

ACT Ombudsman Annual Report

2019–20

2019–20 HIGHLIGHTS

1,223

Total contacts



Received



Finalised



Enquiries

452

452



Complaints

520

521



Reportable
conduct
notifications

177

161



Freedom of
information
reviews

38

36



ACT Ombudsman

Australian Capital Territory

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Produced by the ACT Ombudsman, Canberra

Transmittal Certificate

6 October 2020

Ms Joy Burch MLA
Speaker
Legislative Assembly for the ACT
London Circuit
CANBERRA ACT 2600

Dear Speaker

I present to you my Annual Report for 2019–20.

It has been prepared to fulfil the requirements of s 7A of the *Annual Reports (Government Agencies) Act 2004*.

I certify the Annual Report 2019–20 is an honest and accurate account of the work of the ACT Ombudsman’s Office and that all material information on the operations of the Office has been included for the period from 1 July 2019 to 30 June 2020.

As I am an Officer of the Legislative Assembly, this report is not subject to the *Annual Reports (Government Agencies) Directions 2019*. Where relevant to my Office, I have sought to include similar information in this report to that required under these directions.

Section 15 of the *Annual Reports (Government Agencies) Act 2004* requires that you present a copy of the Annual Report to the Legislative Assembly within 15 weeks after the end of the reporting year.

Yours sincerely



Michael Manthorpe PSM
ACT Ombudsman

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The ACT Ombudsman Annual Report 2019–20 is available on the website.

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Review by the Ombudsman

I am pleased to introduce the 2019-20 Annual Report for the ACT Ombudsman.

Against a backdrop of fire, hail and the COVID-19 pandemic, it has been a challenging year for Canberra. As a community and as a country we now confront the dual challenge of a health crisis and a sharp economic downturn. Like many other agencies, the Office of the ACT Ombudsman has had to adjust the way it works to deal with the pandemic. In particular, we have transitioned to arrangements where many of our people work from home and where our engagement with people who seek our help, the agencies and functions we oversee, and other stakeholders is occurring largely through on-line or virtual means.



Despite these challenges, we have maintained and in some ways improved the services that we offer the ACT community during 2019-20. As this report demonstrates, we have

- dealt with more complaints from members of the public than has been the case in recent years;
- launched comprehensive guidelines for the operation of Freedom of Information (FOI) laws in the ACT;
- strengthened our relationships with other oversight bodies, with a particular focus on the operations of the Alexander Maconochie Centre (AMC);
- worked with community stakeholders to improve awareness of our services;
- launched a better website and a dedicated telephone line, making it easier for the community to access our services;
- built awareness and capability among entities that are covered by the Reportable Conduct scheme, in the interests of the safety of Canberra's children;
- maintained effective oversight of ACT Policing, in particular in relation to complaints and the way in which the police exercise certain covert and intrusive powers;
- continued to support the effective operation of the ACT Judicial Council; and
- created a new function as Inspector of the ACT Integrity Commission, to provide assurance that this important new body to protect integrity operates with integrity itself.

All of these activities highlight that, notwithstanding the compelling and urgent issues that the pandemic has presented, the need for enduring, high quality administration remains vital. Indeed, the pandemic is creating a situation in which more people than ever before are reliant on various forms of government services and support. We have a role to play in ensuring that those services are delivered in a way that is fair, transparent and lawful, and we are committed to continuing our work in 2020-21 to those ends.

Michael Manthorpe PSM
ACT Ombudsman

Part 2—Annual Report Requirements

Organisational overview and performance

Organisational overview

The role of the ACT Ombudsman

The role of the ACT Ombudsman is to influence systemic improvements in public administration in the ACT, as well as providing assurance that ACT government agencies and other designated entities that fall within our jurisdiction act with fairness and integrity. Our Office also works closely with agencies to ensure they provide accessible and effective complaint handling processes to the public.

We undertake this role through our traditional complaint handling activities, as well as our oversight of:

- the ACT FOI framework
- the ACT Reportable Conduct Scheme
- ACT Policing
- the ACT Integrity Commission (as the Inspector).

We also continue to play a support role for the Judicial Council, for which the Ombudsman is the Principal Officer.

The sections below provide an overview of each of these functions. For more detailed performance information for these functions during 2019–20, see Part 2 Performance analysis.

A copy of our organisational chart can be accessed on the ACT Ombudsman website.¹

Managing complaints about public administration

The Ombudsman receives complaints from members of the public who believe they have been treated unfairly or unreasonably by an ACT government agency or ACT Policing.

We assess each complaint within our jurisdiction to determine the most appropriate course of action, which may include investigating or making other enquiries of the agency concerned. Where a complaint falls outside of our jurisdiction, we help people to find the organisation that can best assist them.

Management of complaints can result in a number of different outcomes. For example, the person may be given a better explanation of the decision, receive an apology, an assisted referral of the complaint back to the appropriate agency, or the agency concerned may decide to take further action or expedite a process already underway. Importantly, as part of our investigations, we can also provide feedback to agencies to improve their administrative processes, and to avoid unfair or unreasonable decisions or outcomes in the future.

Information about our complaints work in 2019–20, including identified trends of possible concern and new initiatives to address these, are set out in Part 2 Performance analysis.

¹ See: <https://www.ombudsman.act.gov.au/dev/about-us/who-we-are?a=105930>

Improving complaints processes

Alongside management of individual complaints, we work closely with ACT government agencies at a strategic level to help ensure they provide accessible and effective complaint handling processes to the public. We also encourage agencies to develop a healthy complaints culture and use complaints as a valuable tool to improve their own service delivery.

Complaints Education Program

In December 2019, the Office held its first complaint handling workshop for ACT government agencies. The workshop sold out with 26 participants and nine agencies represented. Feedback from the workshop was positive, with participants stating it enhanced their knowledge about best practice complaint handling and was an opportunity to share experiences and ideas. A second workshop planned for May 2020 was postponed due to the COVID-19 pandemic. We are exploring other digital options for delivery.

Complaints Assurance Program

The Complaints Assurance Program (CAP) is a collaborative process designed to support agencies to improve complaint handling and share best practice initiatives across the public service. We work with agencies to understand and improve their complaint handling by:

- building and strengthening services to ensure accessibility and effectiveness
- recognising agencies' accomplishments and identifying improvements
- establishing tailored frameworks so agencies can self-identify trends and systemic issues
- facilitating knowledge, information and innovation sharing.

Participating agencies complete a self-assessment and then provide a complaint sample to the Office for analysis.

ACT Policing participated in the CAP in 2019. We found ACT Policing is meeting many of the indicators of good complaint handling while also identifying opportunities for improvement.

Positive indicators of executive level commitment to complaint handling included, regular internal reporting to the executive on complaint information and weekly conversations about emerging issues at the operational level. ACT Policing has also proactively reviewed its complaint management framework for consistency, transparency and timeliness and is working to develop more customer centric complaint handling practices.

ACT Policing agreed to implement our recommendations, which include reviewing staffing models to improve timeliness, better engagement with people from culturally and linguistically diverse backgrounds, more training for complaint handling staff and improving policy and operational guidance.

In February 2020 the Office published its report, *Lessons in Complaint Handling*², summarising lessons learned from the CAP in 2019.

Housing ACT is participating in the CAP in 2020, which commenced in February 2020 and will be finalised in the second half of 2020.

² https://www.ombudsman.gov.au/data/assets/pdf_file/0023/110597/Lessons-in-good-complaint-handling.pdf

Reportable Conduct Scheme

Under the Reportable Conduct Scheme, which is set out in Division 2.2A of the *Ombudsman Act 1989* (the Act), the Office oversees the responses of certain organisations in the ACT to allegations of abuse, or misconduct, by any of their employees, that involve children.

In addition to reporting to ACT Policing, Child and Youth Protection Services (CYPS) and/or any other relevant professional or regulatory bodies, organisations covered by the scheme³ must:

- report to the Office allegations, offences or convictions relating to child-related misconduct by employees (including volunteers and contractors) in the context of their professional or private activities
- have practices and procedures in place to prevent such misconduct, respond to such allegations and convictions, and to handle and share information in accordance with provisions in the *Children and Young People Act 2008* (CYP Act).

Our role is to:

- receive and assess the above reports, including whether there was appropriate action by the organisation in response and the adequacy of any investigation carried out by the organisation
- monitor the above practices and procedures an agency has in place to meet its obligations under the scheme.

The scheme does not replace or interfere with police investigations. We work with ACT Policing to make sure allegations of criminal conduct are dealt with appropriately.

To enhance organisation-based child protection outcomes and encourage best practice, we may also:

- monitor an investigation carried out by the organisation
- conduct an investigation into any reportable allegation or conviction, or the response of an organisation to a reportable allegation
- disclose information about investigations to a child, parent and carer, the Office of Fair Trading, and other entities specified in the CYP Act.

More information about our work under the scheme in 2019–20, including trends in reports received from organisations and investigation outcomes, is set out in Part 2 Performance analysis.

Freedom of Information

The Office oversees the ACT *Freedom of Information Act 2016* (the FOI Act) and promotes its objects by:

- conducting independent merit reviews of decisions on access applications
- publishing guidelines to assist FOI practitioners who make these decisions
- granting extensions of time to decide access applications
- investigating complaints about an agency's or Minister's actions under the FOI Act
- monitoring the compliance of agencies and Ministers with their open access obligations.

³ Organisations covered by the scheme include all ACT government directorates, health services, kinship and foster care organisations, residential care organisations, government and non-government schools, education and care services, including after school care, and religious organisations.

In reviewing a decision, the Ombudsman can confirm or vary the original decision, or set it aside and substitute it with a new decision. Ombudsman review decisions are binding and may be appealed to the ACT Civil and Administrative Tribunal (ACAT).

Where possible we resolve review matters informally. We also work closely with agencies through regular forums, to support them to build capability and meet their obligations under the FOI Act.

More information about our work under the FOI Act is set out in Part 2 Performance analysis. The Office also publishes a separate report every year on the operation of the FOI Act. This report is available on our website.⁴

Inspections

The Office monitors ACT Policing's use of covert and intrusive powers through inspections conducted under the *Crimes (Controlled Operations) Act 2008* (Controlled Operations Act), and the *Crimes (Surveillance Devices) Act 2010* (Surveillance Devices Act), as well as compliance with Chapter 4 of the *Crimes (Child Sex Offenders) Act 2005* (the CCSO Act).

