

ACT Ombudsman— Quarterly Report

A REPORT ON THE ACTIVITIES OF THE ACT OMBUDSMAN

1 JANUARY TO 31 MARCH 2019

Report by the ACT Ombudsman
Michael Manthorpe PSM

REPORT NO. **2 | 2019**

Introduction from ACT Ombudsman

I am pleased to introduce the third quarterly report for the ACT Ombudsman for 2018–19. In this quarter, my Office has continued to focus on:

- raising awareness with ACT residents of our role overseeing public administration in the ACT
- building stronger networks with ACT agencies
- taking up new opportunities to influence systemic improvements in the ACT in administrative decision-making, complaint-handling, Freedom of Information (FOI) and Reportable Conduct processes.

Significant achievements were particularly evident in the FOI space this reporting period and included:

- commencing the drafting of new Ombudsman FOI guidelines as provided for under the *Freedom of Information Act 2016* (ACT), with the first two guidelines in draft and a second FOI practitioners forum held to commence consultation with ACT agencies on these documents
- publishing a further seven FOI Ombudsman review decisions—with 18 decisions now available on our website
- finalising 75 per cent more FOI review applications this quarter in comparison to last quarter, with a renewed focus on informal resolution proving successful in resolving cases prior to a final decision being made
- publishing a new brochure aimed at ACT community members about how to access government information, encouraging the use of informal access channels ahead of formal access applications where possible.

The Office also continued to support the Judicial Council, and commenced implementation activities for our new role as Inspector of the ACT Integrity Commission when it commences operation later this year—with scoping activities completed in February 2019 and development of required guidelines underway. I also met personally with Inspectors in other jurisdictions to help inform our implementation strategy.

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

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

Michael Manthorpe PSM
ACT Ombudsman

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Part 1: OUR STRATEGY IN THE ACT

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

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

- the ACT Freedom of Information (FOI) framework
- the ACT Reportable Conduct Scheme
- ACT Policing (as the Commonwealth Ombudsman).

We also continue to play a support role for the Judicial Council and will be commencing a new role as Inspector of the ACT Integrity Commission, when the Integrity Commission commences in mid-2019.

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

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

Part 2: COMPLAINT TRENDS

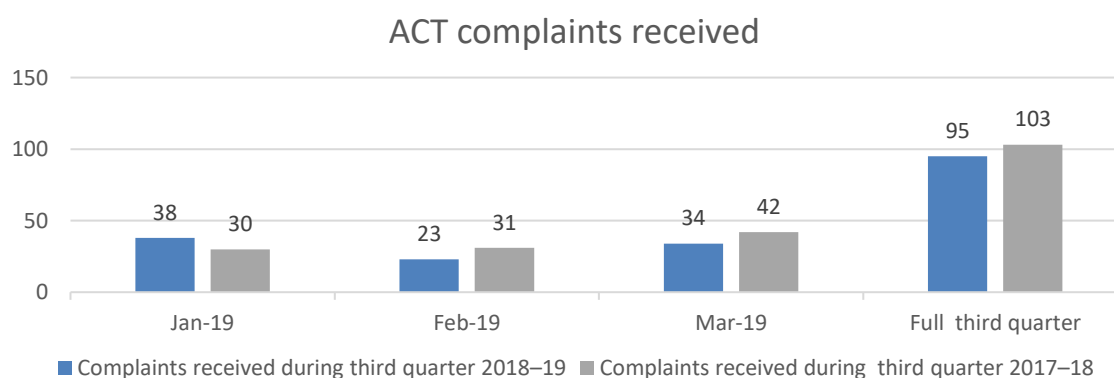
Complaints received

During this reporting period, as outlined in Figure 1, the Office received a total of 84 complaints that related to ACT agencies and 11 complaints that related to ACT Policing.

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

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

Figure 1—ACT complaints received during the third quarter of 2018-19, compared with last financial year



While complaint volumes remain low overall and have decreased slightly this quarter, there has been an increase in complaints this reporting period about:

- Chief Minister, Treasury and Economic Development Directorate (CMTEDD), which increased by approximately 27 per cent, with 28 complaints received this quarter
- Justice and Community Safety Directorate (JACS), which increased by approximately 19 per cent, with 31 complaints received this quarter.

Complaints about these two directorates made up 70 per cent of all complaints received about ACT Directorates during the third quarter as outlined below.

