



OMBUDSMAN AN OFFICER OF
THE ACT LEGISLATIVE ASSEMBLY



17
18

ANNUAL REPORT



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Australian Capital Territory

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A. TRANSMITTAL CERTIFICATE



OMBUDSMAN AN OFFICER OF
THE ACT LEGISLATIVE ASSEMBLY 

2 October 2018

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

Dear Madam Speaker

I present to you my Annual Report for 2017–18.

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

Under s 8(2)(b) of the Act an annual report direction does not apply to Officers of the Legislative Assembly. Although the ACT Ombudsman is an Officer of the Legislative Assembly, this report has been prepared having regard to the directions outlined in the *Annual Reports (Government Agencies) Notice 2017*.

I certify that the Annual Report 2017–18 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 2017 to 30 June 2018.

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

A handwritten signature in black ink, appearing to read "Michael Manthorpe".

Michael Manthorpe PSM
ACT Ombudsman

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The ACT Ombudsman Annual Report 2017–18 is available on the website.

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REVIEW BY THE OMBUDSMAN



I am pleased to introduce the Annual Report for the ACT Ombudsman for 2017–18.

It has been a year of growth, challenge and opportunity for my Office. Following the passage of legislation in the ACT Legislative Assembly, this year we commenced important new functions which aim to provide the community improved assurance about child safety and public administration.

On 1 July 2017, we commenced our new role in receiving and dealing with instances of reportable conduct, being allegations of child abuse and misconduct by employees of certain designated public and private sector organisations. The Reportable Conduct Scheme (the scheme) is a significant reform aimed at protecting children from harm. Similar schemes are being or have been introduced in other jurisdictions, including in the context of responding to the findings of the Royal Commission into Institutional Responses to

Child Sexual Abuse. Following further legislative change, the scheme has been broadened from 1 July 2018 to cover churches and other religious organisations, along with the schools, government directorates and other employers that have been covered by the scheme since 1 July 2017.

In this Annual Report, I publish the first annual statistics on reports that have been made under the scheme, what they are about and what is happening to them. In reading these statistics, care is required. While the headline number of 143 reports may seem significant, the following should be borne in mind:

1. The fact that reports are being made by entities covered by the scheme suggests those entities are already alert to their responsibilities and taking the scheme seriously.
2. The number of reports is within the range of anticipated numbers for the first year of operation, having regard to the operation of similar schemes in other jurisdictions.
3. The reports are generally in the nature of allegations—which, upon investigation, may be sustained or not for a range of reasons.
4. While we group the conduct reported into categories, the majority of the reports pertain to relatively less serious matters within those categories.
5. Entities covered by the scheme are acting appropriately to respond to more serious allegations, including through referral to the police.

We continue to work closely with entities covered by the scheme, as well as other stakeholders.

This Annual Report also includes the first public reporting on the first six months of operation of the new *Freedom of Information Act 2016*, following its commencement on 1 January 2018. In this area, too, my Office has taken on new responsibilities, to undertake merits review of FOI decisions and other functions designed to ensure the efficient and effective operation of the FOI Act. In this role we also seek to work with stakeholders in as constructive and informal a manner as possible, with a strong emphasis on engagement and education, while also upholding the 'pro-disclosure' policy intent of the reforms.

In addition to these major pieces of new work, the Office has seen a decrease in the number of complaints received in our 'traditional' Ombudsman work. While this may indicate improved citizen satisfaction with government services, I am concerned to ensure that our services are well known and of practical value to the community, particularly more vulnerable groups. In the past year we have put effort into deepening our stakeholder engagement in the ACT and have been able to help citizens achieve better outcomes in their dealings with ACT Government entities.

We have also continued our important oversight role with respect to the manner in which the Australian Federal Police (AFP), through its ACT Policing services, exercises various covert or intrusive powers, and we provide oversight of the AFP's management of complaints.

During the past year we have maintained our role as Principal Officer to the ACT Judicial Council, whose activities are described in a separate Annual Report.

Separately, in my role as Commonwealth Ombudsman, my Office has also dealt with many Canberrans about their complaints about Commonwealth government services. The last year, for example, saw a marked increase in complaints to my Office about the National Disability Insurance Scheme, which has been substantively rolled out in the ACT. Interested readers can find out about our Commonwealth activities in our companion Commonwealth Ombudsman 2017–18 Annual Report.

Looking forward, while much of our attention in the year ahead will continue to be directed to our new functions, I am also keen to examine the causes of, and responses to, complaints so as to look for opportunities to influence systemic improvements in administration in the ACT. My Office will be working to gain deeper insights into the way in which people who feel wronged by administrative action, or policing action, are dealt with by the authorities. While as Ombudsman, my staff and I can only investigate a minority of matters that come before us, I am keen to work with agencies to enhance service delivery and complaint-handling capability and continue to listen to the voices of the disadvantaged.

Finally, I thank my hard-working staff who seek, every day, to make a positive difference for the people of our city.

B. ORGANISATIONAL OVERVIEW AND PERFORMANCE

B.1 Organisational overview

The role and functions of the ACT Ombudsman

The role of the ACT Ombudsman's Office (the Office) is to influence systemic improvements in the public sector, public administration and child safety in the ACT, as well as providing assurance that ACT Government agencies act with fairness and integrity. A large part of our role is working with ACT Government agencies to help ensure they provide accessible and effective complaint-handling processes to the public.

In addition to our function of receiving, assessing and investigating complaints about matters of public administration, we also play a central role in the delivery of the Reportable Conduct Scheme (organisation based child protection), undertaking specific functions under the *Freedom of Information Act 2016*, monitoring the use of covert powers and providing support to the ACT Judicial Council.

The ACT Ombudsman function is delivered by the Office of the Commonwealth Ombudsman (Commonwealth Ombudsman) under a Service Agreement between the ACT Government and the Commonwealth Ombudsman. A Senior Assistant Ombudsman and two dedicated teams have day-to-day responsibility for managing the relationship with the ACT Government and the ACT community. Our Operations Branch handles

complaints about ACT Government agencies and ACT Policing, and our National Assurance and Audit Team undertakes inspections of the use of covert powers by ACT Policing.

Complaints regarding public administration

The Ombudsman receives and considers approaches from members of the public who believe they have been treated unfairly or unreasonably by an ACT Government agency or ACT Policing. Complainants are encouraged to deal directly with agencies in the first instance. To support this, we work with ACT Government agencies to help ensure they provide accessible and effective complaint-handling processes to the public.

If the decision to investigate is made, we work cooperatively with the relevant ACT Government agencies to resolve the complaint. While the Office has broad powers to access information, these are generally not required.

When we investigate, our intention is to discover what happened in relation to a complaint and whether action by the agency is required to resolve it. The most common remedies are better explanations from an agency or our Office about a process or outcome, reconsidering a matter or requesting that a matter be expedited if a delay appears to be unreasonable. Our investigations often conclude with feedback aimed at assisting agencies to improve their administrative processes and to avoid unfair or unreasonable decisions or outcomes.

The Office cannot investigate all complaints about all entities. We cannot investigate action taken by a Minister, a judge or magistrate, the Commissioner for Sustainability and the Environment, matters that relate to employment in the public service or actions taken for the purpose of providing a disability service, a health service, a service for children or young people or a service for older people.

Information about our complaints work in 2017–18 is set out in section B.2 of this report.

Reportable Conduct Scheme

The Office commenced a new child safety role in 2017–18 with the start of the Reportable Conduct Scheme (the scheme) on 1 July 2017. While the Office has not previously had oversight of children's services, it now has a central role in providing assurance of, and promoting good practice in, organisations' responses to allegations of misconduct by employees involving children.

Organisations covered by the scheme must report to the ACT Ombudsman allegations, offences or convictions relating to child-related misconduct by an employee. It does not matter if the allegations or convictions arose in the course of an employee's professional or private capacity, or whether a child consents to the conduct. As long as the person was an employee of the organisation at the time the organisation became aware of the allegation, it must be reported to the Office.

The intent of the scheme is to enhance public confidence in the outcomes of organisational responses to allegations of reportable conduct. It does this by giving the Office the role of overseeing responses into employee misconduct when a child's safety or wellbeing is at risk, and of scrutinising the systems of designated entities for preventing and responding to child abuse by its employees.

