarter for the previous financial year.

Figure 8—Reports of finalised in the second quarter this financial year, compared to last financial year

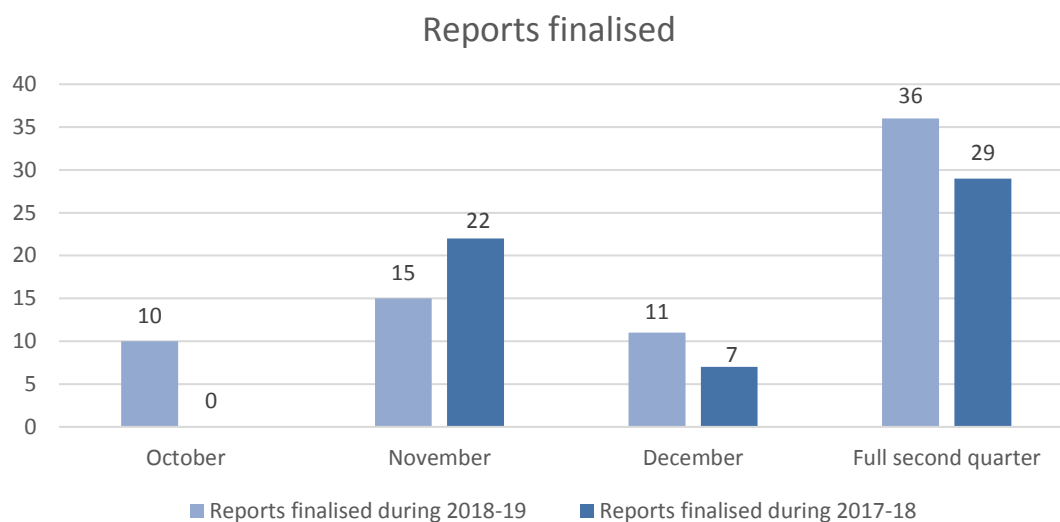
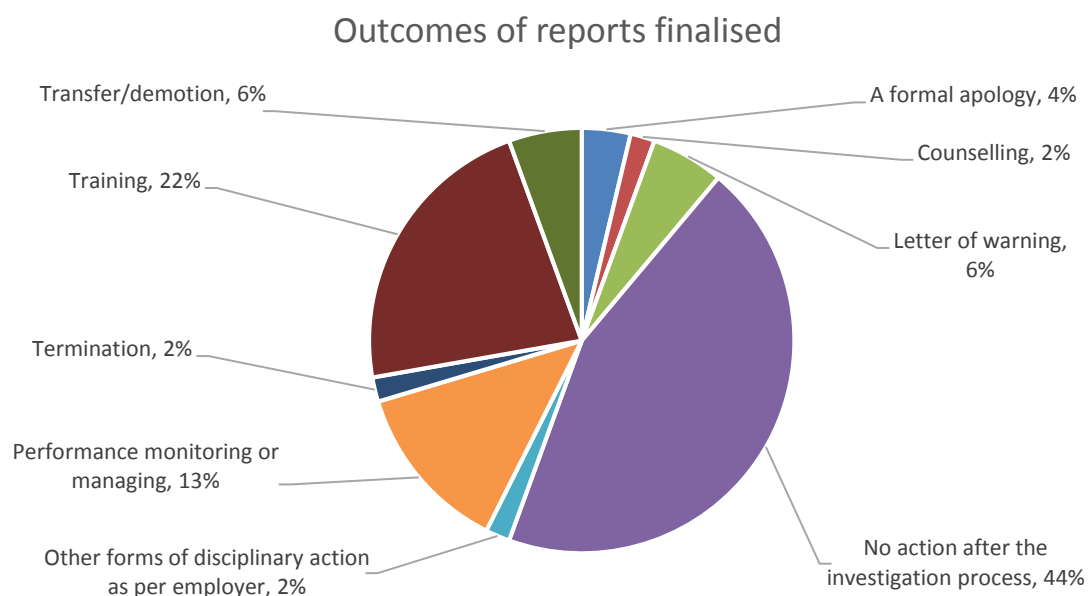


Figure 9 summarises the action taken by organisations as reported to us in reports finalised this quarter.

Figure 9—Outcomes outlined in reports finalised in the second quarter this financial year, compared to last financial year



Engagement and monitoring activities

We continue to support entities to build their capacity to prevent, report and respond to allegations of reportable conduct. In this quarter, the Office focussed on understanding the continuing training needs of organisations, and maintaining and establishing practitioner groups.

