

# SECTION A

## PERFORMANCE AND FINANCIAL MANAGEMENT REPORTING

The ACT Ombudsman's office has been operating for nineteen years. During that time we have assisted in resolving complaints about virtually all aspects of government administration. Complaints arise in matters as diverse as public housing, vehicle registration, child protection, policing and correctional services, and tendering and contracting by ACT Government agencies.

The experience and insights gained through dealing with complaints have enabled the ACT Ombudsman's office to stimulate improvements in government administration. We consistently focus on areas such as the quality of decision making, internal complaint handling, transparency, recordkeeping, communication with the public, and sensitivity to individual needs.

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

### THE ORGANISATION

The role of the ACT Ombudsman is performed under the *Ombudsman Act 1989* (ACT). The Ombudsman also has specific responsibilities under the *Freedom of Information Act 1989* (ACT) and the *Australian Federal Police Act 1979* (Cth), and is authorised to deal with whistleblower complaints under the *Public Interest Disclosure Act 1994* (ACT).

The Commonwealth Ombudsman, who is appointed under the *Ombudsman Act 1976* (Cth), discharges the role of



Prof. John McMillan, ACT Ombudsman

ACT Ombudsman under the *ACT Self-Government (Consequential Provisions) Act 1988* (Cth).

Up until 30 December 2006 the Ombudsman also had specific responsibilities in relation to the Australian Federal Police (AFP) under the *Complaints (Australian Federal Police) Act 1981* (Cth). Complaints made about the AFP before 30 December 2006 continue to be dealt with under that Act. Complaints made after that date are now dealt with under the Ombudsman Act (Cth). Changes to this legislative regime are discussed later in the report. In addition, the Ombudsman has a role in monitoring compliance with Chapter 4 (Child Sex Offenders Register) of the *Crimes (Child Sex Offenders) Act 2005* (ACT) by the ACT Chief Police Officer and other people authorised by the Chief Police Officer to have access to the register.

The ACT Ombudsman is an independent statutory officer who considers complaints about the administrative actions of government departments and agencies. The Ombudsman 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 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 ACT Ombudsman are independence, impartiality, integrity, accessibility, professionalism and teamwork.

Our clients and stakeholders cover all people who may be affected by the administrative actions of ACT Government agencies and the AFP in carrying out their ACT Policing role.

A services agreement between the ACT Government and the Ombudsman covers the provision of services in relation to ACT Government agencies and ACT Policing.

In 2007–08 the Ombudsman delegated day-to-day responsibility for operational matters for the ACT Ombudsman to Senior



Executive team (standing from left) Anna Clendinning and Diane Merryfull; and (seated from left) John McMillan and Vivienne Thom

Assistant Ombudsman Damien Browne, and later Senior Assistant Ombudsman Anna Clendinning, and responsibility for law enforcement, including ACT Policing, to Senior Assistant Ombudsman Vicki Brown, and later Senior Assistant Ombudsman Diane Merryfull. Both Senior Assistant Ombudsmen are supported by a team of specialist staff (the ACT Ombudsman Team and the Law Enforcement Team respectively) in carrying out these responsibilities for the Ombudsman. The Ombudsman and Deputy Ombudsmen maintain an active involvement in the work of these two teams.

## OVERVIEW

### Complaint statistics

Complaint handling continues to be the core of the ACT Ombudsman's role. In 2007–08 the office received 711 approaches and complaints from the public about ACT Government agencies (541) and ACT Policing (170). This represents a decrease of nearly 25% on the 941 approaches and complaints we received in 2006–07. The figures are not directly comparable because of changes in the way ACT Policing complaints are dealt with, as described later in the report.

The number of approaches and complaints received about ACT Government agencies increased slightly (541 in 2007–08, compared to 528 in 2006–07). ACT Corrective Services and Housing ACT continue to be the agencies about which we receive most complaints.

During the period we finalised 800 approaches and complaints, with 561 being about ACT Government agencies, and 239 about ACT Policing.

Detailed analysis of complaints received and finalised is provided in the 'Performance' section of this report under the headings 'Complaints—ACT Government agencies' and 'Complaints—ACT Policing'.

### Submissions and major investigations

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. This included providing comments on draft amendments to the *Ombudsman Act 1989* that were included in the *Statute Law Amendment Act 2008*.

In August 2007 the Ombudsman released his report on an own motion investigation into delays in decisions on taxation objections in the ACT Revenue Office, *ACT Department of Treasury: handling of revenue objections* (Report No 1/2007). During the year we conducted an own motion investigation into the adjudication of breaches of discipline at Belconnen Remand Centre and Symonston Temporary Remand Centre. The report of this investigation will be released in early 2008–09.

The results of a joint AFP/Ombudsman review of ACT Policing's Watchhouse operations were released in June 2007. The joint review team has examined the extent to which the recommendations of the review had been implemented. It is expected that the follow-up of the recommendations will be completed in the first half of 2008–09.

### Organisational planning and environment

During the year the office's strategic plan was reviewed to build on achievements over the past three years and to reflect priorities for the period 2008 to 2011. Strategic priorities identified for 2008–09 are to:

- target outreach, relevant publications and communication activities to key stakeholders, particularly through intermediaries
- be responsive to areas of changing need in allocating resources
- build on the work practice and system changes to deliver improved timeliness, efficiency and effectiveness in managing complaints

- improve quality assurance and consistency in complaint handling
- improve staff training and development programs.