The scheme is set out in Division 2.2A of the *Ombudsman Act 1989* (the Act). The Office:

- receives reports from designated entities about reportable allegations or reportable convictions of an employee and the action the entity has taken in response, including the results of any investigation carried out by the entity (ss 17G and 17J)
- may monitor an investigation carried out by the entity (s 17I)
- must monitor the practices and procedures of entities for the prevention of reportable conduct and for dealing with reportable allegations or reportable convictions (s 17F)
- may, on its own initiative or in response to a complaint, conduct an investigation into any reportable allegation or reportable conviction, or the response of a designated entity to the allegation or conviction (s 17K)
- may disclose information about investigations to a child, parent and carer (s 17L) and the Office of Fair Trading (s 17M), and may disclose child safety and reportable conduct information it receives under the Act to specified entities (ss 34A and 863C) of the *Children and Young People Act 2008*.

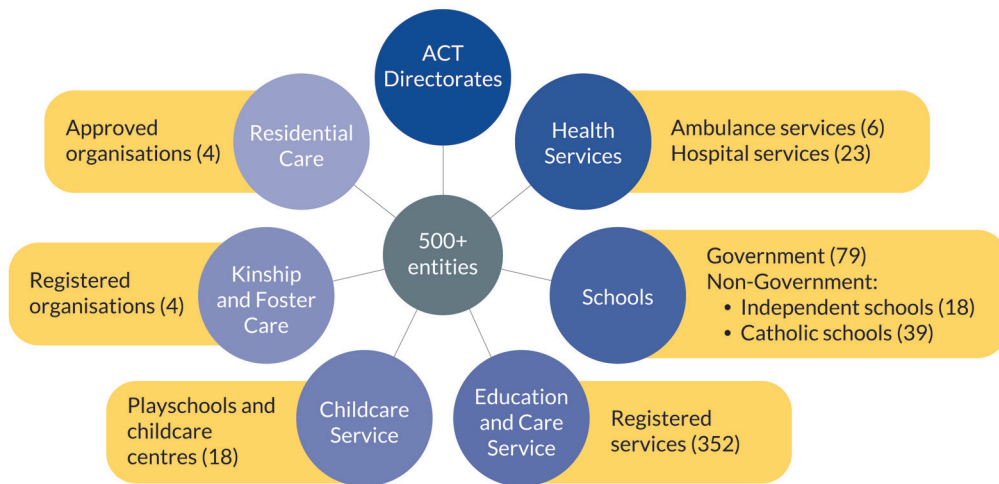
Organisations covered by the scheme in 2017–18 include:

- all ACT Directorates
- health services, such as hospital and ambulance services
- kinship and foster care organisations
- residential care organisations
- government and non-government schools
- education and care services, including after school care.

All employees of the above organisations are included in the scheme, as are volunteers and contractors engaged by the organisation to provide a service to children. The Act was amended in December 2017 to cover labour hire and subcontracting arrangements.

The Act was amended again in June 2018 to include religious organisations in the scheme from 1 July 2018.

Figure 1 – Number of organisations under the Reportable Conduct Scheme as at 30 June 2018



The oversight process role

After an organisation notifies the Office of an allegation of reportable conduct, the organisation is expected to undertake an investigation and address any risks. These inquiries vary in complexity. The Office may decide not to actively monitor an investigation and ask that the entity provide its final report at the conclusion of its investigation.

Once the organisation has completed its investigation, it must provide a report and supporting documents to the Office on the outcome of the investigation and any action taken by the organisation.¹

The Office considers whether the matter was properly investigated and if appropriate action was taken as a result of the investigation. Considerations include whether relevant and available evidence was appropriately gathered, the weight given to the evidence in making any findings and whether the investigation was

procedurally fair. The Office can seek further information from the entity in order to make this determination. We write to the entity when our oversight of the matter is completed.

Under the scheme, organisations are required to have practices and procedures in place to deal with reportable conduct. The Office has responsibility to monitor organisations for compliance with this requirement.

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

Information about our work under the scheme in 2017–18 is set out in section B.2 of this report.

1 ACT Reportable Conduct Scheme process: http://www.ombudsman.act.gov.au/__data/assets/pdf_file/0025/84715/RCS-ACT-Ombudsmans-reportable-conduct-process-map.pdf

Freedom of Information

The *Freedom of Information Act 1989* (ACT) (1989 FOI Act) was in force until 31 December 2017. From 1 January 2018, the 1989 FOI Act was repealed and replaced by the *Freedom of Information Act 2016* (new FOI Act). Any FOI requests made to agencies and Ministers prior to 1 January 2018 continue to be processed under the 1989 FOI Act.

The new ACT Freedom of Information Scheme

On 1 January 2018, the new FOI Act commenced, which provides the Office with a range of new oversight functions, including:

- reviewing the merits of decisions on access applications made by ACT agencies and Ministers under the new FOI Act (Ombudsman review)
- granting extensions of time in which to process access applications
- investigating FOI complaints
- monitoring and reporting on the operation of the new FOI Act
- making formal guidelines and/or open access declarations under the new FOI Act.

The new FOI Act requires a public interest approach to be taken when processing applications for access to government information. Access can only be refused where giving access to the government information sought would be contrary to the public interest.

The new FOI Act is administered with an express 'pro-disclosure bias' and has an objective of facilitating and promoting, promptly and at the lowest reasonable cost, the maximum amount of government held information. Agencies and Ministers are required to proactively publish open access information, and are actively encouraged to consider whether other information can be administratively released outside of the new FOI Act. The new FOI Act expressly

provides that it is not intended to prevent or discourage agencies or Ministers from publishing or giving access to government information.

In performing its FOI functions, the Office works with ACT Government Ministers, agencies and officials through the promotion of pro-disclosure policies and practices, thereby seeking to further the objective of the new FOI Act to make the people and the bodies that are responsible for governing the Territory more accountable to the public.

In progressing applications for Ombudsman review of an FOI decision, the Office will initially seek to resolve matters through informal resolution. This process involves working with the applicant to focus the scope of the review on the particular information sought, and identifying opportunities where the agency or Minister may be willing to provide that information. This ensures that the review matters are resolved as efficiently and quickly as possible.

Where this approach is not able to resolve the review application, the Ombudsman may proceed to make a formal decision. As part of this process, the Ombudsman will provide all parties with a draft consideration and offer the opportunity to provide any further comments, before the decision is finalised. In accordance with s 82(5) of the new FOI Act, all Ombudsman review decisions are published on the Office's website.²

We also have the function of receiving and, where appropriate, investigating complaints about agency handling of FOI matters. The Office investigates such complaints under the Act, following the usual processes and procedures for other complaints about public administration.

Information about our work under the 1989 FOI Act and the new FOI Act during 2017–18 is set out in Part 4 of this report.

² Ombudsman review decisions are located here: www.ombudsman.act.gov.au/Freedom-of-Information

Inspections

The Office monitors police use of covert powers through inspections conducted under the *Crimes (Controlled Operations) Act 2008*, the *Crimes (Assumed Identities) Act 2009* and the *Crimes (Surveillance Devices) Act 2010*.

Information about our inspections in 2017–18 is set out in the Part 4 of this report.

Judicial Council

The ACT Ombudsman, Mr Michael Manthorpe PSM, has been appointed as the Principal Officer for the **ACT Judicial Council**. The Judicial Council is a separate entity established under the *Judicial Commissions Act 1994*. The Judicial Council has powers to receive and examine complaints about judicial officers (judges and magistrates).

The Office of the Commonwealth Ombudsman has a service agreement with the ACT Government to provide staff to support the Council to carry out its functions. The Council issues its own Annual Report to the ACT Attorney-General and this will be published on its website.

B.2 Performance analysis

Information about our complaint work, investigations and reportable conduct is provided below. Information about monitoring and inspection and our Freedom of Information work is provided in Part 4 of this report.

Complaints

Any public contact with the Office is recorded as a complaint. Not all complaints require further action. People contact the Office seeking information on a range of issues including how to make a complaint with an ACT Government agency or ACT Policing.

We will not undertake an investigation of a complaint when:

- we are able to resolve the matter during the initial phone call
- a more appropriate agency can assist the complainant
- we cannot identify a better outcome that would be achieved by conducting an investigation
- the matter has been considered by a Minister, or has been before a court or tribunal.