The Office also has an oversight role regarding the ACT Policing's use of *Crimes (Assumed Identities) Act 2009* and compliance with Part 3.11 of the *Crimes (Child Sex Offenders) Act 2005*. Our Office has not conducted an inspection as ACT Policing has not used these powers.

Information about our inspections in 2019–20 is set out in Part 4 of this report.

ACT Integrity Commission

As of 1 July 2019, the ACT Ombudsman is the Inspector of the ACT Integrity Commission (the Commission). The Commission is an independent body with the power to investigate corruption in the ACT Government, which began full operations on 1 December 2019.

To help improve public confidence, the Inspector was set up to ensure the Commission operates within its legislative powers. The Inspector can:

- investigate and assess complaints about the Commission and its staff
- make recommendations to the Commission
- assess and report on the Commission's compliance with the *Integrity Commission Act 2018* (IC Act).

The Inspector must prepare a separate annual operational review and annual report under the IC Act.

Judicial Council

The Office provides support to the ACT Judicial Council (the Council).

The Council is a separate entity established under the *Judicial Commissions Act 1994* with powers to receive and examine complaints about the conduct or capacity of ACT judicial officers (judges and magistrates). The Council has four members:

- the Chief Justice of the ACT Supreme Court
- the Chief Magistrate of the ACT Magistrates Court
- an appointed legal practitioner member
- an appointed member of the community.

⁴ See <https://www.ombudsman.act.gov.au/publications/reports>

The Ombudsman is the Council's Principal Officer. Together with three nominated staff, the Ombudsman is responsible for receiving the council's enquiries and complaints, assisting the council to conduct preliminary inquiries and other examinations and facilitating communication between the council, complainants and judicial officers. Staff also perform secretariat services for the council.

The Council issues its own Annual Report to the ACT Attorney-General which is published on its website.⁵

Performance analysis

Contacts

In 2019–20, **1,223 contacts** were made to our Office, comprising

- 452 enquiries about our ACT Ombudsman functions
- 520 complaints about ACT agencies, organisations or ACT Policing
- 251 program specific matters (for example, Freedom of Information (FOI) review requests).

These are discussed in more detail in the sections below.

Enquiries

ACT enquiries

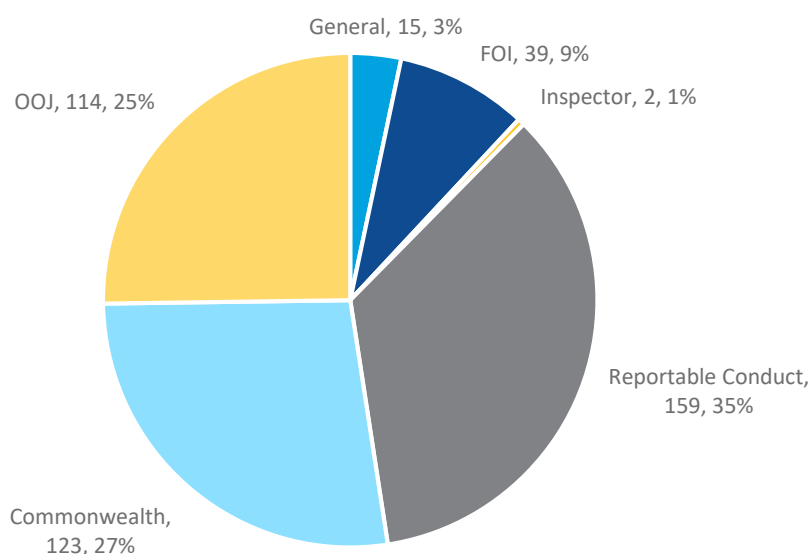
We received **452 enquiries** to the ACT Ombudsman via our phone line and electronically in 2019–20. Of these:

- 159 were about the reportable conduct scheme
- 39 were about FOI
- 2 were about our role as the Inspector of Integrity Commission
- 15 were general enquiries related to the work of the ACT Ombudsman
- 123 related to the work of the Commonwealth Ombudsman
- 114 were out of jurisdiction (OOJ) for our Office

Figure 1 provides a breakdown of the enquiries received by topic area.

⁵ See <https://www.actjudicialcouncil.org.au/annual-report>.

Figure 1—Types of enquiries received by the ACT Ombudsman in 2019–20



Complaints management

Complaints received

In 2019–20, as outlined in Table 1, the Office received a total of **520 complaints**, comprising:

- 70 complaints that related to ACT Policing.
- 423 complaints that related to ACT agencies and general public administration matters
- 11 complaints that related to the FOI Act
- 15 complaints that related to the ACT Reportable Conduct Scheme
- 1 complaint related to our work as Inspector of the ACT Integrity Commission.

Table 1—ACT complaints received during 2019–20, compared with the last two financial years

	2017–18	2018–19	2019–20
Complaints received about ACT agencies	349	381	423
Complaints received about ACT Policing	98	61	70
Complaints received related to FOI Act	-	5	11
Complaints received about ACT Reportable Conduct Scheme	-	20	15
Complaints received about ACT Integrity Commission	-	-	1
Total complaints received	447	467	520

There has been an 11 per cent increase in total complaints received since last financial year.⁶Complaints about ACT government agencies increased, with 423 complaints received in 2019–20 compared to 381 complaints in 2018–19. Complaints regarding ACT Policing increased, with 70 complaints received in 2019–20 compared to 61 complaints in 2018–19. Complaints in relation to FOI also increased this year, as did Reportable Conduct complaints.

⁶ In the 2018–19 ACT Ombudsman Annual Report, Reportable Conduct and FOI complaints were not included in this section.

Complaints about agencies

Table 2 outlines the complaints received by ACT Directorates, ACT Policing and other independent ACT agencies.⁷

Table 2— ACT complaints received during 2019–20 by agency

	Complaints received by directorates, ACT Policing and other independent ACT agencies in 2019–20	Percentage of Complaints received by directorates, ACT Policing and other independent ACT agencies in 2019–20
Chief Minister, Treasury and Economic Development Directorate	123	24
Justice and Community Safety Directorate	121	24
Community Services Directorate	86	17
Independent Statutory Offices	41	8
Transport Canberra and City Services Directorate	26	5
Environment Planning and Sustainable Development Directorate	14	2
Canberra Health Services	11	2
Health Directorate	5	2
Education Directorate	7	2
Prescribed authorities	1	<1
ACT Policing	70	14

The largest number of complaints received in 2019–20 regarding an ACT Directorate were about the Chief Minister, Treasury and Economic Development Directorate (CMTEDD). Together, complaints about CMTEDD, the Community Service Directorate (CSD) and the Justice and Community Safety (JACS) Directorate made up 65 per cent of all complaints about ACT agencies.

For individual agencies, as opposed to directorates, the largest number of complaints received were about:

- ACT Corrective Services (ACTCS), 117 complaints
- Housing and Community Services ACT (Housing ACT), 75 complaints
- Access Canberra, 66 complaints.

A more detailed table indicating complaints received by individual agencies is provided at **Appendix 1**.

How complaints were received and from where

Figure 2 below shows the telephone is still the preferred method for contacting our Office this year.⁸

Use of the telephone and our web based form has remained stable compared to the previous financial year. Email contact has increased from 8 per cent in 2018–19 to 22 per cent in 2019–20.

⁷ This includes complaints related to the FOI Act but not the Reportable Conduct Scheme, which are discussed separately in this report. As such complaints can also be made about non-government entities.

⁸ This includes all complaints received, except those relating to the Reportable Conduct Scheme.

Figure 2—How ACT complaints were made during 2019–20 compared to the previous financial year

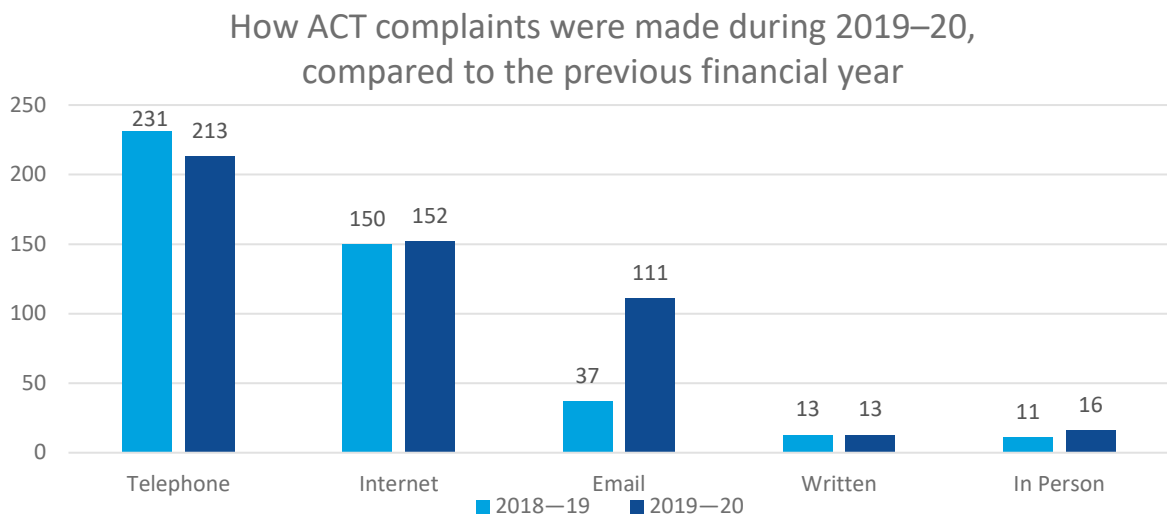
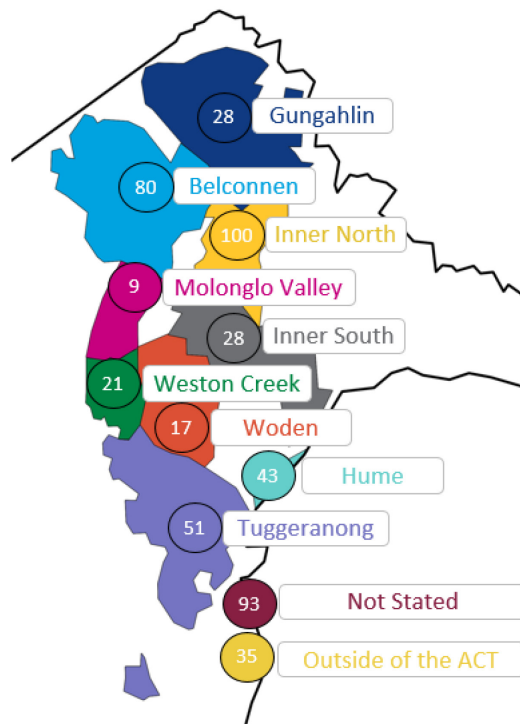


Figure 3 provides a breakdown of **505 complaints** made by ACT district. The highest number of complaints (100) were received from the Inner North, followed by Belconnen with 80 complaints. We received 93 complaints from people that did not state their suburb, and 34 complaints from outside of the ACT.

