

# performance and financial management reporting

The ACT Ombudsman's office has been operating for 18 years. During that time we have assisted in resolving complaints from thousands of ACT residents about virtually all aspects of government administration. We bring 30 years of experience in dealing with complaints about Australian Government departments and agencies, through our Commonwealth Ombudsman role.

The office consistently focuses on areas such as the quality of decision making, internal complaint handling, transparency, record keeping, communication with the public, sensitivity to individual needs, and government accountability generally.

By fostering improved government administration, we can strengthen the community's confidence in the integrity and professionalism of government and support fairer and more accountable government.

## THE ORGANISATION

The Ombudsman is an independent statutory officer who considers complaints about the administrative actions of government departments and agencies, and aims to foster good public administration by recommending remedies and changes to agency decisions, policies and procedures. The Ombudsman also makes submissions to government on legislative and policy reform.

The role of the ACT Ombudsman is performed under the *Ombudsman Act 1989* (ACT) (Ombudsman Act). The Ombudsman also has specific responsibilities under the *Freedom of Information Act 1989* (ACT), and is authorised to deal with whistleblower complaints under the *Public Interest Disclosure Act 1994* (ACT).



Prof. John McMillan, ACT Ombudsman

Complaints made about Australian Federal Police (AFP) officers acting in their ACT Policing role are dealt with by this office under our Commonwealth jurisdiction (*Ombudsman Act 1976* (Cth)) and through an agreement with the ACT Government. Up until 30 December 2006 the Ombudsman had specific responsibilities in relation to complaints about the AFP under the *Complaints (Australian Federal Police) Act 1981* (Cth) (Complaints Act). These responsibilities now fall under the *Australian Federal Police Act 1979* (Cth) as well as the Ombudsman Act (Cth). These changes are discussed in detail later in the report.

The Ombudsman has a new role in monitoring compliance with chapter 4 of the *Crimes (Child Sex Offenders) Act 2005* (ACT) (child sex offenders register) by the ACT Chief Police Officer and other people authorised by the Chief Police Officer to have access to the register.

The office investigates complaints in accordance with detailed written procedures, including relevant legislation, a service charter and a work practice manual. It carries out complaint investigations impartially, independently and in private. Complaints may be made by telephone, in person or in writing (by letter, email or facsimile, or by using the online complaint form on our website). Anonymous complaints may be accepted.

The key values of the Ombudsman are independence, impartiality, integrity, accessibility, professionalism and teamwork.

## OVERVIEW

### Complaint statistics

Complaint handling is the core of the ACT Ombudsman's role. In 2006–07 the office received 941 approaches and complaints from the public about ACT Government agencies (528) and ACT Policing (413). This represents an increase of 9% on the 865 approaches and complaints we received in 2005–06. However, the figures are not directly comparable because of changes in the way ACT Policing complaints are handled.

The number of approaches and complaints received about ACT Government agencies increased by 3% in 2006–07 (528, compared to 512 in 2005–06). Housing ACT and ACT Corrective Services continue to be the agencies about which we receive most complaints.

During the period we finalised 931 approaches and complaints, with 501 being about ACT Government agencies and 430 about ACT Policing.

Detailed analysis of complaints received and finalised is provided in the 'Analysis of agency performance' part of this report in the sections *Complaints—ACT Government agencies* and *Complaints—ACT Policing*.

### Submissions

A distinct role of the Ombudsman is to contribute to public discussion on administrative law and public administration, and to foster good public administration that

is accountable, lawful, fair, transparent and responsive.

As part of this role we made submissions to, or commented on, a range of administrative practice matters, Cabinet submissions and legislative proposals during the year. These included:

- providing comments on the Planning and Development Bill 2006 to the ACT Legislative Assembly's Standing Committee on Planning and Environment
- making a submission to the Department of Housing and Community Services on the exposure draft of the Children and Young People Bill 2007
- providing comments on draft amendments to the Ombudsman Act that were included in the *Statute Law Amendment Act 2007*.

### Organisational planning and environment

During the year, the office's strategic plan was reviewed to build on achievements over the past four years and to reflect priorities for the period 2007 to 2010. Strategic priorities identified for 2007–08 are to:

- focus on areas of administrative concern as identified through analysis of complaint trends
- continue to build the profile of the office through outreach, relevant publications and communication activities
- build on our work practices and system changes to deliver improved timeliness, efficiency and effectiveness in managing complaints, conducting inspections and generating reports
- improve quality assurance and consistency in complaint handling.

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

## HIGHLIGHTS

This has been a year of both consolidation and change for the Ombudsman's office.

Last year we introduced new work practices and a new complaint management system, and formed the Public Contact Team to be the initial point of contact for all complaints and enquiries to the office. These changes have now been fully implemented, and we are undertaking a review to determine whether they have delivered the improvements sought in our complaint-handling processes, and to identify areas for further improvement.

During 2006–07 we focused greater effort on making formal reports on investigations about ACT Government agencies than in previous years. This year we provided five reports on our investigations, with three of these under s 18 of the Ombudsman Act. Each report contained recommendations for improvement of processes within the relevant agencies. Summaries of the reports are provided later in the section *Complaints—ACT Government agencies*.

In addition, as discussed in the section *Complaints—ACT Policing*, changes have been made to the legislative regime governing the handling of complaints about the AFP. As a result, we have put extensive effort into developing new policies and procedures regarding AFP complaints.

Our expertise in public administration helps us to ensure that best administrative practice is integral to government planning and decision making. The office continued to provide input on significant ACT Government projects during the year, including the ACT Prison Project, and to hold regular meetings with agency contact officers.

## OUTLOOK FOR 2007–08

We continue to operate under a memorandum of understanding (MOU) with the ACT Government for the provision of Ombudsman services in relation to ACT Government agencies and ACT Policing. At the time of publication we are close to signing a new services agreement with the ACT Government,

which takes into account complaint workloads for the office and developments in ACT functions, such as the new ACT Prison.

In 2006–07 we resumed our program of seminars for ACT Government complaint contact officers. The seminars aim to increase the practical complaint-handling skills of those officers, as well as enhancing their understanding of the role of policy and legislation in decision making. We will continue with this program in 2007–08.

Our capacity to deal with complaints in an effective and timely manner depends to a significant extent on our relationship and interaction with government agencies. We have conducted a number of surveys of people who have complained to us, in order to identify how we can improve our service delivery. However, we have not undertaken a systematic review of our interactions with agencies for many years.