We may not investigate a complaint if a person has not raised the matter with the agency concerned, if a remedy to the matter cannot be identified, or if the matter is over 12 months old.

In 2018–19, the Office will be using the preliminary inquiry power provided under s 8 of the Act, which allows the Office to quickly obtain information that will assist us in making a decision about whether to start an investigation. We anticipate that this will make dealing with our Office easier for agencies and allow some matters to be resolved more quickly and more informally.

Summary of complaint statistics

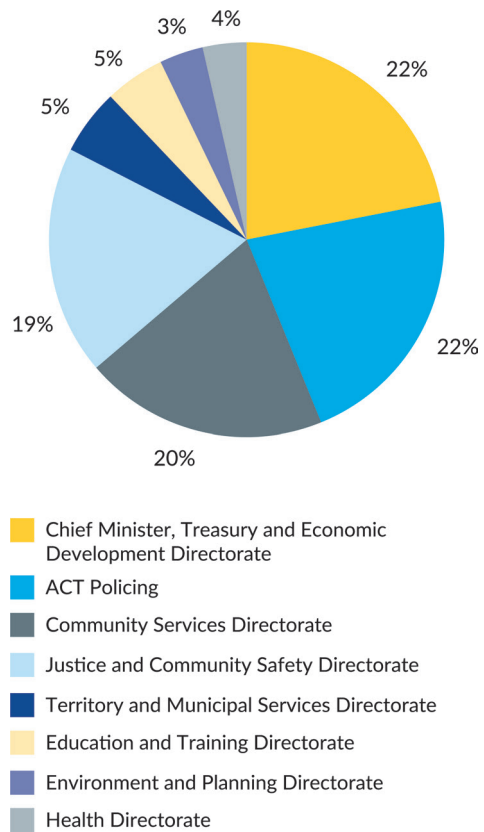
In 2017-18 we received 447 complaints, compared to 526 complaints in 2016-17, an overall decrease of 15 per cent. To continue to build awareness of our Office and the services we provide, we are planning to increase our outreach both directly with the community and agencies throughout 2018-19.

We received 349 complaints about ACT Directorates and agencies (11 per cent decrease from 393 approaches in 2016-17) and 98 complaints about ACT Policing (26 per cent decrease from 133 approaches in 2016-17).

In 2017-18 we finalised 453 complaints compared to 508 in 2016-17, which was a decrease of 11 per cent (not all complaints are finalised in the year they are received). In 2017-18, we investigated 71 of the complaints that were finalised.

Along with complaints about ACT Policing, we received the highest number of complaints from the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) (predominantly Access Canberra), the Community Services Directorate (predominantly Housing ACT) and the Justice and Community Safety Directorate (predominantly ACT Corrective Services). The spread of complaints across agencies is broadly similar to the pattern seen in previous years.

Figure 2 – Complaints received by Directorates, agencies and ACT Policing



Housing ACT

Adequate public housing supports people to build stable, productive lives and to care for children.

In 2017–18 we received 69 complaints about Housing ACT, within the Community Services Directorate, compared to 80 in 2016–17, a decrease of 14 per cent. We investigated 17 of the 71 finalised Housing ACT complaints. The remaining 54 complaints were not investigated, due to the reasons set out on page 7.

The main complaints about Housing ACT were about requests to move properties, maintenance issues and neighbourhood disputes.

CASE STUDY

Housing ACT

Teodora contacted our Office in distress wanting to make a complaint about her Housing ACT property containing high levels of mould. She was also concerned that the structure of the house was being undermined by water damage.

After we investigated, Housing ACT determined, through the engagement of an engineer, that the actions of one of Teodora's neighbours were potentially undermining the structural stability of her property and that it was possible that this was being done deliberately to harass her.

As a result of our investigation, Teodora was placed on a priority housing wait list and was rehoused in a suitable property by Housing ACT. Housing ACT is assessing what action will be taken in relation to the damage to the property.

ACT Corrective Services

In 2017–18 we received 50 complaints about ACT Corrective Services, within the Justice and Community Safety Directorate, compared to 51 in 2016–17. We investigated 12 of the 50 finalised complaints that related to ACT Corrective Services. The remaining 38 complaints were not investigated, due to the reasons set out on page 7.

There are a number of agencies that have oversight of the management of the Alexander Maconochie Centre (AMC). Our role is to receive, investigate and resolve individual complaints from detainees. Phone calls to the ACT Ombudsman from the AMC are free and detainees can also email or write to us. Communications with the Office are protected under s 51 of the *Corrections Management Act 2007*.

A focus this year for the Office has been to improve the visibility and accessibility of our services to the detainees at the AMC. We designed a poster for display in the AMC with the contact details of both the ACT Ombudsman and the ACT Human Rights Commission. We regularly visit the AMC to discuss complaints and other matters with detainees. This also allows us to promptly raise detainee feedback with the AMC management in an informal way.

CASE STUDY

ACT Corrective Services

Conor had been preparing to leave the Alexander Maconochie Centre (AMC) because he had been advised that he had completed his sentence. He was then told at short notice that he was unable to leave, as he needed to apply for parole.

Conor made a complaint to our Office about the advice he had received from the AMC staff, which had caused him considerable distress and resulted in a delay for his anticipated release.

After we investigated, the AMC acknowledged that Conor had been given incorrect advice, apologised for the error and wrote to the Sentence Administration Board to request his parole hearing be held as soon as possible.

Access Canberra

Access Canberra provides a range of customer service, regulatory and licencing functions. It is also a contact centre for a number of ACT Government Directorates. This means that complaints about Access Canberra can cover a wide range of issues.

In 2017–18 we received 39 complaints about Access Canberra, within the CMTEDD, compared to 64 in 2016–17, a decrease of 39 per cent. In 2017–18 we investigated six of the 37 finalised complaints about Access Canberra. The remaining 31 complaints were not investigated, due to the reasons set out on page 7.

Complaints about Access Canberra usually relate to government service delivery and often relate to delay in taking action or responding. In these cases, our Office can act as a ‘circuit breaker’, using our influence to move matters that might have got stuck in the system or been misplaced.

CASE STUDY

Access Canberra

Helen complained to us that Access Canberra was not responding to her complaint. Following our investigation, we found that Helen’s complaint had been referred by Access Canberra to Transport Canberra and City Services (TCCS) for consideration of regulatory action.

However, once TCCS determined no regulatory action was required, the issue of the complaint was not addressed. We were able to fix this oversight and TCCS offered Helen an apology for the delay in contacting her.

ACT Policing

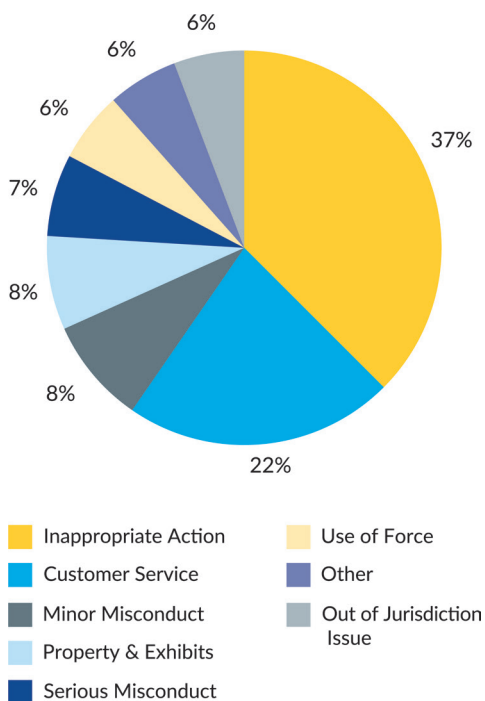
In 2017-18 we received 98 complaints about ACT Policing compared to 133 in 2016-17, a decrease of 26 per cent. We investigated 14 of the 100 finalised complaints that related to ACT Policing. The remaining 86 complaints were not investigated, due to the reasons set out on page 7.

Complaints about ACT Policing can take many forms. 'Inappropriate action' can include complaints about excessive delay, inadequate investigation, or a failure to adequately report or record a matter. 'Minor misconduct' can include inappropriate behaviour (such as intimidating behaviour during traffic stops). 'Customer service' complaints can relate to discourtesy or the failure to provide appropriate advice. 'Property and exhibits' complaints can relate to a failure to return property.