Figure 3—Where ACT complaints were made from during 2019–20 by ACT District



Complaints finalised

As outlined in Table 3, in 2019–20 the Office finalised a total of **521** complaints comprising:

- 70 ACT Policing matters
- 424 complaints relating to ACT government agencies
- 11 complaints relating to the FOI Act
- 16 complaints relating to the Reportable Conduct Scheme.

Table 3—ACT complaints finalised during 2019–20, compared to the previous two financial years

	2017–18	2018–19	2019–20
Complaints finalised about ACT agencies	353	382	424
Complaints finalised about ACT Policing	100	65	70
Complaints finalised related to FOI Act	-	-	11
Complaints finalised about ACT Reportable Conduct Scheme	-	15	16
Total complaints finalised	453	462	521

Every complaint is assessed on its merits to determine whether it can be resolved quickly or a formal investigation is required. Our focus on early resolution provides a better service for complainants, with positive outcomes for people often able to be achieved without the Office proceeding to a full investigation.

CASE STUDY

An ACT resident complained to our Office as they disagreed with a decision by Transport Canberra and City Services (TCCS) that their vehicle was illegally parked on territory land, and about the behaviour of the licencing and compliance officer. The resident had complained to TCCS through Access Canberra but had not received a response. Our Office made preliminary inquiries with TCCS to determine the status of the complaint. In response, TCCS investigated the complainant's concerns, contacted the complainant and apologised for the initial incident and how their complaint had been handled. It advised our Office that it has since initiated new procedures to ensure complaints are dealt with in a timely manner.

Outcomes achieved for investigated complaints

The table at **Appendix 2** provides outcomes resulting from investigations finalised in 2019–20. More than one outcome can be achieved per complaint investigation.

The outcomes achieved this financial year included:

- the Ombudsman being able to provide a better explanation to the complainant in 45 cases
- a better explanation being provided by the agency in 14 cases
- a remedy being provided by the agency in eight cases
- the action being expedited in four cases
- a change to a law, policy or procedure in two cases
- a decision being changed or reconsidered in eleven cases.

During this financial year, the Office finalised 57 investigations. In most matters, the complainant's concerns were resolved after we commenced our investigation and raised the matter with the relevant agency. In some matters, we were able to provide independent assurance to complainants that agencies had acted reasonably and lawfully, and a better explanation of what occurred.

Performance against service standards

Our Office has service standards in place from 1 July 2019.⁹ These standards apply to complaints we receive about government agencies, whether Australian Government or ACT Government.

We aim to resolve 60 per cent of all government complaints within seven days. We are usually able to achieve this timeframe for routine or simple complaints, but more complex complaints will take longer. This means we may not always meet the 60 per cent target where we receive a higher proportion of more complex complaints.

This financial year, 43 per cent of complaints about ACT government agencies were closed within seven days, with 83 per cent of complaints finalised in 30 days. Almost all of our ACT complaints (99.5 per cent) were finalised in 12 months as expected, with 94 per cent finalised in 90 days.

We are developing separate service standards to give added transparency and certainty to the work we do in the ACT. We also continue to explore ways to deliver efficiencies in complaints management, while ensuring we provide the ACT community with appropriate levels of service where complex complaints are made.

Complaint trends and agency engagement

The sections below provide more detailed commentary on complaint trends about particular ACT government agencies during 2019–20 and initiatives by our Office in response.

Complaints made about FOI or Reportable Conduct matters are discussed separately under the relevant sections. Complaints about the ACT Integrity Commission are discussed in the ACT Inspector of the Integrity Commission Annual report.

ACT Corrective Services

117 complaints were received in 2019–20 about ACT Corrective Services (ACTCS), an increase of 70 per cent compared to 2018–19.

These complaints were all made about the Alexander Maconochie Centre (AMC), and almost all were made by detainees. Common issues stemming from these complaints included:

⁹ <https://www.ombudsman.act.gov.au/making-a-complaint/what-we-do-with-your-complaint>.

- access to facilities, programs and medical treatment at the AMC
- access to visitors
- strip searching policies
- parole processes
- segregation practices
- cleanliness of the prison
- detainee property
- failure to make policy instructions publicly available
- management of correspondence, including with legal representatives
- staff conduct.

CASE STUDIES

We received a complaint from an AMC detainee about food purchases not being provided or going missing. Following our investigation, AMC management advised that a new process of checking food items received against those ordered has been implemented. Our investigation resulted in a positive change to a policy and practice.

An AMC detainee complained to our Office that their property was accidentally damaged by correctional officers during a cell search. They asked for the property to be replaced, or for the cost to be reimbursed. After an investigation by our Office, ACTCS discovered there had been a miscommunication which had resulted in a delay in ordering a replacement item. ACTCS then ordered the replacement item and gave it to the detainee.

A detainee contacted our Office to complain their parole hearing, due in April 2020, had been delayed. Following our investigation, ACTCS advised us they were working closely with the Sentence Administration Board to ensure parole hearings occur as quickly as possible. They were also ensuring Sentence Management Officers had been explaining current and interim processes to detainees, including any changes to hearing times and schedules.

Our Office has continued to work closely with ACTCS during 2019–20 to manage the increase in complaints to our Office and help ACTCS to address any systemic issues in conjunction with other AMC oversight agencies, such as the ACT Human Rights Commission and the Office of the Inspector of Correctional Services.

In 2019–20, we signed a joint relationship protocol with other AMC oversight agencies outlining how we will work together to ensure effective oversight of the prison. The protocol is available on our website.¹⁰ We also finalised a new protocol to ensure that complainants who contact multiple oversight agencies have their issue directed to the appropriate agency, and we avoid duplication.

Together with other oversight agencies, the Office raised concerns about strip searching procedures at the AMC, following the introduction of new arrangements. ACTCS acknowledged our concerns and some of the feedback was incorporated into revised policy guidance.

Our Office also provided feedback to ACTCS on numerous new and draft policies this year, including those relating to open access, parole, and the detainee communications and policy framework.

¹⁰ https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0019/109621/Relationship-Protocol-between-agencies-responsible-for-the-oversight-of-the-Alexander-Maconochie-Centre.pdf

In 2019–20, we finalised a process for facilitating the agreed assisted referrals of AMC complaints to ACTCS. This new process ensures that where a complaint relating to the immediate safety, wellbeing or dignity of a detainee or where a detainee is having difficulty accessing the complaints process, they are put in direct contact with the area best able to manage their complaint quickly and effectively. A feedback loop also ensures the ACT Ombudsman is updated about the outcome of the matter and that it is resolved. A copy of our assisted referral policy is available on our website.¹¹

We also developed new posters, in collaboration with other AMC oversight agencies, to display at AMC which clearly explain what detainees can complain about and the internal and external pathways to make a complaint.

Housing ACT

Seventy-five complaints were received about Housing ACT in 2019–20, a decrease of nine per cent in comparison to last financial year.

The most common issues raised included:

- maintenance issues and in particular, failures to undertake or complete urgent maintenance
- requests to transfer properties or request for new properties, particularly where allocated housing did not meet the medical/specialised needs of the resident
- anti-social behaviour and neighbourhood disputes
- debt and refund issues.

We continue to work closely with Housing ACT to facilitate improvements in public administration, including via quarterly meetings to discuss complaint trends and share best practice.

This year, we escalated concerns raised with our Office regarding housing options for detainees who are seeking to apply for parole. Housing ACT introduced new arrangements to ensure public housing properties that are not needed due to the tenant being incarcerated, are handed back more quickly to increase supply, and detainees then placed on the priority list when eligible for bail. Housing ACT staff also commenced visiting the AMC at least monthly to help detainees complete any necessary paperwork. Additional temporary housing options are also being considered by the ACT Government, where a property is not immediately available on exit from the AMC.

Other positive outcomes from our engagement have included:

- introducing assisted referral of complaints to Housing ACT—ensuring that vulnerable complainants who are finding it difficult to resolve their housing-related issues are placed in direct contact with the area that can assist them most effectively.
- working with Housing ACT to clarify and document its complaint pathways and processes, particularly for maintenance requests which are largely managed by a third party contractor, and where the complaints process can be unclear.

¹¹ https://www.ombudsman.act.gov.au/data/assets/pdf_file/0016/110806/ACTCS-assisted-referrals-March-2020.pdf

CASE STUDY

An ACT resident contacted our Office as they were concerned their relative's public housing property was unsafe. They advised that water was entering the property, carpets were being damaged, and their relative was unable to move about their home easily.

Following our investigation, we were able to provide a better explanation to the complainant about the state of their relative's property. We assured the complainant that Housing ACT had made a number of repairs to the home, and there was no evidence of further leaks. Housing ACT agreed to replace the carpet. We also advised the complainant of further steps they could take should the leaks reappear.

Access Canberra

The number of complaints received about Access Canberra increased by 29 per cent this financial year, with **66 complaints** received.

Complaints about Access Canberra covered a broad range of issues including:

- licencing and registration issues, such as vehicles being incorrectly registered to third parties, dealing with stolen vehicles, and difficulties transferring a licence from another state to the ACT
- issues with building and construction, such as complaints about building noise and approvals and not following policy or procedure
- parking and traffic infringement notices and issues with payment plans for traffic infringements
- wait times for vehicle inspection times after the Canberra hail storm
- working with vulnerable people registration practices
- fair trading investigations.

Engagement and education activities also indicated there remained some confusion among agency complaint handlers about the role of Access Canberra, and its complaint handling pathways.

