

SECTION C

LEGISLATIVE AND POLICY BASED REPORTING

PUBLIC INTEREST DISCLOSURE

Under the *Public Interest Disclosure Act 1994* (ACT) (PID Act), a person may make a public interest disclosure (PID) to any ACT Government agency including the Ombudsman. The Ombudsman can become involved directly or at the request of the agency concerned. PID matters are among the most complex cases the Ombudsman deals with in terms of their investigation and resolution.

The PID complaints investigated by the Ombudsman tend to be connected with workplace disputes and grievance processes. Such disputes sometimes open up other issues relating to the wider operations of the agency involved.

In last year's annual report we reported on a PID that was referred to the Commissioner for Public Administration and the Auditor-General. The matters raised in that PID are still under investigation by those bodies.

Two PID complaints were under consideration at the end of the last reporting period. The first was a matter we had previously declined to investigate as the matter had previously been investigated by an independent investigator. In addition, the actions said to be unlawful reprisals did not appear to have been taken because of the person's disclosure. The person resubmitted his PID in a different form, asking that the matters raised be investigated. We considered that the matters raised were the same as those previously considered by this office and again declined to investigate. Some additional issues raised by the person were also considered, but we declined to investigate on the basis that insufficient evidence had been provided.

The second matter still under consideration related to the procedures of an ACT agency to respond to PIDs. The issues were raised by a person who had made a PID to the agency concerned and considered that he had suffered unlawful reprisals. We declined to investigate the unlawful reprisals as we considered he was able to resolve the issue through the legal representation which he had underway. We are continuing to work with the agency to ensure that their procedures for responding to PIDs are effective.

We received one further PID this year. The matter is in the early stages of consideration. We also received a complaint that was characterised as a PID. The complainant had concerns about the manner in which her rehabilitation program was being handled by the relevant agency. We did not consider that the matters raised constituted a PID as defined by the Act. We suggested that she raise the employment-related issues with the Commissioner for Public Administration and the privacy issues with the Privacy Commissioner.

FREEDOM OF INFORMATION

Complaints about the actions of agencies

Subsection 53(3) of the *Freedom of Information Act 1989* (ACT) (FOI Act) requires the Ombudsman to report on complaints about the handling of freedom of information (FOI) requests by ACT Government agencies.

This year we received five complaints involving three agencies in which the handling of FOI requests was raised as an issue. About half of these complaints related

to service delivery, and specifically about delay by agencies in providing documents and/or decisions. Often the focus of our intervention is to have the agency expedite a response. The other complaints related to dissatisfaction with exemptions claimed. In this situation, we will sometimes ask the agency to better explain its decision for exempting documents.

FOI requests to the Ombudsman

In 2007–08 the ACT Ombudsman received two FOI requests under s 15 of the FOI Act. In one case, partial access to the documents was granted. In the second case, the only document that fell within the scope of the request was exempted under s 36 as it was an internal working document.

There were no applications for review of our decisions made to the Administrative Appeals Tribunal. It is not feasible to calculate reliably the cost of dealing with the FOI requests, as it is dispersed throughout the office. During the period, no fees or charges were imposed on the applicant.

INTERNAL ACCOUNTABILITY

The Commonwealth Ombudsman is also the ACT Ombudsman. Funding for services in relation to ACT Government agencies and ACT Policing is provided through a services agreement with the ACT Government. The services agreement took effect from 31 March 2008 and replaced the previous memorandum of understanding. The Ombudsman's office remains independent of the ACT Government.

The Governor-General re-appointed the Commonwealth Ombudsman, Prof. John McMillan, to a second five-year term in March 2008. Mr Ron Brent, Deputy Ombudsman, was also re-appointed to a second five-year term in June 2008. Dr Vivienne Thom was appointed as Deputy Ombudsman in March 2006 for a five-year term.

The remuneration for the Ombudsman and Deputy Ombudsmen is determined in accordance with a ruling by the Remuneration Tribunal (Commonwealth).