During late 2006–07 we commenced a survey of agencies to ascertain their views about our effectiveness and our interactions, and to identify areas where we could improve processes to lead to speedier and more effective resolution of complaints. We will assess the survey results, and start implementing any required changes, early in 2007–08.

During 2007–08 we will also conduct another survey of people who have complained to us, to identify any areas for improvement in our policies and procedures.

In 2006–07 major reforms to the AFP complaint-handling system were implemented. These reforms remove the requirement for joint handling of all complaints. AFP line management deals with minor matters, providing a faster and more efficient method for resolving these issues. More serious matters will continue to be notified to the Ombudsman's office, with primary responsibility for resolving these matters remaining with the AFP.

Ombudsman staff will continue to be active in ensuring that the AFP's complaint-handling system provides an effective response to individual complainants and provides public assurance about police accountability.

In 2007–08 we expect that most complaints received under the Complaints Act will be finalised. This will enable the office to focus more on systemic and serious issues relating to AFP practices and the conduct of individual AFP members.

Finally, we will examine ways to improve the level of our engagement with the ACT community.

## INTERNAL ACCOUNTABILITY

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

The Governor-General of Australia appointed Prof. John McMillan as Commonwealth Ombudsman in May 2003 for a five-year period. The Ombudsman's remuneration is

determined in accordance with a ruling by the Remuneration Tribunal. Prof. McMillan acted in the position of Integrity Commissioner in the Australian Commission for Law Enforcement Integrity during the period January to June 2007. Dr Vivienne Thom, Deputy Commonwealth Ombudsman, acted in the position of Ombudsman during that period.

In 2006–07 the Ombudsman delegated day-to-day responsibility for operational matters for the ACT Ombudsman to Senior Assistant Ombudsman Ray Matcham, and later Senior Assistant Ombudsman Damien Browne, and responsibility for law enforcement, including ACT Policing, to Senior Assistant Ombudsman Vicki Brown. Both Senior Assistant Ombudsmen are supported by teams of specialist staff (the ACT Ombudsman Team for ACT Ombudsman functions and the Law Enforcement and Inspections Teams for law enforcement functions) in carrying out these responsibilities for the Ombudsman. The Ombudsman and Deputy Ombudsmen maintain an active involvement in the work of these teams.



*Executive team (standing from left) Damien Browne, Ron Brent and Mary Durkin; and (seated from left) John McMillan, Vivienne Thom and Vicki Brown.*

## ANALYSIS OF AGENCY PERFORMANCE

### Summary

In 2006–07 the ACT Government paid an unaudited total of \$933,799 (including GST) to the Ombudsman’s office for the provision of Ombudsman services. Moneys were received directly from the ACT Government under the MOU. Payments (including GST) were for the purposes of the ACT Ombudsman function (\$439,583) and the handling of complaints about ACT Policing (\$494,216).

The office’s performance against indicators is shown in Table 1 and provided in more detail under the sections *Complaints—ACT Government agencies* and *Complaints—ACT Policing*. The statistical report in Appendix 1 provides details of approaches and complaints received and finalised, and remedies provided to complainants in 2006–07.

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

- need to gain access to agency records
- nature of the allegations made by a complainant
- time taken by an agency to respond to our requests for information
- likely effect on other people of the issues raised by the complainant.

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

In some instances, we refer complainants to other review agencies that can more appropriately deal with the issues they have raised. These issues may include complaints about environment, health and consumer services, as there are special commissioners to deal with these matters. We also receive approaches about matters that we are unable to consider because they are outside our jurisdiction, such as complaints about employment conditions. Approaches and complaints about actions of other police forces are referred to the relevant state ombudsman or other investigative body.

**TABLE 1** SUMMARY OF ACHIEVEMENTS AGAINST PERFORMANCE INDICATORS, 2006–07

Performance indicators	ACT Government agencies	ACT Policing
Number of approaches and complaints received	528 approaches and complaints (512 in 2005–06)	413 approaches and complaints (353 in 2005–06)
Number of approaches and complaints finalised	501 approaches and complaints (522 in 2005–06)	430 complaints and 502 complaint issues (419 and 486, respectively, in 2005–06)
Time taken to finalise complaints	89% of all complaints finalised within three months (94% in 2005–06)	53% of all complaints finalised within three months (73% in 2005–06)

Note: we no longer count separate issues finalised for ACT Government agencies.

## Training and liaison

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

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

Specific activities included:

- conducting a forum for ACT Government agencies' contact officers and complaint handlers
- providing a briefing to Members of the ACT Legislative Assembly, ACT Senators and Members of Parliament, and their staff, on the role and function of the Ombudsman
- providing a briefing to the Executive of the Department of Education and Training
- providing an information session for trainee custodial service officers and probation and parole officers
- continuing to provide input to the Department of Justice and Community Safety on the ACT Prison Project
- participating in the ACT Free Legal Advice Forum and the Complaint Handlers Forum to discuss topical issues in complaint management
- conducting regular meetings with senior staff in ACT Government agencies to provide feedback on complaints received and to ensure complaints are handled smoothly
- commenting on a range of ACT Government and agency submissions and discussion papers raising issues of administrative practice
- meeting monthly with the AFP's Professional Standards team to discuss issues relevant to the operation of the complaint-handling system, and meeting weekly with Professional Standards staff to discuss individual complaints and investigations
- attending a joint AFP-Ombudsman workshop on reforms to the AFP complaint-handling system
- co-sponsoring a three-year study entitled 'Whistling while they work' on whistleblower protection laws across Australia
- co-sponsoring a major project to improve management of difficult complainant behaviour.

We play an active role in collaborating with Ombudsman offices in the Asia-Pacific region. During 2006-07 the ACT Ombudsman Team hosted people from Vanuatu and Papua New Guinea (PNG) on three occasions to provide insight and assistance on complaint handling at the local government level, particularly in relation to complaints in the corrections context. ACT Corrective Services was gracious in providing opportunities for our international visitors to tour the correctional facilities in the ACT.

Our Law Enforcement Team continued to assist other integrity bodies from the Asia-Pacific region through presentations to, and training of, international delegations, particularly in discussing the key aspects of our relationship with the AFP. The team also hosted a range of international guests this year, including senior staff from the PNG Ombudsman Commission.

## Service charter standards

We are committed to providing the best service possible. The ACT Ombudsman Service Charter is available on our website at [www.ombudsman.act.gov.au](http://www.ombudsman.act.gov.au). The charter outlines the service that can be expected from the office, ways to provide feedback and steps that can be taken if standards are not met. We will complete a review of our service charter standards in 2007-08.

