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Annual Report 2021/22

*Presented to the Chief Minister under section 152 of the Ombudsman Act
for tabling in the Legislative Assembly*

Acknowledgement of country

We pay respect to the past, present and future Traditional Custodians and Elders of lands throughout the Northern Territory.



Annual Report 2021/22

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Ombudsman overview

The Ombudsman's Office operates jointly with the Office of the Information Commissioner (**OIC**) and the Judicial Commission Office (**JCO**). The Ombudsman is also the Information Commissioner and Principal Officer of the Judicial Commission.

There are dedicated staff within the OIC and JCO but other staff contribute to the work of all offices. For example, the Business Services Unit supports all functions and the Deputy Ombudsman is also Deputy Information Commissioner and Deputy Principal Officer of the Judicial Commission.

A separate Annual Report is prepared for each of the OIC and the Judicial Commission. This report relates to the Ombudsman function but financial reports for the whole of the Ombudsman's Office Agency are included in this report at Appendix B.

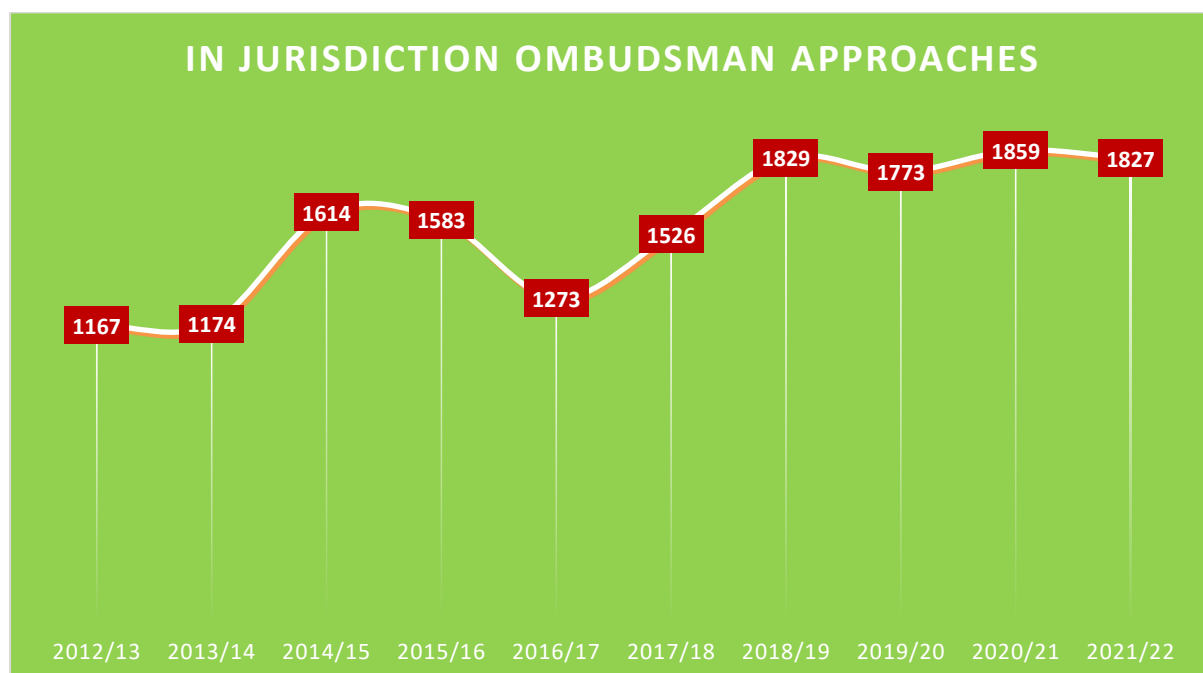
Matters of note

Chapter 1 discusses some matters of particular note, including:

- the impact of the COVID-19 pandemic on Office operations and approaches received;
- the advent of two new functions for the Office, involving:
 - establishment and support for the new Judicial Commission, which deals with complaints about the behaviour and capacity of judicial officers and NTCAT members;
 - appointment as Interim NT National Preventive Mechanism (**NPM**) for the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*;
- ongoing issues around:
 - the 2020 Darwin Correctional Centre disturbance and the Paget report into it; and
 - support and assistance that the NT Government provides to victims of crime.

Approaches received and finalised

This year continued a run of very busy years for the Ombudsman. The graph that follows shows that a very high rate of In-jurisdiction matters has been sustained over the past four years, compared with historical levels.



This ongoing high level of approaches, combined with the challenges of COVID-19 and a range of additional new functions, has placed considerable strain on the staff of the Office. Our staff have applied themselves admirably to that task, with 2,566 approaches finalised during the year. As a result, the number of open General (non-Police conduct) matters at 30 June 2022 fell substantially from the previous year. The number of Police conduct matters open at the end of year remains of concern but the situation also improved substantially from the position at 30 June 2021. Average timeliness suffered during the year, largely due to COVID-19 delays and finalisation of a significant number of older cases that formed part of the backlog of police conduct cases. However, 89% of all matters completed in the period were finalised within 90 days.

Chapter 2 has more detail on approaches received and finalised across the public sector and discussion of the types of issues raised in the context of a number of specific public authorities.

Chapter 3 discusses NT Police conduct issues, including commentary on a continuing backlog of investigations, the time limit on commencing disciplinary proceedings, care in custody and youth justice issues. Police conduct complaints continue to represent a major part of the Ombudsman function. Complaints are routinely dealt with by the NT Police Professional Standards Command, subject to the oversight of our Office. Good progress was made during the year towards reducing the backlog of police complaints but there is still a substantial backlog awaiting investigation and finalisation.

Chapter 4 discusses Correctional Services issues, including commentary on heat stress in prisons, use of force and separate confinement, and implementation of our report, *Women in Prison II*. Correctional Services is routinely the second largest source of approaches to the Office.

Other Ombudsman functions and activities

Chapter 5 discusses some of the other functions and activities we undertook during the year, aimed at promoting better government, including:

- contributing to NT Government policy development by:
 - providing input on a range of policy and legislative matters for consideration by Government;
 - serving on the Northern Territory Law Reform Committee;
- undertaking work on the conduct of a statutory review relating to firearm prohibition orders legislation;
- conducting a variety of statutory audits/inspections in relation to law enforcement agency functions; and
- undertaking or contributing to training activities and presentations for public sector staff and a variety of community and stakeholder engagement.

Chapter 6 sets out detailed information about how we do what we do, including information about the handling of police conduct complaints.

Chapter 7 provides information about corporate aspects of the Office and our staff.

Once again, this was a year filled with novelty and many challenges. A huge thanks must go to all staff of the combined offices for their flexibility and resilience, in particular to the Deputy Ombudsman and others in my Senior Management Group.



PETER SHOYER
OMBUDSMAN
30 September 2022

KEY PERFORMANCE INDICATORS

Key Deliverables	2019/20	2020/21	2021/22
Total approaches received Comprises all enquiries and complaints, including matters referred to another body or found to be outside jurisdiction. The baseline average for the eleven years from 2003/04 to 2013/14 was 2,063 approaches.	2,535	2,458	2,406
Total approaches finalised Includes approaches carried over from the previous year and approaches reopened after the end of that year. 153 approaches were open at 30 June 2022 compared to 313 at 30 June 2021.	2,427	2,342	2,566
Police approaches finalised within 90 days Includes enquiries and preliminary enquiries undertaken by the Office and matters dealt with by Police under oversight of the Ombudsman.	86%	78%	68%
Other approaches finalised within 28 days Refers to all non-Police conduct approaches, including local government.	92%	82%	86%

VISION, MISSION, CORE VALUES

The Ombudsman NT:

- is an independent office that deals with complaints about administrative actions of public authorities and conduct of police officers;
- has powers in relation to NT Police, Corrections, NT government departments and authorities and local government councils;
- undertakes audit / investigation functions and makes reports relating to telecommunications interception, use of surveillance devices and controlled operations by NT Police; and
- has a general function to promote improvements in administrative practices and procedures.

Our Vision (our ultimate aim)

A high level of public confidence in fair and accountable public administration in the Northern Territory.

Our Mission (how we contribute to our vision)

- Give people a timely, effective, efficient, independent, impartial and fair way of investigating and dealing with complaints about administrative actions of public authorities and conduct of police officers.
- Work with public authorities and other stakeholders to improve the quality of decision-making and administrative practices in public authorities.

Core Values (guide what we do and how we do it)

- **Fairness**

We are independent and impartial. We respond to complaints without bias. We give everyone the chance to have their say. We do not take sides.

- **Integrity**

We take action and make decisions based on our independent assessment of the facts, the law and the public interest.

- **Respect**

We act with courtesy and respect. We recognise and respect diversity. We seek to make our services accessible and relevant to everyone. We consider the impact of our actions on others.

- **Professionalism**

We perform our work with a high degree of expertise and diligence.

- **Accountability**

We are open about how and why we do things. We are responsive and deal with matters in a timely manner. We allocate priorities and undertake our work so that the best use is made of public resources.

CHAPTER 1 – MATTERS OF NOTE IN 2021/22

COVID-19 – OFFICE OPERATIONS

The COVID-19 pandemic began to impact Australia from early 2020. In my 2020/21 Annual Report, I commented on the impact of the pandemic on the operations of our Office and other public sector agencies in that year. The emergency declaration in respect of the pandemic ceased on 15 June 2022. However, amendments included in the *Public and Environmental Health Legislation Amendment Act 2022* meant that Chief Health Officer (CHO) Directions could continue to be made with respect to COVID-19 for a further two years. A number of post-pandemic directions have been made.

If anything, the COVID-19 pandemic had a greater impact on the Office in 2021/22 than in 2020/21. The Office was only briefly physically closed during lockdown periods and service was continued throughout those periods by staff working remotely.

However, staff absences increased in 2021/22 because of absences due to COVID-19, being a close contact of someone with COVID-19, being a carer of an infected person or close contact and staff being more likely to stay at home with other illness than they would perhaps have done in the past. There was also an increase in staff taking recreation leave that had been postponed from times when the ability or incentive to travel had been limited due to travel restrictions and risks around travel arising from the pandemic.

Staff absences placed significant additional pressure on staff of the Office who were often required to continue to carry the workload within this context of reduced capacity. I acknowledge these challenges were shared across many organisations in the public and private sectors in 2022. However, I can only express my thanks and admiration for the manner in which my staff approached this challenging time.

Our capacity to work remotely was maintained throughout the period, including ensuring individual staff worked from home from time to time, to maintain proficiency in remote operations. This necessitated a change in the Office's information and communication technology resources to facilitate a speedy and smooth transition to remote work should the circumstances require it.

As with all other organisations we were required to comply with various CHO Directions in the running of our agency. Even as requirements eased, we have continued to limit group sizes in meeting and interview rooms within the office and to promote attention to social distancing and personal hygiene measures in line with our COVID Plan. We also continued to conduct meetings remotely where that was achievable.

Certain aspects of Office operations continued to be impacted in 2021/22. Our community engagement program continued to be curtailed and our education and staff development programs were also more limited.

The challenges COVID-19 presented to the Office during the period were extraordinary, and when combined with a number of additional functions undertaken by the Office, have meant we had to carefully assess priorities and assign our limited resources accordingly.

This is also true of other agencies that have had to assign resources and undertake unfamiliar and additional roles to respond to the pandemic. Those functions have given rise to a large number of approaches to our Office during 2021/22, which are discussed below.

COVID-19 APPROACHES RECEIVED

During 2021/22, 242 approaches received had some substantive COVID-19 element. A breakdown of the nature of those approaches is set out in the following table.

Breakdown of approaches with a substantive COVID element 2021/22

Category	No.	Issues relating to
Quarantine <ul style="list-style-type: none"> Need to quarantine Quality of service Fees Forced Infringements 	28 24 15 4 2	Requirement to quarantine and length of quarantine. Includes refusals to allow home quarantine and requests to stay beyond mandated period Service provision while in a public quarantine facility Amount of fees charged and requests for waiver or reduction Detention and transfer to a quarantine facility, including issues with transport Refusal to withdraw infringement notices
Vaccination mandate	22	Vaccination employment mandate
Border controls <ul style="list-style-type: none"> Hotspot Entry approval Infringements Entry requirements Wrong information 	11 7 3 1 1	Short notice of hotspot declaration Refusal to allow entry, denial of exemption to enter and approval followed by refusal on arrival Refusal to withdraw infringement notices Need to test on arrival Provision of inaccurate information by officials
Internal controls <ul style="list-style-type: none"> Lockdown/Lockout Masks Entry requirements 	8 2 3	Enforcement of lockdown and lockout provisions Enforcement of mask wearing requirements Entry requirements for public facilities
Police enforcement	13	Manner in which police enforced COVID-19 requirements, including allegations of excessive force, victimisation, unauthorised entry and failure to enforce
Corrections <ul style="list-style-type: none"> Duty of care Vaccination mandate Service disruptions Visits 	12 9 8 4	Implementation of precautionary measures in prisons Requirement for vaccination in order to visit a prison Delay or other service limitations in prisons contributed to by COVID-19 Cancellation or disruption of visits due to COVID-19
Service issues	16	Delay or other service limitations in government agencies contributed to by COVID-19
General	32	General complaints about legality or fairness of COVID-19 measures, and matters raised by third parties without an individual interest in the complaint
Private sector <ul style="list-style-type: none"> Services Internal controls 	11 1	Includes seeking refunds related to travel disrupted by COVID-19 requirements, issues with employment, rental and health services provision Private sector implementation of mandated internal controls

Quarantine

Quarantine issues attracted the highest number of approaches. Many related to the need to quarantine at all while others related to the period of quarantine. A small number related to people returning from overseas and uncertainty around meeting quarantine requirements in different Australian jurisdictions.

There were some approaches regarding the quality of service at government run quarantine facilities, including the Centre for National Resilience (CNR) at Howard Springs. These related to issues such as the provision and quality of food, cleaning services and provision for the particular needs of individuals, for example, families with babies and young children and people with specific dietary requirements. Often these issues arose when people first entered the facility.

The administrators of quarantine facilities established mechanisms for dealing with such issues and generally worked well to address issues put to them directly or notified by our Office. The evolving situation throughout the pandemic gave rise to many challenges for the provision of short term accommodation and support, in a secure and COVID-safe environment. Numbers of people required to quarantine could and did fluctuate widely with little notice. People entering quarantine facilities were, unsurprisingly, often entering them grudgingly and ready to find fault at inconveniences as well as genuine gaps in service.

Genuine issues did arise and there were, at times, delays in catering to all requests. However, the facilities did set up effective systems to allow for direct communication with the authorities running them and to respond to complaints raised with our Office.

Example – Centre for National Resilience

The complainant was a returning Australian citizen who travelled from overseas and was housed in the repatriation flights area of the CNR.

He called the management team at CNR to identify people who were violating quarantine rules and causing disturbance in his area. He complained none of them wore a mask and they were in very close proximity to each other. He said police officers saw them but they were only given a warning.

He contacted our Office the next day. He said his neighbours in the next pods were loud and slammed the door until early in the morning. He said he was five days into his quarantine and he could not sleep at all. He said they continuously violated quarantine rules such as swapping cigarettes and walking around with no mask on. He said they would run back to their pods once they saw police officers approaching. He said he had evidence of the neighbours breaking quarantine rules, including videos and photos. He forwarded these to our Office.

The complainant said he wanted people who break the rules to be punished. He also requested to be moved to a different pod because he couldn't imagine staying next to his loud neighbours for the remainder of his quarantine.

Our Office contacted a senior officer in the CNR and provided the information that had been passed on by the complainant.

The CNR responded within a day after our first contact with the complainant, advising that NT Police had developed an updated plan to monitor the neighbours' behaviours due to non-compliance with the CHO Directions for quarantine and the CNR had located a room in the same quarantine zone, designed a transfer infection control plan and would move the complainant later that day. The CNR advised that the Director of Quarantine Program had already spoken with the complainant about this.

We called the complainant that afternoon. He said that all of his concerns were resolved. He confirmed the management team at the CNR had spoken to him and he was being moved to a new room. He was happy with the response.

There were also a number of concerns raised with fees charged for mandatory quarantine. These arose in a variety of situations, including arrangements around a number of family members in quarantine and situations where people who arrived in the face of a rapid change in restrictions, for example, immediate hotspot declaration, were faced with a limited stay prior to their return to home.

In my previous Annual Report, I emphasised the importance of the exercise of discretion, taking into account the particular circumstances of individuals and ensuring adequate mechanisms for review are built into any government intrusion into the rights and lives of individuals. In a pandemic that impacted so heavily on so many from a personal and financial perspective, I proposed that it is important for government to adopt a generous, even sympathetic, approach to the levying and pursuit of fees imposed for mandatory quarantine.

Example - Review of fees charged

The complainant and his family travelled from Sydney to Alice Springs and quarantined together. The mother and three children travelled by plane. The father travelled by car, arriving two days later. The whole family quarantined together in one family area at the facility and were all released together. One \$5,000 invoice was issued for the mother and children and a further \$2,500 invoice was issued for the father.

The matter was initially raised with our Office and referred on to the Department for consideration and direct response to the complainant. The Department's initial determination was that the two invoices would stand. The complainant returned to our Office some time later and we requested that the Department review its decision. The Department reconsidered the matter and advised that it had decided to charge the family as one family unit, not one individual and one family.

Mandatory vaccination

There were a number of approaches to our Office in relation to vaccination mandates. Approaches were made in relation to the validity of the mandatory requirements and specific issues relating to public and private sector employees. The requirements were spelled out in CHO Directions. These were not issues with which the Office could assist enquirers beyond referring them on to others who might be able to help them to understand the application of the requirements to their particular circumstances.

Border control

Approaches were also made around border control restrictions, including refusal to allow entry at the border and refusal to grant exemptions to allow entry. Controls on entry varied throughout the year. The grant of exemptions caused some concerns, particularly when large numbers of exemption applications led to delay in making decisions. There were also complaints where applications for entry were accepted only to be rejected on arrival in the Territory, when closer inspection of the evidence supporting the exemption led to concerns about the veracity of the application.

On other occasions, the decisions individuals made as regards travel were impacted by wrong or conflicting information from officials. In some cases, people were forced to return to their state of origin within a short space of time, having incurred considerable cost and made changes to their living circumstances based on approval.

Having said that, the Territory was at the time (and continues to be), a destination of considerable attraction to other Australians, and it was appropriate for authorities to scrutinise the basis for any exemption sought. However, it is also incumbent on authorities to take a reasonable approach to the exercise of discretion, and the evidence required in support of the exercise of that discretion.

The situation became particularly problematic with a number of decisions to declare hotspots in certain areas with very limited notice. Significant accommodations were made for people who were caught 'mid-flight' but an arguably inflexible position was taken if it was considered that people received notice or could have received notice before boarding a flight. A number of approaches were made to the Office from people who were impacted by hotspot declarations.