We also received four complaints relating to the 'use of force' and five complaints relating to 'serious misconduct'. If complaints alleging 'serious misconduct' appear to include issues of corruption, they may be transferred to the Australian Commission for Law Enforcement Integrity (ACLEI), although none of the complaints received this year fit that description.

We participated in Community Forums attended by ACT Police and representatives from ACT's Indigenous community. These forums commenced in response to the overrepresentation of Aboriginal and Torres Strait Islander peoples in ACT Policing apprehension rates and in an effort to engage more effectively with local Aboriginal and Torres Strait Islander communities.

Figure 3 – ACT Policing complaints received by type

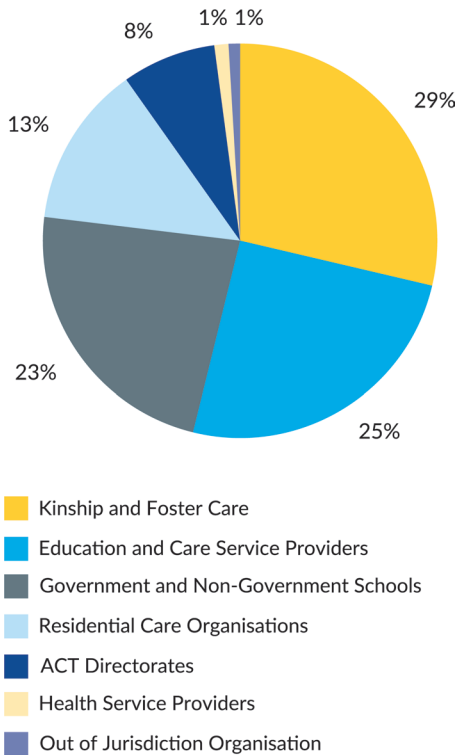


Reportable conduct

The Office received 143 reports from organisations of reportable conduct in 2017–18, which is broadly in line with expectations. The number of reports received suggests that there is reasonable knowledge and awareness of the scheme by organisations subject to the scheme.

The Act specifies the organisations that are under the scheme, which the Office has grouped by sector.

Figure 4 – Notifications received by sector



*Reports to our Office from Education Directorate and ACT Health Directorate are counted in 'government and non-government schools' and 'Health Services' respectively.

Late in the year we noted that the health sector had submitted very few reports when compared to experiences in other jurisdictions with reportable conduct schemes. In June 2018, we engaged with a sample of organisations in the sector to raise awareness of the scheme and to ascertain the sector’s understanding of and experience with the scheme.

Reports by allegation type

The Act specifies a range of conduct that is reportable to the Office under the scheme. For the purposes of reporting, the Office groups conduct into a number of categories, which are explained further in the practice guide published by the Office to assist organisations to determine whether an employee’s conduct is reportable.³

Within each of these categories, the conduct can range from less serious to very serious conduct. For example, 'misconduct of a sexual nature' can range from conduct which crosses professional boundaries or giving inappropriate attention or focus to a child, through to the sharing of pornographic images or grooming behaviour. Similarly, 'hostile use of force' can range from conduct which causes no or minor injuries, such as minor physical contact but in a demeaning or threatening manner, through to corporal discipline or other conduct causing physical injury.

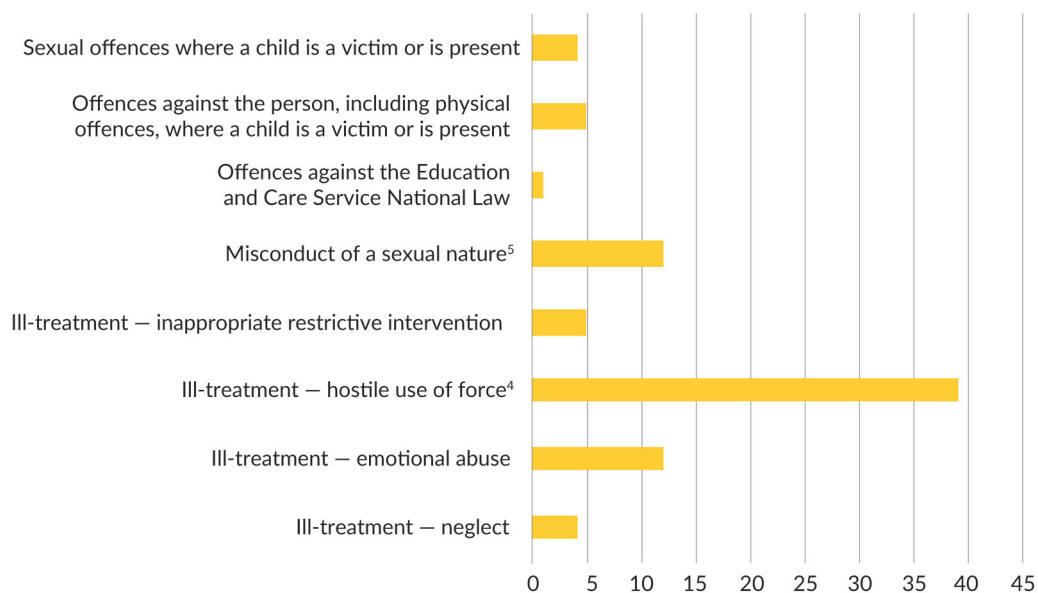
3 ACT Ombudsman Practice Guide No.2 Identifying Reportable Conduct: http://www.ombudsman.act.gov.au/_data/assets/pdf_file/0009/81000/No.-2-Identifying-Reportable-Conduct.pdf.

Our Office records each allegation (there may be more than one in a single report received) of reportable conduct against these categories. While we cannot publicly report on the exact nature of the conduct reported, the majority of reports received represent conduct at the less serious end of these categories. Further, the guidance provided by our Office strongly encourages

employers to contact ACT Policing if there is any possibility that an offence has been committed.

Figure 5 shows the allegation type of all finalised investigations reported to our Office in the first year of operation. The most common allegation reported to our Office was ill-treatment (hostile use of force)⁴, followed by misconduct of a sexual nature⁵.

Figure 5 – Allegation by type – finalised investigations



4 'Ill-treatment – hostile use of force' may cover conduct which is unreasonable and seriously inappropriate, inhumane or cruel force/physical contact against a child or causes a child to fear the imminent use of such force/physical contact.

5 '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.

Outcome

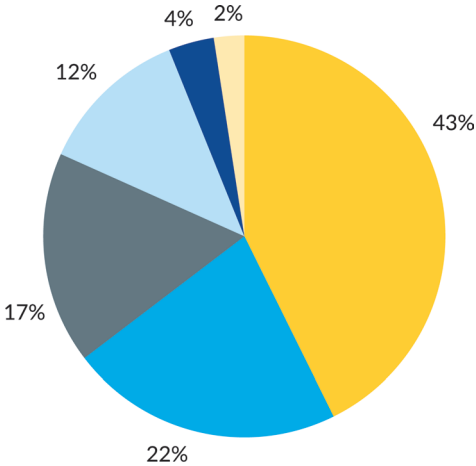
After notifying the Office of a reportable conduct allegation the organisation must provide the Office with the outcome of its investigation.

The Office encourages organisations to indicate whether each allegation has been sustained or not sustained after investigating. Making a finding is important to bring transparency and closure for the parties involved in the matter and to ensure that any risks to child safety can be assessed. It also assists other organisations with whom the information may be shared to perform their roles (for example, in relation to the administration of the Working with Vulnerable People Scheme). The Office has provided guidance on the types of findings to enable consistency in reporting.

Care should also be taken in interpreting the number of ‘sustained’ findings. Our Office is interested in the appropriateness of an organisation’s overall response, taking into account both the nature of the conduct and whether the allegation is sustained or not.

The reports we received from organisations in the first year had a relatively low rate of ‘sustained’ findings. Even where an allegation is not sustained, we look to ensure that potential risks to child safety were acted upon by the organisation as part of its response to the allegation.