Where a complainant disagrees with our conclusions and decision on a complaint, they may ask for the matter to be reviewed. A Deputy Ombudsman will consider the information provided and decide whether or not we will review our decision. The Deputy Ombudsman chairs the office's internal review

panel and allocates the request for review to a designated review officer who has not had prior involvement in the complaint. The review officer will consider whether the processes our staff followed were fair and adequate, and whether the conclusions reached were reasonable and properly explained to the complainant.

During the reporting period, we received and finalised 13 requests for reviews of our complaint handling. Seven review requests involved ACT Government agencies. The original decision was affirmed in five complaints, and in two cases, we are investigating further. Six review requests related to ACT Policing. The original decision was affirmed in five complaints. The outcome for the sixth complaint did not change, but we apologised to the complainant for not keeping them advised sufficiently of progress with their complaint, and for not providing as full an explanation of our conclusions as we should have.

## COMPLAINTS—ACT GOVERNMENT AGENCIES

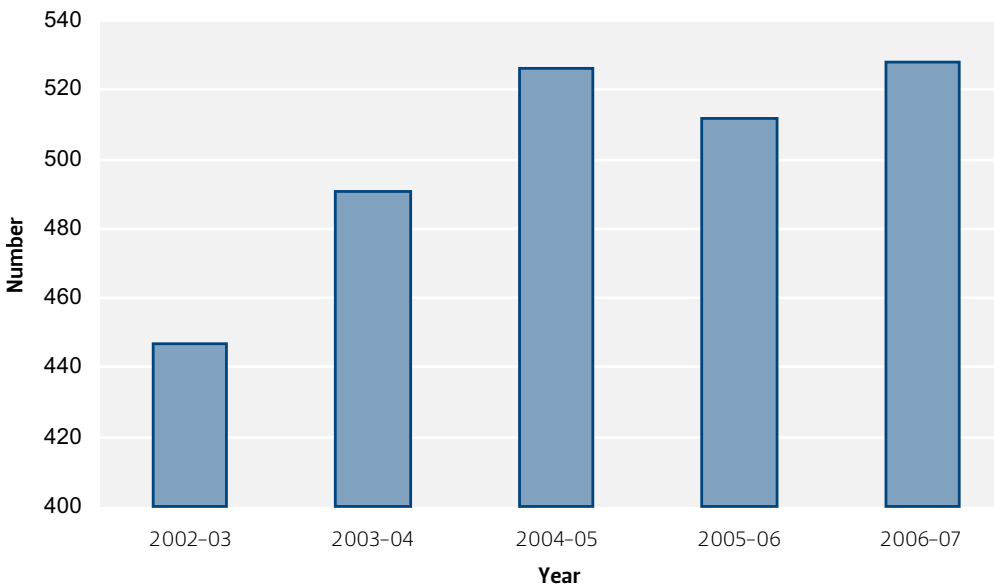
### Complaints received

In 2006–07 we received 528 approaches and complaints about ACT Government agencies, a 3% increase over the 512 approaches and complaints received in 2005–06 (see Table 1). Figure 1 provides a comparison of approaches and complaints received about ACT Government agencies since 2002–03.

Housing ACT and ACT Corrective Services continue to be the two agencies about which we receive most approaches and complaints, with 99 and 94 received respectively (19% and 18% of the total), compared to 105 and 97 each in 2005–06.

We received fewer approaches and complaints about ACTEW Corporation (from 27 in 2005–06 to 8 in 2006–07), while complaints about the Department of Education and Training increased from 11 in 2005–06 to 31 in 2006–07. Detailed statistical information is provided in Appendix 1.

**FIGURE 1** APPROACHES AND COMPLAINTS RECEIVED ABOUT ACT GOVERNMENT AGENCIES, 2002–03 TO 2006–07\*



\* The numbers of approaches and complaints received about ACT Government agencies have been combined for the years 2003–04 to 2006–07. For 2002–03 the numbers relate only to complaints received.



## Complaints finalised

During 2006–07 the Ombudsman’s office finalised 501 approaches and complaints about ACT Government agencies, compared to 522 approaches and complaints in the previous year.

This year we investigated 29% of these approaches and complaints, down 8% from the number of matters investigated last year. This investigation rate is now more in line with the rate in our Commonwealth Ombudsman jurisdiction.

In most cases we decided not to investigate because the complainant had not tried to resolve their problem first with the relevant agency. This practice of referring complainants back to the agency concerned in the first instance provides the agency with the opportunity to resolve any issues before an external body, such as the Ombudsman, becomes involved.

The remedies for complaints we investigated included agency explanation (explaining to the complainant why the agency acted the way it did); action to expedite the matter; an agency apology; agency reconsideration of an earlier decision; and changes in agency administrative policy and procedure.

## Time taken to finalise complaints

Of the 501 approaches and complaints about ACT Government agencies that were dealt with during 2006–07, 59% were finalised within one week and 89% within three months (see Figure 2). This compares with 63% finalised within one week and 94% within three months, in 2005–06.

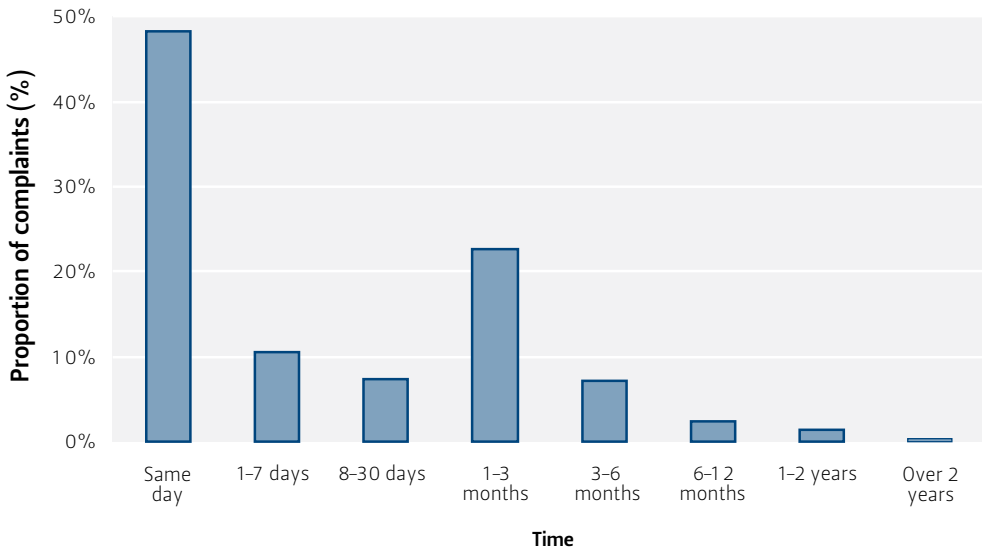
Of the remaining complaints, 7% were completed in three to six months and 4% took over six months to complete. Complaints taking more than six months to complete are more complex and usually require extensive involvement of senior staff.