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

### Complaints service

During the year we signed a new services agreement with the ACT Government for the provision of Ombudsman services in relation to ACT Government agencies and ACT Policing. The agreement takes into account complaint workloads for the office and new developments in ACT functions, such as the new ACT prison.

In 2005–06 we introduced a raft of changes to our work practices to improve the consistency, effectiveness and efficiency of complaint handling. These changes were refined during 2006–07 and 2007–08. During 2007–08 we conducted an external post-implementation review of the changes, and convened an internal working party to consider whether complaint work can be managed more efficiently.

These reviews identified some areas for further improvement. In response, we have implemented a number of changes. For example, we have:

- created an Information Management Committee to ensure that the development of information technology, work practices and governance strategies align with a whole-of-office approach to information management
- developed a new, risk-based quality assurance framework.

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. In late 2006–07 we undertook a survey of ACT and Australian Government 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.

The survey results showed that the role of the office is accepted and well regarded, with most respondents agreeing on the importance of the office and its impartiality. Some specific areas were noted for improvement. We have started a range of initiatives in response, such as working to improve the quality and amount of information we provide to agencies about various aspects of the work of the Ombudsman's office.

Further details of the reviews, the survey and changes we have implemented will be published in the Commonwealth Ombudsman Annual Report 2007–2008.

Following changes in 2006 to the way complaints about the AFP are handled, the Ombudsman has a responsibility to review the administration of the AFP's handling of complaints, through inspection of AFP records. The first two reviews of the AFP's administration of complaint handling, including handling of complaints about ACT Policing, were completed in 2007–08. The Ombudsman will report to the Commonwealth Parliament on the outcome of these reviews in early 2008–09.

### Public administration and complaint handling

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 on the ACT Prison Project. We also continued to hold regular meetings with agency contact officers to maintain the good working relationships so important to timely and effective resolution of complaints.

During the year, a Senior Assistant Ombudsman, Ms Mary Durkin, was appointed to the position of ACT Health Services Commissioner. We congratulate Mary on this notable achievement.

## OUTLOOK FOR 2008–09

Late in 2007–08 we commissioned an independent market research company to undertake a survey of complainants. The survey aims to obtain information on three key aspects—access, demographics and quality of service. We will analyse the results of the survey and report on the results and initiatives taken in response in 2008–09.

The coming year will see the opening of the Alexander Maconochie Centre and the Bimberi Youth Justice Centre. Consequently it is possible that we will see a change in the nature of complaints arising in relation to these facilities, including from people moving from interstate prisons to the new ACT prison. We will work closely with relevant agencies to identify any systemic issues that may appear to be arising.

We will also use the information arising from our reviews of AFP complaint handling to assist the AFP in improving their complaint-handling processes.

We will continue our program of seminars for ACT Government complaint contact officers, aimed at increasing the practical complaints-handling skills of those officers,

as well as enhancing their understanding of the role of policy and legislation in decision making. We are also developing a range of information about the role of the ACT Ombudsman and how the office works, to help staff in agencies as well as the general public.

## ANALYSIS OF AGENCY PERFORMANCE

### Summary against performance

In 2007–08, the ACT Government paid an unaudited total of \$952,475.70 (including GST) to the Ombudsman's office for the provision of Ombudsman services. Moneys were received directly from the ACT Government initially under a memorandum of understanding, and then under a new services agreement from 31 March 2008. Payments (including GST) were for the purposes of the *Ombudsman Act 1989* (ACT) (\$448,374.30) and for complaint handling in relation to ACT Policing (\$504,101.40).

The office's performance against indicators is shown in Table 1 and provided in more detail under the headings 'Complaints—ACT Government agencies' and 'Complaints—ACT Policing'. The statistical report in Appendix 1 provides details of complaints received and finalised, and remedies provided to complainants in 2007–08.

Approaches and complaints to the office range from simple contacts that can be resolved without investigation through to the

**TABLE 1** Summary of achievements against performance indicators, 2007–08

Performance indicators	ACT Government agencies	ACT Policing
Number of approaches and complaints received	541 approaches and complaints (528 in 2006–07)	170 approaches and complaints
Number of approaches and complaints finalised	561 approaches and complaints (501 in 2006–07)	239 complaints and 293 complaint issues
Time taken to finalise complaints	87% of all complaints finalised within three months (89% in 2006–07)	92% of complaints finalised under the Ombudsman Act (Cth) within three months

Note: Because of the changes to the legislative regime for ACT Policing complaints, the statistics are not comparable year by year.

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:

- the need to gain access to agency records
- the nature of the allegations made by a complainant
- the time taken by an agency to respond to our requests for information
- the 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. If a person has an enquiry or complaint outside the Ombudsman's jurisdiction to deal with, we try to provide relevant information and contact details to assist them.

### 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. Activities included:

- conducting a forum for ACT Government agency 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 functions of the Ombudsman
- providing a number of information sessions for trainee custodial service officers and probation and parole officers



Ombudsman office staff visiting the Alexander Maconochie Centre site

- 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.