Example – From hot spot to hot water

In September 2021, three friends (**the Applicants**) applied for an exemption to enter and reside in the NT. They were travelling from a declared hotspot interstate. Upon request, they each provided a contract of employment signed by their prospective employer in the NT and a signed lease agreement.

Within days, the Applicants were advised in writing by a delegate of the CHO that they were approved to enter the NT and undertake mandatory quarantine for 14 days.

The Applicants immediately arranged to fly to Darwin, each completed a Border Entry Form. The Applicants were transported by bus to the CNR but soon after they arrived they received a call from the COVID-19 Hotline advising them their applications had been revoked because the documentation that they had provided was no longer sufficient. The Applicants asked if they could provide additional evidence to support their right to stay in the NT but this was declined and the call was terminated. The Applicants were left bewildered and uncertain about the legitimacy of this call and the dismissive and unhelpful attitude of the caller.

The next day, the Applicants received an email from the Border Restrictions Exemption team stating that their original Application did not meet the criteria and was not approved. This was despite an Approval having already been granted prior to their entry into the NT.

That evening, NT Police attended the facility in person and spoke to the Applicants. They re-confirmed the revocation of the Approval but were not aware of the reasons why. They advised the Applicants to book their return flights and leave the NT. The Applicants could not contact the Hotline to query the decision as it was after hours.

At about 8.00am the next morning, the Applicants contacted the Hotline seeking a review of the decision to revoke their Application. They were informed that the decision was made at a higher level and it would not be reviewed further. They were advised that the 'legitimacy of their documents' was challenged but no further information was provided.

The Applicants were directed to book their flight from Darwin on the 1.00pm plane at their own cost or face being issued with infringement notices. They were left confused and upset by the actions of the Department. They felt that the decision was unjust and they were concerned that they were unable to challenge it with additional information. They contacted our Office and we raised the issue with the Department. An internal review of the decision to revoke the Application was conducted and the Department's revocation decision was upheld.

The Applicants felt that they had no choice but to leave Darwin by air as directed, incurring further costs.

Our investigation identified the following:

- The Applicants were relying on a letter of support provided by a local sporting club. Enquiries of club management by the Department cast doubt on the authority of the signatory to the letter to write such a letter on behalf of the Club. However, the Department confirmed that there was no record of the Club actually revoking their support.
- The residential evidence provided (a private tenancy agreement) was not considered sufficient as the documentation disclosed a rental for only one room. However, the Department made no effort to speak to the lessor and clarify the situation.
- The employment contracts were for casual positions in hospitality and one could not confirm a consistent income from them. However, there was no indication that the Department had contacted the employer to verify the employment arrangements.

In summary, no attempt was made to clarify the accommodation and employment documentation which would arguably be most important for the decision-maker to consider, and only the letter of support from the sporting club was enquired into.

Our Office was concerned the Department had failed to review the evidence in a reasonable manner. We were concerned that:

- there was no change in the Applicants' circumstances or supporting evidence to justify the exercise of discretion to revoke the Approval;
- there was no reasonable investigation or review of the key supporting evidence; and
- there was no reasonable opportunity provided to the Applicants to address the Department's concerns about their applications.

We maintained the view that the Department's decision to revoke the approval was disappointing and made to the Applicants' detriment. The Applicants changed their position by taking steps to relocate to the NT, incurring costs on the basis that their application was successful. The decision to revoke the approval was not as a result of any actions by the Applicants.

We reiterated our position to the Department and following a further review, a new decision was made by the Department to compensate the Applicants for their financial loss by reimbursing them their airfares and their quarantine fee.

That outcome was welcome and gave some financial comfort to the Applicants but the processes adopted by the Department fell short of best administrative practice. This case provides a good illustration of some of the 'lessons learned' discussed below.

Internal controls and police enforcement

Internal controls such as lock downs, lockouts and mask wearing were primarily enforced by NT Police. Approaches were also made about other aspects of police enforcement of CHO Directions, including use of force and lawfulness of entry/searches undertaken when enforcing requirements, along with other issues like the behaviour of police at checkpoints. These issues were dealt with as police conduct complaints.

Correctional Services

A number of approaches were raised by prisoners who were concerned about the adequacy of action being taken to ensure the health and safety of prisoners in the prison environment. Where necessary, these concerns were referred to Correctional Services to encourage communication aimed at explaining the significant COVID-19 measures that were being undertaken.

Others raised concerns about restrictions on prison visits implemented to reduce the risk of COVID-19 coming into prisons. A number related to the imposition of restrictions to prison entry for unvaccinated visitors, including a restriction on entry by unvaccinated children (when they were not able to be vaccinated). That matter was quickly remedied.

Lessons learned

The number of approaches received regarding COVID-19 was significant in terms of the work of our Office and the work of various agencies in responding to them. However, that number should be viewed against the enormous amount of work required by numerous agencies in this space and the reality that, for many Territorians and visitors, the pandemic response was a novel and substantial intrusion into many aspects of their lives that they would never countenance outside an emergency situation.

In the circumstances, there is little surprise there was such a level of approaches to our Office. Many concerns were raised, some mistakes were made, but the numbers by themselves do not, in my view, reflect any fundamental failing in the systems adopted by government agencies in addressing the pandemic.

While I do not make any overarching commentary on the administration of the government response to the pandemic, I will highlight below a number of themes I consider were shared across different categories of complaint.

One voice

COVID-19 presented an emergency situation in which all of our lives were disrupted for an extended period. It was also an emergency in which all of us were required to obey, and often enforce, novel and intrusive rules. This extended beyond public officers who might normally be involved in enforcement, to businesses and to families and households. We were all required to know the rules, follow the rules and, in many cases, do our best to ensure that others followed the rules. In order to do so, we all needed to know the rules that applied at any given time.

The quickly evolving risks raised by the pandemic required a similarly evolving approach by authorities. This meant that rules changed frequently and either immediately or within a short timeframe. This raised challenges for authorities, businesses and members of the public called on to react to such changes.

General announcements were often formally implemented by official directions only after some days had passed. The broad thrust of a decision was announced first, the detail for compliance followed later. Sometimes, this was due to the absolute urgency of the situation. On other occasions, consistency and understanding for public officials, businesses and the public would have been promoted by taking more time to craft announcements and rules for simultaneous, or at least more closely aligned, publication. For the future, it would be enormously helpful to have a single and settled official source of authority that is accurate and updated as often as necessary and as quickly as possible.

Feedback and clarification

Inevitably, in such a changing environment, there were situations where it was necessary to clarify or amend rules, to avoid unintended consequences and enhance public understanding and acceptance.

A key mechanism for identifying error or the need for clarification is feedback from officials on the ground and members of the public. A single and authoritative mechanism for clarification and amplification, which invites and responds positively to phone, e-mail, social media and other enquiries and feedback, is an essential tool in such circumstances.

It can also provide a valuable forum for receiving and dealing with complaints that both informs where there is a need for further clarification and explanation, and provides a conduit for importing consistent considerations of fairness into government decision-making.

Wrong information provided

There were a number of cases in which it was claimed that a person had acted on the advice of one official who advised a course of action was available or should be taken, only to be later advised by another official that such action was not available to them, often to the considerable detriment of the person. These were cases where there was no obvious change in the rules, merely in the way they were applied.

It is important to provide the best guidance possible for officials supplying information and making decisions on the ground. Further, there should always be scope, when mistakes are made or simply a differing interpretation is taken, to take that into account when making decisions about what to do in a particular case.

Minimal gap between notification and change

It is difficult and often unfair to retrospectively second-guess decision-making in response to urgent situations. Any delay in implementing measures may increase risk. However, there will be situations where providing a short breathing space in the gap between notification and implementation can avoid significant dislocation to a large number of people, without substantially raising the risk involved. A matter of even a few extra hours of notification prior to action may well have little or no substantive impact on the level of risk.

There were many instances throughout Australia where notification was made a day or several days prior to action. While each situation must be considered on its merits, it will often be appropriate to give judicious consideration to providing as much notice as is reasonably possible in a manner that does not substantially increase the level of risk of real harm.

Evidentiary requirements

There were also cases in which decision-makers seemed to require substantial evidence within extremely short timeframes, in circumstances where people were in transit and had little hope of supplying the specific evidence needed within the timeframe. On occasion, this appeared to be accompanied by a sceptical approach to any claims that were not backed by watertight evidence.

There were, no doubt, a number of instances in which people were trying to game the system to their own advantage. However, I am confident there were also many people who were simply caught short by not being able to supply the requested evidence within a limited timeframe when they were far from home.

In my previous Annual Report, I said:

To allow assessment of these factors, there is frequently an onus on an individual to put forward evidence to support their claim. In such cases, it is important for agencies to ensure they are open to receiving such evidence and that the standard of proof they require matches the decision they are called on to make. The more significant the decision is from the perspective of the public, the higher the standard of proof that may be expected. Conversely, for less publicly significant decisions, including many administrative decisions, an agency should be more willing to accept the reasonable efforts of an individual to establish their claim, without necessarily taking up a defensive position that requires the highest standard of proof.

Of course, a decision may be of moderate or limited significance from a public perspective but have a major impact on the individual concerned. It is important that the reasons for any decision adverse to an individual be clearly articulated to them.

It is essential that the standard of proof required by public officials align with the decisions that have to be made. It is also important that people be given a reasonable time in which to provide additional evidence if questions are raised about their *bona fides*. In a number of cases, the decisions to be made did not appear to give rise to any substantial increase in the risk of COVID-19 spreading but lay, at most, around whether or not people might be seen to gain an unfair advantage or put added pressure on quarantine facilities. In such cases, evidentiary requirements could have been better tempered around the actual risks of making a decision in favour of the individual.

Discretion and review

In my previous Annual Report, I noted that an important point to be drawn from COVID-related complaints we had received, but one of broader relevance to public administration, is the need for agencies to provide for the exercise of discretion and to maintain simple, fair and timely mechanisms for review of decisions that impact on the lives of community members. That view has been re-affirmed by a number of complaints received over the past year.

At that time, I said that public sector agencies have a crucial role to play in promoting fairness in decision making. This involves a range of considerations but certainly includes taking into account the particular circumstances of the individual and the case, along with any information they have been given by the agency. It commonly involves consideration of the exercise of discretion to ensure fairness rather than a one-size-fits-all approach to decision-making.

I noted that it was important to recognise that the COVID-19 pandemic gave rise to a situation in which restrictive provisions were unprecedented in their scale and application in the public health sphere.

I acknowledged that acting firmly and decisively was clearly an approach that was broadly accepted as important to address the many challenges of the COVID-19 pandemic. However, I said it was important for NTG agencies to recognise, particularly as the COVID-19 response matured, that firm approaches aimed at ensuring protection of the NT community need to be tempered with fairness and continue to recognise that just decisions must be made in light of the circumstances of each case.

I stressed that agencies needed not simply to maintain a consistent application of policy, but to refrain from inflexible or unfair application of policy in circumstances that justify a different approach: in brief, there is a need for recognition that special cases warrant special measures.

I acknowledged that, when dealing with a high volume of matters or matters that require urgent attention, making discretionary decisions, judgement calls on evidence or giving detailed reasons for decision can be problematic. I said that is why it is important to have a relatively straightforward and timely mechanism for next-level review of decisions, for cases where a concern is raised by the individual.

In this way, a more senior officer can review the evidence, consider more carefully the merits of the claim and the particular circumstances of the case, and explain the basis for any adverse decision. I said it was vital, particularly in the novel and demanding circumstances of the pandemic, that agencies develop simple, fair and timely mechanisms for review of decisions that can have a major personal and financial impact on the lives of Territorians and other Australians.

I consider that there were improvements over the period in terms of greater provision for exercise of discretion and review. However, there were a number of cases, in the extraordinary circumstances faced by all of us, in which I considered agencies maintained a harder line than necessary, even on review.

There may be some who maintain that accommodating personal circumstances will be taken as a sign of weakness and lead to increased challenges to the system. That it will open up the floodgates for challenges. That considering and reviewing the exercise of discretion is too time and resource intensive to maintain in a time of crisis. That it is better to stick to a hard line so long as everyone is treated in an identical fashion.

I maintain the strong view that considering fairness to individuals in the application of government decision-making is a sign of strength rather than weakness. Doing what is right in the circumstances must be a hallmark of good government. It does take time and resources but it should never be discounted as a secondary concern or a potential obstacle to good government and governance.

Comprehensive guidance

To advance all of these aims for the future, it would be beneficial for comprehensive guidance for all decision makers and the public to be developed and disseminated from the outset, and regularly updated, with a single source of authority.

I do not underestimate the challenges that would have been faced in embarking on such a task when the immediate and urgent demands of dealing with the pandemic emerged. However, it would be prudent for the NT Government to review the course of development of information holdings and guidance given to various decision-makers, businesses and the public over the course of the pandemic, with a view to developing guiding principles for promoting understanding and awareness of everyone affected in future broad-scale emergencies.

JUDICIAL COMMISSION OFFICE

As Principal Officer of the new Judicial Commission, the Ombudsman has responsibility for the Judicial Commission Office (JCO).

During the year, the JCO undertook substantial work to enable the establishment of the Judicial Commission. The *Judicial Commission Act 2020* came into force in November 2021, and the JCO has been open to accept complaints about the behaviour and physical or mental capacity of judicial officers and NTCAT members since that time.

Information about the functioning of the Judicial Commission and the JCO will be included in the Annual Report of the Commission.

OPCAT

The Australian Government has ratified the United Nations *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).

The objective of OPCAT is to establish a system of regular visits by independent international and domestic bodies to places of detention, in order to prevent torture and other forms of ill-treatment. Places of detention include prisons, youth detention centres, police watch houses, court cells and closed environments in mental health, disability and aged care facilities.

OPCAT establishes an international Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the UN Committee against Torture (SPT). SPT members will visit Australia, including the Northern Territory, from time to time. NT visits are facilitated by the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (NT).

A domestic visiting body for the prevention of torture and other ill-treatment is called a National Preventive Mechanism (NPM). The OPCAT provides that the minimum powers of an NPM will be:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention ..., with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;*
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; and*
- (c) To submit proposals and observations concerning existing or draft legislation.*

In Australia, NPMs will be established by the Commonwealth, states and territories in relation to their own public authorities. For each jurisdiction, more than one entity may have an NPM role.

The NT Ombudsman has been nominated as Interim NPM for the NT. Other entities, for example, the Children's Commissioner and the Principal Community Visitor, are likely to be appointed in relation to specific authorities/functions in due course. During the reporting period we were able to undertake the following activities:

- participating in ongoing consultation on draft legislation - the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Bill 2022* has recently been introduced into the Legislative Assembly;
- researching OPCAT models and example OPCAT activities across many jurisdictions;
- liaising with the other likely NPM appointees in the NT with respect to implementation issues, including overlap, modelling and costings;

- connecting with the Commonwealth NPM and other NPM bodies interstate, both individually and through attendance at NPM Network meetings convened by the Commonwealth NPM;
- researching international standards for places of detention, as well as best practice methodology documents from organisations such as the SPT and the Association for Prevention of Torture;
- keeping abreast of developments regarding systemic concerns that may contribute to a risk of torture or other ill-treatment;
- preparing an initial implementation project plan and stakeholder consultation plan;
- conducting early stakeholder consultations across a variety of sectors;
- considering potential themes that may arise across all places of detention within the OPCAT framework; and
- preparing a training plan in relation to the development needs of staff in order to undertake OPCAT functions.

During the period, we engaged in either face-to-face or online meetings on OPCAT-related issues on more than 40 occasions with non-government stakeholders, NT Government agencies, independent offices in the NT and independent entities from around Australia and internationally.

In the latter part of the reporting period, funding of \$160,000 for each of 2021/22 and 2022/23 was approved by the NT Government to support establishment. The question of resourcing NT NPM operations on an ongoing basis, including any contribution from the Australian Government, is yet to be settled. While we have been able to undertake valuable preparatory work during the reporting period, additional and significant resources will be critical to effective operation of the NPM function.

PRISON DISTURBANCE

In May 2020, there was a major disturbance at the Darwin Correctional Centre (**DCC**), during which a number of prisoners escaped from their cells. They were confined within the broader prison perimeter and the situation was brought under control on the evening in question. However, there was extensive fire damage to prison infrastructure. Many aspects of the incident have since been made public in the course of court proceedings.

The NTG commissioned reports into the disturbance by Professor John Paget and Mr Tim Lyons. I was provided copies of the reports on the basis of an undertaking under section 30 of the Act that I will not disclose the reports to anyone else, other than necessary staff of my office, without approval from the Department of the Attorney-General and Justice (**DAGJ**). I accepted copies on that basis because it allowed me to consider whether there was a need for further immediate action by my Office.

Having considered the reports, I formed the view that there was no need for further immediate action by my Office in relation to the particular incident. However, in addition to dealing with the particular circumstances surrounding the incident, the Paget report also points to numerous matters that require action in relation to the broader administration of correctional services.

The report includes numerous recommendations for improvement. The analysis and recommendations are very much in line with previous commentary by my Office (for example, in *Women in Prison II*) and others (e.g., the Hamburger report). They all point to a need for extensive action across a whole range of correctional services functions. They all identify a need for fundamental or paradigm change.

There have previously been public statements that the Paget report, or at least a summary or edited version, would be published. At the time of writing that had not eventuated.

I have continued to pursue disclosure of the report or an edited version as a considerable contribution to the public interest in advancing public discussion around justice issues. The most recent advice from the DAGJ is that disclosure remains under consideration by the NT Government, and that:

NT Correctional Services (NTCS) is committed to addressing key issues identified in the respective reports and has created the "Forward, Together" Team to drive improvements based on recommendations of the 2021 Organisational Review. The review considered a range of previous reports, including the Paget Report. The "Forward, Together" Team is focussed on increasing investment and remodelling operations, service delivery, planning and organisational performance to drive a culture of continuous improvement, accountability and effectiveness. Strategic areas for immediate priority are:

- 1. Improving strategy and governance;*
- 2. Sustaining operations; and*
- 3. Tackling reoffending.*

I can assure you that NTCS are dedicated to actioning the recommendations and will continue to collaborate with key stakeholders.

I remain of the view that disclosure of the Paget report, including its recommendations for reform, would be very much in the public interest.

On a related note, I must also express considerable concern about the limited progress in remedying the damage done during the May 2020 disturbance. The damaged facilities standing in the heart of the prison continue to represent a substantial impediment to effective operations and significantly impacts both prison staff and inmates at DCC. I am informed that remediation work has commenced. It is hoped that it can be completed in the near future.

VICTIMS OF CRIME

The Crimes Victims Services Unit (CVSU) - a unit within DAGJ, plays a key role in handling applications for financial assistance under the *Victims of Crime Assistance Act 2006*. Over time, a backlog of applications has built up. Our Office has monitored efforts to address this backlog over several years.