*Paul Coleman, Director ACT Ombudsman Team, speaking at the ACT complaint contact officers seminar.*



**FIGURE 2** TIME TAKEN TO FINALISE APPROACHES AND COMPLAINTS ABOUT ACT GOVERNMENT AGENCIES, 2006–07



## Overview of complaints

The creation of the Public Contact Team as the first point of contact for people approaching the Ombudsman's office has enabled the ACT Ombudsman Team to focus more effort on identifying and investigating complaints which appear to raise systemic issues. As a consequence, during the year we completed a number of investigations that resulted in formal reports to agencies or recommendations for improved policies and procedures.

### Department of Treasury

The issue of delay in decision making is a common theme across a number of ACT agencies. One example the office dealt with concerned the Department of Treasury and resulted in the Ombudsman issuing a formal report. The case study *Delay in deciding an objection decision* on page 10 summarises the issues.

In the course of investigating Mr A's complaint, it became apparent that there may have been a significant number of taxation objections that were taking a long time for Treasury to determine. Accordingly, the Ombudsman commenced an own motion investigation into the administrative handling of a range of objection decisions by Treasury. The investigation covers a number of issues, including records management and case management. Treasury has cooperated with the own motion investigation, and has also devoted considerable additional resources to dealing with objections. We will report on the outcome of this investigation in our 2007–08 annual report.

### Housing ACT

The main themes of complaints about Housing ACT were similar to previous years: maintenance, allocation of housing, and the behaviour of other tenants. Complaints about

waiting lists and transfers dropped off in the latter part of the year. This may have been the result of Housing ACT implementing a new system for categorising applications and a new internal review system for hearing appeals about priority.

A prominent theme this year was complaints from Housing ACT tenants about the harassment, violence and intimidation they claimed to have suffered at the hands of other tenants. In one case, the occupants of a Housing ACT townhouse persistently sought goods and money from other residents by use of practices that verged on extortion. In another instance, a tenant with apparent mental health issues harassed another tenant to the point that the latter feared leaving her residence. In other cases, alleged assaults, damage to property and even assaults on pets are alleged to have occurred.

In tenant disputes, Housing ACT encourages mediation and seeks to assist tenants in resolving their issues. Disputes sometimes arise in cases which are inherently complex, and in which a number of service providers are involved. In the more unusual cases, Housing ACT will serve a notice on a tenant in relation

to their obligation to respect the rights of other tenants. In extreme cases, a notice to vacate may be the final step.

Housing ACT has recognised the need to monitor and manage these kinds of issues and has commissioned research into how they can be better managed. The Ombudsman will keep issues relating to tenant disputes under review during 2007–08.

We also completed a formal report into a complaint about Housing ACT, as described in the case study *Problems with rental rebate calculation* (page 11). This matter illustrates how administrative decisions can cause significant problems for the people affected by them, and how dealing with one complaint can result in broader systemic changes. The review of procedures and policy suggested by the Ombudsman and agreed by Housing ACT has the potential to help many more people in addition to the complainant.

As this case raised broader systemic issues about rental rebate calculations, the Ombudsman is considering undertaking an own motion investigation in 2007–08 to follow up on our earlier recommendations.

## delay in deciding an objection decision

### CASE STUDY

Mr A complained to the Ombudsman that he had been waiting for over two years for a decision by Treasury on his objection about a decision to impose a 100% penalty on him for an improper claim of the First Home Owner Grant.

Ombudsman staff reviewed Mr A's file at Treasury and met on several occasions with relevant Treasury staff. Just over two months after Mr A complained to us, he received a decision on his objection from Treasury. The Ombudsman nonetheless concluded that the delay of some two and a half years was unreasonable.

The investigation of Mr A's complaint also identified problems about the non-responsiveness of Treasury to correspondence from objectors. Another issue compounding the problem was that there was no legislative requirement for Treasury to decide an objection within a specific period.

The Ombudsman recommended that Treasury change its communications policy, provide six-monthly interim advice to objectors, and respond promptly to their correspondence. The Ombudsman also recommended that Treasury apologise to Mr A for its poor communication with him, including its failure to answer some of his letters.

Treasury accepted the recommendations of the report. The full report on Mr A's case is on our website at [www.ombudsman.act.gov.au](http://www.ombudsman.act.gov.au) (ACT Report No 02/2006).

### Care and protection matters

The Ombudsman provided two formal reports to the Department of Disability, Housing and Community Services (DHCS) arising from complaints about the Office for Children, Youth and Family Support (OCYFS). These matters again illustrate the issue of delay; this time in following up on assessments made by relevant officers of OCYFS.

It would not be appropriate to provide any substantial details of those matters in this report, both to protect the privacy of the people involved and to comply with the secrecy provisions of the *Children and Young People Act 1999*.

In the first matter, OCYFS officers had identified the need to conduct police checks on some people involved in the case, and considered that issues that had come to light in their investigation should be referred to the police. However, action was delayed for

four months. The Ombudsman found the delay was unreasonable and recommended that procedures be reviewed to ensure as far as possible that this delay did not happen again. DHCS now has policy and procedures in place which provide guidance and direction on the completion of criminal history checks and referrals to the AFP, to ensure referral oversights do not recur.

In the second case, the Ombudsman provided a report on a matter that the Chief Executive of DHCS had requested the Ombudsman's office investigate. In this matter, OCYFS officers had identified the need to further investigate circumstances reported to them concerning a child, but had failed to do so for a number of months. A review of the reforms of procedures in OCYFS since the incident took place satisfied the Ombudsman that no further action was required by OCYFS to minimise the risk of similar lapses in future.

### problems with rental rebate calculation

#### CASE STUDY

Ms B, a public housing tenant, complained to the ACT Ombudsman that Housing ACT was seeking to recover a large debt from her for rental rebates she had received.