Figure 6 – Outcomes reported by organisations – finalised investigations



- Not sustained (insufficient evidence)
- Not sustained (false)*
- Sustained
- Not reportable conduct
- Blank/not recorded
- Not sustained (lack of evidence of weight)

*Not sustained (false): After investigation the agency has made a positive finding that reportable conduct or misconduct didn’t occur. For further information about these outcomes and what they mean, please see the Office’s Practice Guide No 6: Making a finding of Reportable Conduct, available from our website.⁶

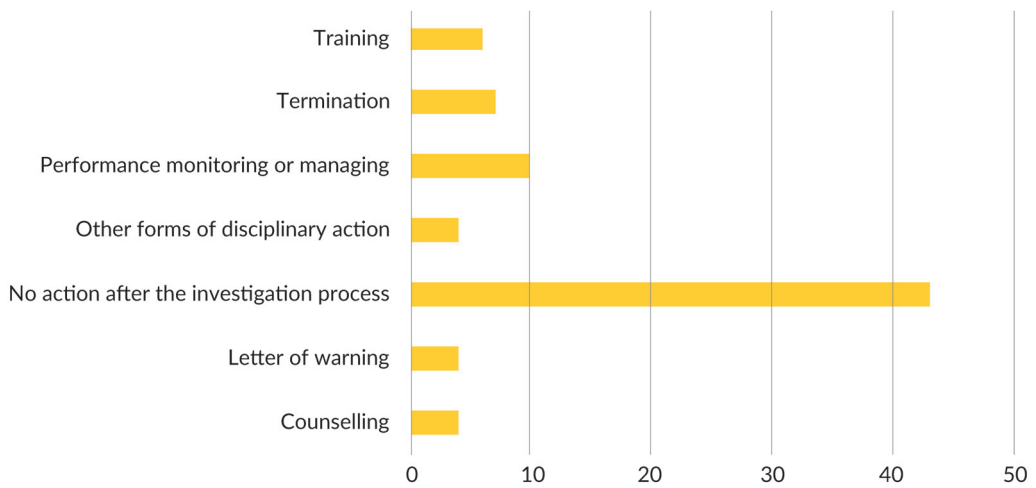
⁶ http://www.ombudsman.act.gov.au/__data/assets/pdf_file/0013/81004/No.-6-Making-a-finding-of-reportable-conduct.pdf.

Action taken by organisations

An organisation covered by the scheme must also tell the Office what action it has taken as a result of the investigation. Organisations tell us about a broad range of responses. Figure 7 illustrates the most common actions organisations have taken after an investigation.

We only seek information on action by organisations. Employee action that may be related to the allegation, such as resignation, is not captured in figure 7.

Figure 7 – Action taken as a result of an investigation



Ombudsman's experience of the scheme

The Office's early experiences indicate how the scheme, and this Office's role in it, can improve ACT organisations' responses to allegations of child abuse and child-related misconduct by employees. This scrutiny can lead to organisations being more child-safe, identification of opportunities for improvement within the organisation's practices and may result in information being shared that might not otherwise have been considered.

The Office's experience of the scheme so far is that we are able to add value to organisations' investigation processes by viewing a matter from an external perspective, analysing information and asking questions of an organisation while a matter is underway. Even where we accept that an organisation's response and finding on a matter might be reasonable, we often provide feedback to the organisation on their investigation techniques, procedural fairness processes, record keeping, interview practices and bias or conflict issues in order to enhance future practices.

Our approach is to seek to improve capacity within organisations to meet the scheme, rather than identifying non-compliance. We have undertaken thorough case management and resource intensive assistance to support organisations to conduct proper investigations and take appropriate action.

Information-sharing between organisations is an important part of the scheme. Information can be shared under the *Children and Young People Act 2008* to help ensure better protection for children. There is ongoing work for organisations to prepare themselves to make requests for information and to respond to such requests appropriately. Understandably, there is a high demand for guidance and support in this area so organisations can be assured they are meeting all legal obligations when they engage with information-sharing.

Complaints and investigations

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 into a reportable conduct allegation or reportable conduct conviction. This role provides greater assurance to the public that organisations are investigating allegations, and that when they do, they do so fairly.

Our Office received two complaints requesting an Ombudsman investigation into an organisation's response to an allegation. In June 2018, the Office published an information sheet for persons subject of an allegation, which includes information about how to make a complaint. We will continue to look for ways to ensure that employees and alleged victims are made aware of their right to complain, including during the investigation process. This will be done through our products aimed at employees and also ensuring that organisations make it known to their employees.

During 2017–18, the Office undertook two investigations in response to complaints that no action had been taken by an organisation in response to an allegation. Both organisations responded by notifying our Office of the allegation as required and commencing an inquiry.

The Office also commenced an own-initiative investigation into an organisation's handling of a reportable conduct matter. The matter had been reported and some inquiry undertaken by the organisation, but a number of issues were raised that warranted further inquiry. We also identified an opportunity to explore issues which may be of interest to other organisations covered by the scheme. The investigation is expected to be finalised in 2018–19.

Support and capacity building for organisations

The Office supports organisations to meet their obligations under the scheme through conducting information sessions for organisations and providing an online **resource kit** which includes a series of practice guides and frequently asked questions. The Office encourages early contact from organisations to our dedicated phone line and email to help ensure reports are made by organisations where required.

Throughout the year, the Office promoted the scheme with a range of activities, set out below, to support organisations' capacity to comply with the expectations of the scheme. We consider that working with organisations in this way has increased the organisations' confidence to respond to complicated matters and better outcomes for the parties involved.

Engagement

Children's services and the private sector are both new areas of jurisdiction for the Office. This means we are oversighting and working alongside a range of organisations that are new to us. We regularly engaged with organisations, oversight and regulatory bodies to inform our work throughout 2017–18. This included the Child and Youth Protection Service and the Human Services Registrar in the Community Services Directorate, Working with Vulnerable People in Access Canberra, Teacher Quality Institute, Workforce Capability and Governance in CMTEDD, Children's Education and Care Assurance in the Education Directorate and the Children and Young People Commissioner and the Public Advocate.

The Office maintained regular liaison meetings with the organisations with higher reporting activity. The meetings provided opportunities to provide feedback on broader practice issues and understand how organisations were experiencing the scheme. We also maintained regular liaison with oversight and regulatory bodies related to child protection to compare and discuss the intersections of the scheme amongst the existing mechanisms.

The Office also established a reportable conduct practitioner's forum which meets on a quarterly basis. Representatives of each of the sectors and key organisations were invited to attend. The purpose of the forum is to provide feedback to the Office on new developments or information products and to share ideas across sectors on best practice in investigations and child safeguarding. In response to members' views, the forums have focused on the role of child protection, challenges and change in the first six months and pathways to information-sharing. These forums will continue to run throughout 2018–19.

We also used a subscription database to provide eight email updates about the scheme, including notifications when new practice guides were released by our Office and theme-based practice information. There are more than 300 subscribers on the distribution list.

Training for organisations

In March 2018 the Office engaged a specialist training provider, Halloran Morrissey, to support organisations' capacity to comply with the scheme's expectations around the prevention, handling and investigation of alleged reportable conduct. Halloran Morrissey developed two skills-based courses, 'Responding and conducting reportable conduct investigations' and 'Investigative interviewing for reportable conduct matters'.

We offered 20 of the day-long courses which were attended by 330 people from organisations covered by the scheme. The courses were delivered in sector groups and therefore were able to be tailored to meet the sector's needs.

Feedback from participants was overwhelmingly positive, including:



I found the entire session useful and informative



The discussions and process information around how to actually do what we know we need to do



The clarification around our role in reporting and how to define whether the allegations is reportable conduct or not



It was all extremely relevant and interesting



All of it is very relevant and 'eye-opener'

While the training was well received, it is clear to us that response and investigation practices in the ACT are still under development. This indicates that the demands on the Office to support organisations are likely to remain high during 2018–19. Feedback from the sessions will also inform the Office's priorities in supporting the delivery of the scheme's intentions in the ACT.

In June 2018, we provided information sessions about creating child safe organisations. The practices of child safety are complementary to an organisation's requirement to meet their obligations under the scheme. Through our contracted service provider Child Wise, we offered five sessions to all organisations under the scheme, including religious organisations that will join the scheme from 1 July 2018. Seventy-five people attended the sessions, with feedback that the information was informative and relevant and that attendees' knowledge had improved.

Throughout 2017–18 we continued to develop our information sheets and practice guides for organisations, building on those developed in 2016–17. The guides were revised following legislative amendments in December 2017.

Monitoring compliance by organisations

Under the Act, organisations are required to have practices and procedures to promote, respond to and prevent reportable conduct, and the Office is required to monitor these policies and procedures.