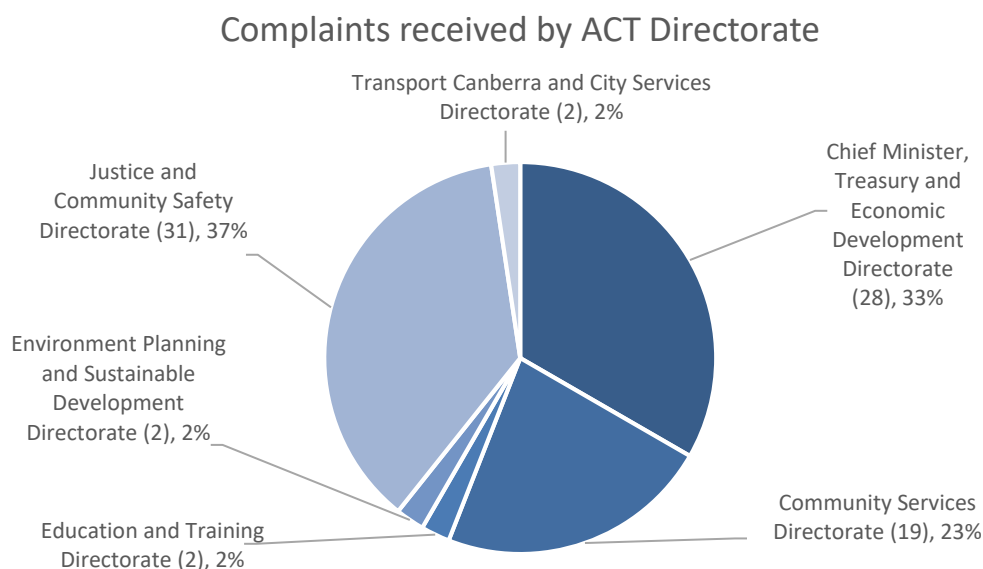
Most other Directorates experienced decreases in complaint volumes compared to the second quarter for this financial year. This included the Community Services Directorate (CSD)—with only 19 complaints received this quarter, 17 per cent less than in quarter two.

Complaints regarding ACT Policing continued to decrease, with only 11 complaints received this quarter.

Complaints about ACT agencies

As reflected in Figure 2, the largest number of ACT complaints received this quarter in terms of ACT Government Directorates were about JACS (31 complaints), followed by CMTEDD (28 complaints) and CSD (19 complaints).

Figure 2— ACT complaints received during the third quarter of 2018–19 by ACT Directorate



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

- ACT Corrective Services (ACTCS), 21 complaints
- Housing and Community Services ACT (Housing ACT), 17 complaints
- Access Canberra, 13 complaints.

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

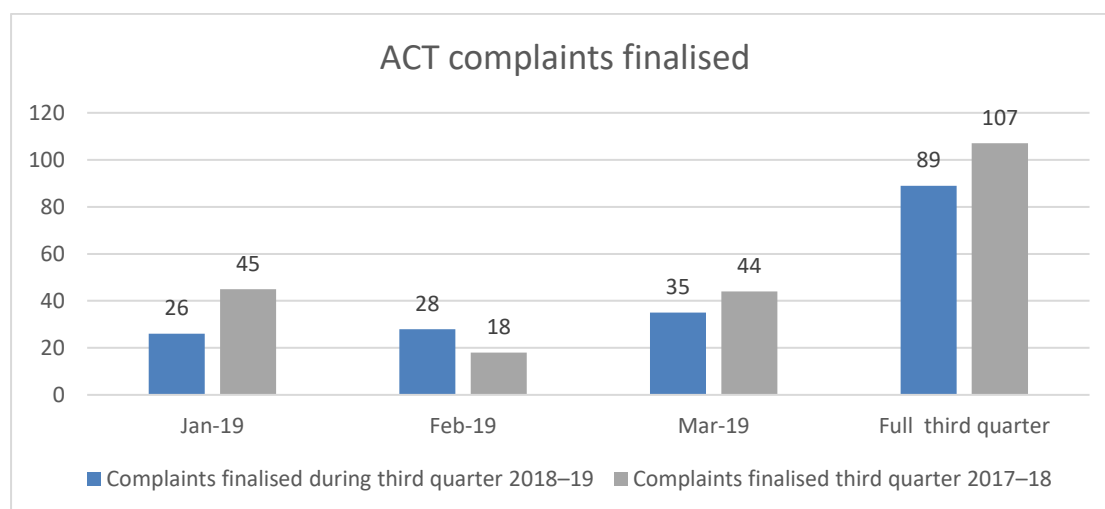
Complaints finalised

Our management of complaints can result in a number of different outcomes. For example, the complainant may be given a better explanation of the decision, receive an apology, or the agency concerned may decide to take further action or expedite a process already underway.

As outlined in Figure 3, the Office finalised a total of 89 complaints during this quarter:

- 13 ACT policing matters
- 76 complaints relating to the ACT jurisdiction.

Figure 3—ACT complaints finalised during the third quarter of 2018-19, compared to last financial year



While less complaints were finalised this quarter compared to the previous quarter, as outlined below there were some positive trends in terms of the outcomes achieved for investigated complaints.