Some time before, Ms B had received a lump sum settlement for a motor vehicle accident. Housing ACT attributed 50% of the settlement as income for Ms B over the life of the settlement. As a consequence, Housing ACT recalculated Ms B's rental rebate on the basis of the attributed income and raised a debt against her.

We investigated the matter, reviewing the relevant Housing ACT files and considering the policy and legislation concerning Ms B's circumstances. We identified several inconsistent decisions by ACT Housing on the matter, as well as inconsistent advice given to Ms B.

The Ombudsman recommended waiver of the rental rebate debt, an apology to Ms B, and a review of the systemic administrative issues involved. While noting that the policy of recovering rental rebate payments in cases like Ms B's is a matter for Housing ACT, the Ombudsman raised the issue as to whether the relevant ACT legislation adequately and properly gives effect to that policy.

Housing ACT accepted all of our recommendations, and responded positively to the investigation and our report. The Ombudsman has commended the actions taken by Housing ACT.

Housing ACT agreed that Ms B's debt should be waived. It has also changed its administrative practices to give suitably qualified staff responsibility for complex rental rebate cases, and is developing a new training module in advanced rental rebate calculations. Housing ACT also agreed to clarify aspects of its relevant policy concerning cases like that of Ms B.

### ACT Corrective Services

Complaints received about ACT Corrective Services generally related to property, maintenance of amenities and allegations of harassment.

We also received a significant number of complaints in October and November 2006 about detainees being locked down in their cells more often than usual. It seemed that staff shortages meant that there were insufficient staff to adequately supervise detainees being out of their cells. The Ombudsman raised the issue with the Chief Executive of the Department of Justice and Community Safety, who responded by providing detailed reasons for the problem, including the difficulty in attracting and recruiting suitable custodial staff. The problem eased over the following months and complaint numbers receded.

We continued discussions with ACT Corrective Services about improving procedures in the ACT's remand centres. The two case studies *Revocation of visitors' visiting privileges* and *Improving buy-up procedures* (page 13) illustrate two complaints where ACT Corrective Services agreed to suggestions for improved policies and procedures from the Ombudsman.

With the new ACT Prison set to open in late 2008, the Ombudsman will be focusing on corrections complaints over the next year, to identify any areas of concern that we might be able to address before the prison opens. We are confident that our work on such complaints, and our good working relationship with ACT Corrective Services, should serve this process well.

### ACT Planning and Land Authority

The Ombudsman also provided a formal report to the ACT Planning and Land Authority (ACTPLA) this year, which is summarised in the case study *Error in lease renewal* (page 13). This case illustrates that sometimes a complaint is not substantiated, but the investigation process can highlight the effect of a problem, since remedied, that gave rise to the complaint.

In the last two annual reports we referred to a matter in which a lack of coordination between ACTPLA and ActewAGL led to a complainant incurring substantial costs. The matter was resolved this year by ACTPLA reaching a financial settlement with the complainant. ACTPLA also provided this office with an explanation of changed procedures intended to ensure that development approval will not be given until relevant clearances from other agencies (such as ActewAGL) have been obtained.

## revocation of visitors' visiting privileges

### CASE STUDY

Mr C, a detainee at the Belconnen Remand Centre (BRC), complained that the visiting privileges of his partner and mother had been revoked for six months. The BRC had taken the action because it considered the people were involved in the introduction of contraband.

This had the effect of depriving Mr C of visits by his partner, infant child and mother over the six-month period. Our investigation revealed that there was no written ACT Corrective Services policy covering such decisions. The length of the revocation had been set on the basis of unwritten policy about the periods appropriate in different circumstances.

ACT Corrective Services has now addressed this issue in its policy on detainee visits. The policy provides advice on the length of revocation which is appropriate and on the other considerations relevant to setting the period. The new policy also includes information on a visitor's right to review of a revocation decision.

ACT Corrective Services are commended for the policy change, which represents a substantial improvement on the previous position of determining length of revocation of visitors' visiting privileges on the basis of an unwritten policy.

### Oral advice

We also dealt with a range of complaints about the provision of oral advice. In one matter concerning ACTPLA, the caller maintained that he had been advised that a structure on his property did not require approval, but he was required later to seek approval. In a complaint about a parking matter, the caller claimed he had been told that he would not have to pay the administrative costs for late payment. However, according to the caller, he received a bill for the administrative costs and the relevant office had no record of the earlier advice.

In the absence of records, these kinds of matters are difficult or impossible to resolve. They highlight the importance of agencies maintaining accurate records for accountability. For example, ACTPLA has recently implemented better business practice guidelines and an educational campaign for staff to address such issues. They also illustrate the need for members of the public to keep careful records and to get advice on important issues in writing.

### improving buy-up procedures

#### CASE STUDY

The Ombudsman received a complaint from Ms D, a detainee at Symonston Temporary Remand Centre, that she and a number of other women had not been given access to the buy-up—an opportunity for detainees to spend their funds on groceries—following a long weekend. Buy-ups usually occur on Tuesdays and Fridays.

On investigation, it became apparent that for a buy-up to occur after a long weekend, special arrangements need to be made because administrative staff are not present on the public holiday Monday. On some previous occasions, detainees had been offered a double buy-up on the Friday, but that had not occurred this time. Instead, a cigarettes-only buy-up was offered to detainees for the Tuesday, and a notice had been given about this. We found conflicting information concerning what happened to the notice, as it was apparent that not all detainees understood the proposed change in arrangements, and this had led to Ms D's complaint.

The Ombudsman suggested some changes that were readily accepted by ACT Corrective Services to improve communication about buy-ups. One suggestion was to make sure that when detainees enter the Remand Centre they are given details about changed buy-up arrangements on long weekends. Another suggestion was that each detainee should receive their own notice concerning any changes to those arrangements ahead of each long weekend.

### error in lease renewal

#### CASE STUDY

Mr and Mrs E, rural lessees, complained that ACTPLA had wrongfully made an application to the Registrar-General to vary their lease. The variation was to add in clauses that allowed neighbouring lessees a right of access to reach their own blocks.

On investigation, it became apparent that an error had been made in renewing the lease some years previously. The previous lease had contained clauses allowing the neighbours access across the lease, but these had been left out in the renewal process. The action by ACTPLA to vary the lease was to restore this aspect of the lease to the situation prior to the renewal.

The Ombudsman found that the original error was serious and it should have been addressed much sooner. However, there was no evidence that the error was anything other than a one-off mistake. ACTPLA had already acknowledged and apologised for the error. There was no need for further action by ACTPLA in relation to the complaint.