To inform this role, the Office sent a short survey to all designated organisations in June 2018. The purpose of the survey was to identify the current policies and practices of organisations under the scheme and identify where organisations may require further support or training in the future. A secondary purpose was to help organisations to reflect on their policies and practices related to reportable conduct and identify areas for improvement, through the associated self-assessment tool.

Expansion of the scheme to include religious organisations

The *Ombudsman Amendment Act 2018* expanded the scheme to include religious organisations and was passed by the Legislative Assembly on 7 June 2018 and commenced on 1 July 2018.

The overall success of an expanded scheme will be closely related to the capacity of organisations to comply with the scheme's requirements. The Office will provide support to organisations during 2018–19 to assist them with meeting the requirements.

The Office commissioned a specialist legal and consulting firm, Melhem & Beckett, to conduct stakeholder engagement with the religious sector in May 2018. The Office wanted to better understand the religious organisations present and active in the ACT, raise awareness of the scheme, understand how religious organisations were organised and who was considered the head of the organisation. We were also interested to understand religious organisations' current capacity to comply with the scheme and assess their need for support.

Melhem & Beckett conducted four forums with a sample of organisations in the ACT. Feedback received indicated that organisations were seeking further explanation of the scheme's intention and operation, ongoing training on all aspects of the scheme and supports to develop policies and procedures. We continue to offer information sessions to religious organisations. The Office responds promptly to enquiries and has prepared a range of online materials for organisations to draw on.

The Royal Commission

In December 2017 the *Royal Commission into Institutional Responses to Child Sexual Abuse* released its final report. Volumes 6 and 7 were particularly about making institutions safer for children. The Royal Commission recognised the importance of independent oversight of organisations and recommended a nationally consistent reportable conduct scheme in all states and territories.

The lessons learnt from the stories and case studies of the Royal Commission will continue to inform our practices and the importance of the work the Office undertakes to create safer organisations for children.

B.3 Scrutiny

The Office appeared before the Standing Committee on Public Accounts in November 2017 and the Select Committee on Estimates 2018–19 in June 2018. The Ombudsman also appeared before the Select Committee on an Independent Integrity Commission in July 2017.

C. FINANCIAL MANAGEMENT REPORTING

C.1 Financial management analysis

In 2017–18 the ACT Government paid a total of \$3,296,896 (including GST) to the Office of the Commonwealth Ombudsman to undertake a number of functions.

In accordance with the Service Agreement the Commonwealth Ombudsman was funded \$1,172,796 for ACT Ombudsman services and for complaint-handling and oversight in relation to ACT Policing. The Commonwealth Ombudsman received additional funding for functions in 2017–18 through variations to this Agreement.

The ACT Government provided the Office:

- \$986,700 (including GST) to perform functions under the Reportable Conduct Scheme
- \$88,000 (including GST) to perform functions as the Principal Officer to support the ACT Judicial Council
- \$1,049,400 (including GST) to implement and perform functions under the new FOI Act.

PART 4 – DIRECTORATE AND PUBLIC SECTOR BODY SPECIFIC ANNUAL REPORTING REQUIREMENTS

The Office has statutory responsibility for inspecting the records of ACT Policing in relation to the use of certain covert and intrusive powers under ACT legislation.

During our inspections conducted in 2017–18, ACT Policing was cooperative and provided our Office with sufficient access to relevant information and members of staff.

Overall, the inspections found ACT Policing's records relating to controlled operations and its use of surveillance devices to be comprehensive and adequate. ACT Policing accepted our findings and acknowledged its positive working relationship with our Office. The results of these inspections are detailed below.

Controlled operations

The *Crimes (Controlled Operations) Act 2008* allows ACT Policing to conduct controlled operations in the ACT. The Office is required to inspect the records of ACT Policing at least once every 12 months to determine the extent of compliance with the Act.

In 2017–18, we conducted two inspections of ACT Policing's records associated with all controlled operations authorities that had either expired or were cancelled in 2017.

Inspection criteria

The following inspection criteria was applied to assess compliance:

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

Inspection findings

As a result of both inspections conducted in 2017–18, ACT Policing was assessed as compliant with the requirements of the Act.

At our second inspection (where we inspected three authorities) we noted a number of issues relating to ACT Policing's reporting obligations under the Act.

The Act requires the officer responsible for the controlled operation, known as the Principal Law Enforcement Officer (PLEO), to report specific information about the controlled operation to the Chief Police Officer, within two months of its completion.

In three controlled operations, we identified that an officer other than the PLEO had made the report. The template used for the report didn't prompt the PLEO to sign it. However, based on the processes in place at ACT Policing, we are satisfied that the PLEO had a strong understanding of the activities conducted under the authorities and was aware of the reports' contents.

For one of these controlled operations, ACT Policing disclosed that the report had not been made within the required two month period.

The Act also requires the Chief Police Officer to give the Minister for Police and Emergency Services an annual report with specific information, including the number of controlled operations authorities that were granted or amended.

In one instance, an administrative oversight resulted in the annual report to the Minister not indicating that an amendment had been made to an authority. Following the inspection, ACT Policing advised that it would prepare an amendment to the annual report, addressing this issue.

Surveillance devices

The *Crimes (Surveillance Devices) Act 2010* establishes a framework for the use of surveillance devices by law enforcement officers in the ACT. The Office may inspect the records of ACT Policing to determine the extent of compliance with the Act.

In 2017–18, we conducted two inspections of ACT Policing's records associated with all surveillance device warrants that had either expired or were cancelled from 1 June 2016 to 30 June 2017.

Inspection criteria

The following broad criteria were applied to assess compliance:

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

Inspection findings

As a result of our first inspection conducted in 2017–18, ACT Policing was assessed as compliant with the requirements of the Act.

At our second inspection conducted in 2017–18, ACT Policing disclosed several instances of non-compliance.

The Act requires surveillance device warrants to be issued by judges who are appointed to the ACT Supreme Court. ACT Policing disclosed that three surveillance device warrants were issued by a judge who was not appointed to the ACT Supreme Court.

Despite our Office reporting on this issue previously, ACT Policing acknowledged this was the result of insufficient awareness of the requirements of the Act and has implemented training to increase awareness and prevent future reoccurrence.

We note that, as a result of this issue being identified by ACT Policing prior to the execution of the warrants, no protected information was obtained under the invalid warrants.

ACT Policing also disclosed that a surveillance device continued to capture information for approximately two weeks after the warrant authorising use of the surveillance device had expired. Upon discovery, the device was immediately deactivated and unlawfully captured information was isolated from use.

ACT Policing has since applied remedial measures in order to accurately track warrants and remind investigators when surveillance warrants will expire.

We also identified several issues that were administrative in nature which ACT Policing has rectified through appropriate remedial action.

Assumed identities

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

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

Child Sex Offenders Register

The ACT Child Sex Offenders Register (the register) is established by the *Crimes (Child Sex Offenders) Act 2005*. Chapter 4 of the Act specifies how ACT Policing must manage the register, including whether all necessary information is included on the register and whether there are sufficient controls on the use and disclosure of information from the register. In addition, ACT Policing may apply for a warrant under Part 3.11 of the Act to enter and search the premises of a registrable offender for the purpose of verifying the offender's personal details or determining whether the offender has breached, or is likely to breach, an order prohibiting certain conduct.

Under the *Ombudsman Act 1989*, the Office is required to monitor ACT Policing's compliance with Chapter 4 and Part 3.11. To date, no assessment has been made in regard to Part 3.11 of the Act as ACT Policing advised it has not applied any of the provisions.

During 2017–18, our Office finalised one inspection that was conducted during 2016–17 and conducted another inspection in June 2018. The results of the June 2018 inspection have not been finalised and will be reported on in our 2018–19 Annual Report.

In relation to our finalised inspection, ACT Policing was assessed as compliant with Chapter 4, except in a small number of instances where information was incorrectly recorded or inadvertently omitted from the register. Upon our identification of these instances, ACT Policing corrected each record during the inspection.

The detailed report on the results of this inspection was provided to ACT Policing and the Minister for Police and Emergency Services in January 2018.

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

The Commonwealth Ombudsman has an obligation under s 40XA of the *Australian Federal Police Act 1979* (AFP Act) 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.