Recognising the importance of its role in ACT complaint handling, our Office increased engagement with Access Canberra this year, with each organisation presenting to the other on our respective roles and processes. We now meet quarterly with Access Canberra to discuss complaint trends and how we can work together more effectively.

CASE STUDY

An ACT resident contacted the Office because of delay in having approved maintenance action taken on a tree next to their home, following a request through the 'Fix my Street' form. The resident had asked for the tree to be assessed 18 months earlier. It was assessed as requiring maintenance within a six month period but the work did not occur and the resident did not receive a response to their job request. We made preliminary inquiries with Access Canberra, which located the work order and followed up with the responsible government directorate, TCCS, to ask for priority action and to ensure the required maintenance work was carried out. TCCS advised our Office there had been an issue with the system for registering maintenance requests and the process for communicating with residents, and that this would be addressed.

Management of Dangerous Dogs

While the Office does not receive significant numbers of complaints about dangerous dogs, the complaints we received showed confusion about how to make a complaint about dangerous dog related matters. This year our Office worked with TCCS to clarify how the ACT community can make complaints about dangerous dogs and published this information on our website.¹²

TCCS also updated our Office on its progress in implementing recommendations from the 2018 Independent Expert Review into the Management of Dogs in the ACT.¹³ TCCS has made significant progress with all recommendations agreed or agreed to in principle, either fully or partially implemented. Our Office will continue to engage with TCCS on its progress, including a proposed update of its operational manual and internal guidance, and further development of community education and awareness campaigns.

ACT Revenue Office

The number of complaints received about the ACT Revenue Office (ACTRO) decreased by 35 per cent this financial year with **17 complaints** received.

The most common issues raised were fees and charges and incorrect decisions. This included complaints about the land valuation objections process as well as land tax arrears payments and processes.

We finalised a complaint investigation this financial year regarding the increase of the unimproved value for a commercial property. During the course of our investigation and a related inquiry into commercial rates by the ACT Legislative Assembly, the property owner received a reduced valuation for their property and some positive changes were also made to the ACTRO website providing greater transparency around how valuations and rates are determined.

This matter raised broader concerns about the transparency of the valuation process for commercial land. We continue to work with ACTRO on these matters and expect to report on them in 2020–21.

¹² <https://www.ombudsman.act.gov.au/making-a-complaint/common-complaints/dangerous-dogs>

¹³ https://www.tccs.act.gov.au/_data/assets/pdf_file/0003/1251345/Independent-Expert-Review-into-the-Management-of-Dogs-in-the-ACT.pdf

Other engagement activities

In addition to responding to individual complaints, we liaise regularly with directorates and agencies across the ACT public sector to identify opportunities to influence improvement in public administration. We also engage with other oversight bodies in the ACT, such as the ACT Human Rights Commission and the Inspector General of Corrective Services, along with equivalent bodies in other jurisdictions, such as FOI Commissioners and Inspectors of Integrity Commissions. This allows us to share concerns, avoid duplication, maximise the efficiency of oversight and identify best practice opportunities for our own Office to improve.

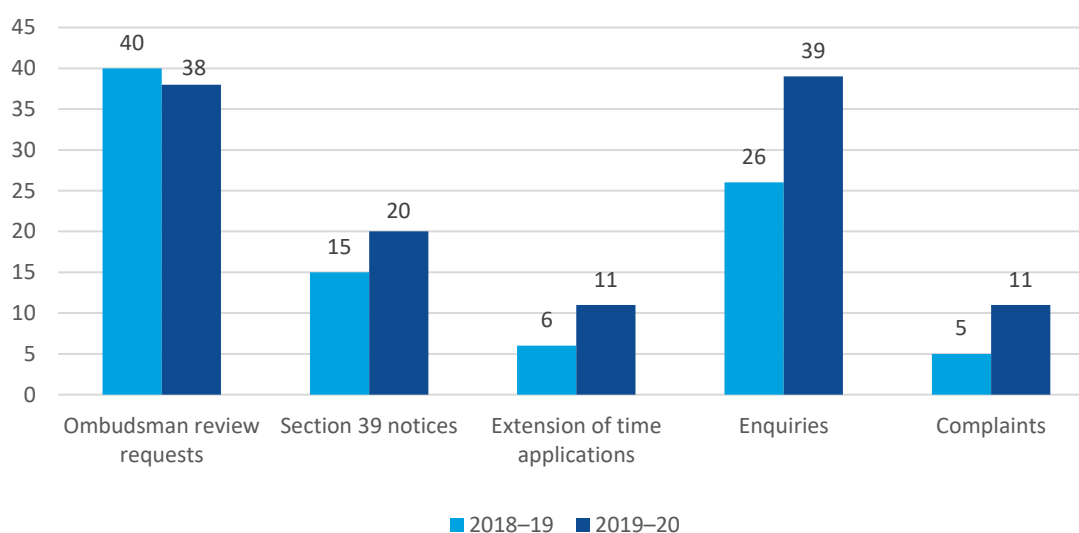
Freedom of Information

FOI contacts received

The Office received **119 contacts** related to our role as the independent oversight agency for FOI in 2019–20. This is a 30 per cent increase on the 92 contacts received in the previous financial year. As outlined in Figure 4, this comprised:

- 38 applications for Ombudsman review
- 20 s 39 notices (notices given to the Ombudsman to advise that a decision on an access application was not made in time)
- 11 extension of time requests
- 39 FOI related enquires
- 11 FOI related complaints.

Figure 4—Contacts received under the FOI Act in 2019–20, compared to 2018–19



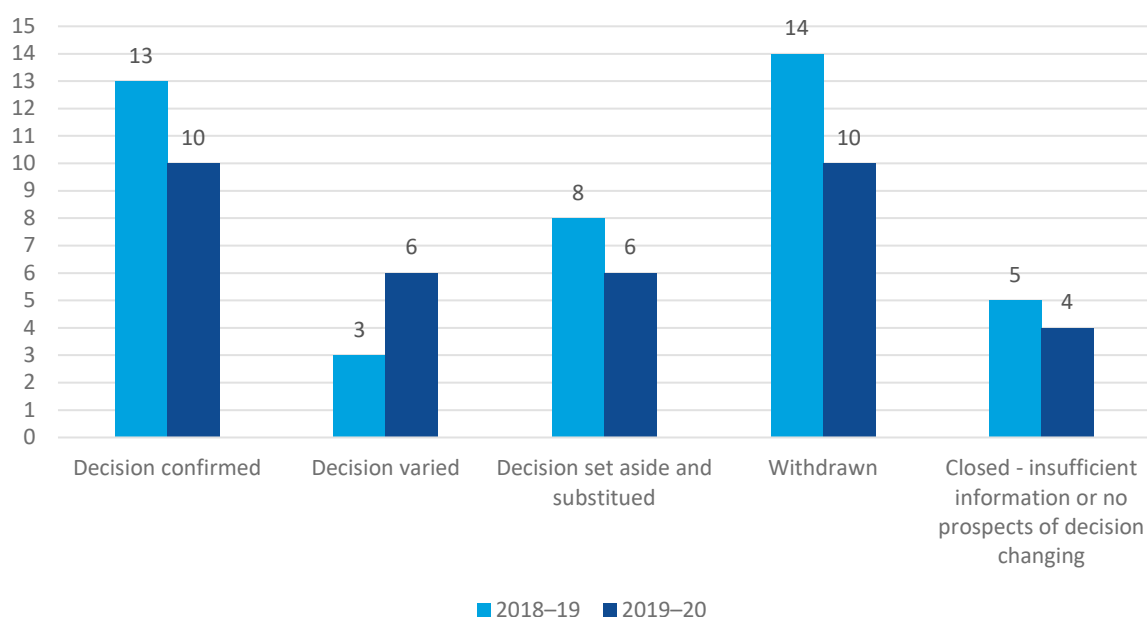
Finalised FOI reviews

As shown in Figure 5, the Office finalised **36 Ombudsman reviews** in 2019–20.

The outcomes of these reviews were:

- the original decision was **confirmed** in 10 cases
- the original decision was **varied** in six cases
- the original decision was **set aside** in six cases
- four matters were closed due to no reasonable prospects of success
- 10 matters were withdrawn following informal resolution activities.

Figure 5—FOI review requests finalised in 2019–20, compared to 2018–19



Performance against service standards

Our Office established service standards for our FOI review applications from 1 July 2019.¹⁴

In 2019–20, we met one of the three standards with:

- 25 per cent of FOI review matters finalised within 6 weeks (below the standard of 30 per cent)
- 42 per cent finalised in 12 weeks (below the standard of 60 per cent)
- 100 per cent finalised in six months as required.

FOI review matters can generally be finalised in six weeks where informal resolution is successful. As a result, our ability to meet the 30 per cent service standard is expected to vary depending on the number of cases that are finalised through informal resolution processes.

Where a formal decision is required, matters are expected to take 12 weeks to finalise and complex matters can take longer. Timeframes may also be delayed where agencies are slow to provide copies of relevant documentation to enable a review to commence.

¹⁴ For more information on Freedom of Information service standards see: <https://www.ombudsman.act.gov.au/improving-the-act/freedom-of-information/foi-complaints-and-reviews>

Published decisions

At 30 June 2020, we had published **47 FOI decisions** on the ACT Ombudsman website.¹⁵

Twenty-three of these decisions were published during this reporting period. Publication of decisions provides agencies and applicants with guidance on the FOI Act, including the application of the public interest test.

Development of FOI guidelines

A priority for our Office in 2019–20 has been the development of FOI guidelines to assist agencies to implement and improve their processes under the FOI Act.

The following six volumes were finalised in May 2020 and subsequently published as notifiable instruments¹⁶. They are also available on the ACT Ombudsman website.¹⁷

- Open Access Information (Guideline 1)
- Dealing with informal requests for government information (Guideline 2)
- Dealing with access applications (Guideline 3)
- Considering the public interest (Guideline 4)
- Amending personal information (Guideline 5)
- Ombudsman reviews (Guideline 6)

These guidelines provide guidance on the interpretation, operation and administration of the FOI Act to assist ACT government decision-makers and promote its pro-disclosure objectives. The Office will continue to monitor and update the FOI Guidelines to ensure they remain a useful resource for FOI practitioners.