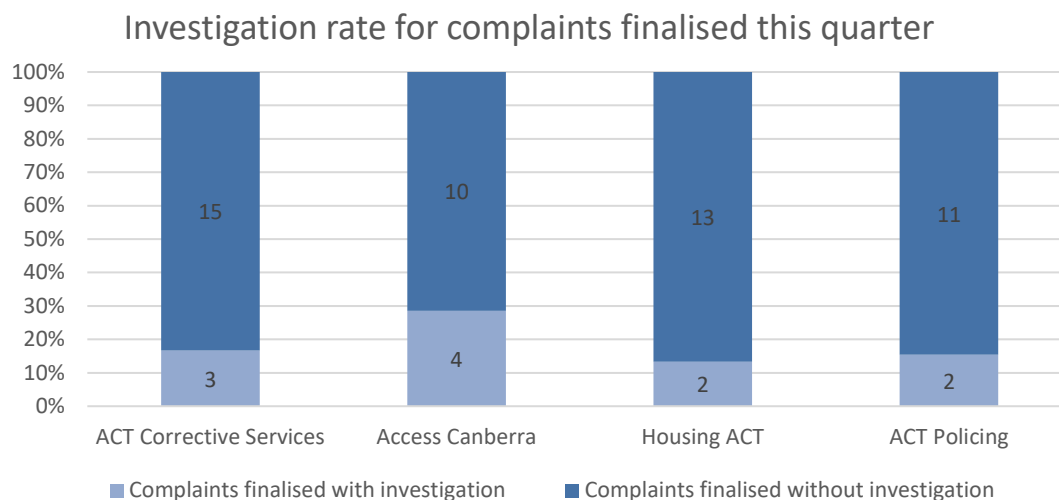
Every complaint is assessed on its merits to determine whether it can be resolved quickly or a formal investigation is warranted. Our renewed focus on early resolution provides a better service for complainants.

A number of factors determine if we investigate a complaint. This includes whether:

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

The investigation rate for agencies receiving the largest number of complaints this quarter is demonstrated in Figure 4. It should, however, be noted that a positive outcome for the complainant may also be achieved without the Office proceeding to a full investigation.

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



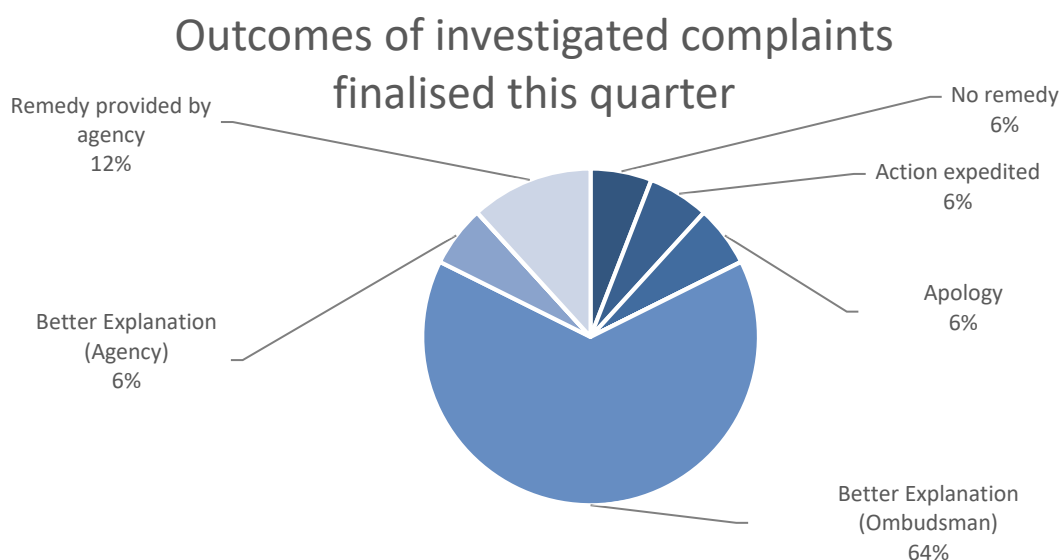
Outcomes achieved for investigated complaints

More than one positive outcome can be achieved per complaint investigation. Figure 5 below outlines the outcomes that resulted from our investigations that were finalised this quarter. The table at **Appendix B** also provides this information by ACT Government agency.

The outcomes achieved this quarter were particularly positive with the Ombudsman being able to provide a better explanation to the complainant in nine investigations. In three further cases, an agency apology was acquired, a penalty was reduced and action was expedited.

- An example of a positive outcome this quarter was a case involving a small business owner who had not received payment from an ACT government agency in relation to work completed for several months. It was identified that the agency’s procedures in relation to processing payments had created some of the delay. Once alerted to the issue, the agency promptly paid all outstanding invoices and the complaint was finalised. The complainant also received an apology.

Figure 5—Outcomes of investigated complaints finalised in the third quarter of 2018–19



New and ongoing complaint trends

The agency with the highest number of complaints received this quarter is ACT Corrective Services—with 21 complaints received this quarter, an increase of 24 per cent.

Almost all of the 21 complaints received were made by detainees at the Alexander Maconochie Centre (AMC), with 18 of the complaints made by male detainees.

Common issues stemming from these complaints included:

- access to healthcare—with matters referred to the Human Rights Commission where appropriate
- access to water
- adequacy of food provided
- access to visitors and information.

Complaints made also raised issues about detainee safety and security, and the treatment of detainees in the Management Unit.