The Commonwealth Ombudsman reports to the Commonwealth Parliament annually, commenting on the adequacy and comprehensiveness of the AFP's handling of conduct and practices issues, and inquiries ordered by the relevant Minister. Our most recent Annual Report on the Commonwealth Ombudsman's activities under Part V of the AFP Act covered two reviews conducted during the 2016–17 financial year and was tabled in Parliament in June 2018.

Of the 431 investigation records raised in response to complaints to the AFP during the relevant review periods covered by the report, 32 per cent related to ACT Policing. This is consistent with ACT Policing being the area of the AFP with the greatest contact with members of the public.

Of the ACT Policing investigations, the AFP considered 19 per cent 'established' (substantiated) which is a decrease from the 28 per cent for the last reporting period.

We found that overall the records indicated the AFP is investigating matters appropriately and demonstrated the AFP's administration of Part V of the Act, relating to how conduct issues are dealt with, is comprehensive and adequate. However, we identified deficiencies in responding to practices issues and recommended that the Commissioner ensures appropriate action is taken in response to all identified practices issues, as required by s 40TX(2) of the AFP Act.

We will continue to examine these issues in 2018–19.

Freedom of Information

Freedom of Information complaints

Under s 55(2) of the 1989 FOI Act, the Office is required to report on complaints about the handling of freedom of information requests by ACT Government Directorates.

During the year the Office received seven complaints about the processing of requests under the 1989 FOI Act. Of these, three were investigated and the remaining four were closed on the grounds that investigation was not warranted in the circumstances. We also finalised a further complaint without investigation which was received during 2016–17.

Freedom of Information functions

The *Freedom of Information Act 2016* (new FOI Act) commenced on 1 January 2018. The new FOI Act is a modern FOI scheme that recognises the importance of public access to government information for the proper working of representative democracy. The new FOI Act provides a pro-disclosure framework for determining the public interest in disclosing government information. Access is only refused where the disclosure of the information would be contrary to the public interest.

The Office is the regulatory oversight body of the FOI scheme and has significant review and complaint investigation functions. The Office also has functions relating to:

- making decisions on extension of time requests from ACT agencies and Ministers
- making guidelines
- making open access declarations
- monitoring and reporting on the operation of the new FOI Act.

CASE STUDY

Freedom of Information

Noah was an ex-employee of an ACT Government Directorate. He made an FOI request under the 1989 FOI Act for access to certain documents that related to his employment.

Noah contacted our Office because he was concerned that the internal review decision letter on his FOI request was signed by his former supervisor, who had made the decision to suspend Noah from his employment.

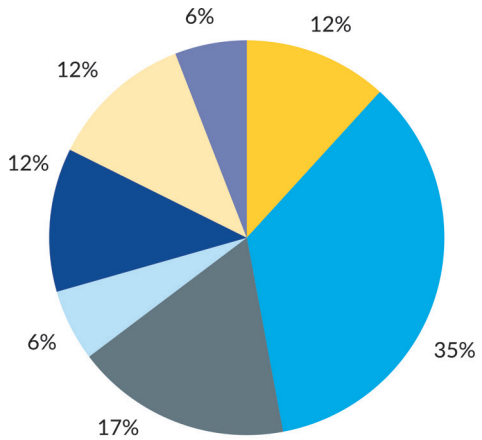
In response to our investigation, the Directorate undertook an independent internal review of the manner in which the FOI request was managed. As a result of this review, additional documents were provided to Noah.

Figure 8 relates to the first six months of the operation of the new FOI Act, from its commencement on 1 January 2018 to the end of the financial year. Our new functions only relate to access applications made to agencies on or after 1 January 2018. Any applications made before that date but not yet finally determined before 1 January continue to be processed under the 1989 FOI Act, which does not provide for Ombudsman review.

Ombudsman review

The Office received 17 applications for Ombudsman review. Figure 8 shows the agencies whose access applications have been the subject of requests for review.

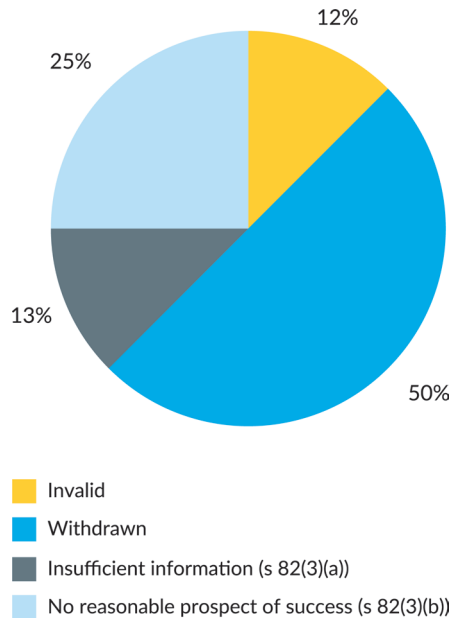
Figure 8 – Agencies whose access applications have been subject to requests for review



- Canberra Institute of Technology
- Chief Minister, Treasury and Economic Development Directorate
- Community Services Directorate
- Environment, Planning and Sustainable Development Directorate
- Health Directorate
- Justice and Community Safety Directorate
- Transport Canberra and City Services Directorate

Eight of the Ombudsman review matters have been finalised as follows.

Figure 9 – Method of finalisation



As outlined earlier, our preferred approach is to seek to informally resolve requests for review wherever we can and to fulfil the objectives of the new FOI Act to provide government information in the most efficient and low-cost means possible. Where this occurs the review is usually withdrawn.

CASE STUDY

Freedom of Information

James sought information relating to issues raised in a public discussion paper. In response, the agency decided to give James access to a number of documents that it found fell within the scope of the access application. James applied for Ombudsman review of the agency's decision on the basis that he believed there was further information that had not been provided to him.

We spoke with James and he identified that he was seeking a methodology document and a number of the agency's working documents. The agency advised us it did not have a methodology document and it had considered the working documents as being outside the scope of the original access application.

However, after speaking with the agency, they did not have any objection to providing this information to James, therefore the agency prepared a methodology document to assist James' understanding of the information provided, acknowledging that such a document would be of interest to him.

Consistent with the objects of the new FOI Act, the agency gave James access to the information he sought. The involvement of our Office, and the positive attitude of the agency, meant James received the information he wanted, without needing a long and legalistic review of whether that information technically fell within the scope of James' access application.

The new FOI Act requires the Ombudsman to make a decision within 30 working days. For matters that can be informally resolved, we have usually been able to do so in less than 30 working days. To 30 June 2018, seven of the eight review matters finalised were closed within 30 working days.

For matters which require a formal decision, our intention is to provide our draft consideration to the parties within 30 working days, to allow the opportunity to comment before finalising the decision. However, this is not always achievable, whether due to delays in receiving information from parties, attempts to resolve the matter informally, complex matters that require clarification, analysis and discussions of often sensitive information and the scope and substance of the review application.

No Ombudsman review matters were finalised with a decision as at 30 June 2018. Of the seven matters where a formal decision is being prepared, none had a draft consideration completed within 30 working days. The Ombudsman has raised these challenges with relevant ACT Government agencies and we are continuing to monitor this issue.

FOI complaints

We have received four FOI complaints relating to access applications made under the new FOI Act. The issues raised in the complaints include delays in FOI processing and allegations that the FOI processes of the new FOI Act are not being followed. The agencies complained about were the Canberra Institute of Technology, the Community Services Directorate and the Health Directorate.

As at 30 June 2018, two complaints had been finalised while the remaining two complaints were open. Neither of the two complaints that had been finalised warranted formal investigation. In one case the agency was still within the statutory processing timeframe and in the other case, a decision on the FOI access application was made while our inquiries were underway.

Other matters

We have received four notifications under s 39 of the new FOI Act, which is where agencies have not processed an access application within the statutory timeframe. These have come from three agencies, one from the Canberra Institute of Technology, one from the Transport Canberra and City Services Directorate and two from the Community Services Directorate.

Community information

We have developed guidance material to assist ACT Government decision-makers and members of the public to understand the new FOI Act. We have also engaged with ACT public servants, presenting on our role as part of legal seminars on the new FOI Act on two occasions. This guidance and support will continue throughout 2018–19.

Report on the operation of the new FOI Act

The Office is required to report on the operation of the new FOI Act each financial year under s 67 of the Act. The Office will provide the report to the Speaker for presentation to the Legislative Assembly once data from ACT agencies and Ministers annual reports has been made available to inform the report.