## COMPLAINTS—ACT POLICING

In the ACT, the AFP undertakes policing under an agreement between the Commonwealth and ACT Governments. The AFP provides policing services to the ACT in areas such as traffic law, undertaking crime prevention, maintaining law and order, investigating criminal activities, and responding to critical incidents.

As the AFP is an Australian Government agency, complaints made about AFP officers acting in their ACT Policing role are dealt with by this office under our Commonwealth jurisdiction and through an agreement with the ACT Government.

In the past year there have been considerable changes to the legislative regime governing the handling of complaints made about the conduct or practices of the AFP.

On 30 December 2006 the *Complaints (Australian Federal Police) Act 1981* (Complaints Act) was repealed and replaced with Part V of the *Australian Federal Police Act 1979* and amendments to the *Ombudsman Act 1976* (Cth). The intention of the reform was to create a more flexible and responsive complaint-handling process that better meets the needs of all stakeholders.

The reforms include the removal of the joint complaint-handling system, which was the central feature of the Complaints Act, and its replacement with a model where the AFP has primary responsibility for dealing with all complaints and the Ombudsman has an enhanced oversight and inspections role. Minor matters are allocated to local area management to resolve and serious matters are dealt with by the AFP's Professional Standards area.

The Ombudsman is no longer involved in the resolution of all complaints, and is not advised of all complaints received by the AFP. However, the Ombudsman continues to be notified of all serious matters, and may choose to investigate the AFP's handling of such cases under the Ombudsman Act (Cth). The categorisation of complaints into minor or serious matters was agreed on by the AFP Commissioner and the Ombudsman and set out in a legislative instrument.

The Ombudsman is also designated as the Law Enforcement Ombudsman and has a new responsibility to review the administration of the AFP's handling of complaints, through inspection of AFP records. An aspect of this responsibility is to comment on the adequacy and comprehensiveness of the AFP's dealing with conduct and practices issues as well as its handling of inquiries ordered by the Minister. The results of these reviews must be provided to the Commonwealth Parliament annually.

It is anticipated that the flexibility of the new system will allow the Ombudsman's office to give closer scrutiny to the handling of serious complaints and focus more on investigating systemic issues.

The change in the complaint-handling system means that the statistics in this report are not comparable with those of previous years. The removal of joint complaint handling and mandatory referral of complaints by the AFP has resulted in a decrease in the number of complaints being received by this office since January 2007. However, this drop in complaint work has been largely offset by the new inspections role and our increased focus on investigating systemic issues.

### Complaints received

In 2006–07 we received 413 complaints about ACT Policing, compared to 353 in 2005–06. This is a 17% increase (Figure 3). We received 314 complaints under the Complaints Act. This amounts to a particularly sharp increase in complaints made under the Complaints Act, given that the figure represents complaints made to the AFP up to 29 December 2006 and subsequently referred to the Ombudsman, or made directly to the Ombudsman up to 29 December 2006. A further 99 complaints were received under the Ombudsman Act (Cth) after the repeal of the Complaints Act on 30 December 2006.

### Complaints finalised

We finalised 430 complaints and 502 complaint issues in 2006–07 under the two legislative schemes. Complaints can contain a number of issues, each requiring separate investigation and possibly resulting in different outcomes.

**FIGURE 3** COMPLAINTS RECEIVED ABOUT ACT POLICING, 2002–03 TO 2006–07

\* Note: The statistics for 2006–07 are not directly comparable to previous years, as explained on page 14.

### Complaints made under the Complaints Act

We finalised 342 complaints containing 412 complaint issues under the Complaints Act.

Of the 412 complaint issues finalised, a large number of the issues (189 or 46%) related to minor discourtesy or service delivery failures and were referred to the AFP's workplace resolution process. This process allows members of the public to provide feedback about their interaction with police; provides AFP members with the opportunity to acknowledge and learn from minor mistakes; and facilitates a more timely and flexible response to complaint issues than does formal investigation.

Of the issues referred for AFP workplace resolution, 135 issues (71%) were successfully conciliated with the complainant. The AFP forwarded reports to the Ombudsman for consideration in relation to the remaining 54 issues (29%) where the complainant was not satisfied with the AFP's attempts to conciliate the matter.

We decided not to investigate, or further investigate, 204 issues after receiving the complaint directly or after considering the report of the AFP's initial evaluation or unsuccessful workplace resolution of the complaint. In some cases we made further enquiries of the AFP, but later decided that further investigation of the matter was not warranted. The lower number of complaints subjected to workplace resolution resulted from an increase in the number of complaints that we considered did not warrant further action in light of the AFP's initial evaluation.

Of the 29 issues investigated by the AFP and reviewed by the Ombudsman's office (30 in 2005–06), six were substantiated, three were incapable of determination, and 20 were unsubstantiated.

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



**TABLE 2** ACT POLICING ISSUES RAISED IN COMPLAINTS TO THE OMBUDSMAN MANAGED AND RESOLVED BY CONCILIATION, 2002–03 TO 2006–07

Year	Issues managed through workplace resolution process (% of total)	Proportion of issues successfully conciliated
2006–07	189 issues (46%)	135 issues (71%)
2005–06	305 issues (63%)	243 issues (80%)
2004–05	460 issues (72%)	246 issues (54%)
2003–04	455 issues (71%)	272 issues (60%)
2002–03	537 issues (67%)	269 issues (50%)

to the AFP for further action—such as a quality assurance review of the report, further clarification of a particular issue, or consideration of a broader issue. We also worked with the AFP to ensure that, where appropriate, the AFP considered broader organisational issues, and responded directly to the complainant.

### Complaints made under the Ombudsman Act (Cth)

We finalised 88 complaints containing 90 complaint issues under the Ombudsman Act. Under the new legislative arrangements, we have adopted the approach that we take with other ACT Government agencies—that a complainant should contact the relevant agency about a complaint before asking the Ombudsman to investigate. We therefore referred the complainant to AFP Professional Standards in the first instance in relation to 57 issues. We referred the complainant to another body in relation to 16 issues, and decided that investigation of 11 issues was not warranted in the circumstances of the complaint. Two issues were not pursued as one complainant withdrew their complaint and the other failed to provide information to enable investigation of the complaint. Four issues were outside our jurisdiction.