Only a small number of complaints on this issue were received by our Office in 2021/22. I believe this was in part due to steps taken by DAGJ and the CVSU to increase resources and streamline operations. However, I believe it is also in large part due to improved communication processes between the CVSU and applicant representatives. I commend the actions of DAGJ and CVSU to address the situation.

On figures provided by CVSU, there has been progress in addressing the pre-2018 backlog, with 377 pre-2018 matters remaining open at 11 August 2022, compared with 674 at 31 March 2021. However, as time marches on and new matters are received, more matters are getting older. As at 30 June 2022, there were 1,707 open matters, compared with 1,674 open at 31 March 2021. Of those approaches, 1,283 were two years old or older.

In light of the ongoing backlog, I sought an update from DAGJ on three operational and policy issues to gauge progress in relation to victims of crime assistance. The issues I raised and the DAGJ response in relation to each, is set out below:

- 1. The continuing operational measures being undertaken to deal with applications under the existing statutory scheme, in a timely manner that is of real benefit to victims of crime.**

[The DAGJ response first noted additional ongoing funding of \$1.5 million.] This comprised \$1.25 million for payments to victims and \$0.25 million for additional FTE to improve processing times for compensation claims. As of early 2022, the CVSU has created and filled the additional permanent positions, namely two A06 Senior Applications Officers and one A03 Administration and Enquiries Officer.

The CVSU also continues to refine its internal policies and procedures, including:

- *Triaging applications to identify particularly vulnerable or high-needs applicants, including senior and minor applicants, as well as applications relating to homicide and sexual assault. These applications are prioritised wherever possible.*
- *Setting and enforcing clear guidelines that files will proceed to a decision (if an applicant is eligible to an award) or deferred if applicants and legal representatives have lost contact or are unable to provide necessary information within reasonable timeframes. If applicants later re-engage with the CVSU, they can be paid straight away (if eligible) or re-open their incomplete application. Applicants then have three years from the date of notification and payment to seek an increase or apply for a review of the decision.*
- *Providing clear options to applicants (including through their representative) if they are likely to be eligible for financial assistance based on information already held by the CVSU without having to participate in medical/psychiatric assessments.*
- *Increased use of video conferencing for medical/specialist assessments. Appointments are usually available in a shorter time frame, and this often reduces the need for applicants to travel.*
- *Accepting reasonable estimates of financial loss, rather than requiring documentary evidence.*
- *Continuing to work with stakeholders to maintain a collaborative relationship, including explaining trauma reducing benefits of quickly getting a decision rather than always seeking highest award amount, which may not be achieved.*

2. The need for statutory reform to ensure that real and effective assistance is provided to future victims of crime in a timely manner.

Legal Policy are working with CVSU to be able to inform Government of potential ways forward regarding statutory reforms and that work is ongoing. Any change in the statutory scheme will require consideration of the financial ramifications and Legal Policy are working with Treasury on costings for wholesale reform.

3. The immediate need for legislative and administrative changes to streamline the existing structure to effectively deal with the backlog of current cases that is ongoing and will persist even if there is substantial change to the nature of the scheme for future applications.

Legislative reform work is being considered by Legal Policy including pathways for interim legislative amendments that could assist with reducing the backlog of applications.

Given the ongoing problems the current scheme is experiencing and the questionable value of substantially delayed assistance to a significant number of eligible victims of crime, I strongly urge continued resource support for the CVSU to eliminate the backlog and that work on policy and legislative reform be given high priority within NT Government.

CHAPTER 2 – APPROACHES AND COMPLAINTS

NUMBER OF APPROACHES

In 2021/22, there were 2,406 approaches to the Office (compared with 2,458 in 2020/21). These approaches were varied and included matters outside our jurisdiction (which we refer on where possible), quick queries, matters requiring more work on our part and complaints requiring significant investigation.

Total approaches to the Office and total 'In-jurisdiction' approaches declined marginally from the previous year, primarily due to a slowdown in the last quarter of the year. New approaches declined from an average of 208 per month in the first nine months of the year, to 178 per month in the final three months, with the decline being more notable in May and June.

	2017/18	2018/19	2019/20	2020/21	2021/22
In-jurisdiction cases	1,526	1,829	1,773	1,859	1,827

The number of more complex approaches declined from the previous year, although the proportion of approaches that fell within the two most complex categories remained relatively steady (at 27% compared to 28% in the previous year).

Complexity	2019/20	2020/21	2021/22
Complex matters	303	331	267
Resolved Expeditiously	374	352	386
Enquiries	1,858	1,770	1,751

Note: Does not include a small number of Policy advice matters that are not categorised for complexity.

The top public sector agencies by number of approaches we received in 2021/22 are listed below.

Department / Agency	2019/20	2020/21	2021/22
Police, Fire and Emergency Services	637	687	653
Correctional Services⁽¹⁾	575	517	530
Health	18	44	190
Families, Housing and Communities⁽²⁾	99	125	103
Jacana Energy	141	115	86
Attorney-General and Justice⁽³⁾	56	71	48
Power and Water	74	53	43
Infrastructure, Planning & Logistics⁽⁴⁾	35	48	36
Industry, Tourism and Trade⁽⁵⁾	-	36	20
Education	27	29	16
City of Darwin	18	20	16
Litchfield Council	11	10	14

Notes

(1) Correctional Services is part of Attorney-General and Justice but is reported separately.

(2) Local Government, Housing and Community Development combined with Territory Families during 2020/21. Approach numbers for previous years have been combined.

(3) Includes Courts and Tribunals (8), NT Work Safe (6), Crimes Victims Services Unit (5), Fines Recovery Unit (5).

(4) Includes Motor Vehicle Registry (20).

(5) Newly created agency in 2020/21 combined various functions. No figures for prior years.

VARIATIONS AT AGENCY LEVEL

The most notable increase in approaches during the year was with regard to the Department of Health. This was the product of numerous approaches related to operations and restrictions around the pandemic.

Police, Fire & Emergency Services (**PFES**) approaches decreased by 5% from a record high in the previous year. Police conduct approaches also declined (by 3%), as did the number of more serious Category 1 and 2 complaints (by 18%). The number of Complaint Resolution Process matters increased by 8%. PFES nevertheless remains the number one subject of approaches to our Office and despite substantial inroads being made during the year, there remains a significant backlog of outstanding police conduct complaints (discussed in Chapter 3).

Correctional Services approaches increased slightly from 2020/21 (by 3%) but were still lower than in the previous two years. Litchfield Council approaches also increased slightly.

Otherwise, all other agencies in the list saw a decline in numbers from the previous year. There was a continuing decline in approaches to utilities, with approaches to each of Jacana Energy and Power and Water falling by about 40% from 2019/20. Housing-related approaches within Families, Housing and Communities approaches also declined, from 91 to 77. In total, approaches in relation to local government councils fell from 48 to 40.

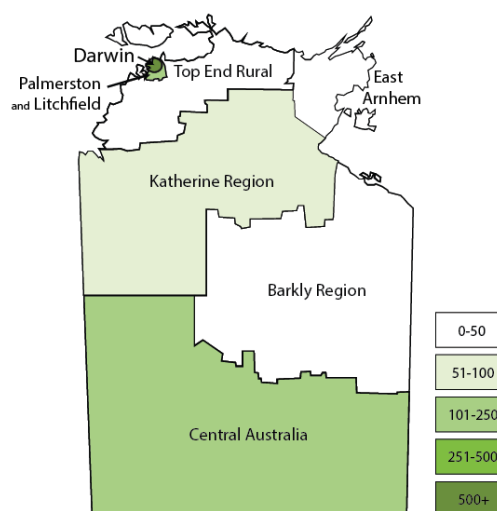
The reasons for declines in relation to so many agencies is not clear. COVID-19 may well have had some influence through a combination of factors such as more lenient approaches by some agencies in the context of the pandemic and members of the public being more accepting of limitations on service provision or more concerned with other issues. In any event, the additional issues raised by COVID-19 meant the overall level of approaches remained at a similar level to recent previous years.

REGION OF APPROACH

Establishing the demographic make-up of people who approach the Office is difficult. People who make a brief phone call or contact us using e-mail or the online complaint form may not provide an address that shows the region where they live. The statistics by region shown below therefore exclude a large number of 'unknowns'.¹

Region	%
Darwin	60
Palmerston/Litchfield	14
Alice Springs/Central	13
Katherine	6
Top End Rural	3
Barkly	3
East Arnhem	2

For similar reasons, it can be difficult to establish in the course of dealing with an approach whether an enquirer identifies as Indigenous. Our Office considers it important to obtain such information to help us identify any gaps in service provision and ways to improve our service.

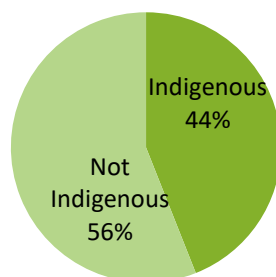


¹ They also exclude prisoners at correctional centres.

We therefore use a demographic information script for our staff to explain to enquirers why obtaining information of this type is important and ask questions about region, Indigenous status and how they found out about the Office. The script and questions have also been incorporated into our online complaints form. However, as we stress to enquirers, it remains a matter of their personal choice whether they wish to answer any of these questions.

In 2021/22, 21% of enquirers identified or were identifiable as Indigenous or representing an Indigenous person. However, over half of enquirers did not disclose a background at all, so these statistics are at best broadly instructive rather than definitive. Of enquirers whose background was identifiable, 44% were Indigenous or represented an Indigenous person.

Complainants Identifying as Indigenous



HOW APPROACHES ARE MADE

The Office offers a range of options for contact.

In 2021/22, over half of enquirers made initial contact with the Office by telephone.

This compared with just over one in four who utilised either e-mail or the Office's online complaint form.

Manner of approach	%
Telephone	56
e-mail	21
Referred by police	12
Online form	6
Letter	3
In person	2

HOW QUICKLY APPROACHES ARE DEALT WITH

In 2021/22, 2,566 approaches to the Office were finalised, with 89% of finalised matters completed within 90 days, compared with 90% in the previous year. This was a significant fall from 2019/20, when 96% of finalised matters were completed within 90 days.

There was a fall in finalisation timeliness for Police conduct matters, largely attributable to the finalisation of a large number of older police conduct complaints that formed part of a backlog of such matters. The following table sets out elapsed time for finalisation of completed Police conduct and non-Police approaches.

Time taken to finalise approaches - approaches finalised in 2021/22

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	25%	19%	24%	13%	20%	675
Other	67%	18%	10%	2%	2%	1,891
Total	1,439	476	359	123	169	2,566

Note: Figures may not add up to 100% due to rounding.

The finalisation of an appreciable part of the backlog and efforts from our staff to finalise other matters led to a significant decline in the number of approaches that remained open at the end of the reporting period, with a fall from 313 at 30 June 2021 to 153 at 30 June 2022.

Open approaches in excess of 90 days old also fell from 153 to 90. However, the situation remains a far cry from earlier years, for example, 2018/19, when only 80 approaches were open at end of year and only 18 of those were over 90 days old. Age of open matters is shown in the following table.

Age of open matters - at 30 June 2022

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	6	14	28	28	47	123
Other	4	3	8	4	11	30
Total	10	17	36	32	58	153

The number of non-Police open matters fell markedly from 130 to 30 over the year. The number of Police conduct open matters also fell from 183 to 123. This was a substantial improvement but more than 4 out of 5 approaches over 90 days old at the end of the reporting period involved police conduct matters. Timeliness issues around police conduct cases are discussed in more depth in Chapter 3.

REFERRAL OR DECLINE OF APPROACHES

There are a number of reasons why we may not accept or may discontinue an approach, including:

- **Referral to agency.** We maintain the view (strongly supported under the Act) that the relevant agency should be given the opportunity to resolve a complaint in the first instance. For this reason, unless a case involves an element of urgency or particular sensitivity, enquirers who come to our office without first addressing their concerns with the relevant agency will usually be assisted by our staff to make contact with the agency.
- **Referral to another independent body.** There are cases where another complaints or review body has sole jurisdiction in relation to the subject of an approach or where we share jurisdiction. We may refer the complainant or the complaint to the other body if we consider it is better placed to deal with the case.
- **Unnecessary or unjustified.** We may decline to deal with a complaint for a variety of reasons, including that it is trivial, frivolous, vexatious or not made in good faith, that the complainant does not have a sufficient interest, that investigation is unnecessary or unjustified, or that the action complained of has been or will be investigated by another complaints body.
- **Outside jurisdiction.** In some cases, we may not have the power to investigate a matter but we may be able to point the enquirer in the right direction. For example, an approach may be about a private sector service provider or a Commonwealth department.

In some cases, we make preliminary enquiries or require investigations to be undertaken by an agency, in order to establish whether we have jurisdiction and whether we should proceed further. This, in itself, may take considerable time and effort before a decision is made on the approach we will take.

Where we refer an enquirer, if we think they may need additional assistance, our staff may contact the agency or independent body with an outline of the concerns and ask it to respond directly to the enquirer. Additionally, we may ask an agency to advise us of the outcome depending on the nature of the matter. The enquirer is advised that they can contact us again if they are unsatisfied with the response of the agency.

Referrals to another independent body

There are a number of other complaint and investigative bodies that deal with specific issues. In some cases, they have exclusive jurisdiction to deal with matters of that type while in others there may be shared jurisdiction. We may refer inquiries of this kind to another entity either informally or formally under section 32 of the Act. NT bodies of this type include:

- Independent Commissioner Against Corruption;
- Information Commissioner;
- Children's Commissioner;
- Health and Community Services Complaints Commission;
- Anti-Discrimination Commission.

To assist with the smooth referral of complaints and exchange of information between offices, we may enter into a memorandum of understanding covering the practical aspects of referrals, confidentiality, information sharing, sharing of resources and minimising the risk of duplication.

Outside jurisdiction

Each year the Office responds to a large number of enquiries relating to entities that do not fall within its jurisdiction, for example, enquiries about private sector or non-government organisations or private individuals.

There are also some types of Government action that we do not have power to review, for example, personal decisions of Ministers, decisions of Cabinet and Executive Council, judicial decisions and decisions about public sector employment.

In outside jurisdiction cases, the Office attempts to either provide contact details or put the enquirer in touch with an entity that can assist them. In 2021/22, we dealt with 577 outside jurisdiction approaches compared with 599 in the previous year. This continues a substantial fall from the 762 outside jurisdiction approaches received in 2019/20.

The following table lists the most common outside jurisdiction sectors where approaches were referred on to another complaints body or forum.

Sector	2019/20	2020/21	2021/22
Consumer affairs	138	96	102
Employment	93	52	74
Health services	69	33	42
Financial services	64	45	36
Commonwealth government	63	54	27
Private housing	41	18	15
Telecommunications	26	22	10

ISSUES AND EXAMPLES FROM SPECIFIC AUTHORITIES

Utilities complaint handling

In 2014, the Power and Water Corporation was split into separate government owned corporations. Since then, Jacana Energy is responsible for retail power in the great bulk of the NT urban market, while Power and Water is responsible for power distribution, including meters and meter reading and all aspects of water and sewerage provision.

This means Power and Water's electricity responsibilities continue to involve many aspects of the consumer experience, right up to the electricity meter. Where electricity is concerned, a consumer may simply not be in a position to know whether a problem with power supply or an excess bill should be addressed by Jacana Energy or Power and Water.

There are frequent occasions when a consumer must rely on both government entities to work together to resolve a problem. For example, Jacana Energy may rely on Power and Water to check that an electricity meter is working properly to confirm a high consumption reading. Or there may be a complaint that a Jacana Energy bill is unfair because of delay or faulty work or equipment on the part of Power and Water.

In response to feedback from our Office, Jacana Energy have advised they are working more closely with Power and Water to assist customers in dealing with their complaints. During 2021/22, we have certainly received fewer complaints about customers being transferred from one organisation to the other without a resolution of their concerns. We are pleased to see this change in the statistics.

Jacana Energy

This year proved to be as challenging for Jacana Energy as the previous two. As with other businesses, the realities of COVID-19 led to staff shortages and at times unavoidable administrative delays which impacted on their complaint management processes. For many customers, COVID-19 factors resulted in financial hardship and ongoing frustration at communication challenges when dealing with their energy concerns.

Against this backdrop, it is interesting to note although Jacana Energy advise that complaint and enquiry numbers received by them remained similar to last year, the number of people who went on to complain about Jacana Energy to our Office significantly decreased.

The total number of approaches relating to Jacana Energy in 2021/22 was 86, compared to 115 in 2020/21 and 141 in 2019/20. Various factors no doubt contributed to the decrease in approach numbers to our Office, including:

- Jacana Energy's more sympathetic approach towards debt collection during the past two years. As a result, there were only two approaches received by our Office about financial hardship compared to 25 three years ago. We may well see a spike in approach numbers about this issue and credit listing when Jacana Energy returns to a more commercial approach to debt collection. It is hoped however that during 2022/23, Jacana Energy remains sensitive to the considerable hardship many people are still facing in the current difficult financial climate.
- We are aware that work is being done by Jacana Energy to improve its customer service and Jacana Energy management have advised a more consumer-focused approach is intended in the future. Jacana Energy advises it has restructured its complaint management process to encourage early resolution and to ensure more difficult complaints are referred to an appropriate officer to investigate. We are also aware that Jacana Energy has implemented a triage system to answer a customer's simple queries quickly and to provide the customer with the best advice on how to communicate with them in a timely manner on more complex enquiries.

The current and proposed improvements to organisational culture and service delivery are welcomed.

Issues raised in relation to Jacana Energy in 2021/22 are set out in the table below. The figures that follow are based on issues raised, not sustained issues.

Jacana Energy – Issues raised - 2021/22

Issue	Notes	No.
Credit listing	Querying or seeking to remove listing with a credit agency	21
Solar	Includes issues relating to solar rebate changes (17), delay in paperwork for new systems, high estimates not taking solar installation into account	20
Excessive charges	Includes issues arising from estimation process and issues with payment of refunds	17
Fees	Includes issues relating to fees for connection and disconnection and administrative fees	6
Contact	Includes problems with contacting Jacana Energy	4
Billing	For example, bill not received, two bills received at same time, sent to wrong address, delay in sending	3
Changed circumstances	Includes problems arising due to change in address or living arrangements, administration of estates	3
Access	Includes issues arising from inability to access property	3
Financial hardship		2
Connection	Includes delay in connection	2
Disconnection		1

Power and Water

Complaints received by our Office regarding Power and Water reduced from 74 in 2019/20 to 53 in 2020/21. Again this year, a further reduction was noted as only 43 complaints were received by us. Power and Water have advised of a similar decrease in the number of customer cases and complaints received by them during 2021/22, recording:

- a decrease of 17% in complaints and 43% in complex enquiries received between 2019/20 and 2020/21;
- a further decrease of 68% in complaints and 38% in complex enquiries received between 2020/21 and 2021/22.