Four of these complaints are being investigated and remain open as at the publication of this report. Our Office will continue to liaise with ACTCS on these matters.

The number of complaints received about the ACT Revenue Office also doubled from last quarter, with 10 complaints received. The issues stemming from these complaints included:

- concerns about the land valuation objections process
- land tax arrears payments and processes.

Two of these complaints are being investigated and remain open as at the publication of this report.

Part 3: ACT COMMUNITY OUTREACH ACTIVITIES

The Office continues to seek opportunities to engage with the ACT community, targeting our outreach activities for maximum impact where possible under a recently finalised ACT engagement plan.

This was a particularly significant quarter for ACT community outreach with information stalls held at numerous community events including:

- O-week at the University of Canberra and the Canberra Institute of Technology in February 2019—allowing our staff to connect with Canberra’s growing student population
- the 2019 National Multicultural Festival in February, in conjunction with the ACT Human Rights Commission—helping to raise our Office profile amongst Canberra’s multicultural community, and celebrate cultural diversity and social inclusion
- Senior’s week in March, where we received lots of questions from older members of the Canberra community.

Outreach to Canberra’s Aboriginal and Torres Strait Islander communities was a particular focus in March with:

- the Office attending and holding a stall at the launch of the ACT Aboriginal and Torres Strait Islander Agreement 2019–2028—an agreement between the ACT Government and the Aboriginal and Torres Strait Islander Elected Body which sets out the long term direction in Aboriginal and Torres Strait Islander Affairs in the ACT.

- meetings held with the recently appointed CEO of the ACT Aboriginal Legal Service, Women’s Legal Centre’s Mulleun Mura program manager and project officer, ACT Legal Aid’s Aboriginal Liaison Officer, Ngunnawal Bush Healing Farm team, Ngunnawal Centre Manager at University of Canberra, Director and Community Outreach Officer at the Tjabal Centre at Australian National University, and the Indigenous Justice Team in Justice and Community Safety Directorate
- attendance by our Office at an ACT Policing community forum designed to increase engagement with Aboriginal and Torres Strait Islander communities.

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

Our Office also attended a number of community meetings this quarter which were focused on people experiencing homelessness and housing vulnerability. These included meetings with the Neighbourly Network, Who’s New on the Street and Catholic Care.

Our staff also delivered presentations at the ACTCOSS Cross Sector Networking Forum and the Initiatives for Women in Need forum.

Part 4: AGENCY ENGAGEMENT

During this quarter, the Ombudsman met with the recently appointed ACT Auditor-General, Mr Michael Harris. The meeting was an opportunity to discuss upcoming priorities, matters of mutual interest and working collaboratively. A meeting between the Ombudsman and the new ACT Chief Police Officer, Assistant Commissioner Ray Johnson APM, also took place.

Representatives of the Office also attended the ACT Joint Advisory Council Chairs meeting, as well as liaison meetings with a range of ACT agencies including the Education Directorate, Housing ACT, Access Canberra and ACTCS.

Representatives of our Office also continued to attend AMC oversight agency meetings, detainee delegate meetings and the ACT oversight collaboration forum to discuss current issues at the prison.

Significant agency engagement also occurred this quarter in relation to reportable conduct and FOI matters—see Part 5 and 6 below for details.

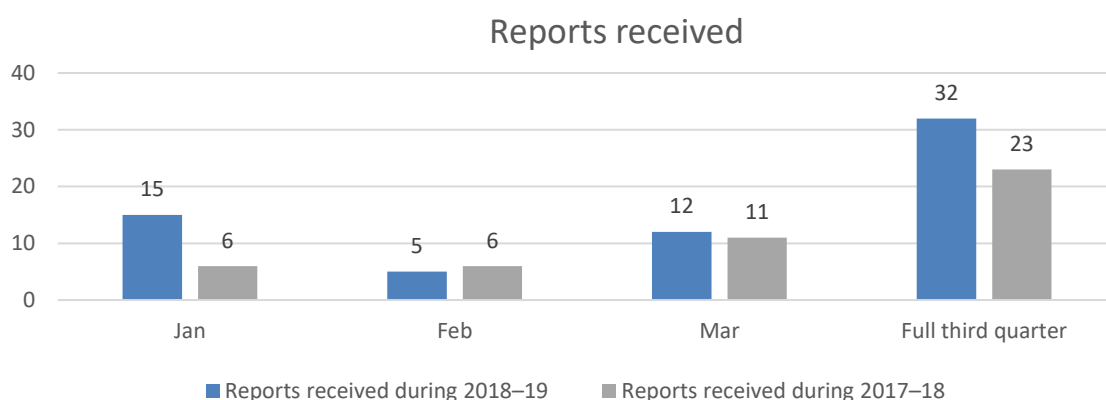
Part 5: REPORTABLE CONDUCT

Reports received

This quarter, the Office received 32 initial reports from entities about allegations of reportable conduct with seven of these also being notified by entities to ACT Policing.