### 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 reviewed our service charter standards during the year.

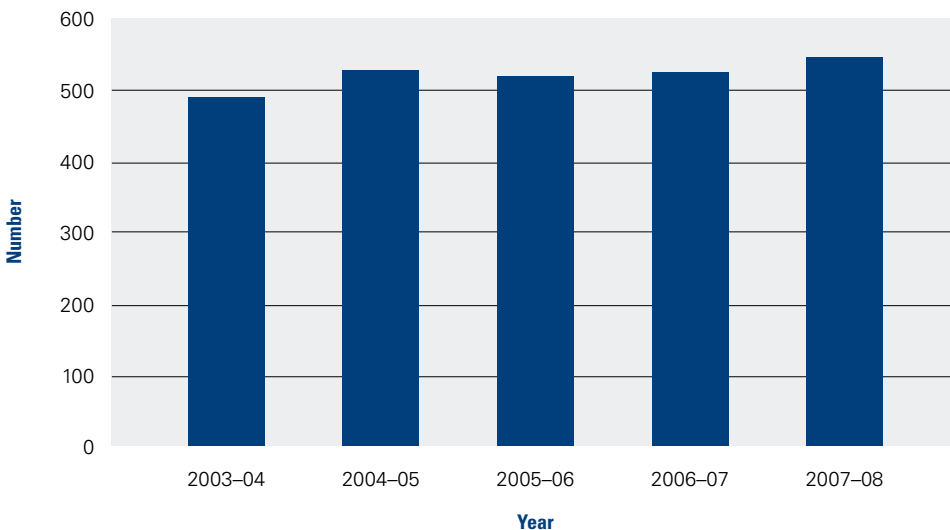
If a complainant disagrees with our conclusions on a complaint, they may ask for the matter to be reviewed. A Deputy Ombudsman will consider the information

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 an 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.

During 2007–08 we dealt with 12 requests for reviews, 11 of which involved ACT Government agencies and one in relation to ACT Policing. The original decision was affirmed in seven complaints. Of the other requests:

- in one case we varied the outcome in that the complaint was in jurisdiction but investigation was not warranted
- in one the outcome was affirmed after further investigation
- one request was withdrawn
- one request was refused as the matter was still being investigated
- one request was still under consideration at the end of the reporting period.

**FIGURE 1** Approaches and complaints received about ACT Government agencies, 2003–04 to 2007–08



## COMPLAINTS—ACT GOVERNMENT AGENCIES

### Complaints received

In 2007–08 we received 541 approaches and complaints about ACT Government agencies, a 2% increase over the 528 approaches and complaints we received in 2006–07 (see Table 1). Figure 1 provides a comparison of approaches and complaints received about ACT Government agencies since 2003–04.

ACT Corrective Services (ACTCS) and Housing ACT continue to be the two agencies about which we receive most approaches and complaints, with 155 and 100 received respectively (29% and 18% of the total), compared to 94 and 99 each in 2006–07. Detailed statistical information on the approaches and complaints received is provided in Appendix 1.

### Complaints finalised

During 2007–08 we finalised 561 approaches and complaints about ACT Government agencies, compared to 501 approaches and complaints in the previous year.

This year we investigated 33% of these approaches and complaints, compared to 29% last year.

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 a better explanation by us or by the agency as to why the agency acted the way it did; an agency changing or reconsidering its earlier decision; action to expedite the matter; an agency apology; and changes in agency administrative policies and procedures.

## FURTHER PROBLEMS WITH RENTAL REBATES

## CASE STUDY

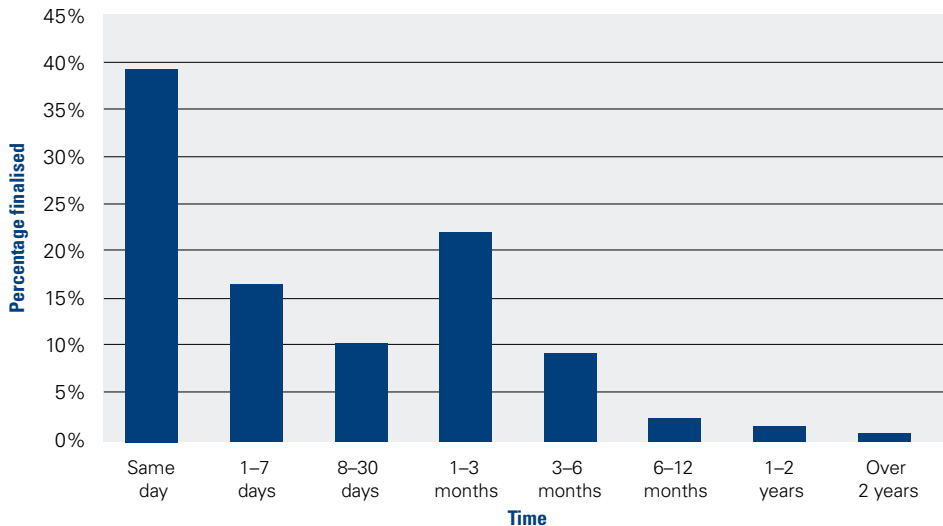
Mr A complained that Housing ACT had incorrectly applied its policy when calculating an adjustment to the rental rebate he and his wife received.

Mrs A had received an out-of-court settlement for an injury she had sustained at work. Under the Housing ACT policy, a tenant must notify Housing ACT of any change in income that may affect their rental rebate calculation. The policy details how to calculate the rental rebate if a tenant has received a workers compensation payment. It also has a section dealing with tenants who receive out-of-court settlements in general. Where this occurs and the settlement is not apportioned, Housing ACT assumes that 50% of the total lump sum is for loss of income and recalculates the rental rebate accordingly.

Mrs A had provided the relevant court documents to Housing ACT. They showed that the settlement had two components—an award of workers compensation and an award for a common law personal injury claim. However, Housing ACT recalculated the rental rebate by attributing 50% of the total amount as income, raising a significant debt.