Open access monitoring strategy

In 2019–20, our Office has been working with participating agencies to monitor their compliance with open access requirements, including a self-assessment, followed by desktop audits by our Office. The aim of these activities is ensure ACT agencies:

- proactively publish information in the specified categories, or explain their reasons not to publish where required
- publish the information in an accessible manner
- ensure published information is up-to-date and complete.

More detailed advice about the outcomes of these activities is included in the FOI annual report for 2019–20 available on our website.¹⁸

Engagement activities

The Office held two FOI practitioner forums during the year, providing the opportunity for ACT government participants to discuss the operation of the FOI Act and best practice approaches, including applying the public interest test.

¹⁵ See <http://www.ombudsman.act.gov.au/improving-the-act/freedom-of-information/foi-review-decisions>

¹⁶ See <https://www.legislation.act.gov.au/notifications>

¹⁷ See <https://www.ombudsman.act.gov.au/improving-the-act/freedom-of-information/information-for-government-agencies>

¹⁸ See <https://www.ombudsman.act.gov.au/publications/reports>

The forums were also used to workshop and consult agencies in the development of Ombudsman guidelines under the FOI Act. For agency representatives, the forums were an opportunity to build their FOI networks, share their experiences with others and gain an insight into how the Ombudsman views the operation of the FOI Act and lessons learnt from our review work. For the Ombudsman’s Office, they provided an opportunity to share our observations about the FOI Act’s implementation and facilitate discussion to help us identify challenges, opportunities and areas of capacity development in the agencies we oversee.

We also continued to meet with a number of ACT directorates and agencies to discuss agency specific FOI issues throughout the year, including:

- the operation of the FOI Act and current issues impacting agencies
- current reviews with the Ombudsman
- the FOI guidelines
- improving the FOI data collection process for FOI reporting
- third party consultation requirements
- extension of time requests to process access applications
- deemed refusals.

Our staff continue to engage with equivalent bodies in other FOI jurisdictions to discuss current issues, challenges and opportunities.

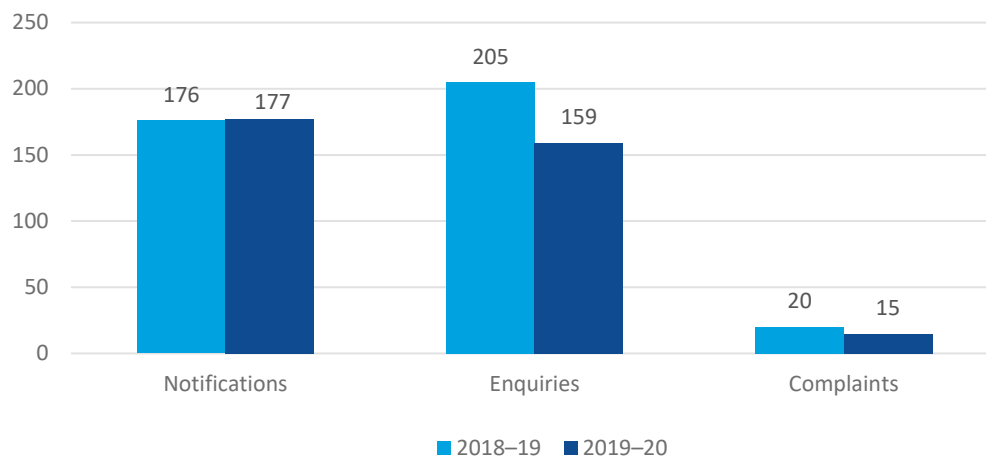
Reportable Conduct

Reportable contacts received

The Office received **351 contacts** related to Reportable Conduct in 2019-20. This is a decrease on the 401 contacts received in the previous financial year. As outlined in Figure 6, this comprised:

- 177 notifications from organisations about allegations of reportable conduct, with 32 of these also being notified to ACT Policing
- 159 enquiries
- 15 complaints.

Figure 6—Contacts received related to Reportable Conduct under the FOI Act in 2019–20, compared to 2018–19



As outlined in Figure 6, notification volumes remained steady overall.

There was a significant increase in notifications in the first half of the financial year, with October recording the most notifications received in a single month. We consider this increase reflects the greater awareness of organisations in the ACT of their reporting obligations, as well as steps they have taken internally to ensure allegations of reportable conduct are identified.

The second half of the year saw a subsequent reduction. However, this may be attributed to COVID-19 restrictions, such as closures of schools and businesses, and parents and carers choosing not to send their children to education and care service providers during the pandemic.

Overall, 66 organisations have now submitted notifications to our Office under the Scheme—with many operating a number of separate services for children and making notifications for more than one of these. The Office continues to promote the scheme with organisations covered so that levels of awareness continue to improve.

Table 4 outlines the number of notifications received this financial year, by sector.

The largest number of notifications received were from government and non-government schools (66 reports) followed by the kinship and foster care sector (52 reports), and education and care providers (36 reports).

Table 4—Notifications received in 2019–20 by sector

	Notifications received in 2019–20 by sector	%
Government and Non-Government Schools	66	37
Kinship and Foster Care	52	29
Education and Care Service Providers	36	20
Residential Care Organisations	8	5
ACT Directorates	6	4
Religious Organisation	6	3
Health Service Providers	3	2

Timeliness of notification reporting

The Act requires organisations to notify the Office within 30 days of becoming aware of an allegation.

In 2019–20, organisations demonstrated mixed compliance with this obligation. Only 60 per cent of notifications were made within the timeframe.

Timeliness of notification is important, as the Office can add most value to an organisation’s response when they approach us early, after conducting their initial assessment, risk management and investigation planning. As a result, where we identify that an organisation is not making timely notifications, the Office encourages them to review their processes and resourcing dedicated to handling allegations of child abuse or child related misconduct by employees.

Sectors performing well in this area include religious organisations, residential care and education and care providers. Following ongoing engagement, Barnados and the Education Directorate have also implemented improved policies and processes in this area.

Cases finalised

Once our Office receives a final report from an organisation at the end of its investigation into a reportable conduct allegation or conviction, we assess it for sufficient inquiry and appropriate action.

The Office may seek further information to be satisfied of the response. Feedback may also be provided to the organisation for them to consider in terms of ongoing practice improvement.

In 2019–20, as outlined in Table 5, the Office finalised **161 matters**—a 10 per cent increase in finalised cases compared to the previous financial year.

Table 5 shows the allegation type of all finalised matters reported to our Office in 2019–20.

The most common allegations reported to our Office were the same as in 2018–19, namely ill-treatment (hostile use of force/physical contact), followed by misconduct of a sexual nature and ill-treatment involving emotional abuse.

Table 5—Allegation type for matters finalised in 2019–20

	Allegation type for matters finalised in 2019–20	%
Ill-treatment - hostile use of force	138	46
Ill-treatment - emotional abuse	70	24
Misconduct of a sexual nature	31	10
Ill-treatment – neglect	28	9
Ill-treatment - inappropriate restrictive intervention	17	6
Offences against a person	8	3
Sexual offences where a child is a victim or is present	7	2

Note:

- ‘Ill-treatment (hostile use of force/physical contact)’ may cover conduct which is unreasonable and seriously inappropriate, inhumane or cruel force/physical contact against a child or which causes a child to fear the imminent use of such force/physical contact.
- ‘Misconduct of a sexual nature’ can include physical contact or speech, or other communication of a sexual nature, inappropriate touching, inappropriate relationship with attention or focus, grooming behaviour, sharing pornography or pornographic images, voyeurism and crossing professional boundaries.

Performance against service standards

When we receive a new notification from an organisation about an allegation of reportable conduct, we assess the initial response by the organisation against criteria such as its reporting to other bodies, its risk assessment and investigation plan. This allows the organisation to take into account our feedback during its investigation. We aim to assess notifications within seven days in 80 per cent of cases.

In 2019–20, 82 per cent of notifications were assessed within the required timeframe.

When we receive a final report from an organisation following its investigation into reportable conduct allegations (s 17J report), we consider whether there was a proper investigation and appropriate action taken and whether we need further information from the organisation. This gives the organisation reasonable opportunity to act on our feedback or provide further information. We aim to complete this within 28 days in 80 per cent of cases.

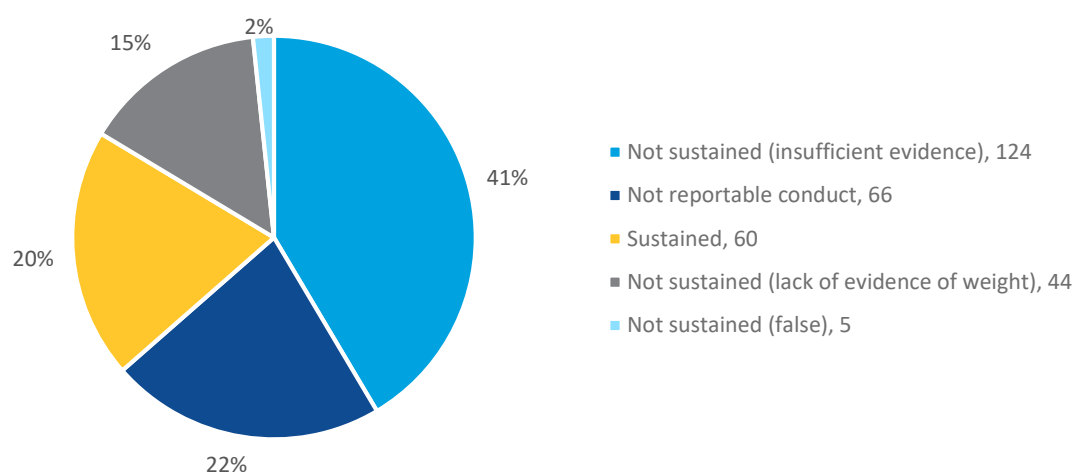
This financial year, 73 per cent were assessed within the required timeframe. The Office experienced an increase in final reports from organisations in the second half of the financial year. Due to COVID-19 this influx of reports has resulted in a backlog of s 17J reports to be assessed. To improve, we have put in place measures including a risk based approach to our triage and assessment of the backlog of s 17J reports while managing incoming s 17J reports and initial notifications. Our focus during this time is to manage immediate risk associated with incoming notifications and monitor current reportable conduct investigations by organisations.