When asked to comment on the reduction, Power and Water advised:

While it is difficult to establish the basis for the observed decline in the number of complaints received by the Office of the Ombudsman, some potential contributory factors may be:

- **Introduction of an enhanced customer contact flow:** *In 2021/22, Customer Experience and Operations introduced a redesigned customer contact flow aimed to improve the quality of interactions with our customers. This approach included implementation of a First Contact Resolution (FCR) process (October 2021), which supported resolution of customer enquiries and requests at the first contact with Power and Water where possible. This process focused on building capability within our customer facing workforce and providing the right tools to enable customer queries to be addressed at the first contact rather than having to refer them to other areas or escalating matters. The FCR process enhanced the customer experience by*

resolving enquiries in a more efficient manner and reducing the number of times customers needed to contact us or explain their issue in order to reach a resolution. The redesigned customer contact flow was supported by the introduction of enhanced ICT systems (which allowed for improved management and tracking of customer and retailer contacts), structured quality assurance processes and vulnerable customer training (which supports staff in identifying and dealing with vulnerable customer engagements).

- ***Introduction of an enhanced customer complaints and cases management process:*** *The Customer Resolutions Team previously consisted of a Complaints Officer (CO) and Service Assurance Officer (SAO), with the CO allocated all matters classified as 'complaints', and the SAO allocated all matters classified as 'cases' (ie. complex enquiries / issues). During a review of Resolutions' function in early 2021, it was identified that the established team structure contributed in an imbalance in staff workload allocation and inconsistencies in the management of customer cases / complaints. In response to this finding, in mid-2021 the Resolutions roles were redesigned to remove the divide between cases / complaints, with team members now responsible for managing the full range of customer feedback, cases and complaints. This redesign has facilitated provision of a consistent level of service for all Resolution matters, regardless of classification, and has been supported by a focus on development of standardised processes to facilitate best practice case / complaints management.*

Against the backdrop of the unique circumstances that COVID-19 has created, it is difficult to conclude that decreased complaint numbers are the result of any particular initiative or improvement. It is pleasing however to note that, like Jacana Energy, Power and Water have taken positive steps to improve and refine their customer service delivery and complaint management. Our Office will remain interested in assessing the longer term impact of improved processes on complaint numbers in future reporting periods.

Issues raised in relation to Power and Water in 2021/22 are set out in the table below. The figures that follow are based on issues raised, not sustained issues.

Power and Water – Issues raised - 2021/22

Issue	Notes	No.
Excessive charges	Includes complaints relating to estimates (6), impact of water leaks (6) and sewerage charges (5)	22
Works	Includes safety issues, failure to provide infrastructure, cost of provision or connection, inaccurate information, damage due to works, remediation issues	4
Solar	Includes delay in paperwork for new systems, high estimates not taking solar installation into account, issues relating to solar rebate calculation, change in rate	3
Billing	Includes delay in billing or refund	2
Delay	Includes delay in communication, meter reads, connection, disconnection	1
Damage or loss due to fault	Includes loss caused by faulty infrastructure or equipment	1
Financial hardship		1

Example – Repairing property damage

A customer remained dissatisfied with the standard of Power and Water repair works conducted when a burst water main damaged the driveway of his property, requiring excavation and a new concrete footpath.

The complainant said that his lawn and bitumen driveway were damaged during excavation works conducted by Power and Water, leaving the driveway with holes and subsidence, which in the Wet led to water pooling up to 20 metres from the end of the driveway.

To remedy the works, Power and Water spread loose gravel over the damaged area, which the complainant said made water-pooling worse. Power and Water maintained that its rectification works were conducted to an appropriate standard, stating subsidence can occur naturally due to a number of factors and was not caused by them.

The complainant disagreed and contacted our Office. In an attempt to resolve the matter quickly and informally, we reviewed the evidence and approached Power and Water asking it to reconsider its position and engage with the complainant to find a satisfactory solution.

Power and Water agreed, and after discussion, a suitable outcome was reached with Power and Water agreeing to reinstate the damaged section of driveway using a spray bitumen to match the original bitumen.

The complainant was happy with this outcome. For our part, it was pleasing to note that a sensible and practical solution was reached without the need for formal inquiries by our Office.

Example – A quick fix

While Power and Water is responsible for supplying water to the water meter, property owners are responsible for the cost of any water use registered on the water meter, including any water used or lost through the property's internal plumbing on the customer's side of the meter. This means that concealed leaks within the boundaries of a dwelling can lead to large water bills.

Following earlier complaints to our Office about concealed water leaks, Power and Water now advise customers when their water consumption is high so the customer can take steps to identify and repair a concealed leak.

Power and Water have also implemented a water leak allowance scheme which aims to help alleviate some of the pressures caused by a concealed leak. Details about the scheme are available on its website [Apply for a water leak allowance | Power and Water Corporation \(powerwater.com.au\)](https://powerwater.com.au) but a condition of the scheme is that a customer acts responsibly in fixing a concealed leak (once detected) within a reasonable timeframe.

In one case, the complainant received a phone call from Power and Water alerting them that their first water meter reading (and usage) was high. A second reading confirmed the high usage and they were issued a bill for \$1,400. They made part payment on the due date and received an extension of time to pay the balance.

They later contacted Power and Water to enquire about applying for a reduction of the bill under its water leak allowance policy. They experienced some problems in submitting their application online so they resubmitted it the following month. Power and Water initially refused their application because their form appeared to indicate they had not immediately attended to the leak.

We contacted Power and Water and asked it to review the matter and see if the complaint could be resolved informally. The complainant submitted they had in fact attended to the leak within a reasonable time and this was reflected in the fact that their recent water bill showed a much reduced reading/usage for that quarter.

On review, Power and Water decided there was sufficient evidence that the leak on the property was fixed promptly in accordance with the policy. It approved the application by granting the maximum 600KL allowance, which translated to a reduction of over \$1,000, wiping the unpaid portion of the water bill that was still owing. The complainant was satisfied with the result.

Example – Not as quick a fix

A Power and Water customer complained to our Office after they received two high water bills of around \$4,000 and \$3,000 for a property they had tenanted. They claimed they had not been sufficiently advised by Power and Water of the continued high usage.

We made inquiries with Power and Water to get further information and received copies of an SMS message and a voicemail message sent to the complainants alerting them to the high water usage.

Unfortunately, on being informed of the high usage by Power and Water, the complainant assumed that the high usage was caused by their tenant filling a portable swimming pool several times and made no further inquiries. It was only some time later that a plumber and then a water leak detector were engaged to locate and fix the ongoing leak.

On this occasion, Power and Water had acted reasonably and in accordance with its policies in advising the customer of the high water usage. Power and Water's efforts to alert the complainant to a potential water leak by SMS and a voicemail message were reasonable in the circumstances. We recommended that Power and Water allow the customer time to pay the bills in instalments.

Example – One size won't fit all

A senior citizen wrote to our Office concerned that Power and Water refused to mail him a form to claim a reduction for his high water bill under its new *Water Leak Allowance Policy*. He said that he had initially written to Power and Water requesting a form because he is not computer literate but they advised a hard copy form was not available, making him feel he was being discriminated against. He advised that he then telephoned Power and Water and while they initially indicated they were able to mail him the form, they later contacted him to advise that a hard copy form was not available, however he could attend the Power and Water Office in Darwin and they would assist him to complete the online application, as their Palmerston Office was closed.

On advising the officer that he did not live in Darwin city and that he had a serious mobility issue, he said that he was told to 'go online'. Finally, after advising the officer that he was not computer literate and didn't have a computer, he was told an application would be mailed to him. The complainant considered his treatment by Power and Water to simply complete a form was unfair and discriminatory.

When my Office contacted Power and Water, they advised that on the complainant's initial contact regarding the allowance, the complainant had provided an email address and indicated that they were comfortable with the application being sent in this format. On further contact with the complainant however, the complainant advised they were not computer literate and requested the form be posted. As the form at that time was in an online format only, and did not translate to PDF, there were some difficulties in meeting the complainant's request. Power and Water advised that they were engaging with the complainant to progress his application and resolve the matter. They also advised that, in light of the complainant's feedback, Power and Water were developing PDF versions of all their online forms so they can be printed and/or posted if required.

This is an example of a problem Territorians are seeing more often as commercial enterprises and organisations close down their shopfront services and switch to online services. It is important for a range of options to be maintained to meet the needs of all customers. This includes the situation where some customers do not have the ability to communicate online. Access issues are important considerations for all organisations, particularly those that offer essential services. It is therefore appropriate that Power and Water maintain a simple option to provide paper copies of application forms and other documents to their customers who cannot access the information online.

Housing

The Housing function is now located within Territory Families, Housing and Communities. There were 77 public housing related approaches in 2021/22.

Issues raised in approaches received in 2021/22 are set out in the table below. The figures that follow are based on issues raised, not sustained issues.

Housing – Issues raised - 2021/22

Issue	Notes	No.
Conduct of tenants and third parties	Includes complaints about tenants, neighbour disputes, theft or damage to tenant property and anti-social behaviour	38
Repairs & Maintenance	Includes accommodating special needs	13
Allocation of housing	Includes priority housing	10
Transfer of tenancy	Includes refusal to transfer and delay	9
Financial issues	Includes rental amounts, debts, deductions and rebates	3
Termination/banning	Includes termination of tenancy and banning from premises	2
Complaint handling		2
Officer conduct	Includes rude and inconsiderate behaviour	1
Property loss or damage	Caused by Housing or contractor	1
Contact	Difficulties in contacting Housing	1

Issues relating to disputes between neighbours and the conduct of other tenants and visitors increased markedly during the period, perhaps contributed to by more time spent at home as a result of the impacts of the pandemic.

Allocation and transfer delay issues remain a feature, with limited housing stock and long wait times being an ongoing feature of public housing in the NT as they are throughout Australia.

Other typical tenancy-related complaints involved delay in attending to repairs and maintenance requests and financial issues around rent levels and the availability of rebates or discounts.

Example – Safety and security concerns

A distressed public housing tenant contacted our office to complain about a delay in a requested transfer to another house due to the neighbours anti-social behaviour and their intoxicated/drug affected visitors unlawfully entering her family home. She feared for the health and safety of her family and wanted a transfer urgently before someone was seriously hurt.

She provided police reports and referrals from Territory Families and other stakeholders supporting her case for a transfer but remained frustrated and anxious at the time it was taking.

Our Office explained (from knowledge of previous complaints received) the delay could be due to a range of factors, for example, long waiting lists generally and particularly, the wait for a suitable house to become vacant in a suitable area.

We advised the complainant, given the circumstances, we could not request Housing to fast track her application at the expense of other applicants. However, we said we would refer the matter to Housing to get an update and ask if any temporary measures could be taken to address the situation, until a suitable house became available in another suburb (for example, improved security fencing, installing a temporary surveillance camera, or other measures in collaboration with NT Police and other agencies, etc).

After reviewing the matter, Housing advised our Office a suitable house had become available in another suburb (albeit not in the preferred area) and offered it to the complainant, pending pre-occupancy inspection and interview processes, which she accepted.

Other authorities

Example – A sense of relief

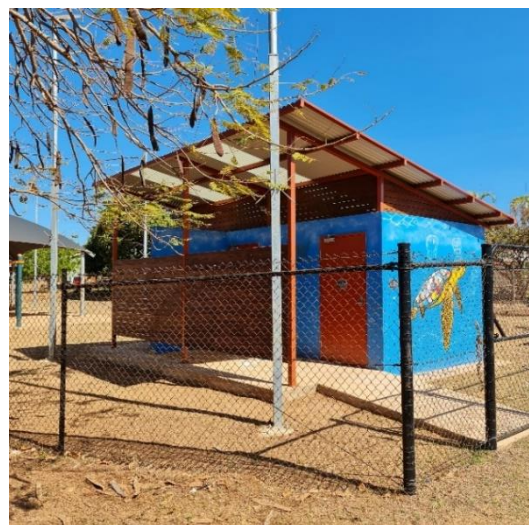
During a community engagement visit to Warruwi community in the West Arnhem region in 2018, staff of our Office were approached by local community residents and past members of the Warruwi Local Authority. They were concerned about delay in the West Arnhem Regional Council (the Council) using approved funding to build a new public toilet for use by the local community and visitors.

They claimed visitors and tourists wanting to use toilet facilities approached community members, or the local store and other stakeholders, or had to use the bush, which was less than ideal. They spoke of considerable work they had done in consulting with relevant stakeholders and obtaining support for the construction and ongoing maintenance of the facility.

Our Office began inquiries with the Council to obtain an update on the situation so we could provide it to the complainants. We received verbal and written responses and documents on action the Council had taken and was taking to progress building the facility. We were advised progress had stalled due to a number of complex factors, relating to issues such as limited community water supply, location, infrastructure requirements, responsibility for ongoing costs and the need to obtain necessary approvals.

We informed the complainants of the complexities involved, advising we would continue to liaise with the Council and keep them informed. From 2018 to 2020 we continued to seek periodic updates from the Council on progress and updated the complainants. In 2020, the Council advised the project was close to being finalised, with approvals, licences and permits obtained, timelines set and construction due to commence soon. However, COVID-19 and community lockdowns caused further delay.

We were pleased to hear from the Council that construction of the new ablution block was completed in 2021. While acknowledging the challenges, timeframe and complexities overcome, it is satisfying to see the community has finally achieved their long awaited facility.



Example – Lost in transit

The complainant advised us that several months ago he applied for an 18+ card from the Motor Vehicle Registry (**MVR**).

He said he did not receive the card but was being advised by MVR that he would need to pay for a new card. We referred the matter to MVR and requested that it contact the complainant directly.

MVR subsequently advised that it accepted the card was not received by the complainant and had agreed to replace the card free of charge.

CHAPTER 3 – NT POLICE

This Chapter:

- discusses a number of specific issues identified in relation to NT Police operations;
- analyses police conduct complaints received and finalised during the period; and
- sets out a number of police conduct case studies as examples of complaints made and investigations undertaken by NT Police under the oversight of our Office.

POLICE CONDUCT BACKLOG AND PSC RESOURCES

I have previously commented on the significant backlog of police conduct cases being investigated by NT Police under the oversight of our Office. Some progress has been made in addressing this backlog. The number of open matters fell from 183 at 30 June 2021 to 123 at the end of this period. At 30 June 2022, there were 47 police conduct matters over 6 months old, including 22 over one year old, but this was a significant improvement on the prior period. Even so, there is still considerable work for NT Police to do in this regard.

For police conduct review and discipline to be effective from the perspective of complainants, officers and the community, it is vital that investigation of complaints be fair and timely. Delay in an area such as this is particularly significant when one considers the statutory 6 month time limit on commencing disciplinary action against police officers under section 162(6) of the *Police Administration Act 1978* (the **PAA**).

I again acknowledge police conduct matters are often more complex and having some matters extend for a length of time is not unusual or necessarily concerning. Some matters take time for the NT Police Professional Standards Command (**PSC**) to investigate thoroughly and there may be delays caused by the unavailability of police or civilian witnesses or an inability to locate witnesses.

In addition, some matters are being delayed while criminal or disciplinary proceedings take their course. However, the great majority of open matters can be finalised in a timely manner with the application of sufficient priority and attention.

The COVID-19 pandemic has again had a major impact on NT Police. It has contributed to two negative impacts on the ability of PSC to deal with police conduct issues in a timely and professional manner. Diversion of staff to other priorities has curtailed available resource capacity. However, equally problematically, there continues to be a high rotation of staff, with specialist skills, expertise and procedural knowledge in this specialist area lost and requiring redevelopment on a regular basis as new officers take up positions.

NT Police must ensure the maintenance of a well-resourced, well-credentialed and stable team to maximise the efficiency of PSC operations and address the backlog as quickly as possible.

TIME LIMIT ON COMMENCING DISCIPLINARY ACTION

As noted above, the PAA places a 6 month time limit on laying disciplinary charges against police officers. This time limit clearly presents substantial challenges for *Ombudsman Act* and disciplinary investigations. This is especially the case as there are frequently many steps involved in police investigation and Ombudsman Office consideration of complaints before laying a charge. It will often be necessary to undertake substantial investigation and consideration prior to that formal step, all within the 6 month limit.

The 6 month limit makes no distinction between relatively low level disciplinary matters and the most egregious instances of breach of discipline. The time limit can easily be exceeded due to relatively common factors such as delays in being able to locate or interview witnesses from remote locations and extended absences on leave on the part of witnesses or subject officers.

Among the problems with the time limit is that it appears the clock may start ticking as soon as any 'prescribed officer' becomes aware of an issue. This may arguably mean that a very serious transgression is not actionable because a single prescribed officer failed to look closely enough at conduct or simply took a particular view of conduct that may not be supported by an impartial and reasoned analysis of all the evidence. It is not uncommon for matters to come before this Office where a supervising officer (who may also be a prescribed officer) at first instance has failed to discover, appreciate or report a significant lapse that warrants closer investigation and potentially, disciplinary action.

These complications, combined with the delays discussed in the section above, have meant that many investigations have been far from finalised at the end of the 6 month timeframe.

There is provision for extension of the time limit, and extensions have been sought and granted on a number of occasions. However, in recent times discussion and debate regarding the requirements to secure an extension have eaten up considerable time and resources of NT Police and our Office that would have been far better spent on investigation, consideration and disposition of complaints.

There can be improvements in the way NT Police approaches investigations and works within the existing legislative scheme. However, there will always be reasons for delay and the 6 month time limit, combined with an overly complicated mechanism for seeking extension represents and will, despite our best efforts, continue to represent, a real threat to the effective discipline of NT police officers.

Notwithstanding the importance of timely disposition of complaints and the disciplinary process, there are strong arguments in favour of review of the current time limit and mechanism for seeking extension in order to ensure the ongoing effectiveness of the police disciplinary system. My understanding is that these issues will be considered in an external review of the PSC currently being undertaken for NT Police.

CARE IN CUSTODY

The Office continues to maintain a focus on addressing issues concerning care provided to people in custody. Sustained instances of failure to provide adequate care during the year included:

- failure to adequately prepare for or provide timely aftercare following use of OC spray (see, for example, Case 5);
- failure to explore the need to convey home a 14 year old who was left alone after confiscating the bike he was riding late at night (see Case 8);
- unsafe driving leading to injury of a person in the cage of a police vehicle;
- failure to explore alternatives to conveying a person with mental health issues in the cage of a vehicle or to notify a senior officer as required (see Case 9);
- failure to adequately record health issues on police systems, including failure to record an injury to a person's head and a statement by a person that they were having thoughts of self-harm.

Action taken in respect of individual officers in relation to the above findings included remedial advice and remedial training.

Another care issue relating to provision of adequate food, water and breaks for people who are transported over long distances is discussed at Case 1.

Our Office continues to highlight with NT Police the importance of ensuring there are suitable resources and procedures in place to extend protection to people in custody who exhibit unusual behaviours that point to them being at risk or experiencing mental health issues. We continue to monitor these issues as they arise in complaints to our Office and are currently awaiting the outcome of a trial being conducted by NT Police into tear-proof custody smocks.