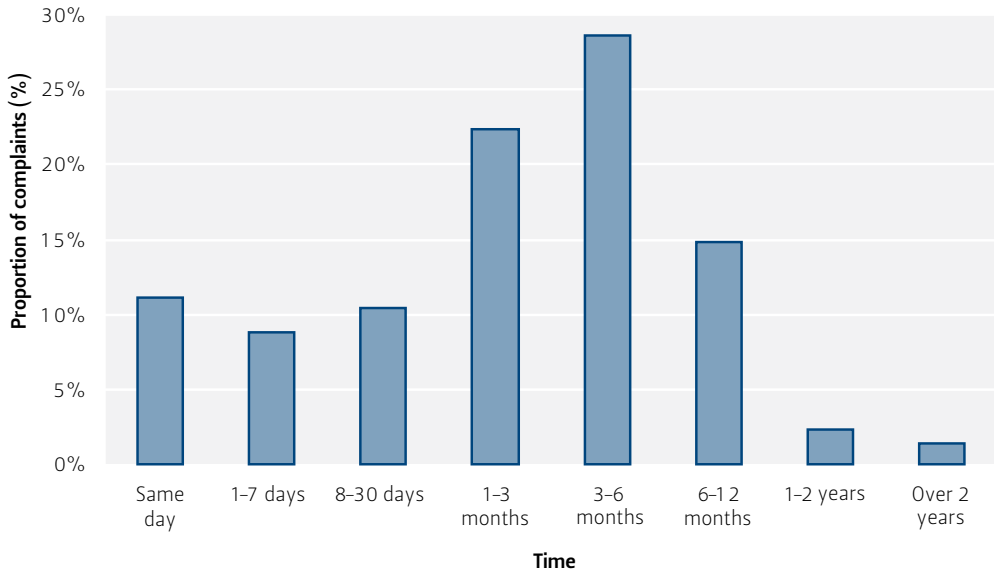
### Time taken to finalise complaints

Overall, 53% of ACT Policing complaints were finalised within three months of receipt (compared to 73% in 2005–06) and 81% were finalised within six months (compared to 90% in 2005–06). The remaining 19% of complaints (80) took more than six months to finalise (compared to 10% in 2005–06.)

### Complaints made under the Complaints Act

We finalised complaints made under the Complaints Act in an average time of 147 days. As the Ombudsman is required to keep complainants notified of the progress of their complaints under this Act, and it is important to try to resolve complaints in a timely manner, we were concerned about these delays and analysed our records to identify where delays were occurring. Our analysis revealed that we received AFP reports an average of 106 days after we received the complaint and that our average consideration time was 41 days.

We noted some delays in the AFP notifying the Ombudsman after they received a complaint. We also noted delays between when we notified the AFP of a complaint and the date the AFP advised us how they intended to deal with the complaint. Some of these delays appear to have resulted from a backlog in the AFP evaluation of new complaints.

**FIGURE 4** TIME TAKEN TO FINALISE COMPLAINTS ABOUT ACT POLICING, 2006–07

We will work with the AFP to resolve the remaining 99 complaints made under the Complaints Act and reduce our own consideration times.

#### Complaints made under the Ombudsman Act

We finalised complaints under the Ombudsman Act in an average of 31 days. This period would have been shorter if it had been possible to settle notification arrangements with the AFP at an earlier stage.

#### Challenges

The commencement of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* on 30 December 2006 has been a major challenge this year. Implementation of the new legislation has involved extensive consultation with the AFP, as both agencies work to develop the new roles assigned by the legislation. In particular, the creation of our new role in inspecting AFP complaint handling, which differs considerably

from our previous function, has taken some effort to develop. The first inspections have taken place and the results will be published separately in a report to the Commonwealth Parliament. While many of the changes brought about by the Act are now bedded down, more time will be needed to make the new complaint handling and review system fully effective.

Parallel with the commencement of the new system is the challenge of finalising the large number of outstanding cases that are subject to the Complaints Act. We have been working with the AFP to reduce the delays in completing investigations into these matters, but it is expected that many of these matters will not be finalised until the end of the 2007–08 reporting year.

We are also concerned at the increasing amount of time it appears to be taking for many complaints to be conciliated or investigated by the AFP. On average, it is taking almost a month longer for complaints to be finalised this year than in the previous

year. We have particular concerns over a small number of cases that remain open after two years. Delays of this kind make a successful outcome for the complainant and the agency more difficult to achieve. We also have concerns about cases which have not been finalised, but where the AFP seems to have taken very little action over a period of some months.

## Improving understanding of ACT Policing

In order to improve the Law Enforcement Team's (LET) understanding of the roles and challenges facing ACT Policing, LET members participated in two ride-along 'beat policing' tours towards the end of 2006.

The ride-along tours enabled LET members to observe first hand the challenges faced by the ACT's beat police, their roles, and the skills they must deploy when dealing with members of the public in the Canberra City area towards the end of the week and on the weekend.

The tours included:

- a visit to the ACT City Police Station and the City Watchhouse and observation of the procedures at the Watchhouse
- first hand observations of the ACT City Beat Squad dealing with members of the public (including numerous intoxicated people)
- a visit to the ACT Police Communications Centre
- discussion of the ACT Police Priority Call Out system and procedures
- demonstration of the operation of hand-held radar equipment used by ACT Police Traffic Operations.

LET members reported that the ride-along tours were an invaluable training experience and gave them a much better understanding of the AFP's community policing role. We hope that other staff will be able to participate in similar tours in future.

## Critical incidents

The AFP notifies the Ombudsman of all critical incidents involving the actions of

AFP officers. Critical incidents are incidents in which a fatality or significant injury has occurred, or where the AFP has been required to respond to an incident on a large scale, as might occur during a public demonstration. During 2006-07 three incidents involving ACT Policing matters were reported to the Ombudsman. Generally it is not our policy to become actively involved in the investigation of critical incidents unless the AFP requests our involvement.

On 14 September 2006 the AFP intercepted a vehicle on the roadway in the Canberra suburb of Ngunnawal. The passenger of the vehicle was believed to be armed with a shotgun and was wanted for questioning for serious crimes involving a firearm. During the incident police safely extracted the driver of the vehicle, but were unable to resolve the standoff with the passenger. The young male passenger discharged his firearm, seriously injuring himself. He died later in hospital. The Ombudsman has requested a copy of the AFP's report at the conclusion of the investigation by AFP Professional Standards.

On 1 November 2006 the AFP advised the Ombudsman of an incident where a woman was sprayed with Oleoresin Capsicum (OC) spray whilst in custody in the City Watchhouse. The woman required hospitalisation following exposure to the OC spray. The matter is being investigated by AFP Professional Standards. This is discussed further in the case study *Use of force* (page 19).