Outcomes

After notifying the Office of a reportable conduct allegation, organisations must provide the Ombudsman with the outcome of its inquiries and what action it has taken as a result—that is, they are asked to indicate a finding on whether or not each allegation has been sustained, or not sustained, after investigating.

Figure 7 and Table 6 summarise the outcomes for each allegation and the actions taken by organisations, as provided to us in reports, finalised this financial year.¹⁹

Figure 7—Outcomes reported by organisations—finalised investigations in 2019–20



The proportion of allegations that were reported as sustained by organisations has decreased to 20 per cent, compared to 35 per cent in 2018–19.

Table 6—Actions taken by organisations—finalised in 2019–20

	Actions taken by organisations—finalised in 2019–20	%
No action after the investigation process	130	43
Training	44	15
Counselling	37	12
Performance monitoring or managing	35	12
Letter of warning	20	7
Other forms of disciplinary action as per employer	15	5
Termination	12	4
Transfer/demotion	6	2

¹⁹ A notification may contain multiple allegations, each having a finding and action recorded.

Investigations and complaints

The Ombudsman may, on his own initiative or in response to a complaint, choose to conduct an investigation into any reportable conduct allegation or conviction against an employee of an organisation considered under the scheme. The Ombudsman may also investigate an organisation's response to a reportable conduct allegation or conviction.

In 2019–20, the Office received 15 complaints about organisations' handling of reportable conduct matters. Most were handled by contacting the relevant organisation and facilitating pathways for complainants to access internal processes or information.

We did not conduct any formal investigations in response to complaints received in 2019–20. We took action under our monitoring powers to address the issues raised in three separate complaints.

Monitoring activities

The Office monitors the practices and procedures organisations have in place to prevent reportable conduct and how organisations deal with reportable allegations and convictions.

During 2019–20, we provided feedback on policies, practices and procedures through our casework, liaison meetings and training sessions. This included feedback about best practice in relation to:

- identifying and managing risks to child safety
- the timeliness of responses to allegations
- planning investigations
- collecting relevant information, including how to interview witnesses and children
- providing procedural fairness to those involved in an investigation
- creating accurate records of interviews and decisions
- good decision-making
- sharing reportable conduct information with other organisations, where appropriate.

In July and August 2019, the Office also surveyed religious bodies to increase our understanding of their level of engagement and the maturity of their reportable conduct processes. We received 39 responses to the survey, covering 92 religious bodies, which indicated they had scope to develop their policies, practices and training further.

Engagement activities

In 2019–20, we conducted engagement activities to support organisations to build their capacity to prevent, report and respond to allegations of reportable conduct. As noted above, engagement with religious bodies that have more recently joined the scheme was a priority.

We hosted two practitioner forums which focused on:

- addressing misconduct of a sexual nature, 'crossing professional boundaries' and the role of child safety officers in schools (September 2019)
- religious bodies (November 2019)—with the Community Services Directorate (CSD) and ACT Policing sharing their experience with attendees.

In addition, we delivered eight information sessions that explained obligations under the scheme, with one dedicated to Barnardos case managers. Feedback from attendees indicated high levels of satisfaction.

The Office also made direct contact with religious bodies to ensure they were aware of the new requirement, introduced on 1 September 2019, to nominate a 'head of entity' responsible for its obligation under the scheme.

We subsequently received 129 nomination forms from religious bodies covering 61 per cent of identified ACT religious bodies, and we have established contacts at more than 180 places of worship in the ACT.

While COVID-19 restrictions impacted engagement activities in the second half of the year, we also:

- attended the Bimberi oversight group, convened by CSD
- attended the Children and Young People Oversight Agencies Group convened by the Public Advocate and the Children & Young People Commissioner
- maintained our regular liaison with Barnardos, the Education Directorate, Senior Practitioner, CMTEDD and the Public Advocate and Children & Young People Commissioner.

In addition this year, we:

- attended the ACT Royal Commission Working Party, convened by CMTEDD
- provided our Office's submission on the Child Safe Standards Discussion Paper to CMTEDD.²⁰

Information sharing

The sharing of reportable conduct information between regulators and oversight agencies, ACT Policing, and organisations under the scheme is important for managing risks to child safety in the ACT.

It has been positive to see organisations adopt a more pro-active approach to sharing such information this financial year, where appropriate to do so.

Information sharing requests have increased this financial year, including requests made between organisations, and to other oversight agencies including ACT Policing and CSD. We have seen organisations use this information to inform their reportable conduct investigations, final findings and outcomes.

To consolidate these developments, the Office plans to publish a practice guide on information sharing in 2020–21, following wide consultation with regulators, oversight agencies and organisations this financial year.

Community Engagement and Support

Engaging with the ACT community remains a key part of our strategy to ensure the ACT community is aware of our services, particularly members of the community who are experiencing vulnerability.

Most of our outreach activities this financial year focused on raising awareness and improving the visibility of our services, following the release of a new separate ACT Ombudsman phone line on 1 July 2019 and our

²⁰ https://www.ombudsman.act.gov.au/data/assets/pdf_file/0015/111291/ACT-Ombudsman-Submission-Child-Safe-Standards-Discussion-Paper.pdf

new ACT Ombudsman website on 1 October 2019. We will continue to seek feedback and make the website a valuable resource for the ACT community.

We also use our ACT Ombudsman Facebook page to share community information and government messages. This year, we released a factsheet to help the community understand how to make a complaint where they were concerned about any interactions with ACT Policing about COVID-19 restrictions.

The ACT Ombudsman also has a range of brochures, guidelines and factsheets available, both printed and online. We have translated our most popular brochure into 22 community languages and made it available to community organisations and at our stalls at community events.

While some planned engagement activities were cancelled towards the end of the financial year due to the COVID-19 pandemic, this year the Office hosted stalls at the Mental Health and Wellbeing Expo, Canberra Fair Day and Annual Comorbidity Interagency Day and the National Multicultural Festival, to raise awareness about our services.

Our staff also attended:

- a Justice Reform Group meeting at the Women's Centre for Health Matters
- a 15th birthday event for Catholic Care's Sobering Up Shelter, including a tour of the facility which provides overnight care of people over the age of 18 recovering from alcohol and/or drug intoxication
- a symposium organised by SOCAP (a consumer affairs professional association) where we met a range of consumer service and complaint professionals
- meetings of 'Who's New on the Street' with homelessness service providers, and the 'Neighbourly Network', a group of community organisations concerned with building better communities
- the ACT 2020 Women's Awards ceremony
- meetings of the ACT Joint Advisory Council Chairs.

Outreach to ACT Aboriginal and Torres Strait Islander communities continued to be a focus this financial year. Our staff attended or met with:

- representatives of the Aboriginal Legal Service, Wreck Bay community, ACT Aboriginal and Torres Strait Islander Justice Caucus Group, Bimberi Youth Justice Centre, Canberra Community Law—Dhurrawang Aboriginal Human Rights Program and the Justice representative of the Aboriginal and Torres Strait Islander Elected Body
- Tjabal Centre for Indigenous students at the Australian National University
- Tjillari Justice Aboriginal Corporation, Yeddung Mura Aboriginal Corporation and the Yurauna Centre at the Canberra Institute of Technology
- Wreck Bay Aboriginal Community Council meeting and the 'Safety in the Pouch' ACT Indigenous Advisory Group interagency meeting
- an Indigenous Business Trade Fair conducted by Supply Nation.

These were important opportunities to build our community networks and gain a general understanding of current issues faced by Aboriginal and Torres Strait Islander community members and their service providers. Such engagements also help inform work done by the Office to ensure our services are accessible.

Scrutiny

The Office appeared before the Standing Committee on Public Accounts in November 2019 for the Annual Report Hearing.

In addition, we made a submission to the Standing Committee on Justice and Community Safety (Standing Committee) 'Inquiry in the form of an evaluation of current ACT Policing arrangements'.²¹ Following our submission, the Ombudsman appeared at the Standing Committee's virtual hearing on the Inquiry on 30 June 2020.

²¹ See https://www.ombudsman.act.gov.au/_data/assets/pdf_file/0025/109663/February-2020-ACT-Ombudsman-submission-into-ACT-Policing-and-AFP-inquiry.pdf

Financial Management Reporting

In 2019–20, the ACT Government paid a total of \$3,030,652 to the Office to undertake its functions. The funding provided to the Office by the ACT Government was used on and to support the functions provided to the ACT. Detailed financial statements for the Office of the Commonwealth Ombudsman, an Australian Public Service entity which currently performs the role of the ACT Ombudsman, are published in the Office of the Commonwealth Ombudsman’s annual report.

In accordance with the Service Agreement between the Office of the Commonwealth Ombudsman and the ACT Government, the Office was provided with:

- \$518,598 for ACT Ombudsman services, including complaint handling
- \$583,054 to provide oversight in relation to ACT Policing
- \$854,000 to perform functions under the Reportable Conduct Scheme
- \$839,000 to implement and perform functions under the FOI Act
- \$140,000 to perform functions as the principal officer to support the ACT Judicial Council
- \$96,000 to implement and perform functions under the Inspector of the ACT Integrity Commission.

Note: all figures quoted above are exclusive of GST.

Part 4—Annual report requirements for specific reporting entities

The Office has statutory responsibility for inspecting ACT Policing records regarding its use of certain covert and intrusive powers under ACT legislation, as well as monitoring its compliance with Chapter 4 and Part 3.11 of the *Crimes (Child Sex Offenders) Act 2005* (the CCSO Act).

Overall, our inspections finalised in 2019–20 found ACT Policing’s records relating to controlled operations and its management of the Child Sex Offenders Register to be generally compliant, but noted some areas for improvement. The results from our inspection of ACT Policing records relating to the use of surveillance devices for the period 1 July to 31 December 2018 were also finalised in 2019–20. We made several recommendations and suggestions to ACT Policing to improve compliance with the *Crimes (Surveillance Devices) Act 2010* (the Surveillance Devices Act). We have seen progress and commitment to further improvement from ACT Policing at subsequent inspections conducted in 2019–20. The results from our 2019–20 inspections will be included in the 2020–21 annual report.

Controlled Operations

A controlled operation provides protection from criminal responsibility for law enforcement officers and civilians who engage in certain conduct that would otherwise be unlawful, if that conduct occurs for the purpose of obtaining evidence that may lead to the prosecution of a relevant offence.