Our investigation revealed that decision makers at each level in Housing ACT did not appear to understand the nature of the court documentation Mrs A provided. It was not until we approached Housing ACT and Mrs A provided legal advice she had obtained to Housing ACT that it undertook to obtain its own legal advice and reconsider the matter. Based on this further legal advice, Housing ACT recalculated the rental rebate adjustment using only the amount awarded to Mrs A for workers compensation, and agreed to apologise to Mr and Mrs A and explain how the errors had occurred.



**FIGURE 2** Time taken to finalise approaches and complaints about ACT Government agencies, 2007–08

### Time taken to finalise complaints

Of the 561 approaches and complaints about ACT Government agencies that were dealt with during 2007–08, 55% were finalised within one week and 87% within three months (see Figure 2). This compares with 59% finalised within one week and 89% within three months, in 2006–07.

Of the remaining complaints, 9% 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.

### Complaint themes 2007–08

Many complaints raise similar types of issues in public administration. While the circumstances of each complaint are usually unique to the agency and individual involved, the broader lessons can often be applied to many agencies.

The main challenges facing ACT Government agencies that were highlighted by complaints received during 2007–08 were improving decision making and providing better information.

### Improving decision making

Problems in decision making can be expected to occur and to give rise to complaints from time to time. Technically complex decisions can be difficult to get right. Good systems and well-trained staff are essential for the effective management of complex areas.

In last year's annual report we described some problems in Housing ACT's recalculation of rental rebates that indicated there may be broader systemic issues. We were considering an own motion investigation into Housing ACT's practices and procedures in this area. The case study *Further problems with rental rebates* occurred prior to Housing ACT providing us with further information about ongoing training of staff and the development of improved systems for recalculating difficult rental rebates. We will continue to monitor the issue, and consider that an own motion investigation is not warranted at this time.

A fundamental feature of good public administration is that decisions are made in accordance with the relevant legislation. Good recordkeeping is also essential to good administration. It supports transparency

**CONSULTATION REQUIRED BY LAW****CASE STUDY**

Ms B complained that the Office for Children, Youth and Family Support (OCYFS) had been making decisions in a way that denied her procedural fairness. She also considered that she had been lied to in relation to the care of her child.

We found that OCYFS records contained scant information on who was involved in decision making and on the reasons for decisions. OCYFS agreed that the records were less than complete. It was also clear that several undertakings OCYFS gave to Ms B had not been met, such as returning her son on an agreed date and ensuring arranged contact visits occurred as planned.

Overall there had been poor communication, some of which was attributable to the lack of a regular case manager. OCYFS agreed that some of its arrangements had been inadequate. It was our view that OCYFS' failure to maintain undertakings for contact arrangements had an unreasonable adverse impact on Ms B, causing her unnecessary inconvenience.

A parent of a child in care has a right to be involved in decision making. The relevant legislation requires that the parent be sufficiently informed so their participation in decision making is meaningful. For certain important decisions, OCYFS had not complied with the requirement in the legislation to keep Ms B adequately informed and engaged in the decision-making process.

OCYFS agreed to engage with Ms B at a more meaningful level and to review internal processes to apply its legislation correctly and improve accountability and transparency in its decision making.

**BEING LEFT OUT****CASE STUDY**

Mr C complained that the then Office of Fair Trading (OFT) had failed to inform him of the reasons for its decision not to pursue action against a sole trader. Mr C also complained that the OFT would not allow him to seek an internal review of the decision.

The sole trader in question was engaged in internet sales of computing equipment. Mr C and others had purchased computing equipment online in good faith, but they did not receive the equipment. Mr C and others complained to the OFT.

Our investigation revealed that the OFT initially intended to pursue the matter further with the sole trader. The matter was transferred between officers within OFT and the new officer decided not to pursue it, as nearly all the affected parties were by then satisfied with their goods or had been reimbursed. The OFT acknowledged that Mr C was yet to be compensated. There were no records of the decision not to pursue Mr C's matter.

Following discussions with Ombudsman staff, the OFT agreed to reconsider the complaint from Mr C and to resume contact with the sole trader. The matter was resolved to the satisfaction of Mr C, who wrote to the OFT (now part of the Office of Regulatory Services) and thanked them for their efforts. The Office of Regulatory Services has established a recordkeeping system and developed training for its officers that will minimise the incidence of this kind of error in future.

## IMPLEMENTATION OF NEW ACT

## CASE STUDY

In December 2007 we received 14 complaints from detainees at Belconnen Remand Centre (BRC) about the commencement of the new *Corrections Management Act 2007*. The Act was introduced by the ACT Government as part of its preparation for opening the new prison in the ACT, the Alexander Maconochie Centre (the AMC).

The detainees complained about information contained in a flyer distributed by ACT Corrective Services (ACTCS) on changes to detainee management to take place the following day when the new Act commenced. The flyer contained information about new discipline measures and search procedures which, for example, allowed for visitors to be 'searched' by dogs. Some detainees were concerned that their children would be subject to searching by dogs in the forthcoming Christmas visits.

Our investigation showed that ACTCS had not considered whether the information provided to detainees appropriately conveyed necessary information about the changes. In addition, there was no formal communication plan in place to keep detainees informed of ongoing changes leading up to the opening of the AMC.

ACTCS agreed that more could have been done to manage the communication of the changes to detainees.

and accountability. It gives confidence that a decision was made by reference to the principles of procedural fairness, and it should show that a decision complied with applicable legislation.

The case study *Consultation required by law* shows the problems that can arise when legislation is not complied with fully and records are poor.