We are in the process of engaging a service provider to meet demand for additional training on conducting reportable conduct investigations and investigative interviews for organisations under the scheme, including all Directorate of Education school principals in 2018–19. The sessions will be at no cost to participants, and will focus on equipping relevant staff with the skills and background to manage investigations fairly and identify appropriate actions for the organisation to take.

Our Reportable Conduct Practitioner’s Forum, with representatives from sectors covered by the scheme, met in December 2018 and included a presentation from Barnardos. To date, this forum has been an important avenue to share good practice and learnings across the scheme and for us to receive feedback on our processes. For this reason, we have recently written to 19 religious organisations to gauge their interest in participating in a similar forum for religious bodies. If there is sufficient interest from religious bodies, we anticipate hosting the first forum before the end of this financial year.

Raising and maintaining the awareness of organisations under the scheme about their responsibilities is also a priority for the Office. In November 2018, we held an information session for organisations under the scheme for 20 participants, including representatives from ACT directorates, religious bodies and community organisations.

While the information sessions are an important and continuing channel for introductory information about the scheme, we are also looking more broadly to ensure that our Office, and/or other relevant regulators and peak bodies, have communicated to entities about the scheme effectively. We have, for example, reviewed whether entities identified as being covered by the scheme in 2017–18 have had active engagement with our Office about the scheme.

In the first quarter of 2018–19, we concluded a voluntary survey of designated entities about their policies and practices in the first year of the scheme and sent entities a self-assessment tool. The response rate covered around 60 per cent of entities, but this was unevenly spread across the sectors with lower results from health services, Non-Government schools and early education and care. As a result, during this quarter, we analysed whether the entities that did not respond to our survey had actively engaged with our Office about the scheme in another way—for example, through information sessions, attendance at training, subscriptions to our electronic newsletter, reports to our Office and/or otherwise.

Our awareness-raising work is becoming more targeted as a result of this work and as the scheme matures. The Office recently wrote to all the health services that we have identified as falling within the scheme to offer information and training, and to ascertain the scope of their reporting responsibilities for associated organisations. In the current quarter, we will also contact those entities for whom we have not had records of active engagement. We will then assess if further awareness-raising work is warranted for particular sectors or entities, including religious bodies that entered the scheme on 1 July 2018.

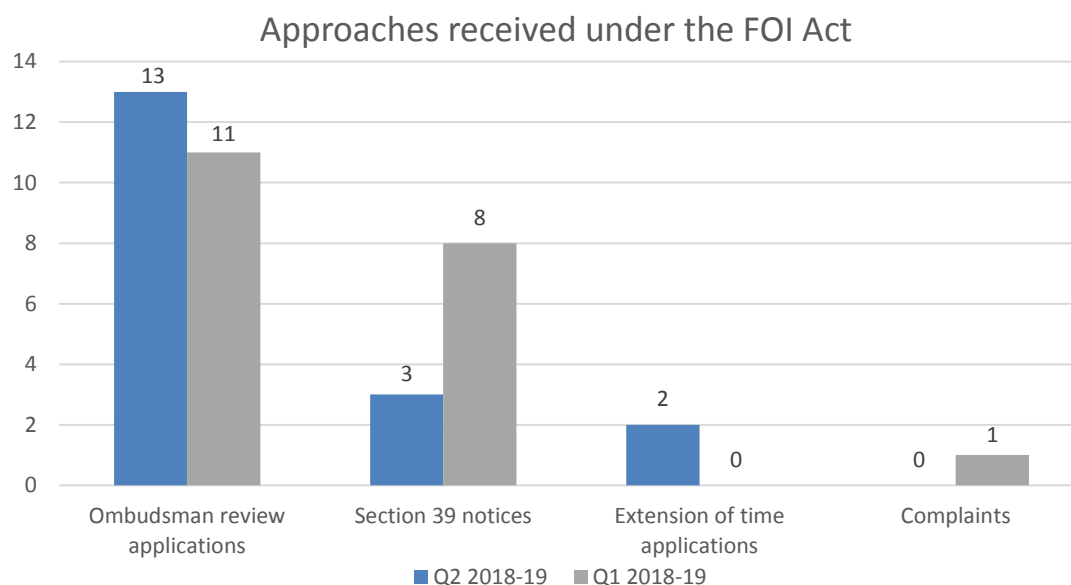
Part 6: FREEDOM OF INFORMATION (FOI)

FOI approaches received

As outlined in Figure 10, the Office received 18 approaches relating to our role under the *Freedom of Information Act 2016* (the FOI Act) during the second quarter, as follows:

- 13 applications for Ombudsman review—an 18 per cent increase on the previous quarter
- three notices under s 39 of agencies not having met the statutory processing timeframe
- two requests for an extension of time (both were granted by the Office).