DOMESTIC VIOLENCE AND SEXUAL ASSAULT MATTERS

Our Office dealt with a number of police conduct complaints during the year that involved elements relating to allegations of domestic violence or sexual assault. Sustained instances of failings with regard to domestic violence and sexual assault included:

- six instances of failure to adequately investigate or progress matters;
- two instances of failure to provide adequate victim support;
- failure to conduct adequate system checks to establish the existence of a Domestic Violence Order (DVO);
- issuing a DVO in circumstances that did not justify issue;
- failure to properly inform the complainant about the right to seek a judge's review of a police-issued DVO.

Action taken in respect of individual officers in relation to those findings included remedial advice and formal written cautions.

YOUTH JUSTICE

The jurisdiction of the Ombudsman is limited with regard to youth justice and child protection matters. The Ombudsman is not empowered to deal with matters that fall within the jurisdiction of the Children's Commissioner. However, the Ombudsman does have power to investigate issues relating to police administration and police conduct with respect to youths.

Royal Commission

The final report of the *Royal Commission into the Protection and Detention of Children in the Northern Territory* was handed down in November 2017. It made a number of recommendations relevant to police administration and police conduct.

In response, the NT Government developed a plan to implement reforms to better support children, young people and families experiencing vulnerability and to deliver the recommendations of the Royal Commission: *Safe, Thriving and Connected: Generational Change for Children and Families 2018-2023* (April 2018).

With regard to initiatives that specifically relate to NT Police, *Safe, Thriving and Connected* states:

Initiatives Identified in Response to the Royal Commission

INITIATIVE	DESCRIPTION	RECS	PHASE
Arrest and Police Custody	NT Police has commenced a review of youth operations that aims to improve the organisational, legislative, policy and training structures and develop platforms that directly guide and influence police operations and interactions with young people and their communities. This work includes a review of General Orders to ensure police practice aligns with the Royal Commission recommendations.	25.02 25.03 25.06	Phase 2
Custody Notification	The establishment and funding of a Custody Notification Service (CNS) for Aboriginal people is a pre-existing Commonwealth and Northern Territory Government commitment. The CNS requires police to notify a lawyer from an appropriate legal service as soon as a child or young person is brought into custody in the Northern Territory. The Northern Territory Government is committed to providing ongoing funding for the CNS after the initial three year funding commitment from the Commonwealth Government expires, provided the model is feasible for the Northern Territory.	25.04 25.33	Phase 1
Police Diversion	Northern Territory Police, Fire and Emergency Services is developing a Youth Justice and Engagement Action Plan to promote partnerships with the community to deliver improved outcomes for at risk young people and their families to ensure a safe and resilient Northern Territory. The proposed outcomes of the Action Plan are: 1. Informed and contemporary workplace culture and practice; 2. Enabling community partnerships and connectedness; 3. Delivering appropriate and timely interventions – early and sustainable exits; 4. Diversion – continuation and expansion of restorative justice conferencing. Underpinning the Action Plan is a review of the current police youth justice and engagement services and the provision of contemporary youth justice and domestic and family violence awareness training to all Police Officers.	25.08 25.10 25.12	Phase 1
Youth Policing	The Northern Territory Government recognises the benefit of NT Police engaging and working with young people, their families and their communities to promote pro-social behaviours and divert youth at risk of offending. NT Police can also play an important role in sustaining positive change following youth justice interventions. The Northern Territory Government will review the current delivery of police youth justice and engagement services and investigate the establishment of a Police Youth Division to manage police services for young people who offend, are at risk of offending, or may be in need of care and protection. Regardless of the structure deployed, NT Police will introduce the required reforms to ensure Police work effectively and constructively with young people supported by targeted training, development and specialisation. The Northern Territory Government will investigate, with reference to other proposed youth justice system reforms, the possible establishment of Community Youth Teams (CYTs) to coordinate cross agency youth justice responses to young offenders at a local level. A CYT comprises frontline staff from Northern Territory Police Fire and Emergency Services and other key stakeholders in identified communities. The role of a CYT is to lead the development and implementation of community action plans to better engage the community and strengthen community safety.	25.01 25.07 25.18 25.20	Phase 1 Phase 2

Many Royal Commission recommendations require involvement from multiple agencies and overall implementation is managed by the whole-of-government Reform Management Office (the **RMO**).

The RMO produces an Annual Report that encapsulates the NTG response to the recommendations. The *2021 Generational Change Impact Report* (June 2022) is available at:
[RMO_Generational-Change-Impact-Report_2021_WEB.pdf \(nt.gov.au\)](https://www.nt.gov.au/rmo/Generational-Change-Impact-Report-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-2509-2510-2511-2512-2513-2514-2515-2516-2517-2518-2519-2520-2521-2522-2523-2524-2525-2526-2527-2528-2529-2530-2531-2532-2533-2534-2535-2536-2537-2538-2539-2540-2541-2542-2543-2544-2545-2546-2547-2548-2549-2550-2551-2552-2553-2554-2555-2556-2557-2558-2559-2560-2561-2562-2563-2564-2565-2566-2567-2568-2569-2570-2571-2572-2573-2574-2575-2576-2577-2578-2579-2580-2581-2582-2583-2584-2585-2586-2587-2588-2589-2590-2591-2592-2593-2594-2595-2596-2597-2598-2599-2600-2601-2602-2603-2604-2605-2606-2607-2608-2609-2610-2611-2612-2613-2614-2615-2616-2617-2618-2619-2620-2621-2622-2623-2624-2625-2626-2627-2628-2629-2630-2631-2632-2633-2634-2635-2636-2637-2638-2639-2640-2641-2642-2643-2644-2645-2646-2647-2648-2649-2650-2651-2652-2653-2654-2655-2656-2657-2658-2659-2660-2661-2662-2663-2664-2665-2666-2667-2668-2669-2670-2671-2672-2673-2674-2675-2676-2677-2678-2679-2680-2681-2682-2683-2684-2685-2686-2687-2688-2689-2690-2691-2692-2693-2694-2695-2696-2697-2698-2699-2700-2701-2702-2703-2704-2705-2706-2707-2708-2709-2710-2711-2712-2713-2714-2715-2716-2717-2718-2719-2720-2721-2722-2723-2724-2725-2726-2727-2728-2729-2730-2731-2732-2733-2734-2735-2736-2737-2738-2739-2740-2741-2742-2743-2744-2745-2746-2747-2748-2749-2750-2751-2752-2753-2754-2755-2756-2757-2758-2759-2760-2761-2762-2763-2764-2765-2766-2767-2768-2769-2770-2771-2772-2773-2774-2775-2776-2777-2778-2779-2780-2781-2782-2783-2784-2785-2786-2787-2788-2789-2790-2791-2792-2793-2794-2795-2796-2797-2798-2799-2800-2801-2802-2803-2804-2805-2806-2807-2808-2809-2810-2811-2812-2813-2814-2815-2816-2817-2818-2819-2820-2821-2822-2823-2824-2825-2826-2827-2828-2829-2830-2831-2832-2833-2834-2835-2836-2837-2838-2839-2840-2841-2842-2843-2844-2845-2846-2847-2848-2849-2850-2851-2852-2853-2854-2855-2856-2857-2858-2859-2860-2861-2862-2863-2864-2865-2866-2867-2868-2869-2870-2871-2872-2873-2874-2875-2876-2877-2878-2879-2880-2881-2882-2883-2884-2885-2886-2887-2888-2889-2890-2891-2892-2893-2894-2895-2896-2897-2898-2899-2900-2901-2902-2903-2904-2905-2906-2907-2908-2909-2910-2911-2912-2913-2914-2915-2916-2917-2918-2919-2920-2921-2922-2923-2924-2925-2926-2927-2928-2929-2930-2931-2932-2933-2934-2935-2936-2937-2938-2939-2940-2941-2942-2943-2944-2945-2946-2947-2948-2949-2950-2951-2952-2953-2954-2955-2956-2957-2958-2959-2960-2961-2962-2963-2964-2965-2966-2967-2968-2969-2970-2971-2972-2973-2974-2975-2976-2977-2978-2979-2980-2981-2982-2983-2984-2985-2986-2987-2988-2989-2990-2991-2992-2993-2994-2995-2996-2997-2998-2999-3000)

Some key achievements and highlights from that report specific to NT Police actions are set out below:

Improving Youth Justice

- *Restructured the Police Youth Division within the Northern Territory Police Fire and Emergency Services (NTPFES) to improve service delivery and outcomes for young people.*
- *Commenced the Custody Notification Service - the NTPFES and the North Australian Aboriginal Justice Agency entered into an MOU in August 2019. The service is based on mutual cooperation and ensures the welfare/legal concerns of young Indigenous persons are maintained as a matter of priority, when in the custody of the NT Police.*

...

- *School Based Policing Program - Inter-government agreement between the NT Police, Fire and Emergency Services (NTPFES) and the Department of Education to expand and develop the program to: -*
 - *Enhance positive relationships between police and young people; -*
 - *Improve safety, community connections, wellbeing and resilience; and –*
 - *Build understanding of their personal responsibility to contribute positively to community safety.*

A Memorandum of Understanding (MOU), Service Level Agreement and Operational Guidelines has been drafted and signed.

- *Recruitment of additional school based police members and provision of prerequisite training prior to placement in schools, including additional schools in Darwin and Nhulunbuy.*

...

Preventing Child Sexual Abuse

- *Establishment of the Northern Territory (NT) Child Abuse Taskforce – 2018–2021, a partnership with the NT and Australian Federal Police (AFP).*
- *Establishment of the NT Joint Anti-Child Exploitation Team (NT JACET) – 2018–2021, a partnership with the NT and AFP.*
- *Operations May and Squire – NT JACET – NT Police operations with interstate law enforcement agencies aimed at investigating children being exploited on social media platforms.*

...

Supporting Survivors and Victims

- *Commitment to training NT Police through the investigative interviewing of vulnerable persons courses that provides specialist training to interview children involved with sexual abuse.*

With regard to Improving Youth Justice, the report states:

The community is safer through Police working effectively and engaging with young people, and focussing on practices that prevent offending.

This program highlights the Northern Territory Police efforts to work with the community and focus on improved and better approaches in youth justice.

Many of the initiatives recommended have been implemented and the Northern Territory Police are committed to addressing better outcomes in youth justice.

Resources help connect police to kids...and teach valuable lessons.

The expansion of the 'School Based Policing Program' from 10 Constables to a blended model of 15 police officers (Constables and Auxiliaries) will ensure the provision of the 'Police in Schools Resource Kit' is provided to an increased number of students.

The resource kit has been developed in conjunction with the Department of Education and focusses on alcohol and other drugs, personal safety, cyber safety, road safety and community safety. The kit is co-delivered alongside teaching staff and fits into the current year 7 to 10 school curriculum.

With regard to preventing child sexual abuse, the report states:

Child safety a focus of joint investigations

Operation May is an NT Police led, joint investigation with the AFP targeting offenders in the NT, who are using online accounts and carriage services to commit Commonwealth offences in relation to children i.e. non-contact offending. Intelligence from Operation May generated six target referrals to AFP/Queensland Police. As a result of Operation May:

- *18 search warrants were executed;*
- *11 offenders were arrested in the NT, including one extradition from WA; and*
- *39 charges were laid, mostly relating to procuring children and child abuse material.*

Our Office

Our Office deals with a range of complaints each year relating to police conduct with respect to youths. In 2021/22, 18 of the 67 Category 1 and 2 complaints to the Office were made by or on behalf of youths. This was an increase from 12 in the previous year. Examples of matters involving youths are set out in cases 7 and 8 below.

In addition to consideration of individual complaints, I commenced an own initiative investigation into police utilisation of spit hoods and restraint chairs on youths. The investigation is reviewing individual instances of utilisation by NT Police in recent years and the system of monitoring and review of utilisation in place within NT Police. Furthermore, the investigations considering adverse implications of spit hood and restraint chair use with respect to youths and alternatives to their use. I anticipate the investigation will be finalised in 2022/23 and a report prepared for tabling in the Legislative Assembly.

In reviewing footage relating to investigations, we see many cases of highly effective and positive interaction and communication by police officers with young people. However, there continue to be some cases in which we identify situations where further attempts at genuine conversation and clearer communication with youths may have avoided escalation of situations that ultimately resulted in use of force.

These situations often appear to arise from an emphasis on gaining immediate control of the situation, at the expense of communication. This is not to say that every situation lends itself to ongoing discussion or that attempts at effective and genuine communication will always prove successful. However, it is important for officers to make all reasonable efforts to positively engage with youths in the course of interactions with them.

The establishment of a Police Youth Division is a welcome development. However, the reality is that the first point of contact between police and youths may fall to any officer at any time. With that in mind, it is important for NT Police to consider all available options for providing training and guidance to officers across-the-board.

ABORIGINAL INTERPRETERS

On occasion in our police complaint work, issues are raised with respect to failure to use an interpreter with Aboriginal suspects. Over time, we have observed suspects being offered an interpreter and declining, and this decision being relied upon by police, even where the suspect's proficiency in English may have been questionable. We developed a degree of concern that some police may be placing too much reliance on a suspect's stated preference as to an interpreter (which can be influenced by many factors) in circumstances where the suspect is unable to make a proper assessment given the information gaps they may have around justice processes.

We explored many issues relating to Aboriginal interpreter use, including factors that may go to reluctance on the part of Aboriginal people to request an interpreter and uncertainty on the part of officials as to when an interpreter should be engaged, in the Ombudsman report, *Strangers in their own land – Use of Aboriginal interpreters by NT public authorities*.

As a specific response to this concern with respect to NT Police interviews, we have engaged with ARDS Aboriginal Corporation in order to attempt development of a practical tool which can be used by Police and our Office, to make better decisions on the issue of interpreter use. The resource is intended to include simple and practical ways to identify when using an interpreter will produce a more reliable interview – such as asking about their strongest language, and listening to whether the suspect speaks in another language to family or friends. Our work on this project will continue.

POLICE CONDUCT APPROACHES RECEIVED

Police conduct approaches can be distinguished from other approaches to NT Police, Fire and Emergency Services (PFES). These may relate to broader issues regarding police powers, for example installation of CCTV, and other functions administered by PFES such as fire services, emergency services, working with children checks and general administrative and employment functions.

The table below sets out numbers of police conduct approaches received in the three most recent years and approaches categorised (not all approaches require categorisation).

Received	2019/20	2020/21	2021/22
Approaches	600	628	612
Complaint Resolution Process	198	172	186
Category 2	76	78	66
Category 1	3	4	1

Categorisation is undertaken by our Office based on the nature of the complaint. Categorisation does not mean that an allegation has been proven.

Category 1 cases are the most serious level of complaints.

Category 2 cases are serious but not at the Category 1 level.

The **Complaint Resolution Process (CRP)** is an informal process undertaken by NT Police where early personal contact between police officers and complainants may lead to a quick and effective resolution.

For more on complaint classification, see *How Police conduct approaches are dealt with* in Chapter 6 - and the Police Complaints Agreement at Annexure A, in particular, clauses 12.3, 12.2 and 11.2.

The total number of more serious complaints (Category 1 and 2) declined from 82 in the previous year to 67 in 2021/22. [This may, at first blush, appear to be in contrast to the significant increase in the number of finalised and sustained complaints discussed below. However, it is important to recognise that the increase in finalised and sustained figures represents a significant effort to address a backlog of cases and that many of those cases arose in previous reporting periods.]

Of the 67 new Category 1 and 2 matters received, 18 were made on behalf of youths, up from 12 in the previous year.

Breaking down the Category 1 and 2 matters by region of origin, 33 originated from Darwin/Palmerston/Top End Rural, 17 from Central Australia, 10 from the Katherine region, 6 from the Barkly region and 1 from the East Arnhem region.

POLICE CONDUCT OUTCOMES

Police conduct issues may be identified in a complaint to NT Police or our Office, by PSC, by the NT Police investigating officer or by staff of our Office. Frequently, more than one issue is identified in relation to a particular complaint.

Category 1 and 2 complaint outcomes

A total of 107 Category 1 and 2 complaints were finalised during 2021/22. This was a huge increase in finalisations and the work of PSC staff and my staff in dealing with this number of matters deserves acknowledgment.

Category 1 and 2 complaints finalised	2019/20	2020/21	2021/22
Category 1	2	0	2
Category 2	32	46	105
Total	34	46	107

Of those finalised complaints, 84 involved a finding that at least one issue was sustained.

How finalised	2019/20	2020/21	2021/22
Category 1 – sustained issue	1	0	2
Category 2 – sustained issue	25	31	80
Deferred in light of disciplinary action / charges	2	0	2
Total	28	31	84

The above table includes a case even if only one issue was sustained. It is important to be mindful that complainants frequently raise a number of issues not all of which will necessarily be sustained. The table also includes cases where the substantive complaint may not have been sustained but an ancillary procedural issue was.

On that point, 46 complaints finalised in 2021/22 involved sustained findings of failure to appropriately utilise a body worn video camera (BWV), compared with 15 in 2020/21. It should be noted that the number of complaints finalised in 2021/22 was far greater than in 2020/21. It is also important to note a substantial number of the matters finalised were complaints made regarding conduct in earlier years (41 of the complaints were initiated in 2019/20 or 2020/21). Even so, this is a substantial number of matters involving inadequate attention to utilisation of BWVs.

As noted previously, the Office is conducting an investigation into utilisation of BWVs, which will address issues around failings in utilisation. Unfortunately, finalisation of this investigation has been delayed due to competing priorities. It is anticipated it will be finalised in 2022/23.

A further 25 cases involved findings of failings in relation to keeping accurate records. This included findings such as failing to complete, or to adequately complete, Use of Force entries or Custody Illness or Injury Reports or failure to take adequate notes relating to incidents.

The following table lists the number of finalised Category 1 and 2 cases involving other sustained issues of each type described. In some cases, complaints involved more than one issue. In some, there was more than one officer involved. Where there was more than one complaint about the same event, it is only counted once.

Sustained Issue Type	Cases
Behaviour – abuse/rudeness/insensitivity	22
Practice/procedure – failings in processes, searches, accoutrements, knowledge of powers/law	20
Practice/procedure – effecting rights of detainee or victim, eg, interview, interpreters, notification	15
Arrest – unlawful / inappropriate arrest/detention / fail advise reason	14
Investigation – failure to undertake / inadequate / delay	9
Failure to provide adequate care, eg, blankets, aftercare after spray	9
Supervision	8
Providing inaccurate information	7

Arrest/custody – use of force	5
Victim support - inadequate	3
Complaints against police – failure to take/adequately investigate complaint, failure to report questionable conduct	2

Outcomes for individual officers included provision of remedial advice, written cautions, good behaviour requirements, additional training such as unconscious bias training, and recommendations for development of personal improvement plans.

Outcomes for individual complainants included further explanations, apologies and withdrawal of infringement notices.