On 14 November 2006 we were advised of a fatal accident involving a young woman who was being pursued by police. The young woman drove through a red light, colliding with another vehicle, in which the elderly woman driver died. The Ombudsman requested a copy of the AFP's final report on the investigation due to the seriousness of the incident and the community concern about police pursuits. The Ombudsman is aware that the Department of Justice and Community Safety has commissioned an independent review of the policy guidelines on police pursuits, being conducted by a former Commonwealth Ombudsman, Mr Alan Cameron.

## Use of force

In our last annual report we noted that we were monitoring the AFP's handling of several complaints from people with physical and mental disabilities about the use of excessive force. Complaints about the use of force have been a continuing concern this year.

During 2006–07 we received a total of 36 complaint issues about the use of force or threatened use of force by ACT Policing. One such complaint resulted in criminal charges being laid against an AFP member and sparked a wider review of video footage of Watchhouse operations by the AFP Professional Standards area. This review resulted in other complaints being raised.

## Review of Watchhouse operations

In January 2007 the ACT Chief Police Officer, Assistant Commissioner Audrey Fagan, and the AFP Chief Operating Officer, Mr Trevor Van Dam, approached the Ombudsman about conducting a joint review into ACT Policing's Watchhouse operations. This review was announced on 12 February 2007 and the report was released on 26 June 2007.

The AFP proposed the review following a number of incidents at the Watchhouse involving use of force, and concerns expressed by the Ombudsman in annual reports over recent years. The review was also an opportunity to assess the July 2006 upgrade of the closed circuit television camera system installed at the City Watchhouse.

The review had broad terms of reference and was able to assess Watchhouse operations against best practice in Australia and overseas. The review team explored every aspect of Watchhouse operations and recommended many changes in Watchhouse procedures, as well as a more far-reaching consideration of the way in which the Watchhouse is operated and staffed.

Among the matters covered by the report were:

- the policies and procedures applicable to Watchhouse operations
- physical conditions for staff and detainees
- surveillance systems
- training of AFP members working in the Watchhouse
- management and control of detainees, including the use of force
- care of persons with special needs
- oversight, supervision and management of Watchhouse staff
- complaint management.

The AFP accepted all the recommendations, with one being a matter for consideration by the ACT Government. The steering committee overseeing the review will meet by December 2007 to report on progress in implementing the review recommendations. The report is available on our website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

### use of force

### CASE STUDY

Ms F was sprayed with Oleoresin Capsicum (OC) spray when she was arrested, and immediately decontaminated.

She was then taken to the City Watchhouse and sprayed with OC spray again. On this occasion she was not decontaminated until approximately two hours later after a change in shift, when the replacement Sergeant contacted an ambulance crew to assist in Ms F's decontamination.

AFP Professional Standards acted swiftly to report this matter to the Ombudsman as a critical incident, and accepted a complaint from Ms F under the Complaints Act.

While AFP investigation of this complaint is suspended pending the outcome of criminal proceedings taken against an AFP member, we will continue to monitor the matter to ensure that all of the issues raised by the complaint are appropriately resolved.



## Detention of minors

In last year's report we described our concerns about the management of young people in custody and the issue of minors being detained without notification to their parents. We noted that we were considering whether an own motion investigation into the issue was warranted. After a decrease in the number of complaints received and careful consideration, we decided against conducting an own motion investigation on this subject.

Instead we pursued our concerns through resolution of the individual cases as demonstrated by the case study *Advising parent* (page 21).

## Exercise of responsibilities under the Intoxicated People Act

In August 2006 the Ombudsman informed the Commissioner of the AFP, that he had decided to undertake an own motion investigation

to review the exercise of responsibilities by ACT Policing under the *Intoxicated People (Care and Protection) Act 1994* (Intoxicated People Act). This follows a 2001 Ombudsman investigation into the matter. The Ombudsman also informed the Chief Executive of ACT Health of his intention to conduct an investigation under the Ombudsman Act for the purpose of considering issues surrounding ACT Policing use of the sobering-up shelter at Ainslie Village, which is operated by Centacare and funded by ACT Health.

We expect to complete the investigation in early 2007–08.

## Review of management of property and exhibits

In last year's annual report the Ombudsman indicated that he was considering conducting an own motion investigation into the adequacy of the AFP's current guidelines on handling property and exhibits, and

how effectively changes resulting from the recommendations of a 1999 Ombudsman own motion investigation had been implemented.

The proposal is still under consideration, subject to other priorities for the coming year.

## INSPECTIONS—ACT POLICING

A child sex offenders register was established in the ACT as a requirement of the *Crimes (Child Sex Offenders) Act 2005* (ACT).

The register commenced operation on 29 December 2005. One of the functions of the ACT Ombudsman is to monitor compliance with chapter 4 of the *Crimes (Child Sex Offenders) Act* by the ACT Chief Police Officer and other people authorised by the Chief Police Officer to have access to the child sex offenders register. We conducted the first inspection of the register in June 2007 and will finalise our report early in 2007–08.

## COMMUNITY GRANTS/ASSISTANCE/SPONSORSHIP

The ACT Ombudsman's office did not provide any community grants, assistance or sponsorship during the reporting period.

## TERRITORY RECORDS

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

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

Schedule 3 of the *Territory Records Act* will come into operation on 1 July 2008 and will provide for public access to ACT records over 20 years old. Records held by the ACT Ombudsman's office will be examined to identify any that are over 20 years old and to ensure that access will be available, consistent with the legislation.

### advising parent

### CASE STUDY

In last year's report we included the case study of a 17-year-old boy who was detained in error during a 'drug sting' in the city. Mr G complained about the manner in which AFP members treated him. He alleged that the arresting officers did not ask him if he wanted a parent or guardian present and that he was questioned without a parent or guardian present. We outlined our concerns about the initial AFP investigation in that report.

Following our comments, the AFP undertook further investigation about the alleged non-compliance with the *Children and Young People Act 1999* (Young People Act) and the relevant ACT Policing Guidelines. As a result of this further investigation, the AFP addressed a number of systemic issues.

A training gap relating to the Young People Act was identified, and the AFP Learning and Development unit has been asked to address this in future training. An ACT Policing instruction reminding all police of their responsibility for notification when dealing with children and young people was promulgated in August 2006. Watchhouse sergeants are also now responsible for double-checking that these notifications to parents and guardians have been carried out.

We have reviewed these outcomes and believe that they adequately address the concerns raised by this office.