The *Crimes (Controlled Operations) Act 2008* (the Controlled Operations Act) allows ACT Policing to conduct controlled operations in the ACT and in other participating jurisdictions. The Office is required to inspect ACT Policing’s records regarding controlled operations at least once every 12 months to assess the extent of its compliance with the Controlled Operations Act.

The Office’s 2018–19 Annual Report did not include the results from our inspection conducted in 2018–19 for control order authorities that had expired or were cancelled from 1 July 2018 to 31 December 2018. The report about this inspection was finalised and provided to ACT Policing in September 2019, and is discussed further below.

In 2019–20, we conducted two inspections of ACT Policing’s records for all controlled operations authorities that had expired or were cancelled from 1 January to 31 December 2019. The reports about the two inspections have not yet been finalised and will be reported in the Office’s 2020–21 Annual Report.

Inspection criteria

The Office applied the following inspection criteria to assess compliance:

- Did the agency obtain the proper authority to conduct the controlled operation?
- Were activities relating to a controlled operation covered by an authority?
- Were agency records comprehensive and adequate?
- Was the agency cooperative in facilitating the inspection?

Inspection findings

As a result of our inspection in 2018–19, which covered the period from 1 July to 31 December 2018, we made findings about ACT Policing’s reporting obligations under the Controlled Operations Act, as well as about controlled operation authorities which had been left to expire rather than being revoked.

Our Office identified two instances where a report was made by an officer other than the principal law enforcement officer (PLEO) for a controlled operation, contrary to requirements under the Controlled Operations Act. We also identified two instances where the report had not been made within the two month timeframe, as required. These findings were also identified during previous inspections. While these do not represent serious instances of non-compliance, ACT Policing should seek to consistently meet these requirements. In response to our report on this inspection, ACT Policing committed to remind PLEOs of their reporting obligations.

Under s 14 of the Controlled Operations Act, an amendment of a controlled operations authority must include certain information. During this inspection, we identified some omissions and inconsistencies with an amendment that was made to a controlled operations authority. We also found that there was nothing to indicate that this record had been provided to the chief officer, as required under the Controlled Operations Act. ACT Policing committed to reviewing this record and updating it as required.

ACT Policing's *Better Practice Guide* states that a controlled operations authority must not be left to expire if the expiry date is more than seven days into the future. We acknowledge that it is better administrative practice to revoke authorities than to allow them to continue past the date that they are being utilised. We identified one instance where ACT Policing did not comply with this guideline. ACT Policing committed to reminding members of this policy.

The Controlled Operations Act states that the chief officer must ensure the agency keeps a general register of controlled operation authorisations. The register must specify certain details relating to applications for controlled operations authorities, applications granted, and amendments to authorities. In one instance, we identified that the details in the general register were inconsistent with the application and authority. ACT Policing advised that it has corrected this administrative error.

Where ACT Policing has advised of remedial action taken in response to our inspection findings, we review any such action at our subsequent inspections.

Surveillance Devices

The Surveillance Devices Act provides a framework for law enforcement officers to use surveillance devices in the ACT. Surveillance device means a data device, a listening device, an optical device, a tracking device, or a device that is a combination of these devices.

The Office may inspect ACT Policing’s records to assess the extent of its compliance with the Surveillance Devices Act.

The Office's 2018–19 Annual Report did not include the results from our inspection conducted in 2018–19 for surveillance device warrants that had either expired or were revoked from 1 July 2018 to 31 December 2018.²² The report about this inspection was finalised and provided to ACT Policing in June 2020, and is discussed below.

In 2019–20, we conducted two inspections of ACT Policing's records for all surveillance device warrants that had expired or were revoked from 1 January to 31 December 2019. The results of these two inspections have not yet been finalised and will be reported in the Office's 2020–21 Annual Report.

Inspection criteria

We applied the following criteria to assess compliance:

- Did the agency have proper authority for the use and/or retrieval of the device?
- Were surveillance devices used and/or retrieved in accordance with the authority of warrants?
- Was protected information properly stored, used and disclosed?
- Was protected information properly destroyed and/or retained?
- Were agency records comprehensive and adequate?
- Was the agency cooperative in facilitating the inspection?

Inspection findings

Following our inspection in 2018–19, which covered the period from 1 July to 31 December 2018, we made recommendations and suggestions to ACT Policing to improve its compliance with the Surveillance Devices Act, address risks in its practices and remedy issues identified in previous inspections.

Based on the results of this inspection, we could not be satisfied ACT Policing had taken appropriate action to address our previous inspection findings. We suggested ACT Policing revise its inspection practices to ensure it can demonstrate it has considered or implemented our suggested remedial actions. ACT Policing accepted this finding.

We have seen an improvement in ACT Policing's inspection preparation practices and overall engagement with our Office in our 2019–20 inspections.²³ We will review ACT Policing's progress at our next inspection.

During our 2019–20 inspection we identified inconsistencies, errors and a varying level of detail across ACT Policing's reports which meant that we were not always able to determine whether ACT Policing's actions were consistent with the authority of the warrant. We made a recommendation that ACT Policing implement measures to improve the consistency, accuracy and level of detail in its reports. We also highlighted the importance of maintaining accurate records that clearly indicate which warrant was executed as the authority to use a surveillance device. In response, ACT Policing advised it has amended its guidance material and taken action to raise awareness amongst officers exercising these powers.

²² The Office's 2018–19 Annual Report incorrectly states that our inspections conducted in 2018–19 were of ACT Policing's surveillance device records for the period 1 July 2017 to 30 June 2018. Our 2018–19 inspections were of ACT Policing's records for all surveillance device warrants that had either expired or were revoked from 1 January to 31 December 2018.

²³ The results of these inspections will be included in the 2020–21 annual report.

Under s 41 of the Surveillance Devices Act, ACT Policing must keep a register of warrants and emergency authorisations, containing specific details about each warrant or authorisation. During the inspection, we identified some errors in ACT Policing's register which it promptly corrected.

We also made findings and suggestions about inconsistencies and inaccuracies on warrants.

Under the Surveillance Devices Act, there are different types of warrants:

- 'premises warrant'—the use of a surveillance device on a stated premises
- 'object warrant'—the use of a surveillance device in or on a stated object or class of objects
- 'person warrant'—the use of a surveillance device in relation to the conversations, actions or geographical location of a stated person or a person whose identify is unknown

What is authorised by a warrant differs according to the warrant type. We identified instances where ACT Policing warrants included information which was inconsistent with the type of warrant issued, likely as a result of template or quality assurance errors. While this did not affect the scope of what was authorised by the warrant, our view was there was a risk these inconsistencies may lead to misunderstandings about what was authorised by the warrant and result in unauthorised action. We suggested ACT Policing establish a separate template for each warrant type to ensure warrants include only that information relevant to the specific warrant type. ACT Policing advised our Office that it has amended its templates accordingly.

The Surveillance Devices Act defines 'premises' to include a vehicle or part of a vehicle. We identified two instances where ACT Policing was issued warrants authorising the use of a surveillance device on an object. However, in both instances the 'object' was a vehicle, meaning the warrants related to premises rather than an object. In response to our finding, ACT Policing has advised that it had updated its guidance material to clarify that warrants relating to vehicles should be sought as premises warrants.

ACT Policing disclosed one instance where it inadvertently used a surveillance device outside of a state or territory of the Commonwealth. We were satisfied that ACT Policing took appropriate action to mitigate the effects of this non-compliance and to prevent reoccurrence of this issue, but still made a suggestion about documenting instances of non-compliance in ACT Policing reports.

We also identified an area of risk in the absence of procedures governing the destruction of information obtained from surveillance devices. We recommended ACT Policing establish a destructions regime that allows it to identify, on a periodic basis, whether records are required to be kept for a stated purpose. ACT Policing advised us of action it is taking in line with our recommendation.

Where ACT Policing has advised of remedial action taken in response to our inspection findings, we will review any such action at our subsequent inspections.

Assumed identities

The *Crimes (Assumed Identities) Act 2009* (the Assumed Identities Act) facilitates investigations and intelligence-gathering regarding criminal activity by providing for the lawful acquisition and use of assumed identities in the ACT. Our Office may inspect ACT Policing's records to assess the extent of compliance with the Assumed Identities Act.

To date, we have not conducted any inspections under the Assumed Identities Act as ACT Policing advised it has not applied any of the provisions.

Child Sex Offenders Register

The ACT Child Sex Offenders Register (the register) is established by the CCSO Act. Chapter 4 of the CCSO Act sets out how ACT Policing must manage the register, including the information that must be recorded on the register and the controls that must be applied to the use and disclosure of information from the register.

Under Part 3.11 of the CCSO Act, ACT Policing may apply for a warrant to enter and search the premises of a registrable offender in order to verify the offender's personal details or determine whether the offender has breached, or is likely to breach, an order prohibiting certain conduct.

The Act requires the Office to monitor ACT Policing's compliance with Chapter 4 and Part 3.11 of the CCSO Act. To date, we have not made an assessment regarding Part 3.11 of the CCSO Act as ACT Policing advised it has not applied any of the provisions.

During 2019–20, our Office finalised one inspection of the register that was conducted during 2018–19. As a result of this inspection, we were satisfied that ACT Policing's management of the register complies with the requirements of the CCSO Act.

Action taken by ACT Policing in response to our previous inspection findings was effective in both reducing the number of errors and improving the level of detail recorded in the register. However at our 2018–19 inspection we noted some inconsistencies in ACT Policing's practices for recording particular types of information in the register. We suggested that ACT Policing implement clear guidelines about how to record different types of information reported by registrable offenders. ACT Policing advised that it will continue to improve practices and procedures to reduce administrative errors. We will continue to monitor this at future inspections.

The detailed report on the results of the 2018–19 inspection was provided to ACT Policing and the Minister for Police and Emergency Services in May 2020.

Our Office's 2019–20 inspection of the register has been postponed until 2020–21 due to the COVID-19 pandemic.

Review of complaint handling under Part V of the *Australian Federal Police Act 1979*

Under s 40XA of the *Australian Federal Police Act 1979* (AFP Act) (Cth), the Commonwealth Ombudsman²⁴ is required to review the administration of the Australian Federal Police's (AFP) handling of complaints through inspection of AFP records. This includes records of the handling of complaints about ACT Policing.