Another important aspect of good decision making is that the circumstances of each person affected by the decision must be taken into account. The case study *Being left out* describes a problem with treating people fairly and keeping proper records.

### Providing better information

Many agencies can improve the provision of information to their customers and stakeholders.

When new legislation or procedures are being introduced, it is important to take care in communicating the changes to people who may be affected. The case study *Implementation of new Act* illustrates a situation where poorly considered

communication led to a number of complaints to the office.

We have been advised that ACTCS has now put measures in place to assist in communicating changes to detainees and prisoners through the use of multi-screen technology and regular newsletters, and that the prisoner handbook is being updated for the Alexander Maconochie Centre.

Agencies need to provide clients with accurate and timely advice. The case studies *Errors in final notices* and *Rates arrears* show the possible financial impact of failures in this area.

The changes ACT Revenue Office (ACTRO) made to their administrative procedures should mean similar problems are not repeated for other clients.

### Achieving good outcomes

A core objective of the Ombudsman is to improve public administration. We investigate individual complaints with a view to obtaining an effective remedy for complainants where appropriate, as well as identifying and resolving systemic issues.

**ERRORS IN FINAL NOTICES****CASE STUDY**

Mr D complained that ACTRO had issued final notices that contained errors before legal action was taken, and that ACTRO had failed to act on his change of address advice.

Mr D had been disputing liability for land tax penalty interest charges for some time. ACTRO issued two final notices for the one debt on the same day, sending one notice to Mr D and the other to his managing agent for the property in question. Each notice contained a different amount for Mr D's land tax obligations.

In response to our investigation, ACTRO advised the errors were due to human error, with an officer failing to manually insert the correct amount relating to Mr D's account.

ACTRO undertook to write to Mr D, apologising for the confusion this error had caused. ACTRO also changed the way it produces final notices by having them automatically created in the debt management system, to prevent a similar error occurring in the future.

Our investigation also established that Mr D had advised ACTRO of a change of address in 2003. However, ACTRO did not act on this advice until late 2007, with the result that they had sent notices to the wrong address for over four years.

ACTRO apologised to Mr D for the error with his address and agreed to remit interest charges for the relevant period.

**RATES ARREARS****CASE STUDY**

Mr E complained that ACTRO had failed to notify him of arrears on his rates account, and as a result he incurred penalty interest.

Mr E had entered into a Flexipay direct debit arrangement in 2001 to pay his rates. Initially the monthly payment was sufficient to meet his annual rates assessment. However, following rates increases this amount was no longer sufficient and Mr E's account fell into arrears in 2006.

Our investigation revealed that ACTRO does not issue arrears notices to ratepayers on the Flexipay direct debit arrangement when their account falls into arrears. However, ratepayers who pay their rates by other means and who fall into arrears are issued an arrears notice. In addition, the annual rates notices and instalment notices issued to ratepayers on the Flexipay arrangement do not clearly advise a ratepayer that their account may be in arrears and do not separately itemise accrued interest.

We have recommended that ACTRO issue arrears notices to ratepayers on a Flexipay arrangement and amend the annual notices and instalment notices to show that an account may be in arrears. We are still in discussion with ACTRO about improving communication with ratepayers about arrears. ACTRO agreed to refund Mr E the interest charged on the basis of his good payment record.

This section gives examples of the types of outcomes we have achieved, and shows the readiness of ACT Government agencies to take steps to make good where things have gone wrong.

A single complaint can sometimes lead to a range of improvements, as the case study *Operator error* shows.

Where different agencies, including in different jurisdictions, are involved in a process, it is important that there is good communication between the agencies, as the case study *Cross border defect notice* shows. It also illustrates how, for individuals, keeping good records about important personal matters is often the key to successfully resolving a problem.

Each Australian state and territory has legislation that specifies the time period after which certain types of matters, including debt recovery, can no longer be pursued through legal action. The case study *Statute barred debt* illustrates a complaint we dealt

with where the agency's policies were inconsistent with the public policy informing the statute of limitations.

## Own motion investigations and other issues

### Department of Treasury

In last year's annual report we advised we were carrying out an own motion investigation into the administrative handling of a range of decisions on objections lodged by the Department of Treasury. In August 2007 the Ombudsman released a report on the investigation, *ACT Department of Treasury: handling of revenue objections* (Report No 1/2007).

During the investigation, ACT Ombudsman staff met with staff of Treasury, ACTRO and the Objections and Appeals Section (OAS) in ACTRO. We reviewed 35 files on decided objections and 73 files on unresolved objections. The own motion investigation also involved researching relevant Australian legislation.

## OPERATOR ERROR

## CASE STUDY

Mr F went to a local waste transfer station that is operated by a contractor but regulated by the Department of Territory and Municipal Services.

The operator weighed Mr F's vehicle and trailer. At the weigh-in, the vehicle registered 3.5 tonnes. On exit, having unloaded the vehicle, it weighed out at 4 tonnes.

There was no dispute that there had been waste on board that was deposited. However, Mr F was charged as though he had deposited 0.5 tonnes of waste, even though this was how much heavier his truck was when leaving. The operator realised that this did not make sense, but imposed the charge anyway. Mr F considered that unfair and took the matter up with onsite staff who would not vary the charge.

He then contacted the department to request that no charge be applied due to the weighing error. The department confirmed that as waste had been deposited a minimum charge should apply. Mr F was not satisfied and complained to the Ombudsman.

When we raised the matter with the department, they indicated that the vehicle may not have had all its wheels on the weighbridge at weigh-in. As this was an operator's error in not ensuring all wheels were on the weighbridge, the department agreed to issue a credit note to Mr F's account.