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 office ensures that:

- all ACT Ombudsman records are stored appropriately and securely
- relevant position profiles and duty statements reflect the records management skills required
- training is available for records management and general staff in recordkeeping skills and responsibilities
- a controlled language system has been developed and is used by staff
- the Ombudsman's approved Records Disposal Schedule (Territory Records (Records Disposal Schedule – Ombudsman Complaint Records) Approval 2003 (No 2); Notifiable Instrument NI 2003–458) is implemented and monitored appropriately.

Part 3 of the Territory Records Act came into operation on 1 July 2008 and provides for public access to ACT records over 20 years old. The ACT Ombudsman's office does not have any records that are over 20 years old.

HUMAN RIGHTS ACT 2004

The ACT Ombudsman continued to work collaboratively with the ACT Human Rights Office and ACT Corrective Services on issues concerning the new ACT prison.

The Ombudsman's office also plays an active role in human rights protection. The right to complain is both a right in itself, implicit in the civil and political rights listed in the Human Rights Act, and one of the best mechanisms to ensure that all other rights can be protected. It establishes a fundamental status for the individual in his or her dealings with government. The existence of bodies such as the Ombudsman minimises the inequality of power, resources

and information that can prevent this right, and those available through it, from being exercised.

COMMISSIONER FOR THE ENVIRONMENT

There were no requests, investigations or recommendations relating to the ACT Ombudsman.

ACT MULTICULTURAL STRATEGY

The Ombudsman now provides information sheets in 36 community languages that set out the role of the Ombudsman and how to make a complaint about a government agency. The languages are Albanian, Amharic, Arabic, Bosnian, Chinese (simplified and traditional), Croatian, Dari, Dinka, Dutch, Farsi/Persian, Filipino, French, German, Greek, Hindi, Indonesian, Italian, Khmer, Korean, Kurdish, Lao, Macedonian, Malay, Pashtu/Pashto, Polish, Russian, Serbian, Sinhalese, Somali, Spanish, Swahili, Tamil, Tigrinya, Turkish and Vietnamese. The information sheets are available at www.ombudsman.act.gov.au.

ABORIGINAL AND TORRES STRAIT ISLANDER REPORTING

In the last two annual reports we reported on our efforts to provide a better service to Aboriginal and Torres Strait Islander people, communities and organisations. A working group in the office developed strategies to refine our consultation processes, undertake own motion investigations in areas of specific concern to Indigenous people and communities, and develop partnerships with existing contact networks in Indigenous communities. We started implementing these strategies in 2007.

Following the announcement by the former Australian Government of the Northern Territory Emergency Response, we decided we could deal more effectively with Indigenous issues by establishing a dedicated Indigenous Unit to provide assistance to all staff in the office in dealing

with complaints from Indigenous people and communities. We also increased our outreach activity and complaint-handling capacity substantially.

While the focus of the unit's work has been the Emergency Response, it also provides advice to other teams in the office on the best way to approach complaints from Indigenous complainants.

ECOLOGICALLY SUSTAINABLE DEVELOPMENT

The Ombudsman continued to encourage staff to manage all resources, including energy, in an ecologically responsible manner. During 2007–08 we conducted an energy audit of all electrical equipment and the office's air conditioning system.

The office's Environmental Management Policy and information material focus on the conservation of energy within the workplace, including the use of light, computer equipment, water management, transport management and organic recycling. The office recycles toner/printer cartridges, paper and cardboard products, classified waste and cans, bottles and plastic. These strategies are communicated through the office intranet and induction program.

It is not possible to report on resource usage specific to the ACT Ombudsman function only.

ACT WOMEN'S PLAN

The Ombudsman's office contributes to the achievement of the ACT Women's Plan by:

- promoting the rights of all individuals, including women and girls, to complain about the administrative actions and decisions of government agencies
- providing a flexible, sensitive and responsive complaints service that can deal effectively with complaints from women and girls.

During the year our ACT Team met with the Women's Information and Referral Centre to discuss our role.