In addition, there were a range of more general recommendations, including:

- implementing regular training in mental health first aid;
- preparing a broadcast on the importance of considering all options surrounding utilisation of section 133AB of the PAA (Taking person into custody for infringement notice offence);
- preparing a broadcast regarding the importance of carrying water for aftercare when OC spray is utilised;
- drawing the attention of senior officers to the importance of clear briefings around liquor licensing operations;
- preparing a broadcast regarding the exercise of the discretion to charge certain offences;
- updating the Custody Illness or Injury Report flowchart; and
- preparing a broadcast on the availability of stealth mode on BWV cameras.

Case studies of some Police conduct complaints finalised during the year appear later in this chapter.

Internal Investigations outcomes

Our Office continues to receive reports on matters identified by sources within NT Police which are dealt with by the NT Police Internal Investigations Division. All of these matters that are, or may, fall within the Ombudsman jurisdiction are reported to and recorded by our Office even if criminal or disciplinary proceedings have already commenced.

Our Office first considers whether these matters fall within jurisdiction. For example, some matters relate to purely private conduct that does not have a connection with official duties and there are also limits on the type of Ombudsman complaints that police officers can make about other officers (see section 21(2) of the Act). A complaint that falls outside Ombudsman jurisdiction may still form a basis for criminal, disciplinary or other management action but that is a matter for NT Police to pursue.

In a number of these cases that fall within our jurisdiction, our Office defers action prior to categorisation, once we are satisfied that criminal or disciplinary action is being pursued. We then review outcomes at the conclusion of that action to decide whether any further action is necessary.

This year a number of matters investigated by NT Police Internal Investigations Division culminated in formal disciplinary outcomes in relation to one or more officers. They dealt with issues such as:

- inadequate response or investigation;
- use of excessive force;
- failure to provide accurate information in relation to particular events;
- negligence in a motor vehicle accident.

Formal disciplinary outcomes in these cases included formal written caution, good behaviour requirements, reduction in rank, transfer and dismissal. In a number of cases, an officer resigned prior to the finalisation of the disciplinary process.

Other cases where remedial advice was given dealt with issues such as:

- inadequate response or investigation;
- rudeness or offensive behaviour.

POLICE CONDUCT CASE STUDIES

Case 1 - Category 1 - Use of force and care on extended transport

The complainant alleged that in arresting him and transporting him, members of NT Police:

- used excessive force by pushing him to the ground, placing a knee to his head and neck, applying handcuffs with force and pulling him to his feet by his arms and handcuffs;
- pushed him into the cage of a police vehicle causing him to hit his head, resulting in bleeding;
- did not provide food or water in approximately three hours of travelling time.

The NT Police Investigating Officer (the **IO**) found that allegations of excessive force regarding one officer were sustained. He noted the complainant did not appear to be offering resistance or making an attempt to escape. He concluded the officer raised his elbow as he ran towards the complainant and struck out with his elbow and forearm causing the complainant to fall.

The IO found that the officer placed one knee on the complainant's mid-lower back and one directly on his head near the back of his neck, for the time it took to apply handcuffs, approximately 15 or 16 seconds. The IO advised that disciplinary action was commenced against the officer in respect of this conduct. That officer is no longer with NT Police.

The IO did not sustain allegations in relation to the application of handcuffs or lifting the complainant to his feet.

Having reviewed footage of the placement of the complainant in the cage of the police vehicle, the IO found no evidence to support an allegation that the complainant was pushed into the cage of the police vehicle or that he struck his head. Based on the information available, I accepted the finding.

The complainant alleged a failure to provide food or water. The IO found this allegation unresolved because of the conflicting versions of events but noted the recollection of events of one officer that were in a number of respects corroborated by his notebook entries. They included the complainant being:

- provided with a meal at 18:30 (which would most likely have been purchased at a shop at a community) which would routinely be accompanied by a drink;
- let out of the cage to relieve himself at 18:49;
- spoken to at 19:31;
- let out of the cage to relieve himself at 20:03;
- checked on at least 4 times between 18:30 and 21:48; and
- checked by a nurse at a watch house at 22:00, with nil concerns identified.

The NT Police *Custody and Transport Instruction* provided:

130. On longer road transportations consideration should be given to providing a mattress, blanket and bottled water to the person in custody who is lodged in the cage of a vehicle.

*131. When transporting by road, the vehicle will stop **every hour at a minimum** and members will undertake a physical check of the person/s in custody. The frequency of physical checks should increase according to risks such as those associated with restricted vision, mixed genders, health, demeanour and weather/temperature conditions.*

I noted that memories of the circumstances may well have faded as the complaint was not lodged until seven months after the incident. The complainant's representatives advised a maximum temperature during the day of 32 degrees. However, I noted that the complainant was transported in the evening, by which time the temperature would have fallen somewhat, making the conditions of transport more tolerable.

Based on the information available, I accepted the findings and recommendations of the IO. However, I stressed the importance of officers taking care concerning the welfare of people in custody who are being transported long distances. It is clearly important for a person in custody to have ready access to water, preferably by having a plastic bottle in the cage but in rare cases where safety concerns might raise an issue with such a step, by regular stops to provide water. In this case, additional bottled water could have been purchased at the store prior to departure if that was required to ensure an adequate supply.

I have previously made a recommendation in relation to the need, particularly in remote communities, to carry adequate water to provide aftercare in the event that OC spray is deployed. This is another situation where ensuring a supply of water to either provide or refill a water bottle would be prudent.

In the circumstances, I recommended that a notification be issued to remind officers of the requirements of the Instruction and the importance of carrying and providing an adequate supply of water for persons in custody.

Ancillary issues were also identified regarding the honesty/integrity of statements made by one officer in relation to the incident and failure to activate body worn video. Disciplinary action was commenced in relation to those issues.

I reiterated the importance of all officers turning on their body worn video at the earliest possible opportunity when there is a possibility that they will come into some adverse contact with a member of the public.

Case 2 - Category 1 – Apprehension and use of force – spit hood

The complainant was taken into custody following a request for police attendance in relation to a domestic violence incident during which he was alleged to have assaulted family members.

The complainant alleged that NT Police:

- unlawfully apprehended him under section 128 of the *Police Administration Act 1978* (the **PAA**) relating to protective custody; and
- used unlawful and excessive force while he was at a police watch house.

Section 128(1)(b) of the PAA restricts the power to apprehend for protective custody to cases where a member has reasonable grounds for believing a person is in a public place or trespassing on private property.

The IO stated that there was arguably sufficient information on which to make a finding that the complainant was trespassing on private property but concluded that the reason for apprehension did not appear to have been decided on until after the complainant had been put inside the cage of the police vehicle.

Officer A stated that the initial basis for apprehension was for offences and application for a Domestic Violence Order (**DVO**) but that there was a later decision to apprehend for protective custody when it became clear that police would not be in a position to obtain supporting evidence.

The IO did not accept that Officer A believed there was sufficient information to arrest for the purposes of a DVO and concluded the apprehension was not in compliance with the PAA or the Police General Order – *Arrest*. The IO found the complaint sustained.

Deficiencies were identified both with respect to the action taken against the complainant and failings in the action and investigation taken to pursue and address the potential criminal and domestic violence aspects of the incident. Disciplinary proceedings were undertaken in respect of Officers A and B which addressed both the concern raised by the complainant and the adequacy of police action regarding the incident. While I am not in a position to disclose the final outcomes of the proceedings, I have been informed of them and consider they appropriately addressed this issue of the complaint.

The complainant also alleged two instances of excessive use of force:

- the take down of the complainant after he spat on an officer and the application of a spit hood; and
- his subsequent placement in a cell.

The IO determined the action/conduct was not found to be unreasonable given the circumstances.

In the first instance, the complainant was being escorted towards a cell when he spat on Officer B's face. Officer A took action to control the complainant's head and take the complainant to the ground. The IO found that Officer A lost his balance and fell, landing on the complainant's back and legs. The IO decided that, while not perfectly executed, the take down technique is taught in defensive tactics training and was a reasonable use of force.

Officer A then called for a spit hood. The time from the take down until the complainant was manoeuvred into a standing position with the spit hood on, was about 90 seconds. Officer A then directed the complainant into a cell with a hand on the back of his neck. He was then directed onto a mattress in the cell and Officer A rested his knees on the complainant's shoulder blades to facilitate removal of handcuffs, after which time he was left in the cell. The IO concluded there was no evidence that the complainant hit or fell onto the cell bedding.

My Office noted that police did not immediately remove the spit hood from the complainant before exiting the cell, contrary to the *Custody and Transport Instruction*. The complainant did not show any discomfort from having the spit hood remain on and it appears he could have removed it himself once his hands were freed from the handcuffs. However, this step should have been taken by police. The IO recommended remedial advice be provided to the watch house keeper and Officers A and B regarding compliance with the Instruction.

I have noted elsewhere in this report that my Office is conducting an investigation into recent police utilisation of spit hoods. It is important to appreciate the difference between the broader policy issue of whether or not utilisation of spit hoods should be further limited or abandoned on the one hand and consideration of the conduct of individual officers, acting under current arrangements and subject to current police General Orders and Instructions on the other.

The use of a spit hood in this case followed immediately on from the complainant spitting into the face of an officer. It was placed on the complainant in order to facilitate safe transfer to a nearby cell. It should have been on for a very short space of time. The failure to remove it when the complainant was placed in the cell was a clear failing. It is important that police utilising restraints as potentially intrusive as a spit hood take every step to ensure that their use is kept to an absolute minimum and that they are removed as soon as possible.

Case 3 - Category 2 - Use of force - choke hold

Police responded to a report of a domestic disturbance. They arrived to find the complainant, his partner and infant child in a public area. The complainant initially provided a false name to police, making it difficult to identify him but his partner later confirmed his identity. Police entered into conversation with the complainant and conducted checks on police information systems.

These checks confirmed that there was a current Domestic Violence Order (**DVO**) in place in which the complainant was the defendant. The DVO prohibited him from being in the presence of his partner under the influence of alcohol. The complainant admitted that he had been drinking alcohol. Officers again satisfied themselves as to his identity before informing him that he was under arrest.

By this time, the complainant had taken his child from his partner and was holding the infant in his arms. Officers attempted to get him to hand the child to his partner but he refused to do so. He attempted to avoid being arrested and became more agitated and aggressive, yelling and swearing at officers. His partner attempted to take the infant from him but he refused. Officers became increasingly concerned for the safety of the infant after attempting to resolve the situation peacefully over about 15 minutes.

The complainant then began threatening officers before taking a step towards one of them. Another officer who was situated behind the complainant moved forward and placed his right arm across the front of the complainant around his neck and grabbed his left hand in a form of 'choke hold'. The officer held this position for approximately 4 seconds until the complainant released the infant to his partner. Officers continued with the arrest and struggled to handcuff the complainant as he was providing active resistance.

The same officer again raised his left hand and re-commenced the 'choke hold'. The complainant remained restrained in this fashion for 15 seconds. This caused the complainant to cease resisting and he was lowered to the ground where he was moved onto his stomach so that he could be more easily controlled and handcuffed. It was evident from Body Worn Video (**BWV**) footage that, when the complainant was placed onto his stomach, he was displaying signs of being unconscious. While officers finished handcuffing him he began to regain consciousness. He was brought to a seated position saying, "*I'm spinning out*" on a number of occasions. He then began to become verbally aggressive yelling "*let me go*" several times. He was escorted to the rear of the police vehicle. He again resisted at the rear of the police vehicle and police used force to place him in the vehicle.

The IO concluded that the complainant's behaviour towards police was erratic and threatening. Officers believed that the complainant was using the infant in his arms as a measure to avoid arrest and held concerns for the safety of the infant.

The IO considered, due to the position in which the complainant was holding the infant, the techniques available to officers to resolve the situation were extremely limited. The IO was not prepared to find the first, 4 second hold, unreasonable given the circumstances.

The IO concluded the decision to apply handcuffs was reasonable and that BWV footage showed the complainant did not fall to the ground. However, the IO decided that the second application of the 'choke hold' was not reasonable. The officer was subject to disciplinary action under Part IV of the PAA.

This complaint was classified as a Category 2 complaint but was deferred under section 107 of the Act when disciplinary action was undertaken. The outcome of the investigation was conveyed to the complainant's legal representatives by NT Police.

Case 4 - Category 2 - Impact of licensing operation

A licensee complained about the impact of a four day licencing operation by police in a town, which entailed three days of full coverage Point of Sale Intervention (**POSI**) in take away outlets around the town.

The first concern was that police conducting POSI duties made customers wanting to purchase take away alcohol wait an unacceptable time. The IO analysed liquor sale frequency and numbers on each of the days of the operation for the week preceding, the week of the operation and the week after.

Sales were clearly down on the Thursday of the operation from the preceding Thursday and to a lesser extent from the Thursday after. Sales were also appreciably down from the preceding and ensuing Fridays. Sales on the Saturdays did not show any appreciable difference. The IO noted that an extra officer was allocated to POSI duties on the Friday but accepted that the time taken to serve each customer was substantially increased on the first two days of the operation.

During the operation, POSI staff were directed to speak with every customer and obtain information under section 250(2) of the *Liquor Act 2019*. The task of obtaining this information from every customer, conducting necessary police checks, then relaying this information via police radio to a dedicated officer for inclusion on a database, delayed the processing time of customers through the bottle shop. This in turn resulted in less sales for the day than usual on the first two days. Officers involved expressed concerns at the pressure this put on them and the delays for customers.

The IO concluded that the police action was lawful and was conducted without any intention to cause delay. However, the IO recommended that the concerns of the complainant and comments of officers involved be drawn to the attention of senior officers involved in planning the operation to assist with planning of future operations of this type.

On one occasion, a junior officer directed the licensee and the licensee's employees to stop take away alcohol service. This was done in response to concerns about the gathering of an unruly crowd in the vicinity of the premises. There was consultation between officers, one of whom indicated that they were taking steps to have a shutdown authorised. The junior officer then told staff to stop serving over the objections of the licensee. Another officer also advised by police radio that service should be shut down. Neither officer had authority to approve that step. The IO found this aspect of the complaint sustained and recommended that the officers receive remedial advice and that an apology be given to the licensee.

A number of issues were also identified regarding interaction with customers over the course of the operation. These included unfairly ascribing responsibility for the nearby disturbance to customers waiting in line, failing to consider the individual circumstances of customers in line, and refusing service on grounds not justified by the *Liquor Act*, including requiring an ID document showing proof of lawful residence in the town.

The IO recommended a number of officers be given remedial advice in relation to these issues. The IO again recommended that the concerns of the complainant and comments of officers involved be drawn to the attention of senior officers involved in planning the operation to assist with future planning.

This matter arose shortly after there had been changes to liquor regulation in the town. In a case where an operation has the potential to have a significant impact on customers and licensees, it is essential that careful planning be undertaken, adequate police resources be made available and detailed and accurate guidance be given to all officers involved in a timely manner.

Case 5 - Category 2 - Use of force – pepper spray - aftercare

The complainant was arrested on Mitchell St in the early hours of the morning and driven to the Palmerston Watch house. His complaint was that he was driven down a dirt road for an hour and thrown around in the back of the cage. The police driver denied driving on any unsealed sections of road and the police CAD log showed the trip took 15 minutes. The IO found no evidence to support the allegation.

However, NT Police and my Office identified a number of ancillary issues relating to the arrest, two of which were sustained. The complainant was involved in a physical altercation with another person. Police intervened. OC spray was utilised. While the officer claimed he made attempts to utilise verbal commands for the complainant to desist before deploying OC spray, the IO considered that CCTV and BWV footage showed otherwise. The IO concluded that there did not appear to be any verbal communication/command provided by the officer prior to the deployment of the OC spray. The IO found this issue sustained. The officer concerned is no longer with NT Police.

The officers did not immediately provide aftercare following the use of OC spray. They did not have water available in their vehicle and decontamination did not take place until arrival at the watch house, 22 minutes after the spray was used. The officers appeared not to be aware of a previous broadcast regarding the need to carry water in police vehicles for decontamination purposes.

An officer was given remedial advice in this regard. The IO also recommended that a broadcast be distributed to the Darwin and Road Policing Command to remind members of their obligations regarding aftercare and that the broadcast also remind members of the recommendation under the previous broadcast in relation to the carriage of water for decontamination purposes.

Case 6 - Category 2 - Profiling

The complainant was a 20 year old male riding a bicycle at night in the centre of town. An officer on a motor bike stopped beside him. The officer asked him if the bicycle he was riding was stolen. The complainant took offence at this and an unpleasant verbal exchange ensued. Later that night, the complainant attended at the Watch house to make a complaint.

The complainant felt he was questioned solely because he was indigenous and riding an expensive bike. On interview, the officer said his focus was on the fact that the complainant appeared to be a youth riding an extremely expensive bike. He acknowledged this was profiling (but stated it was not on the basis of race) and that it was a mistake to make this assumption without any enquiries.

The IO found that the officer had failed to comply with the requirements to treat everyone with courtesy, fairness and respect, and not to harass or discriminate against any person. The IO also found that the officer failed to activate his BWV when he should have. The officer was given remedial advice and undertook Unconscious Bias Training.

Case 7 - Category 2 - Integrity

Police were investigating the source of a fire in grass near town. Witnesses provided them with descriptions of two females seen in the vicinity. An officer found two young teenage girls who matched the descriptions. One of them was the complainant.

The officer encouraged the girls to get into the cage of the police vehicle by telling them he would take them to the hospital to see relatives. They expressed doubt that he was telling the truth but he assured them he would do so. However, once they were secured in the cage, he instead took them to the witnesses to obtain visual identification.

The girls were detained in the cage for about 14 minutes before being told they were under arrest. They were then taken to the Watch house where they were held for close to an hour before being released without charge.

The officer who initially detained the girls explained that he was on his own and stated that they were known to him as frequent offenders who would regularly run away. He said he was aware that the complainant had previously run into oncoming traffic to avoid police, placing her and vehicles at risk. He also stated that he knew one of the girls had been found on multiple occasions carrying knives and had, on one occasion, made a threat to stab people she was looking for.

The IO determined that the issue around the complainant's initial detention of the girls was sustained. The IO found that, by deliberately misleading them, he had contravened requirements for officers to act with honesty and integrity and conduct themselves in a proper manner.

The IO also found that the officer had contravened section 127 of the PAA by failing to advise them they were under arrest or advise them of the reason for their arrest.

The IO further found non-compliance with identification requirements and *Youth Justice Act* requirements. Disciplinary action was undertaken in respect of one officer and remedial advice on supervisory requirements was provided to another officer.

The IO found the ultimate arrest and holding of the girls at the Watch house was not unreasonable in the circumstances.

Case 8 - Category 2 - Bicycle pursuit

At approximately midnight on a Saturday night, two officers on pushbikes in the CBD observed the complainant, a 14 year old boy, on a push bike. The bike had no lights and the boy was not wearing a helmet. The boy was directed to stop but did not do so. A bicycle pursuit ensued through the streets of the CBD. The officers caught up with the complainant, spoke to him and seized the bike, believing it stolen. The officers advised him he was free to walk home.