PART 5 – WHOLE OF GOVERNMENT ANNUAL REPORTING

N. Community engagement and support

In 2017–18 we prioritised improving the visibility and accessibility of our services by increasing our community engagement activities. In particular, we have continued to focus our engagement with the ACT's Aboriginal and Torres Strait Islander communities.

Our Office has a dedicated Indigenous Strategy Team that provides advice and support to staff handling complaints relating to Aboriginal and Torres Strait Islander peoples and communities. In 2016, the Office engaged Gilimbaa, an Indigenous consultancy, to conduct an Indigenous accessibility review. The Office is currently implementing strategies to ensure our services are culturally safe, competent and accessible to Aboriginal and Torres Strait Islander peoples.

We held regular meetings and attended a number of events throughout the year which included:

- meetings with the ACT Aboriginal and Torres Strait Islander Elected Bodies
- attending Caucus meetings in relation to the Aboriginal and Torres Strait Islander Justice Partnership
- joining Members of the Legislative Assembly, representatives from the ACT public sector and community members to attend the NAIDOC week flag raising ceremony
- having a team in the NAIDOC Touch Football Carnival
- participation in the Reconciliation Day walk and bridge crossing
- attending the launch of the University of Canberra's Aboriginal and Torres Strait Islander Strategic Plan.

We ran a local art competition for Aboriginal and Torres Strait Islander people who live in the ACT which saw 11 people submit entries. The competition was to create an artwork that the Office would feature on educational and promotional material. Leah Brideson's work 'Community Together', inspired by the beautiful natural environment of the ACT, was the winner.



Community Together Leah Brideson



ACT Ombudsman Michael Manthorpe with art competition winner Leah Brideson

Outreach

To promote community awareness of our role in complaint-handling, we attended a number of community events, including the National Multicultural Festival, the Multicultural Women's Expo and Seniors week events. We supported Mental Health Week by holding a stall at the Mental Health and Wellbeing Expo in Canberra City and distributing information about our work. We also met with the ACT Council for Social Services (ACTCOSS), the ACT Disability, Aged and Carer Advocacy Service (ADACAS) and the social workers at the Canberra Hospital.

Internally, the Office has taken the opportunity this year to recognise and celebrate our diverse community. This has included a staff lunch for Harmony Day and a presentation by Cody Smith from A Gender Agenda to celebrate the International Day against Homophobia, Biphobia and Transphobia. We have also joined the Neighbour Day Working Group to support initiatives in community-building and social connectedness.

In September 2017 the Office hosted the ACT NAPCAN Child Protection Week function, including the presentation of the ACT Play Your Part Award. Speakers at the event included ACT Children and Young People Commissioner, and representatives from the ACU Institute of Child Protection Studies and the CREATE Foundation. The Office also made a presentation on the purpose and function of the Reportable Conduct Scheme.

O. Justice and community safety

O.2 Freedom of Information

The *Freedom of Information Act 1989* (the 1989 FOI Act) remained in force until 31 December 2017. During the reporting period we received three requests for documents under s 14 of the 1989 FOI Act.

We provided partial access to the requested documents in response to two requests. No decision was provided in relation to the third request on the basis that the requested material was publicly available.

We did not impose any fees or charges on applicants for the processing of their requests.

No applications for reviews of our decisions were made to the ACT Civil and Administrative Tribunal.

O.3 Human Rights

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

In February 2018, the ACT Human Rights Commission provided human rights training to 20 members of our Office, including investigation officers. This included information on the broader human rights framework including the ACT legislation and the legislative scrutiny processes.

P. Public sector standards and workforce profile

P.2 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 ACT Public Interest Disclosure Scheme (PID) and refer any concerns to the Commissioner for Public Sector Standards. The Office can take complaints about and review the handling of PIDs by ACT public sector agencies.

Two disclosures were received during the reporting period and we also received one report that is currently being assessed. We received two PID handling complaints, one is currently being assessed and one was not investigated. We also closed a complaint that was received in an earlier reporting period.

Q. Territory records

The Office has a records management program that was approved by the Director of Territory Records. We operate in line with the *Territory Records (Records Disposal schedule – Ombudsman Complaint Management Records Approval 2011 (No 1) (NI2011-93)*.

Agency Annual Report

Under s 96 of the new FOI Act agencies are required to prepare a report on the operation of this Act in relation to the agency during the year. This information is provided below.

Decisions on open access

The new FOI Act requires information that came into existence on or after 1 January 2018 should be published as open access information. This must, as far as practicable be accurate, up-to-date and complete.

Decisions to publish access information

We have made one decision to publish open access information – this is the Work Practices Manual.

Decisions not to publish access information

We have not made any decisions not to publish open access information.

Decisions not to publish a description of open access information

We have not made any decisions not to publish a description of open access information.

Access applications

No applications for release of information were received under the new FOI Act.

Charges and application fees

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

We do not charge for information released under an access application made to the Office. Further, in our oversight role, our Office does not charge any fees for Ombudsman review.

APPENDIX 1

Complaints received and finalised about Directorates and ACT Policing 2017–18

Jurisdiction/Directorate/ Agency	Received	Finalised			Remedies							
	Received	Not Investigated	Investigated	Total Finalised	Action expedited	Apology	Decision changed or reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total Remedies
Chief Minister, Treasury and Economic Development Directorate	98	88	14	102	1	2	2	11			2	18
Access Canberra	39	31	6	37		1		3			1	5
Chief Minister, Treasury and Economic Development Directorate	18	17	2	19	1			2				3
ACT Revenue Office	22	23	0	23								
University of Canberra	15	14	3	17				2				2
University of Canberra – International	4	3	3	6		1	2	4			1	8
Community Services Directorate	89	71	17	88	7	1	1	11	1		4	25
Community Services Directorate	20	17	0	17								
Housing ACT	69	54	17	71	7	1	1	11	1		4	25
Education and Training Directorate	22	21	1	22				1				1
Canberra Institute of Technology	10	10	0	10								
Education Directorate	12	11	1	12				1				1

Jurisdiction/Directorate/ Agency	Received	Finalised			Remedies							
	Received	Not Investigated	Investigated	Total Finalised	Action expedited	Apology	Decision changed or reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Total Remedies
Environment and Planning Directorate	16	12	2	14				1				1
ACT Environment and Planning Directorate	16	12	2	14				1				1
Health Directorate	16	14	2	16			2	2				4
Health Directorate	16	14	2	16			2	2				4
Justice and Community Safety Directorate	84	72	17	89			1	15		1		17
ACT Corrective Services	50	38	12	50			1	10				11
ACT Court or Tribunal	8	9	0	9								
Human Rights Commission	3	3	0	3								
Justice and Community Safety Directorate	6	7	2	9				1				1
Legal Aid ACT	7	7	0	7								
Public Trustee for the ACT	10	8	3	11				4		1		5
Territory and Municipal Services Directorate	24	18	4	22	1	2	1	3	1			8
ACTION	2	2	0	2								
Transport Canberra and City Services Directorate	22	16	4	20	1	2	1	3	1			8
All ACT Directorates	349	296	57	353	9	5	7	44	2	1	6	74
ACT Policing	98	86	14	100	1		2	4				7
Total	447	382	71	453	10	5	9	48	2	1	6	81

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GLOSSARY

ACAT	ACT Civil and Administrative Tribunal
ACT	Australian Capital Territory
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
PID	Public Interest Disclosure
the scheme	Reportable Conduct Scheme

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 2017–18, which is available at ombudsman.gov.au.

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1	Directions overview		
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2	Public sector body annual report requirements		
	A	Transmittal certificate	page III
	B	Organisational overview and performance	page 3
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	B.2	Performance analysis	page 7
	B.3	Scrutiny	page 19
	B.4–9	Risk management, Internal audit, Fraud prevention, Work Health and Safety, Human Resources Management and Ecological Sustainable Development	n/a
	C	Financial Management Reporting	page 20
	C.1–6	Financial Management Analysis, Financial Statements, Capital Works, Asset Management, Government Contracting and Statement of Performance	n/a
	3	Reporting by exception	
D		Notices of non-compliance	nil to report
D.1 & D.2		Dangerous Substances and Medicines, Poisons and Therapeutic Goods	nil to report

Part	Section	References
4	Agency-specific annual reporting requirements	
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		n/a
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