The department also undertook to review operational procedures at the transfer station and to consider the adequacy of its complaint arrangements.

The file review showed shortcomings in the records management system used by OAS. Files did not have folio numbers and records were often not in chronological order. Many files contained information that was not documented properly. For example, some telephone conversations were recorded on a post-it note instead of formal records such as 'record of conversation' or 'note for file'.

The file review also revealed significant problems with the case management of objections. For example, in 15 matters no action, or no substantive action, was recorded for periods ranging from two to three and a half years. Objections were not

regularly reviewed to check compliance with processing and decision-making standards. In addition, the procedures for handling objections did not set timeframes for decisions on objections to be made.

The Ombudsman recommended:

- the practices, procedures and standards for recordkeeping of objection files be assessed and modified to bring them into line with best practice
- the case management system be reviewed and improved to include timeframes for making decisions on objections

### CROSS BORDER DEFECT NOTICE

### CASE STUDY

Mr G received an ACT defect notice for his NSW registered vehicle and the ACT authorities advised the NSW registry so that the defect could be recorded.

After the vehicle had been repaired Mr G took the documentation to the motor registry to have the defect lifted. The ACT authorities did not advise the NSW authorities of the repairs and the vehicle's registration was subsequently cancelled.

We contacted Road User Services and Mr G provided photocopies of his documentation to them. The ACT authorities then consulted their NSW colleagues and action was expedited to re-register the vehicle.

### STATUTE BARRED DEBT

### CASE STUDY

Mr H applied for allocation of public housing. He complained when he received a letter informing him that his failure to pay a debt could be considered a breach of a tenancy agreement and may mean he would not be allocated housing.

Mr H had previously owed \$1,200 to Housing ACT from a debt arising in the mid-1980s. That debt was statute barred, and there was no lawful authority to demand payment as over six years had passed since the debt was incurred. Nevertheless, in 1997 Housing ACT had used a debt collection agency to attempt to recover the money. Mr H complained to the Ombudsman on that occasion and Ombudsman staff wrote to Housing ACT pointing out the lack of legal authority to demand payment. Subsequently Housing ACT implemented a policy to not attempt to recover statute barred debts.

However, Housing ACT regards a failure to pay debts as a breach of a tenancy agreement. We considered that it was not reasonable to use a statute barred debt as a basis for declining to allocate housing, and that it was inappropriate to seek payment of such a debt when the debtor applies for public housing.

We obtained agreement that Mr H's debt would not be considered in allocating him housing. Housing ACT agreed to review its policy on taking into account statute barred debt in considering applications for housing.

- regular case reviews be conducted to ensure consistent performance
- staff be trained in case management procedures.

Treasury accepted the recommendations of the report. In March 2008 the Commissioner for Revenue advised this office that a review of OAS had been conducted. The review resulted in increased staffing, improved recordkeeping in accordance with the requirements of the *Territory Records Act 2002*, and improved case management arrangements. He further advised that work was being done to achieve certification under ISO 9001, the international quality assurance standard. The Commissioner also advised that timeframes for decision making in various categories of decision were being considered but had not been finalised. We will continue to discuss these issues with Treasury until the reform process is complete.

We have received three further complaints about delay in decision making at ACTRO. These complaints relate to the period reviewed in the own motion investigation and do not show ongoing issues with decision making.

### Housing ACT

In last year's annual report, we noted complaints from Housing ACT tenants about the harassment, violence and intimidation they claimed to have suffered at the hands of other tenants. There were fewer complaints related to neighbourhood disputes in 2007–08, with 15 such complaints received compared to 24 in 2006–07. We are aware of efforts being made by the AFP and Housing ACT to refer people involved in disputes to appropriate resolution service providers. This may explain why there are fewer complaints, and at this stage, neighbourhood disputes appear not to require our particular attention.

### ACT Corrective Services

During 2007–08 we conducted an own motion investigation into the adjudication of breaches of discipline at the BRC and Symonston Temporary Remand Centre

(STRC). A draft report on that investigation has been provided to ACTCS for comment. The draft report acknowledges that significant reforms to the prisoner discipline system were made in the *Corrections Management Act 2007*. However, the draft report proposes further reforms to ensure the system is effective and fair. ACTCS has accepted the recommendations, and the report will be published early in 2008–09.

We received a complaint from a detainee at BRC about strip searching procedures at BRC and STRC. Although our investigation is not complete, we have drawn some concerns to the attention of the Chief Executive of the Department of Justice and Community Safety. We will report on the outcome of our investigation of this matter in our 2008–09 annual report.

### COMPLAINTS—ACT POLICING

In the ACT, the AFP undertakes community policing under an agreement between the Commonwealth and ACT Governments. The AFP provides policing services to the ACT in areas such as traffic law, 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.

Before 30 December 2006 complaints about the AFP were handled by the AFP and oversighted by the Ombudsman under the *Complaints (Australian Federal Police) Act 1981* (Complaints Act).

Complaints about the AFP made since 30 December 2006 are dealt with by the AFP under the *Australian Federal Police Act 1979* (AFP Act) and may also be investigated by the Ombudsman under the *Ombudsman Act 1976* (Cth). The Ombudsman does not oversight the handling of every complaint, but is notified by the AFP of complaints it receives which are categorised as serious conduct issues (category 3 issues). The

Ombudsman also periodically reviews the AFP's complaint handling. Hence the Ombudsman now investigates AFP actions on the same basis as the actions of other agencies are investigated.