As outlined in Figure 6, this was an increase of 39 per cent in reporting compared to the same time period in the last financial year.

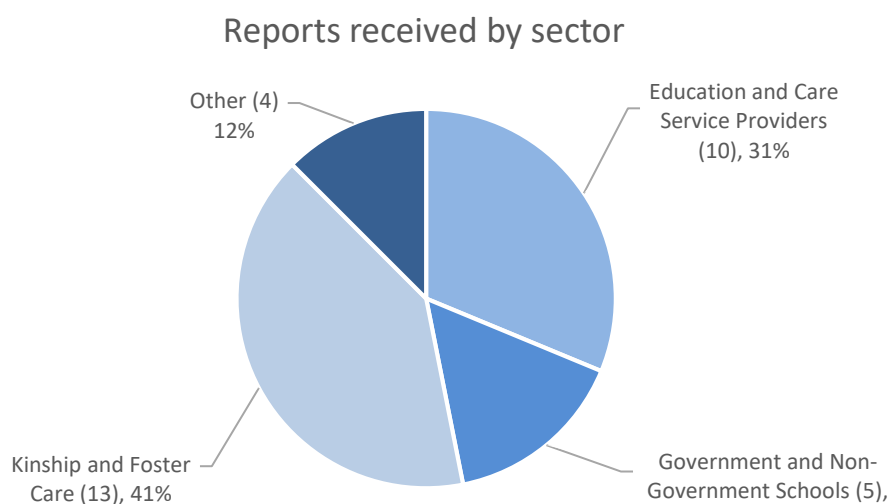
Figure 6—Reports received in the third quarter of 2018-19, compared to previous financial year



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

Figure 7 below outlines the number of reports received this quarter by organisation, with the largest number of reports received from Kinship and Foster Care organisations (13 reports). The 'other' category includes ACT Directorates, Residential Care Organisations and Religious Bodies.

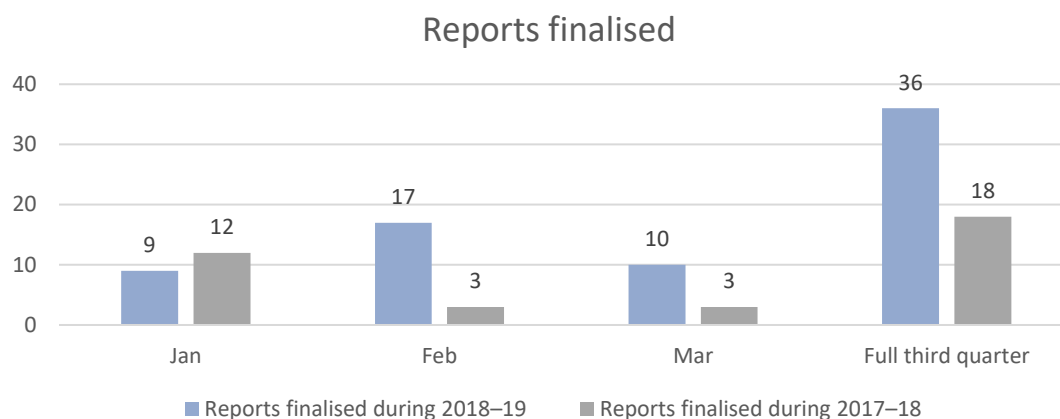
Figure 7—Reports received in the third quarter of 2018-19 by sector



Reports finalised

In the same quarter, as outlined in Figure 8, the Office closed 36 matters, a 100 per cent increase in cases finalised compared to the same quarter for the previous financial year.

Figure 8—Reports finalised in the third quarter of 2018-19, compared to last financial year



After notifying the Office of a reportable conduct allegation the organisation must provide the Ombudsman with the outcome of its investigation and what action it has taken as a result of the investigation. The Figures 9 and 10 summarise the outcomes for each allegation and the action taken by organisations, as reported to us in reports finalised this quarter. A notification may contain multiple allegations.

Figure 9— Outcomes reported by organisations – finalised investigations in the third quarter of 2018-19