The complainant alleged substantial use of force by the officers against him and that they slashed the bicycle tyres. The IO did not find any use of force allegations sustained and found that the seizure of the bike was not unreasonable in the circumstances.

Our Office raised concerns regarding the pursuit of the complainant through the CBD at night for a minor matter as raising significant risks to the safety of the complainant, the officers and other road users. The IO indicated they were unable to determine the nature, level of risk or appropriateness of pursuing the complainant but recommended remedial advice in relation to decision making, discretion and the potential unintended consequences of pursuit in such circumstances.

The IO found that an issue around allowing the boy to walk home by himself was sustained. The IO recommended the officers be provided remedial advice in relating to *Youth Justice Act* provisions on interviewing and searching youths and on *Care and Protection of Children Act* provisions relating to when a child is in need of care and protection.

The IO also found sustained issues around BWV use, failure to record the incident on the Police Real-Time Online Management Information System and failure to submit a Custody Illness or Injury Report. The IO recommended remedial advice be given to the officers on these matters.

One recommendation included encouragement to be mindful that simply because a person flees is not a justification for pursuing them. There are many reasons why a person may not wish to interact with police and may choose instead to leave. Police will have a power to detain or arrest in certain circumstances but should not automatically act on the basis that a move away from them is invariably a sign of guilt.

Case 9 - Category 2 - Use of force - Transport of person with mental health issues

Police were providing assistance under the *Mental Health and Related Services Act 1998* to bring the complainant to an approved treatment facility for assessment. This was based on a recommendation from a mental health nurse.

The officers located the complainant at a service station in a vehicle with the engine running and the windows wound up. Police requested the complainant to open the vehicle door for slightly under two minutes. The complainant did not do so and police smashed the window to gain entry to the vehicle and placed her in handcuffs before she was put in the cage of a police vehicle.

The IO did not find allegations in relation to use of force and police demeanour toward the complainant sustained. The IO noted that the complainant had been reported as being in an agitated state, had not cooperated with police directions and was known to have carried weapons and physically resisted police in the past. The fact that the vehicle was running and the possibility the complainant might try to leave in it presented a risk to safety of the complainant, police and others in the vicinity. The IO did recommend that officers receive remedial advice regarding the requirement to provide the reason for apprehension to persons taken into custody.

The IO found an issue sustained in relation to the decision to transport the complainant in the cage of a police vehicle. The *Custody and Transport Instruction* states that police vehicles will only be used as a last resort to escort a person apparently suffering from a mental illness and where there is no other alternative that is consistent with ensuring the safety of the person and the public. It also requires any transport of such a person to be notified to a senior officer.

Officers had no recall as to whether there had been any attempt to arrange for an ambulance or to notify a senior officer. There was no record of either. The IO recommended that officers receive remedial advice to ensure awareness of the need to adequately canvass more suitable transportation options for mentally unwell people.

Case 10 - Category 2 - No requirement to issue infringement notice

The complainant was an 18 year old who suffered from a number of health issues. He was involved in an altercation at premises where he was staying. Police were called and the complainant was ultimately arrested and conveyed to a watch house. He was thereafter released and issued with an infringement notice.

The complainant made a number of allegations concerning the approach adopted by police, including use of excessive force during his arrest and the failure of police to address allegations made by him. These were either not sustained or remained unresolved.

An issue was raised around whether consideration should have been given to releasing the complainant with a caution or unconditionally. The IO was not prepared to find that the decision to issue the infringement notice was unreasonable in the circumstances but recommended that a broadcast be circulated to members reminding of the need to consider all available outcomes under section 133AB of the PAA and that an infringement notice does not need to be issued in all cases.

STATUTORY OVERSIGHT FUNCTIONS

We have separate statutory obligations to audit/investigate and report in relation to the utilisation of a number of powers of law enforcement agencies and their officers.

Firearm prohibition orders

Amendments to the *Firearms Act 1997* grant the Commissioner of Police a broad discretion to issue Firearm Prohibition Orders. The effect of a Firearm Prohibition Order is to prohibit a person from:

- (a) *acquiring a firearm or firearm related item; and*
- (b) *possessing or using any firearm or firearm related item; and*
- (c) *being in the company of a person who acquires, possesses or is using a firearm or firearm related item.*²

The issue of an order is made without warrant and engages extraordinary powers of search. Similar powers already exist in other jurisdictions but concerns have been raised about the breadth of the powers and the potential for arbitrary or unreasonable use. In relation to the corresponding scheme in NSW, the NSW Ombudsman has stated:³

Police were given strengthened powers ... to conduct searches in aid of FPO orders. The new search powers were introduced as part of a series of legal reforms intended to enhance the ability of police to prevent and control crime, and gun crime in particular. The Commissioner of Police described the new powers as 'extraordinary'. They enable police, without a warrant, to search an FPO subject's body and any vehicle or premises that the person occupies, controls or manages. A search may be conducted 'as reasonably required' to determine if the FPO subject has committed an offence by having a firearm, firearm parts or ammunition.

The breadth of the new search powers raised concerns that police may use them arbitrarily or unreasonably. The NSW Parliament required the NSW Ombudsman to keep under scrutiny the exercise of the new FPO search powers for the first two years of their operation.

Similarly, the amended *Firearms Act 1997* (NT) provides that the NT Ombudsman must review, during the first two years after commencement:

- (a) the exercise of powers conferred on police officers under Part 8A – Firearm prohibition orders; and
- (b) the financial effect of the result of the commission of offences against this Part.⁴

The Ombudsman must give a copy of the report of the review to the Minister as soon as practicable after the expiry of the two year period.⁵

No resources have been provided to our Office to conduct the review. We have consulted with NT Police during the two year period regarding the recording and provision of information necessary to inform the review and have been provided with updates on implementation. Every reasonable effort is being made to progress the review, but its finalisation will be delayed due to competing priorities. A report will be provided to the Minister as soon as practicable.

² *Firearms Act 1997*, s.49E.

³ *Review of police use of the firearms prohibition order search powers - Section 74A of the Firearms Act 1996* (August 2016), p. iii.

⁴ *Firearms Act 1997*, s.49ZB(1).

⁵ *Firearms Act 1997*, s.49ZB(2).

Surveillance devices

The purposes of the *Surveillance Devices Act 2007* (the SDA) are to:

- (a) regulate the installation, use, maintenance and retrieval of surveillance devices;
- (b) restrict the use, communication and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations;
- (c) establish procedures for law enforcement officers and ICAC officers to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices in criminal investigations extending beyond this jurisdiction;
- (d) recognise warrants and emergency authorisations issued in other jurisdictions; and
- (e) impose requirements for the secure storage and destruction of records, and the making of reports to Supreme Court Judges, Local Court Judges and Parliament, in relation to surveillance device operations.

Section 63(1) of the SDA requires the Ombudsman to inspect the records of each law enforcement agency (but not ICAC) to determine the extent of compliance with the SDA by the agency and its law enforcement officers.

The Ombudsman is required, under section 64(1) of the SDA, to report to the Minister at six monthly intervals on the results of each inspection. Section 64(2) of the SDA provides that the Minister must, within seven sitting days after receiving a report, table a copy of it in the Legislative Assembly.

In accordance with the SDA, our Office undertook two inspections during the reporting period and required reports were provided to the Minister.

Tabled reports are available on the Ombudsman website.

Telecommunications interception

The *Telecommunications (Interception and Access) Act 1979* (the Commonwealth Act) prohibits the interception of, and other access to, telecommunications except where authorised. An “agency” as defined in the Commonwealth Act can apply for a warrant to authorise access.

The NT Police has been declared an agency under section 34 of the Commonwealth Act.

The *Telecommunications (Interception) Northern Territory Act 2001* (the NT Act) enabled that declaration and provides for record keeping, inspection and reporting required under the Commonwealth Act (see section 35 of the Commonwealth Act).

Sections 9 and 10 of the NT Act provide for the NT Ombudsman to inspect NT Police records and report on compliance by members of the NT Police with Part 2, Division 1 of the NT Act.

Section 10 of the NT Act provides that there must be an inspection at least once in every six month period and that an annual report on inspections must be provided to the NT Minister within three months of the end of the financial year. The NT Minister in turn provides a copy of the report to the relevant Commonwealth Minister.

In accordance with the NT Act, our Office undertook two inspections during the reporting period and provided an annual report to the NT Minister.

Controlled operations

Part 2 of the *Police (Special Investigative and Other Powers) Act 2015* provides for authorisation of 'controlled operations', which might colloquially be described as 'under cover' operations. It also provides protections against criminal and civil liability for people involved in authorised controlled operations.

As a safeguard, the Act provides for the Ombudsman to inspect the records of NT Police and the Australian Criminal Intelligence Commission at least once each year, in order to determine the extent of compliance by each agency and its officers with Part 2.

The Ombudsman must report on compliance each year to the relevant minister. Reports are tabled in the Legislative Assembly in due course.

Tabled reports are available on the Ombudsman website.

CHAPTER 4 – CORRECTIONAL SERVICES

HEAT STRESS IN PRISONS

I have previously raised issues regarding heat stress, in particular at the Alice Springs Correctional Centre (ASCC), in public reports and directly with Correctional Services.

Environmental conditions in Alice Springs are notoriously challenging in the summer months, with extensive runs of days where the temperature exceeds 40 degrees, and indeed 42 degrees. Perhaps even more challenging are the runs of nights where the temperature remains very high.

These conditions are faced by everyone in Alice Springs, many of whom are not in a position to utilise air-conditioning to ameliorate them. However, unlike other residents of the town, prisoners are highly restricted in their movements and the steps they can take to stay cool. They are often confined for much of the day and night, with other prisoners, in a small cell, with limited air flow. The situation is exacerbated when, as now, inmate numbers are high, often exceeding the facility's design capacity, with more people forced to share already cramped spaces.

I wrote to the new Corrections Commissioner regarding the issue in March 2022, noting that heat stress continued to be raised by stakeholders and that it had also garnered considerable public attention in Western Australia in recent times. I provided copies of a number of recent publications on the issue of heat stress in prisons.

I noted we had been advised of subsequent additional measures that had been implemented by Correctional Services to assist in addressing the issue at ASCC, including additional shade cloth in external areas and the installation of new external dormitory doors that allow better ventilation. I said these measures are to be commended but in reality, inmates and staff will continue to deal with heat stress on a regular basis until more significant heat reduction measures are taken.

I expressed the view that heat stress not only impacts negatively on prisoner comfort, welfare and safety but also on the good management of the prisons. Prisoners who are hot, tired and aggravated from sleepless nights brought on by extreme heat are not so easily amenable to compliance and more prone to outbursts. I said the reality of climate change means that this issue will only get worse and needs to be effectively addressed.

I suggested that the temperature extremes experienced in Alice Springs meant that air-conditioning is likely to be the only truly effective measure in the prison environment in the long run. I strongly urged this be given urgent consideration by Government.

I acknowledged this would no doubt have initial cost implications, but said that this needed to be carefully weighed against the financial savings and other benefits of promoting the good health and more effective management of prisoners from the perspective of staff and the correctional system as a whole.

As an initial step, I raised the potential for Correctional Services to engage an expert who could advise on intermediate steps that can be taken to ameliorate hot conditions in both prisons, as well as options to effectively air-condition prison facilities.

I discussed the issue in a meeting with the Commissioner and later wrote again, reiterating the benefits of engaging an expert who could advise on the issue.

The Commissioner responded, providing an assurance that it is important to Correctional Services that both prisoners and staff are comfortable during extreme heat periods, as far as practicable. He went on to state:

As you are aware, the extreme cost implications associated with air-conditioning custodial facilities are prohibitive and for 2022/23, there are no budget allocations available to remedy the issue.

[Correctional Services] is however, embarking on a multi-year reform program. As part of the 'Forward, Together' reform planning, an infrastructure plan for [Correctional Services] will be developed and will endeavour to address this issue over coming budget years.

Our Office will continue to press for action in this regard.

USE OF FORCE AND SEPARATE CONFINEMENT

The Office received a complaint around use of force by correctional officers in relation to an incident, including use of Oleoresin Capsicum (OC) spray.

The officers in this case were responding to a fight between two prisoners in a prison block. The complainant was standing within close proximity to the entrance door to the block, however, was a significant distance from the incident and not, in our view, presenting any active threat to officers.

Issues were initially raised with Correctional Services by the complainant's representative from the North Australian Aboriginal Justice Agency (NAAJA), regarding use of force and ensuing separate administrative confinement. Correctional Services replied that an inquiry had been conducted which found no evidence to support the allegations.

NAAJA approached our Office. Following preliminary investigations, we expressed detailed preliminary views to Correctional Services regarding the use of force and separate confinement, and invited a response.

Correctional Services provided detailed commentary on numerous points raised in our preliminary views, contesting many of them.

We continued to have concerns and wrote to Correctional Services in the following terms (edited to remove identifying details and for ease of reading):

Use of Force by Correctional Officers

Our office is conversant of the environment and dynamic situations for which Prison Officers are responsible in their daily duties. When analysing complaints regarding the use of force, our office reviews the Correctional Services Act 2014 and Commissioners Directives against the circumstances to which the officer was responding.

...

Upon entry to [the block, the officer] is seen to deploy his Oleoresin Capsicum (OC) spray, in our view, without purpose or justification towards the complainant and other prisoners within his close proximity. The initial burst of OC spray delivered by [the officer] was immediate and without sufficient time for the complainant to comply with the officer's directions. [The officer] deployed the OC spray using a wide spread hosing technique towards the complainant's back and in the direction of other nearby prisoners. [The officer] continued to use a hands on approach while prisoners were attempting to return to their cell, which can be seen to aggravate and cause reaction from prisoners. If [the officer] had engaged in verbal communication rather than a hands on approach, there may have been fewer instances of force required.

The response provided ... to paragraph 25 of our preliminary findings acknowledges the complainant presented no risk to Correctional Officers and relied upon the custodial history of the complainant to justify the deployment of OC spray. However, the examples of his offending provided to this office failed to identify a single instance where the complainant was involved in a violent offence against Correctional staff. Our office maintains our original view that the officers' actions were not reasonable or proportionate to the situation.

While we consider it necessary to be cognisant of the surrounding environment, we do not consider a prisoner's history as being a sole justification for the immediate use of force. Our office has identified reliance of a prisoner's custodial history as justification relied on for the use of force through a variety of use of force complaints and recommend this issue be addressed by the Commissioner.

Recommendation:

Our office has noted several occurrences where force has been used under the unelaborated justification of maintaining the security and good order of the facility and without any attempt to de-escalate the situation or attempt alternative measures. Section 140 of the Correctional Services Act 2014 ... requires the Commissioner to manage use of force.

It is recommended that the Commissioner undertake a review of compliance with regards to the force used within the facility against the Commissioners Directives and the Act. Should the Commissioner identify systems of control relating to the use of force which may benefit by providing further guidance or directions, we recommend that such guidance and directions be provided through internal broadcasts and training.

Of note: This issue does not form part of this complaint however there is a display of force within the same incident. CCTV ... shows five correctional officers with OC spray at the ready responding to a prisoner. All five officers disperse a burst of OC spray with very little direction or apparent necessity. The prisoner is then being escorted by a single officer towards the exit of the building with a female officer continuing to spray in the direction of the prisoner and officer as they depart. Our office can identify no value or justification for this level of force to be used and it is recommended that the incident be reviewed with consideration to whether it is appropriate to take disciplinary action and/or provide remedial training. The amount of OC spray used and questions around the ability of most officers to disperse the OC spray effectively raise issues of concern. Review of the footage will show officers dispersing OC spray in the direction of their colleagues who at the time had control of the prisoner and were escorting them away from the situation. The effects of the spray can be seen by officers coughing and attempting to clear their eyes.

Record Keeping

Our office has previously highlighted concerns regarding poor record keeping practices within Northern Territory correctional facilities. Examples of prior findings include the absence of use of force forms, separate confinement documents partially incomplete and not containing sufficient information to justify isolation or continued isolation. Our review of documents has found very little regard given to the justification for actions taken by officers where use of force or separate confinement has been used. There is a common reliance by officers on the justification being to maintain security and good order of the facility. The broad nature of this response heightens risks of overreach or abuse of power as there is no provision or requirement to identify the actual risk which presented concern for the security or good order of the facility.

Recommendations:

The term 'to maintain security and good order of the facility' is extremely broad and appears to have been used by some officers as a catch-all without thought to accountability or transparency. Commissioners Directive 2.4.2 – section 7.14.1 provides specific grounds when recording separate confinement. This should negate any requirement for the use of 'maintain security and good order'. It is recommended that the Commissioner remind officers of this Directive and direct supervisors to enforce compliance.

We further recommend that the Commissioner considers whether it is appropriate to justify the use of force with 'to maintain security and good order of the facility'. It is our view that any use of force should be supported by an account of the behaviours which resulted in the use of force as well as the alternatives considered by the officer prior to the use of force, for example:

While responding to an incident between two prisoners in [a specified block], prisoner A demonstrated signs of aggression towards me, his fists were clenched and he was screaming that he was going to hit me. I asked him to calm down and explain the issue to me however he raised his fist and rapidly approached me. I removed my OC spray from my belt and issued a warning that should he continue to approach me I would spray him, he did not comply so I released a single burst of OC spray towards the direction of his face. This had an immediate effect and I was able to gain subject control.

This response would be justified by the aggressive and threatening nature of the prisoner who posed a real and apparent threat to the officer and regardless of timeframe, should the use of force be audited, there is sufficient information to detail the response and corroborate the version of events against CCTV. We do not consider 'to maintain security and good order of the facility' to be a reasonable standalone response by officers and recommend the implementation of a more transparent system of control.

We acknowledge the differences between our findings and the response of PSU with regards to the use of force and separate confinement of the complainant, however we do not believe sufficient evidence or records have been provided to alter our preliminary findings.

We requested that Correctional Services give further consideration to this case and to the above recommendations.

CORRECTIONAL SERVICES APPROACHES

Correctional Services approaches totalled 530 in 2021/22, up slightly from 517 in 2020/21 but lower than the numbers in the two previous years.

There were 362 approaches relating to the Darwin Correctional Centre (DCC) and 147 relating to Alice Springs Correctional Centre (ASCC).

A list of the most common issues raised by approaches in 2021/22 is set out in the following table. Some approaches raised more than one issue. The table lists issues raised, not issues sustained.