### Review of complaint handling

The Ombudsman has a responsibility under s 40XA of the AFP Act to review the administration of the AFP's handling of complaints, through inspection of AFP records. This includes records of the handling of complaints about ACT Policing. The Ombudsman reports to the Commonwealth Parliament on reviews conducted during the year, commenting 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 federal minister.

The office completed the first review of the AFP's administration of complaint handling under Part V of the AFP Act in October 2007 and the second review in June 2008. The Ombudsman will report to the Commonwealth Parliament on the outcome of these reviews in early 2008–09.

### Complaints received

In 2007–08 we received 170 approaches and complaints, raising 184 separate issues, about AFP members acting in their ACT Policing role. Owing to the change in arrangements for dealing with complaints about the AFP, this figure is not comparable with previous years. The most common issues raised by complainants included:

- inadequate advice and service
- use of force and serious misconduct
- failure to act and inadequate investigation
- minor misconduct, including inappropriate behaviour and harassment.

### Complaints finalised

During 2007–08 we finalised 73 complaints under the Complaints Act, and 166 approaches and complaints under the Ombudsman Act (Cth). Given the different arrangements which apply under the two

Acts, we have not included a summary statistical analysis of the outcomes as in previous annual reports.

### Complaints oversighted under the Complaints Act

At 30 June 2007, 101 ACT Policing cases under the Complaints Act remained open for oversight. We finalised our oversight of 73 cases during the year. With the addition of one case not notified to the Ombudsman until June 2008, this left 29 cases open at the end of 2007–08.

Of the 111 issues finalised in the 73 cases, 40 issues were referred to the AFP's workplace resolution (conciliation) process. This process allows members of the public to provide feedback about their interaction with police; provides AFP members with the opportunity to resolve misunderstandings; and facilitates a more timely and flexible response to complaint issues than does formal investigation.

The Ombudsman questioned in two cases whether a complaint had been genuinely resolved as a result of conciliation but generally endorsed the conciliation outcomes.

Where matters were not conciliated, we accepted the AFP's decision not to investigate 12 issues and accepted an 'unsubstantiated' outcome for the AFP's investigation of 23 issues. However, we disputed an 'unsubstantiated' outcome in a number of other cases. We requested investigation or further investigation of 12 issues and expressed a differing opinion on the AFP's handling of at least four other issues. We endorsed a 'substantiated' outcome in respect of eight issues investigated by the AFP, including those where we had pressed for investigation.

Delay in finalising the investigation process and communicating the outcome to the complainant was the most frequent cause of concern on our part. The quality of AFP complaint investigation reports continued to be acceptable on the whole, although we had difficulties with a small number where



the conclusions were not well supported by the evidence. In two cases we carried out and completed our own investigation. The AFP accepted our recommendations in one case, but not in the other as described in the case study *No help*.

The AFP has now provided investigation reports for all outstanding cases under the Complaints Act not involving criminal prosecution. These are being considered by the Ombudsman in accordance with Complaints Act procedures.

### Complaints made under the Ombudsman Act

We finalised 166 approaches and complaints containing 182 issues under the Ombudsman Act. Under the new legislative arrangements, we have adopted the policy that we take with other agencies—that in general a complainant should take up

their concerns with the relevant agency before we will investigate. We therefore referred the complainant to AFP Professional Standards in the first instance in relation to 133 issues. We referred the complainant to another body in relation to eight issues, and declined to investigate in other cases for a number of reasons, including the complainant's insufficient interest, the age of the complaint, or because we considered investigation was not warranted in all the circumstances.

Of the four complaints we investigated, there were several where we were particularly concerned about police conduct. We considered one showed a serious disregard of Watchhouse procedures during the detention of an Indigenous juvenile. This case is described further in the *At risk* case study.

## NO HELP

## CASE STUDY

Mr J complained that one evening in 2005 police came to his home and advised him that his mother had been making nuisance calls to a police station. The police sought Mr J's assistance so that they could access his mother's home, which was nearby, to stop her making the calls. Mr J, who had been drinking, agreed to assist. However, after leaving his residence Mr J began behaving in a disorderly manner and made it clear he no longer wished to assist.

Although Mr J was just outside his home and had not shown any intention of behaving in a disorderly manner until then, the police decided to take him into custody for his safe protection because he appeared heavily intoxicated and because of his behaviour. They handcuffed Mr J and attempted to place him in a van. Mr J struggled and his foot became caught in the door of the van, gashing his ankle severely.

Mr J's injury was not noticed by the police present, or on arrival at the Watchhouse, despite Mr J's attempts to draw attention to it. However, as soon as Watchhouse staff identified the injury, they called the ambulance service. Mr J was subsequently released into the ambulance service's care so that his injury could be treated.

On investigation of Mr J's complaint, we considered his care and protection would have been more assured if police had returned Mr J to his home rather than take him from outside his residence to the Watchhouse. We questioned the judgement of the police involved, but considered no individual was responsible for the unfortunate chain of events. We thought it more a reflection of poor communication and lack of experience. Given Mr J had been induced to leave his home by police solely to assist them, we recommended the AFP apologise to Mr J for his injury. However, the AFP did not accept that fault lay with its members and did not apologise to Mr J.

## Time taken to finalise Ombudsman Act complaints

The median time for finalising ACT Policing complaints under the Ombudsman Act was two days, reflecting the large number of approaches able to be dealt with expeditiously by phone. Overall, 92% of ACT Policing complaints dealt with under the Ombudsman Act were finalised within three months of receipt and 96% were finalised within six months. Three complaints took longer than nine months to finalise.