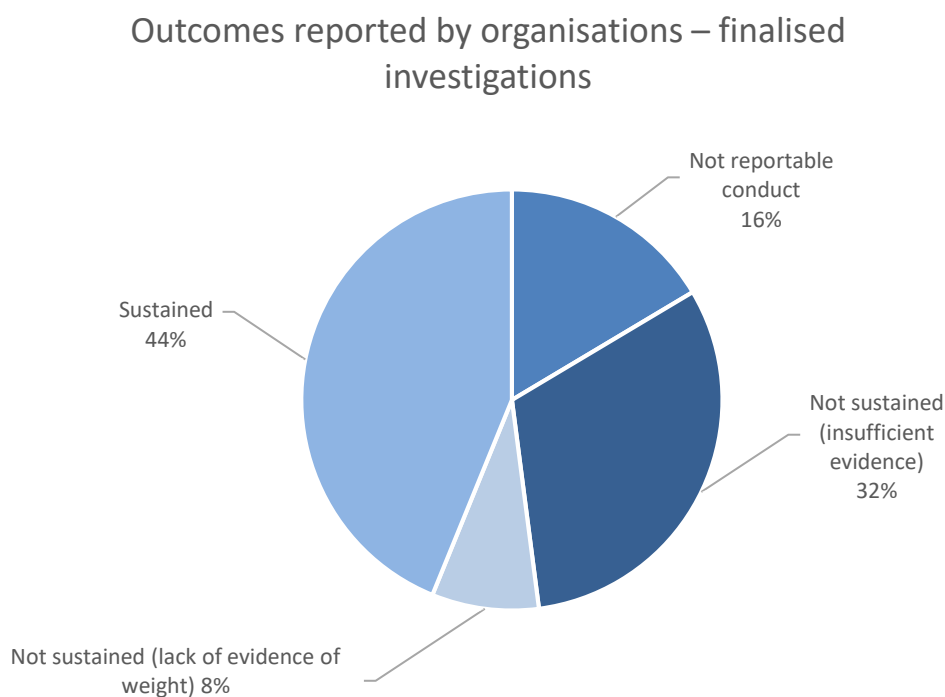


Figure 10—Actions taken by organisations - finalised in the third quarter of 2018-19



Engagement and monitoring activities

In this quarter, we supported entities to build their capacity to prevent, report and respond to allegations of reportable conduct by:

- writing to all early education and care services, who had not actively engaged with the Office, to promote awareness of the scheme and the information and support we can offer
- delivering two information sessions about the scheme for entity representatives across all sectors covered by the scheme, as well as two tailored sessions for the Human Resources Branch in the Education Directorate
- holding a reportable conduct practitioners forum that considered matters such as providing information to children, parents and carers about reportable conduct investigations
- continuing to provide constructive comments through our casework and entity liaison.

We also continued to work closely with Access Canberra to improve regular information sharing practices between our Office and the Working With Vulnerable People Team. This exchange of information provides additional assurance that each organisation has the information it needs to fulfil its child safety role.

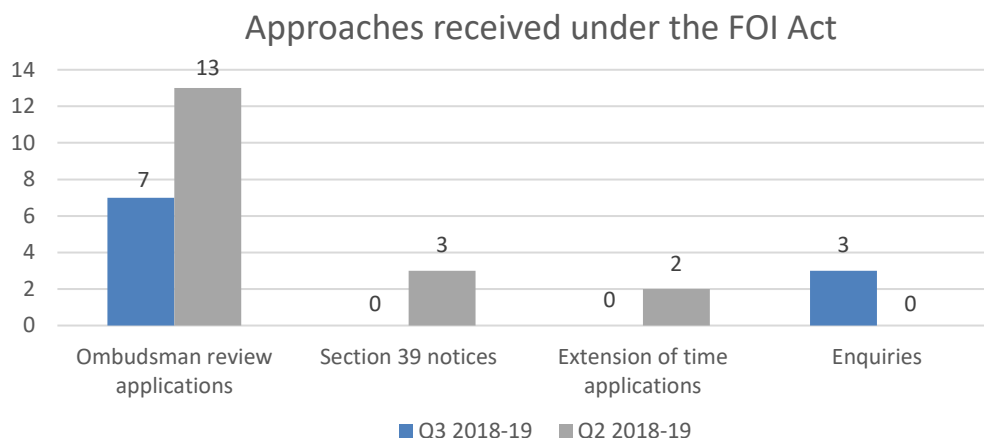
The *Royal Commission Legislation Amendment Act 2019* passed in March 2019 and includes changes to the scheme which will affect religious bodies. We have communicated these changes to our stakeholders through our website and e-newsletter. We look forward to holding information sessions specifically for religious bodies, as well as our first practitioner’s forum for religious bodies in May.

Part 6: FREEDOM OF INFORMATION (FOI)

FOI approaches received

As outlined in Figure 11, the Office received 10 approaches relating to our role under the *Freedom of Information Act 2016* (the FOI Act) during the third quarter. This comprised of seven applications for Ombudsman review and three enquiries. There were no section 39 notices or requests for extension of time to the Ombudsman during the reporting period.

Figure 11—Approaches received under the FOI Act in the third quarter of 2018–19, compared to the second quarter



Finalised FOI reviews

As shown in Figure 12, the Office finalised 14 Ombudsman reviews during this quarter (75 per cent more than the previous quarter). The finalised reviews included:

- confirming the original decision in one case
- varying the decision in one case
- setting the decision aside and substituting the decision in three cases
- one matter was closed due to insufficient information
- eight matters were withdrawn, largely due to informal resolution activities.