Figure 10—Approaches received under the FOI Act in the second quarter 2018–19 in comparison to quarter one



Finalised FOI reviews

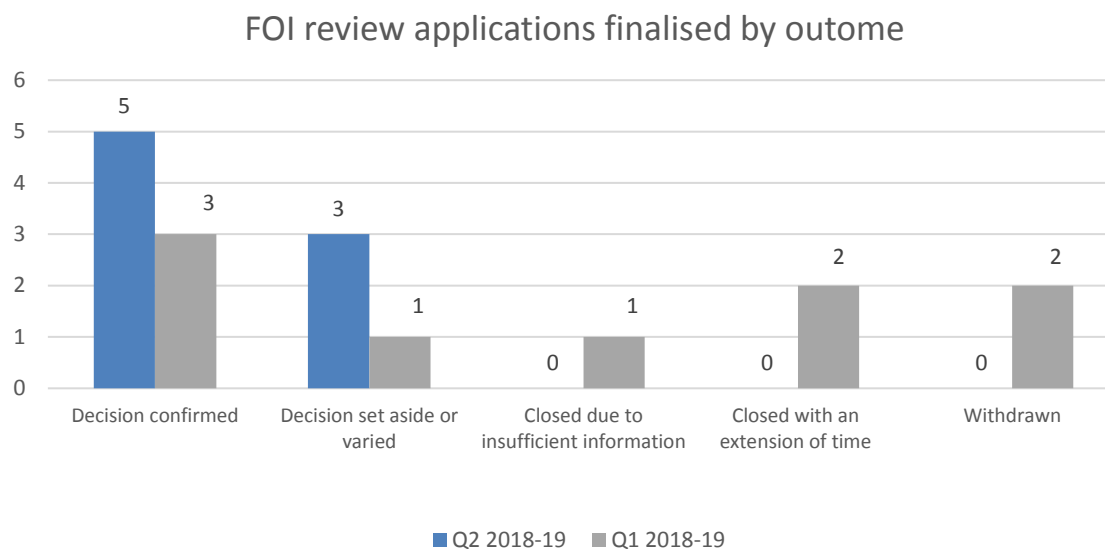
The Office finalised eight Ombudsman reviews during this quarter:

- confirming the original decision in five cases
- varying the decision in one case
- setting the decision aside and substituting the decision in two cases.

As reflected in Figure 11, the number of decisions finalised during the reporting period was double that of the previous quarter (four review decisions), with a total of 12 review decisions made in 2018—the first full year of the operation of the new FOI scheme. All of these decisions can be accessed via the ACT Ombudsman’s website.⁵

⁵ See: <http://ombudsman.act.gov.au/Freedom-of-Information>

Figure 11—FOI review applications finalised in the second quarter 2018–19 by outcome in comparison to quarter one



Engagement activities

The Office held its first FOI Practitioners’ Forum on 9 November 2018, with 29 practitioners from the ACT Government attending and discussing their experience of the first year of the FOI Act.

Practitioners reflected on the progress made across government to implement the new legislation and the different experiences of agencies applying the FOI Act to their respective organisations.

The group explored opportunities for greater consistency amongst agencies, as well as ongoing education and networking amongst agencies to improve practices. The practitioner forums will continue throughout 2019, and provide valuable opportunities for sharing of best practice and informing the development of the Ombudsman’s FOI Guidelines.

The Office also participated in a number of FOI liaison meetings during this quarter including with JACS and ACT Health.

FOI annual report

The Office published its first annual report on the operation of the FOI Act pursuant to s 67 of the FOI Act, providing some early observations on the implementation of the Act and the first six months of FOI statistics provided by agencies and Ministers.

The report comments on the quality of decision-making across agencies and the need for improvements in the reasons for FOI decisions by decision-makers. The report also notes that further work can be done by agencies to assist members of the public with their access applications. The Office is targeting these issues through the development of FOI Guidelines and ongoing stakeholder engagement and education with agencies.

The report is available on the Office’s website.⁶

⁶ See: http://www.ombudsman.act.gov.au/_data/assets/pdf_file/0023/92363/Report-on-the-operation-of-the-Freedom-of-Information-Act-2017-18.pdf

APPENDIX A

Complaints received by ACT Ombudsman by agency for the second quarter of 2018–19: 1/10/2018 to 31/12/2018