Further, under s 40XB of the AFP Act, the Ombudsman may, at any time, inspect the records of AFP conduct and practices issues for the purposes of reviewing the administration of Part V of the AFP Act.

²⁴ The Commonwealth Ombudsman is also the ACT Ombudsman.

The Ombudsman reports annually to the Federal Parliament, on our review of AFP's activities under Part V of the AFP Act. Our most recent report covered two reviews conducted during 2017–18 and was tabled in May 2019. The results from reviews conducted in the 2018–19 financial year will be detailed in the Ombudsman's annual report under the AFP Act which will be finalised in the second half of 2020.

In October 2019, the Ombudsman performed a three day review under s 40XB of the AFP Act which focused on service delivery in specific areas such as the recording of conflict of interest issues, communication with complainants and timeliness in resolving complaints. The results of this review will be incorporated into the Ombudsman's annual report under the AFP Act for the 2019–20 financial year.

The Ombudsman's annual review of the administration of AFP's handling of complaints through inspection of records under s 40XA of the AFP Act was postponed due to the COVID-19 pandemic. We expect to hold this annual review in the latter part of 2020. The results of this review will be included in the Ombudsman's annual report under the AFP Act for the 2019–20 financial year.

Part 5—Whole-of-Government Annual Reporting

Freedom of Information

Decisions on open access

During 2019–20, our Office published its Open Access Information Strategy on our website, and continued our efforts to pro-actively publish government information. This included publishing 2018–19 annual reports, new policy documents and four ACT Ombudsman quarterly reports.

We did not make any decisions to refuse to publish open access information, or descriptions of open access information.

Access applications

Six applications for release of information were received by the Office under the FOI Act, with:

- access granted in full in one matter
- access granted in part in three matters
- access refused in one matter
- one access application withdrawn.

A decision in one application was provided outside the timeframes allowed under the FOI Act.

On 2 April 2020, the Attorney-General tabled a statement in the ACT Legislative Assembly under s 39 of the FOI Act containing reasons for the length of time taken.

Charges and application fees

The FOI Act provides that information should be released at the lowest reasonable cost to applicants.

We have not charged for information released under an access application made to the Office.

Human Rights

The *Human Rights Act 2004* (the Human Rights Act) forms part of the legislative and policy framework relevant to the complaints we receive. The Human Rights Act provides protections for peoples' civil and political rights and requires that agencies act consistently with those rights. When assessing a complaint, the Office considers whether the action or decision of an agency may engage one or more human rights.

Part 6—State of the Service Report

Public Interest Disclosure

The Office is a 'disclosure officer' under the *Public Interest Disclosure Act 2012* and may investigate disclosable conduct that relates to the head of service.

We do not have oversight responsibility for the Public Interest Disclosure (PID) Scheme, however the Office can take complaints about and review the handling of PIDs by ACT public sector agencies.

There were no disclosures received during the reporting period. However, we received two PID handling complaints, one of which was investigated, and three general PID enquiries.

APPENDIX 1

Table 7—Complaints received by ACT Ombudsman in 2019–20

Directorate/Agency	Total received	Total finalised	Finalised with investigation	Finalised without investigation
Canberra Health Services	11	11	-	11
Chief Minister, Treasury and Economic Development Directorate	123	122	9	113
Access Canberra	66	68	6	62
ACT Revenue Office	17	17	3	14
Canberra Institute of Technology	9	9	-	9
University of Canberra	23	20	-	20
Chief Minister, Treasury and Economic Development - other	8	8	-	8
Community Services Directorate	86	83	9	74
Housing ACT	75	72	8	64
Community Services - other	11	11	1	10
Education Directorate	7	7	-	7
Environment Planning and Sustainable Development Directorate	14	15	4	11
Health Directorate	5	5	-	5
Justice and Community Safety Directorate	121	124	17	107
ACT Corrective Services	117	119	16	103
ACT Emergency Services Agency	1	1	-	1
Justice and Community Safety - other	3	4	1	3
Transport Canberra and City Services Directorate	26	27	2	25
ACTION Bus	2	3	1	2
Transport Canberra and City Services - other	24	24	1	23
Independent statutory offices	41	40	1	39

Directorate/Agency	Total received	Total finalised	Finalised with investigation	Finalised without investigation
ACT Court or Tribunal	3	3	-	3
ACT Human Rights Commission	5	5	-	5
ACT Integrity Commission	1	-	-	-
Director of Public Prosecutions	1	1	-	1
Legal Aid ACT	11	11	-	11
Public Trustee and Guardian for the ACT	20	20	1	19
Prescribed authorities	1	1	-	1
ACT Law Society	1	1	-	1
Territory owned corporations	-	-	-	-
ACT Long Service Leave Authority	-	-	-	-
Icon Water	-	-	-	-
Total ACT Government*	435*	435	42	393
ACT Policing	70	70	15	55
Total ACT	505*	505*	57	448

***Note 1:** this table includes the details of general complaints received as the ACT Ombudsman, complaints about FOI and complaints received as the Inspector of the ACT Integrity Commission.

***Note 2:** A further 15 complaints were received about reportable conduct, with a **total of 520 ACT complaints received** by our Office in 2019–20. A further 16 complaints were finalised about reportable conduct, with a **total of 521 ACT complaints finalised** by our Office in 2019–20.

APPENDIX 2

Table 8—Outcomes of finalised complaint investigations for 2019–20 by agency and by outcome

Directorate /Agency	Investigations finalised	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better Explanation by Ombudsman	Better Explanation by Agency	Agency office counselled/ disciplined	Remedy provided by Agency	Penalty waived or reduced	Total outcomes achieved
Canberra Health Services	-	-	-	-	-	-	-	-	-	-	-
Chief Minister, Treasury and Economic Development Directorate	9	-	-	-	1	8	2	-	-	-	11
Access Canberra	6	-	-	-	-	5	1	-	-	-	6
ACT Revenue Office	3	-	-	-	1	3	1	-	-	-	5
Canberra Institute of Technology	-	-	-	-	-	-	-	-	-	-	-
University of Canberra	-	-	-	-	-	-	-	-	-	-	-
Chief Minister, Treasury and Economic Development	-	-	-	-	-	-	-	-	-	-	-
Community Services Directorate	9	2	-	-	6	3	5	-	3	-	19
Housing ACT	8	2	-	-	6	2	4	-	2	-	16
Community Services - other	1	-	-	-	-	1	1	-	1	-	3
Education Directorate	-	-	-	-	-	-	-	-	-	-	-
Environment Planning and Sustainable Development Directorate	4	-	-	-	1	3	2	-	-	-	6
Health Directorate	-	-	-	-	-	-	-	-	-	-	-
Justice and Community Safety Directorate	17	2	-	2	1	15	3	1	3	-	27
ACT Corrective Services	16	2	-	2	1	14	3	1	3	-	26
ACT Emergency Services Agency	-	-	-	-	-	-	-	-	-	-	-
Justice and Community Safety – other	1	-	-	-	-	1	-	-	-	-	1

Directorate /Agency	Investigations finalised	No further action	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better Explanation by Ombudsman	Better Explanation by Agency	Agency office counselled/ disciplined	Remedy provided by Agency	Penalty waived or reduced	Total outcomes achieved
Transport Canberra and City Services Directorate	2	-	-	-	-	2	1	-	-	1	-	4
ACTION Bus	-	-	-	-	-	-	-	-	-	-	-	-
Transport Canberra and City Services - other	2	-	-	-	-	2	1	-	-	1	-	4
Independent statutory offices	1	-	-	-	-	-	-	1	-	-	-	1
ACT Court or Tribunal	-	-	-	-	-	-	-	-	-	-	-	-
ACT Human Rights Commission	-	-	-	-	-	-	-	-	-	-	-	-
Director of Public Prosecutions	-	-	-	-	-	-	-	-	-	-	-	-
Legal Aid ACT	-	-	-	-	-	-	-	-	-	-	-	-
Public Trustee and Guardian for the ACT	1	-	-	-	-	-	-	1	-	-	-	1
Prescribed authorities	-	-	-	-	-	-	-	-	-	-	-	-
ACT Law Society	-	-	-	-	-	-	-	-	-	-	-	-
Territory owned corporations	-	-	-	-	-	-	-	-	-	-	-	-
ACT Long Service Leave Authority	-	-	-	-	-	-	-	-	-	-	-	-
ICON Water	-	-	-	-	-	-	-	-	-	-	-	-
Total ACT Government	42	3	4	-	2	11	30	13	1	7	-	68
ACT Policing	15	1	-	-	-	-	15	1	-	1	-	17
Total ACT	57	4	4	-	2	11	45	14	1	8	-	85

***Note:** this table includes the details of general complaints received as the ACT Ombudsman, complaints about FOI and complaints received as the Inspector of the ACT Integrity Commission, that were finalised in 2019-20. A further 16 complaints about reportable conduct were also finalised in 2019-20, with a **total of 521 ACT complaints finalised** by our Office in 2019-20. One investigation may result in multiple outcomes. Total outcomes achieved is a total of all outcomes excluding no action taken.

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Glossary

ACAT	ACT Civil and Administrative Tribunal
ACC	Australian Crime Commission
ACT	Australian Capital Territory
ACTCS	ACT Corrective Services
AFP	Australian Federal Police
Agencies	Administrative units of ACT government business
AMC	Alexander Maconochie Centre
CMTEDD	Chief Minister, Treasury and Economic Development Directorate
CSD	Community Services Directorate
Directorates	Administrative units of ACT government business
FOI	Freedom of Information
JACS	Justice and Community Safety Directorate
the Office	ACT Ombudsman's Office
OOJ	Out of jurisdiction
PID	Public Interest Disclosure

Compliance statement

Report on omissions and reasons for non-compliance

The Office of the Commonwealth Ombudsman discharges the role of ACT Ombudsman. The ACT Ombudsman is not required to comply with the Annual Report Directions under the Annual Reports Act, but the Commonwealth Ombudsman is required to act in accordance with the Directions under its Service Agreement with the ACT Government. Because the Office of the Commonwealth Ombudsman discharges the role of ACT Ombudsman, many omitted items are separately reported in the Commonwealth Ombudsman Annual Report 2019–20, which is available at ombudsman.gov.au.

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