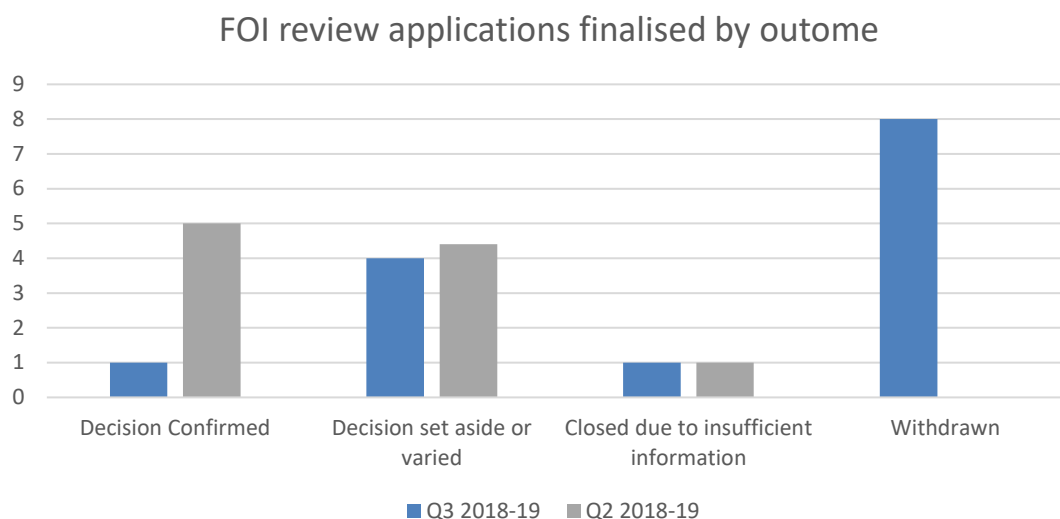
Informal resolution

We continue to focus on informal resolution wherever possible to resolve Ombudsman reviews. Case officer assessments are now being used to resolve matters before progressing to a final decision, by presenting an applicant with information on the likely outcomes of the review and options for resolution.

In cases where an agency decision is likely to be confirmed by the Ombudsman on review, the case officer assessment provides the review applicant the opportunity to make further relevant submissions, accept an option for resolution proposed by an agency, and/or withdraw their application for review.

This approach has resulted in cases being resolved ahead of a formal decision, reducing the overall timeframe for our review, and saving the applicant additional legal fees where they are represented by a lawyer. In some cases, additional information has also been released to the applicant where the agency has been willing to release further information administratively.

Figure 12—FOI review applications finalised in the third quarter of 2018–19 by outcome, compared to the second quarter



Published decisions

As of 31 March 2019, we have published 18 decisions on the ACT Ombudsman website.¹ Seven of these decisions were published during this reporting period.

These decisions provide agencies and applicants with guidance on the FOI Act including the application of the public interest test.

Guidelines project

A priority for our Office in 2019 is the development of a set of FOI Guidelines to assist agencies to implement and improve their processes under the FOI Act. During the reporting period, the Office progressed the development of its first two guidelines on the topics ‘Open Access Information’ and ‘Dealing with informal requests for government information’—with these two products expected to be finalised in the next quarter, and a total of six guidelines planned to be developed this year.

The FOI Act is explicit in intending for formal access applications to be the last resort, and members of the public are encouraged to seek information through Open Access or make an informal request for government information. Agencies have identified that implementing Open Access and informal request processes requires organisational and cultural change within agencies, and collaboration between different areas. Accordingly, we consider that the FOI guidelines on these topics should be of assistance to agencies in implementing these changes.

¹ Between January and December 2018, we published 11 decisions. This quarter we published 7 decisions. See: <http://ombudsman.act.gov.au/Freedom-of-Information>.

Engagement activities

On 22 March 2019, the ACT FOI team held a second FOI Practitioner Forum, designed to encourage collaboration between ACT government agencies, and give our Office an opportunity to provide feedback and learn about the experiences of each agency. This particular forum also focused on consulting FOI practitioners on the development of the first two Ombudsman guideline topics.

The forums are run quarterly with the next forum taking place in June 2019.

During the reporting period, our Office also met with ACT government agencies involved in the policy and whole-of-government approach to FOI through regular liaison meetings, as well as JACS and the Environment Planning and Sustainable Development Directorate (EPSDD) to discuss open access requirements and challenges.

We also participated in a meeting of the Australian Information Access Commissioners (AIAC) held in Wellington over 21–22 March 2019. Following on from this AIAC meeting, in partnership with the ACT Government, the Office will be progressing a multi-jurisdictional survey on public attitudes to FOI. The results of this survey will help to:

- highlight levels of community awareness and engagement
- inform strategies to improve information and education about access to government information in the ACT.