Directorate /Agency	Total Received	Total Finalised	Finalised without investigation	Finalised with investigation
Chief Minister, Treasury and Economic Development Directorate	22	24	20	4
Access Canberra	11	10	8	2
Chief Minister, Treasury and Economic Development	3	4	2	2
ACT Revenue Office	5	6	6	0
University of Canberra	3	4	4	0
Community Services Directorate	23	25	20	5
Community Services Directorate	3	3	3	0
Housing ACT	20	22	17	5
Education and Training Directorate	5	7	6	1
Canberra Institute of Technology	1	1	1	0
Education and Training	4	6	5	1
Environment and Planning Directorate	2	2	2	0
Health Directorate	1	1	1	0
Justice and Community Safety Directorate	26	26	23	3
ACT Corrective Services	17	17	15	2
ACT Court or Tribunal	2	2	2	0
ACT Human Rights Commission	1	1	1	0
Justice and Community Safety	2	1	1	0

ACT Ombudsman—Quarterly report, 1 October to 31 December 2018

Directorate /Agency	Total Received	Total Finalised	Finalised without investigation	Finalised with investigation
Legal Aid ACT	2	2	2	0
ACT Law Society	0	0	0	0
Public Advocate for the ACT	0	0	0	0
Public Trustee for the ACT	2	3	2	1
Transport Canberra and City Services Directorate	9	9	9	0
ACTION Bus	0	0	0	0
Transport Canberra and City Services	9	9	9	0
Territory-owned Corporation	1	1	1	0
ACT Long Service Leave Authority	0	0	0	0
Icon Water	1	1	1	0
Total ACT Government	89	95	82	13
ACT Policing	13	16	11	5
Total ACT	102	111	93	18

APPENDIX B

Outcomes of finalised complaint investigations for second quarter by ACT Government agency and by outcome

Directorate /Agency	Investigations finalised	Outcome achieved via the investigation										Total positive remedies achieved
		No remedy	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better Explanation (Ombudsman)	Better Explanation (Agency)	Other non-financial remedy	Agency office counselled/ disciplined	Remedy provided by agency	
Chief Minister, Treasury and Economic Development Directorate	4	0	0	1	2	1	3	1	0	0	0	8
Access Canberra	2	-	-	1	2	1	1	1	-	-	-	6
Chief Minister, Treasury and Economic Development	2	-	-	-	-	-	2	-	-	-	-	2
ACT Revenue Office	-	-	-	-	-	-	-	-	-	-	-	-
University of Canberra	-	-	-	-	-	-	-	-	-	-	-	-
Community Services Directorate	5	0	2	0	0	0	4	1	2	0	0	9
Community Services Directorate	-	-	-	-	-	-	-	-	-	-	-	-
Housing ACT	5	-	2	-	-	-	4	1	2	-	-	9
Education and Training Directorate	1	0	2	0	0	0	2	0	0	0	0	4
Canberra Institute of Technology	-	-	-	-	-	-	-	-	-	-	-	-
Education and Training	1	-	2	-	-	-	2	-	-	-	-	4
Environment and Planning Directorate	0	0	0	0	0	0	0	0	0	0	0	0
Health Directorate	0	0	0	0	0	0	0	0	0	0	0	0
Justice and Community Safety Directorate	3	2	0	0	0	0	3	0	0	0	0	3
ACT Corrective Services	2	-	-	-	-	-	3	-	-	-	-	3
ACT Court or Tribunal	-	-	-	-	-	-	-	-	-	-	-	-

Directorate /Agency	Investigations finalised	Outcome achieved via the investigation										Total positive remedies achieved
		No remedy	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better Explanation (Ombudsman)	Better Explanation (Agency)	Other non-financial remedy	Agency office counselled/ disciplined	Remedy provided by agency	
ACT Human Rights Commission	-	-	-	-	-	-	-	-	-	-	-	-
Justice and Community Safety	-	-	-	-	-	-	-	-	-	-	-	-
Legal Aid ACT	-	-	-	-	-	-	-	-	-	-	-	-
ACT Law Society	-	-	-	-	-	-	-	-	-	-	-	-
Public Advocate for the ACT	-	-	-	-	-	-	-	-	-	-	-	-
Public Trustee for the ACT	1	2	-	-	-	-	-	-	-	-	-	0
Transport Canberra and City Services Directorate	0	0	0	0	0	0	0	0	0	0	0	0
ACTION Bus	-	-	-	-	-	-	-	-	-	-	-	-
Transport Canberra and City Services	-	-	-	-	-	-	-	-	-	-	-	-
Territory-owned Corporation	0	0	0	0	0	0	0	0	0	0	0	0
ACT Long Service Leave Authority	-	-	-	-	-	-	-	-	-	-	-	-
ICON Water	-	-	-	-	-	-	-	-	-	-	-	-
Total ACT Government	13	2	4	1	2	1	12	2	2	0	0	24
ACT Policing	5	0	0	0	1	3	4	0	0	0	0	8
Total ACT	18	2	4	1	3	4	16	2	2	0	0	32