### Challenges

In the eighteen months that the new complaints regime has been in place the nature of future Ombudsman oversight of ACT Policing has taken clearer shape. The Ombudsman's review function has become a useful instrument for tracking complaint trends, both in respect of ACT Policing and for the AFP nationally. However, the pattern of complaints to the Ombudsman also remains an important way of measuring community satisfaction with the administration of ACT Policing. The list of most common complaints noted above indicates where scrutiny may be most needed in the coming year.

### Improving understanding of ACT Policing

In order to improve the Ombudsman's Law Enforcement Team's (LET's) understanding of the roles and challenges facing ACT Policing, LET members participated in further 'beat policing' visits in 2007–08. These visits, in which LET members accompanied police on patrol, enabled LET members to observe first hand the challenges faced by the ACT's beats teams, the roles they are required to play, and the skills they must deploy when dealing with members of the public.

### 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. Usually we do not become actively involved in the investigation of critical incidents unless the AFP requests our involvement.

During 2007–08, the AFP reported one incident involving ACT Policing members to the Ombudsman. In December 2007 a vehicle collided with a tree on Majura Avenue, resulting in serious injury to the driver. Shortly before the collision police had attempted to intercept the vehicle because they believed the driver was wanted in relation to a number of criminal offences. A pursuit followed but the police lost sight of the vehicle before the accident. The collision was reported by a member of the public and police attended the scene. The AFP notified us of the incident shortly after it occurred. There was nothing to indicate police had acted inappropriately before the accident.

### Review of Watchhouse operations

The results of a joint AFP/Ombudsman review of ACT Policing's Watchhouse operations were released in June 2007. The review, which is available on our website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au), made a number of recommendations.

The AFP accepted all the recommendations, with one being a matter for consideration by the ACT Government. In November 2007 the joint review team commenced a survey of the extent to which the recommendations had been implemented. The team completed its survey in June 2008 and was preparing a submission for presentation to the Steering Committee set up under the original review arrangements. It is expected that the follow-up of the recommendations will be completed in the first half of 2008–09.

### Detention of minors and persons at risk

We have expressed concern about the detention of minors and persons at risk in several of our recent annual reports. Problems continue to occur in this area, as the case study *At risk* shows.

## AT RISK

## CASE STUDY

Mr K, a 16-year-old Indigenous youth, was held for eight hours, from midnight until eight o'clock, in the Watchhouse. Under AFP guidelines, he was in the 'at risk' category both because of his age and because he was Indigenous. He was not transferred to Quamby Youth Centre or provided with a support person. The arresting officers were unable to contact his mother, who was therefore not aware of his detention.

Mr K was woken just after four o'clock and taken briefly from his cell. He was returned, but then re-awakened and returned to his cell half an hour later. When Mr K returned to the cell the second time, he appeared agitated. Half an hour later, he began to show signs of self-harming behaviour, tearing his T-shirt and wrapping it around his neck.

This episode was not dealt with in accordance with the guidance relating to self-harming behaviour of people in custody provided by the ACT Policing: Practical Guide: Persons in Custody or the Watchhouse Manual. The AFP did not contact the Mental Health Crisis Team or the on-call doctor. Three police officers entered the cell and removed Mr K's T-shirt and blankets. The incident was recorded and no further action was taken.

Over a period of time Mr K continued to show signs of stress and finally blocked the camera in the cell. The police then put him into a padded cell. AFP officers said they kept Mr K under close observation while he was there. Our investigators saw no evidence of this. Indeed, Mr K had sufficient time to make a ligature from material torn from his trousers and hold it around his neck for over an hour.

When the cell was opened at eight o'clock to allow ACT Corrections officers to assume custody of Mr K, the Watchhouse sergeant noticed the ligature around Mr K's neck. Mr K was ordered to remove the ligature, and when he refused to do so, four officers moved in. Mr K was struck a blow to bring him under control.

While we considered the blow was controlled and necessary to prevent Mr K from self-harming, we had concerns about the care given to Mr K while he was in police custody. It appeared that the officers in the Watchhouse did not follow the guidelines for juveniles, for Indigenous people, or for people exhibiting self-harming behaviour.

There was no evidence in the documentation provided to us as to why the police did not follow the guidelines. In some circumstances, a departure from the guidelines may be warranted, but the police have not given us any such reasons. We therefore brought the matter to the attention of the AFP Commissioner. The AFP is now investigating the matter.

### Exercise of police responsibilities under the Intoxicated People Act

As noted in last year's annual report, we have been undertaking 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 followed an investigation we conducted into the matter in 2001. We are also conducting

an investigation under the Ombudsman Act (ACT) that is considering issues about ACT Policing use of the sobering-up shelter at Ainslie Village, which is operated by Centacare and funded by ACT Health.

The report of the investigation is expected to be released in early 2008–09.

## 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 ACT Ombudsman's functions is to monitor compliance with Chapter 4 of the Act by the ACT Chief Police Officer and other people authorised by the Chief Police Officer to have access to the register.

The office conducted its first inspection of the register in June 2007. The report of this inspection was finalised in 2007–08 and the Ombudsman provided it to the Minister for Police and Emergency Services and the ACT Chief Police Officer. The report found that the AFP was generally compliant with the relevant provisions of the Act. We conducted the second inspection of the register in June 2008 and are finalising the report from this inspection. It is our intention to conduct inspections on an as-required basis, but at least every 12 months.