FOI materials

During the reporting period, the Office released a brochure on ‘Accessing Government Information’ aimed at community members, which uses simple language and visual aids to explain the FOI process from access application to Ombudsman review. The brochure is available on the Office’s [website](#).²

² See: http://www.ombudsman.act.gov.au/_data/assets/pdf_file/0023/92363/Report-on-the-operation-of-the-Freedom-of-Information-Act-2017-18.pdf

APPENDIX A

Complaints received by ACT Ombudsman by agency for the third quarter of 2018–19: 01 January to 31 March 2019

Directorate /Agency	Total received	Total finalised	Finalised without investigation	Finalised with investigation
Chief Minister, Treasury and Economic Development Directorate	28	26	19	7
Access Canberra	13	14	10	4
Chief Minister, Treasury and Economic Development	3	1	1	-
ACT Revenue Office	10	9	8	1
University of Canberra	-	2	-	2
Canberra Institute of Technology	2	-	-	-
Community Services Directorate	19	17	15	2
Community Services Directorate	2	2	2	-
Housing ACT	17	15	13	2
Education Directorate	2	2	2	-
Environment Planning and Sustainable Development Directorate	2	1	1	-
Health Directorate	-	-	-	-
Justice and Community Safety Directorate	31	28	25	3
ACT Corrective Services	21	18	15	3
ACT Court or Tribunal	-	-	-	-
ACT Human Rights Commission	2	2	2	-
Justice and Community Safety	2	3	3	-
Legal Aid ACT	3	2	2	-

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Directorate /Agency	Total received	Total finalised	Finalised without investigation	Finalised with investigation
ACT Law Society	1	1	1	-
Public Advocate for the ACT	-	-	-	-
Public Trustee for the ACT	1	1	1	-
Director of Public Prosecutions	1	1	1	-
Transport Canberra and City Services Directorate	2	1	1	-
ACTION Bus	1	-	-	-
Transport Canberra and City Services	1	1	1	-
Territory-owned Corporation	-	1	-	1
ACT Long Service Leave Authority	-	1	-	1
Icon Water	-	-	-	-
Total ACT Government	84	76	63	13
ACT Policing	11	13	11	2
Total ACT	95	89	74	15

APPENDIX B

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

Directorate /Agency	Investigations finalised	Outcome achieved via the investigation										Total positive remedies achieved
		No remedy	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better Explanation (Ombudsman)	Better Explanation (Agency)	Other non-financial remedy	Agency office counselled/ disciplined	Remedy provided by agency	
Chief Minister, Treasury and Economic Development Directorate	7	-	-	1	-	-	8	1	-	-	1	11
Access Canberra	4	-	-	1	-	-	3	1	-	-	1	6
Chief Minister, Treasury and Economic Development	-	-	-	-	-	-	-	-	-	-	-	-
ACT Revenue Office	1	-	-	-	-	-	1	-	-	-	-	1
University of Canberra	2	-	-	-	-	-	4	-	-	-	-	4
Canberra Institute of Technology	-	-	-	-	-	-	-	-	-	-	-	-
Community Services Directorate	2	-	1	-	-	-	1	-	-	-	-	2
Community Services Directorate	-	-	-	-	-	-	-	-	-	-	-	-
Housing ACT	2	-	1	-	-	-	1	-	-	-	-	2
Education Directorate	-	-	-	-	-	-	-	-	-	-	-	-
Environment Planning and Sustainable Development Directorate	-	-	-	-	-	-	-	-	-	-	-	-
Health Directorate	-	-	-	-	-	-	-	-	-	-	-	-
Justice and Community Safety Directorate	3	1	-	-	-	-	1	-	-	-	1	2
ACT Corrective Services	3	1	-	-	-	-	1	-	-	-	1	2
ACT Court or Tribunal	-	-	-	-	-	-	-	-	-	-	-	-

ACT Ombudsman—Quarterly report, 1 January to 31 March 2019

Directorate /Agency	Investigations finalised	Outcome achieved via the investigation										Total positive remedies achieved
		No remedy	Action expedited	Apology	Change to law, policy or practice	Decision changed or reconsidered	Better Explanation (Ombudsman)	Better Explanation (Agency)	Other non-financial remedy	Agency office counselled/ disciplined	Remedy provided by agency	
ACT Human Rights Commission	-	-	-	-	-	-	-	-	-	-	-	-
Justice and Community Safety	-	-	-	-	-	-	-	-	-	-	-	-
Legal Aid ACT	-	-	-	-	-	-	-	-	-	-	-	-
ACT Law Society	-	-	-	-	-	-	-	-	-	-	-	-
Public Advocate for the ACT	-	-	-	-	-	-	-	-	-	-	-	-
Public Trustee for the ACT	-	-	-	-	-	-	-	-	-	-	-	-
Director of Public Prosecutions	-	-	-	-	-	-	-	-	-	-	-	-
Transport Canberra and City Services Directorate	-	-	-	-	-	-	-	-	-	-	-	-
ACTION Bus	-	-	-	-	-	-	-	-	-	-	-	-
Transport Canberra and City Services	-	-	-	-	-	-	-	-	-	-	-	-
Territory-owned Corporation	1	-	-	-	-	-	1	-	-	-	-	1
ACT Long Service Leave Authority	1	-	-	-	-	-	1	-	-	-	-	1
ICON Water	-	-	-	-	-	-	-	-	-	-	-	-
Total ACT Government	13	1	1	1	0	0	11	1	0	0	2	16
ACT Policing	2	-	-	-	-	-	2	1	-	-	-	3
Total ACT	15	1	1	1	0	0	13	2	0	0	2	19