Correctional Services – Issues raised - 2021/22

Issue	Notes	No.
External contact	Includes issues with phones (52), mail (37) and visits (32)	121
Officer conduct	Includes rudeness, insensitivity, harassment, poor communication, inappropriate treatment of a vulnerable person	108
Complaint processes	Includes problems accessing new complaint system	102
Health / welfare	Issues regarding health services are referred on to the Health & Community Services Complaints Commission but we deal with issues regarding how correctional officers implement health and medical advice	96
Classification / Housing	Includes issues about the classification of a prisoner, eg, high, medium, low security, as well as accommodation arrangements such as which area or block they are placed in and cell type, and management plans	89
Food	Issues relating to quality or service of food. Includes issues relating to special dietary requirements	45
Time spent outside	Issues relating to lockdowns and other limitations placed on time outside of cells	39

Issue	Notes	No.
Personal safety/security	Includes assault, fight, threat by prisoner – assault, excessive force, threat by prison officer – housing prisoners together in a way that puts one or more at risk - COVID-related safety concerns – other safety concerns	38
Money / buys	Any issues dealing with prisoner accounts and purchases	34
Work	Employment inside or outside prison	30
Transfers	Includes intra-Territory and external transfers	29
Condition of facilities		23
Recreation / Amenities	Matters relating to recreational activities and everyday aspects of living, eg access to publications, access to television, sporting and craft equipment	20
Information	Includes requests for information and documents, complaints that information was not provided	19
Parole	Decisions of the Parole Board do not fall within the Ombudsman's jurisdiction	19
Educational programs		15

The top five issues this year were the same as for 2020/21 but the number of approaches for each fell, except for Health/welfare, which stayed the same. Numbers relating to Food, Time spent outside, Personal safety/security, Transfers, Condition of facilities and Parole increased. Numbers for other issues decreased.

A number of issues continued to arise with the new internal prisoner complaints process adopted by Correctional Services (discussed in detail in Chapter 5, pages 71-74, of the 2020/21 Annual Report). Our Office has maintained efforts to work with Correctional Services to improve the process in the context of individual complaints.

A number of COVID-19 related complaints arose in the context of External contact (visits), Time spent outside and Personal safety/security.

Correctional Services case studies

Case 1 – Intensive management plans

The complainant was a prisoner who told us he had been put “out the back” in the punishment block and had lost his privileges after an incident. He said he did not think this was fair and he should have gone through misconduct first to have this kind of punishment. He said he was told he would be kept out the back and be subject to loss of privileges for four weeks.

We investigated and provided the following response on this issue:

We talked to PSU [Correctional Services' Professional Standards Unit] about what happened We asked why you were put out the back with loss of privileges.

PSU explained to us that you had been put on an “Intensive Management Plan” (IMP). This is a special plan that the prison can sometimes make to help manage prisoners who are misbehaving a lot. The plan says what kind of cell you need to be in, how you should be escorted, and what privileges you can have. There are four levels (or stages) in an IMP. You start at Stage 1, which means you do not have many privileges and have to be handcuffed at all times out of your cell. When you go to Stage 2, 3 and 4, you slowly get more privileges.

The prison does not have to put you through a misconduct hearing to put you on an IMP. A misconduct hearing is a way of punishing you for one single incident where you broke a rule of the prison. An IMP is different. An IMP gets used where you are breaking a lot of rules over a short period of time, and when your behaviour is making it hard for the correctional officers to run the prison properly.

PSU told us that you were involved in 17 incidents in a 4 month period. PSU gave us some of the paperwork about these incidents. You were reported to do things like:

- *Not following instructions of officers.*
- *Stealing food and other items.*
- *Making rude, offensive and/or inappropriate comments to staff.*
- *Moving prohibited items in the prison.*
- *Swearing at and threatening correctional officers.*
- *Fighting with other prisoners.*

From the information given to us by PSU, we believe that the prison followed its procedures properly when it put you on that IMP. Even though being on that IMP made things hard for you, we do not believe that the prison did the wrong thing.

We have been told that Correctional Services is currently working on improving their ways of dealing with prisoners who are misbehaving a lot. We will be keeping watch over how this procedure changes in the future.

Because we believe that the prison followed its procedures properly, and Correctional Services is also working on better ways to deal with prisoners who are misbehaving, we do not believe that we need to investigate your complaint further. We will close your complaint today.

Case 2 – Employment safety

Our Office was approached by a complainant who had suffered an injury while participating in prisoner employment at a correctional facility. Our Office made some preliminary inquiries and established that NT Worksafe had been notified of the incident, but was satisfied with the steps and information at the time and did not conduct any further investigation of the matter.

The material provided to our Office raised a level of concern regarding training of prisoners, compliance with risk mitigation measures, and record keeping in relation to workplace health and safety matters. We undertook consultation with NT Worksafe and established that it would be able to accept a referred complaint to undertake further inquiries. We took that course of action to enable a more specialised complaints entity to consider the matter.

Case 3 – Prisoner safety

The complainant raised concerns around prisoner safety in areas within a correctional centre that are prone to wet conditions, following a fall that resulted in a broken leg. Preliminary enquiries conducted by our Office further revealed there was a delay in providing the complainant medical assistance due to a communication breakdown, as well as inconsistent record keeping of the incident between Correctional Services and Prison Health Services (PHS).

Following consultation with Correctional Services, recommendations were proposed to:

- Conduct a review of the current communication procedures between the control tower and operational staff (including medical staff);

- Conduct a review of the current health and safety standards regarding slippery surfaces and wet areas of the facility, including:
 1. with respect to unsafe / slippery surface areas of the facility that are prone to wet conditions;
 2. ensuring that appropriate signage is clearly visible in areas of the facility that are prone to wet conditions to notify prisoners of any potential slip and fall hazards in the immediate area; and
 3. considering anti-slip mats or improved flooring treatments to areas of the facility that are prone to wet conditions;
- Undertake a review of the current record keeping procedures (inclusive of medical records) to ensure accurate, reliable records are kept in accordance with operational practice and correlate with PHS records.

Additional elements of this complaint were referred to the Health and Community Services Complaints Commission for consideration.

Case 4 – External contact - Prisoner Telephone System

A prisoner reported ongoing technical faults and delays with the Prisoner Telephone System (PTS) in his sector, stating that only three out of the six available handsets for the phones were working. The prisoner stated this resulted in extended wait times to use the phones and caused arguments amongst the prison population.

He pursued his concerns through the internal complaints process but remained aggrieved with the correctional centre's response, informing him that due to the impacts of COVID-19 and delays in delivery of freight, the PTS would not be repaired as soon as anticipated. The correctional centre also acknowledged that there were more phone handsets than external phone lines for use at the time the complaint was raised.

Our Office raised the prisoner's concerns with Correctional Services. Not long afterwards, the prisoner called again to express his thanks and to advise that all six phones were now operational and in working order.

Correctional Services also acknowledged an issue with the phone line ratio to available handsets and that the server equipment was outdated. They advised that applications to update the server and add an additional 15 phone lines had been approved and that work was pending.

Case 5 – External contact - Protected mail

The complaint was about protected mail that had been opened. The mail was from the FOI co-ordinator at the Department of the Attorney-General and Justice. The mail was handed to the prisoner, however, he refused to take it as he could see that it had been opened. Correctional Services staff put the letter into his property.

Enquiries revealed that a new mail officer was not fully aware of the process for dealing with protected mail.

The new officer was provided with additional training about protected mail. In addition, a review was initiated regarding the procedures around handling of mail that is opened in error – specifically developing a template form to provide a written record of the reason for this type of error.

WOMEN IN PRISON II

Our report, *Women in Prison II* (2017) revisited similar issues to those discussed in a 2008 Ombudsman report, in the context of conditions faced by women in the Alice Springs Women's Correctional Facility. The investigation was initiated in light of a range of complaints about conditions and analysis which showed the number and proportion of female prisoners in the NT had grown rapidly in recent years. Combined with substantial growth in male prisoner numbers, this put enormous pressure on the correctional system and sub-standard conditions for female prisoners persisted.

The report noted that, in Alice Springs, rapid growth in numbers and limited facilities contributed to a broad range of problems for female prisoners, including:

- Chronic overcrowding (growing numbers in a limited space, inside a male prison)
- Housing and facility issues (wear and tear, not enough amenities)
- Limits on education and rehabilitation programs
- Limits on employment opportunities
- Issues with health care of prisoners, including 'At Risk' prisoners
- Problems with the basics (clothing, hygiene, food and recreational activities)
- Cultural issues for the predominantly Indigenous population
- Language and communication issues for the predominantly Indigenous population
- Inadequate arrangements for housing children with their mothers.

The report concluded the fundamental purpose of the correctional system should be rehabilitation and, in order to promote rehabilitation, solutions must be designed with specific prisoner groups in mind. To that end, there must be:

- solutions designed specifically for women;
- solutions designed specifically for Indigenous women;
- involvement of Indigenous stakeholders and communities in both design of solutions and delivery of solutions.

The report noted the potential for the young women in prison today to contribute positively to their families and their communities in the future. However, it concluded the chances are that without substantial support and guidance many will instead be in and out of the justice and health systems for decades to come.

It stated we cannot, as a society, financially or morally afford to allow this situation to continue. The report called for a transformational shift in the correctional system towards rehabilitation and reintegration.

It concluded that, as a community, we need to acknowledge things will only get better if we invest in the future of offenders. We need to explore alternatives to custody and create an environment in custody and afterwards that encourages and assists people to build better lives for themselves, their families and their community. We need to facilitate non-offending.

The report stated the public debate must be reframed. Government and the community must be in this for the long haul. Different approaches must be trialled. False starts or missteps must be seen as part of the long term development process. In such a complex area, mistakes will be made. People will falter. These should be accepted as lessons for the future rather than signs of crisis or collapse.

This approach requires long term investment not limited by annual reporting or electoral cycles. The whole structure of the correctional system has to be aimed at rehabilitation, breaking away from traditional 'stone wall' models.

Courts and authorities must have a wide range of well-resourced options for dealing with less serious offenders. Many options will be non-custodial. Where a custodial term is considered essential, custodial environments need to be designed with women in mind to accommodate the limited risks they actually present.

The report made nine recommendations:

- 1. The NT Government adopt a whole-of-government approach to reduce offending and recidivism and to promote rehabilitation of offenders, to include:**
 - a. a common intent and set of shared objectives to reduce offending and recidivism;**
 - b. appropriate governance arrangements, both at ministerial and departmental levels;**
 - c. creation and publication of targets and performance measures common across justice, education, health and human service system agencies; and**
 - d. improved collection, sharing and use of data across agencies to drive evidence based reforms and improved service delivery.**
- 2. Using justice reinvestment methodology, the NT Government pilot and evaluate local approaches to crime prevention and community safety in disadvantaged communities with the aim of reducing reoffending and increasing community safety.**
- 3. The NT Government, the Department and Corrections acknowledge and publicly promote rehabilitation and reintegration as the primary focus of the correctional system, in the best interests of the whole community in minimising future offending.**
- 4. The NT Government, the Department and Corrections acknowledge the importance of differentiating between the needs and characteristics of female prisoners compared with male prisoners in facility, policy and program development, as well as the importance of addressing the needs and characteristics of individual prisoners.**
- 5. The NT Government and the Department place strategic emphasis on further development of non-custodial options for dealing with female offenders by way of diversion and other programs both prior to entry into the justice system and by providing viable, well-resourced and timely program options for consideration by courts when dealing with offenders.**
- 6. The NT Government, the Department and Corrections fundamentally reconsider the approach to custody of female prisoners, with an emphasis on decentralisation, community and family support, ensuring that security matches the actual risk they present and providing an environment that facilitates rehabilitation and reintegration, including viable, well-resourced and timely accommodation and program options.**
- 7. Corrections develop, in consultation with the Ombudsman, a detailed plan to pursue and address all of the issues raised in Chapter 8 and Volume 2 of this report. The plan should set out an initial response to each issue, a description of proposed actions to address the issue, the resource implications of those actions, the source of any additional funding required, measurable outcomes and a timeline for action. The plan should provide for action on priority issues within a matter of weeks or months but in any event should provide for implementation of all actions within two years of finalisation of this report. The broad topics covered by the plan will include:**
 - a. overcrowding;**
 - b. housing and facility issues;**
 - c. education and rehabilitation programs;**
 - d. employment opportunities;**
 - e. health care;**
 - f. the basics (clothing, hygiene, food, and recreational activities);**

- g. underlying supports (induction, legal assistance, making complaints and using interpreters); and*
- h. children in prison.*
- 8. Corrections provide the Ombudsman with a copy of the initial plan within three months of the finalisation of this report, and updates on progress every three months thereafter. Corrections meet with the Ombudsman staff to discuss progress on each occasion.**
- 9. Given the overwhelming proportion of Indigenous female prisoners, consideration and implementation of all recommendations be conducted in consultation with Indigenous communities and elders as well as prisoners and other stakeholders.**

The aims and recommendations in *Women in Prison II* align closely with the Hamburger Report and the broader recommendations in the more recent Paget Report (discussed in Chapter 1). It remains vital for Government to continue to explore wholesale strategic solutions to the issues discussed in those reports.

We continue to receive six monthly updates from Correctional Services on the implementation of Recommendation 7. The most recent update is set out below. Corrections advises, while our report was in relation to the ASCC, it considers both correctional centres are the subject of reporting. Readers of prior annual reports will note repetition in much of the update relating to ongoing initiatives. The update is included in full to give a detailed picture of the work being done by Correctional Services in the area.

Women in Prison II

January to June 2022 - Corrections Update

Sub recommendation	Comment
Overcrowding	<p>As at 30 June 2022, at Alice Springs Correctional Centre (ASCC) there were 33 female prisoners consisting of 32 Aboriginal prisoners and 1 non-Aboriginal.</p> <p>ASCC H Block operational capacity is 50. During June 2022 the average female prisoner population was 34, which is 5 per cent of the prison population.</p> <p>As at 30 June 2022, at Darwin Correctional Centre (DCC) there were 79 female prisoners consisting of 66 Aboriginal prisoners, 10 non-Aboriginal and 3 Foreign Nationals.</p> <p>DCC Sector 4, operational capacity is 92. During June 2022 the average female prisoner population was 80, which is 7 per cent of the prison population.</p>
Housing and Facility issues	<p>ASCC H Block infrastructure still remains the same as per previous report. Any building issues are reported to our Industries staff, and repairs are prioritised. In December 2020, \$75 000 was allocated under the Minor New Work program to improve amenities within the H Block i.e. refurbishing of showers, toilets and low security demountable building to alleviate overcrowding. The funds have been committed and the works are 95 per cent completed with completion due by the end of August 2022.</p> <p>All DCC Sector 4 cells, rooms, corridors and block entry doors are unlocked during the day to allow prisoners access to their cells/rooms, toilets, showers and personal items.</p> <p>The only exception is within Sector 4H (high security prisoners), as the main block entry door is left secured. However, Sector 4H prisoners do have access to all facilities within their unit in a controlled way.</p>

Education and rehabilitation programs	<p>The Alternative to Custody Life Skills Camp in Alice Springs has had four female prisoners referred from ASCC as at June 2022. One being a mother and baby.</p> <p>North Australian Aboriginal Justice Agency (NAAJA) Kunga program at ASCC has completed a four-week block course and are currently running their weekly counselling sessions with the course participants.</p> <p>Current programs operating in ASCC H Block are as follows:</p> <ul style="list-style-type: none"> • Pre-release Kunga (NAAJA) four week block program; • Batchelor Institute of Indigenous Tertiary Education (BIITE) Certificate I Visual Arts; • BIITE Certificate II Business; • QuickSmart; • Bible studies; • Lutheran Care - financial counselling program; • Safe & Sober Program; • NAAJA Throughcare Program; • Alcohol & Other Drugs Service Centre Australia; and • Family Violence Program. <p>At DCC, female prisoners are able to enrol in tertiary education with University of Southern Queensland (USQ). BIITE has delivered courses in Certificate I Visual Arts, Certificate I Business, Certificate I Foundation Skills, Certificate II in Visual Arts, Certificate I in warehousing Operations, Certificate I in Supply Chain Operations, Elevated Work Platform, Forklift and Barista training.</p> <p>Chaplaincy visit weekly for a church service with the Chaplain providing individual support as per request.</p> <p>DCC are facilitating Alcohol and Other Drugs program in Sector 4.</p> <p>Two computers (PCs) are now available in the female sector library with appropriate restrictions in place. Software upgrades are being applied to ensure the prisoners have access to the approved educational sites.</p> <p>Through these PCs prisoners also have access to word processing software to work on typing skills and resume writing.</p>
Employment opportunities	<p>Over 95 per cent of the ASCC female prisoners are employed as breakfast packers, laundry workers, ground maintenance and librarian within the H Block Industries area. During 2021-22 there was no female prisoners engaged in external volunteer and paid employment. This was due to not having the correct classification and managing COVID-19 in the centre.</p> <p>DCC female prisoners are able to take advantage of the voluntary and paid employment programs. At DCC there are no female prisoners participating in the external Volunteer Employment Program (VEP) and two participating in the Paid Employment Program (PEP) at a local business.</p> <p>Internal sector employment opportunities for female prisoners include shop vending, cleaning, librarian, tutors, carers, accommodation cleaners, laundry workers, cleaning workers, yard workers, Bio Hazard workers and foreman.</p>

Health care	<p>A Registered Nurse works with small groups of women and discusses healthy lifestyle choices, which can include a referral to the Health and Recreation team for an individualised fitness routine. Sport and Recreation Officers also deliver alternative activities to the female prisoners with a health promotion focus.</p> <p>In ASCC the Preventable Chronic Conditions Nurse (PCCN) continues to conduct consults specifically aimed at health promotion topics. An underlying theme is self-management strategies.</p> <p>The PCCN also supports prisoners accessing external treatment programs and assists with prisoner requests to Prisoner Services and Block Officers for services from Alcohol and Other Drug Services Central Australia (ADSCA) and with Risk Management Plan referrals to Drug and Alcohol Services Australia (DASA) and Central Australian Aboriginal Alcohol Prevention Unit (CAAAPU).</p> <p>At Reception or when practicable, ASCC prisoners are seen by a Registered Nurse prior to being escorted to their housing where they are further assessed by the Senior Correctional Officer (SCO) regarding any children, payback, concerns etc.</p> <p>They are seen by a doctor within 24 hours, or where practicable following Reception. If there is an emergency situation an out of hours contact at the Alice Springs Hospital is called for advice.</p> <p>Payback Mediation is facilitated by staff to ensure the females' safety as concerns arise.</p> <p>In ASCC, Pre and post release supported accommodation programs are facilitated with DASA and Mission Australia where the special needs of female prisoners are managed and assessed relative to their suitability for referral to a program.</p> <p>Primary Health Care (PHC) is the service provider for the prison population at both the DCC and ASCC. The PHC Medical team consists of nurses, doctors, Aboriginal health practitioner, nurse practitioner and visiting allied services. Forensic Mental Health Unit and Prison In Reach Alcohol and Other Drug services work closely with the PHC. The PHC main focus is providing targeted and opportunistic cares for the prison health with strong focus on chronic disease management, acute and complex health conditions, drug and alcohol withdrawals and management of mental health issues faced by the prison population.</p> <p>Further to this, PHC provide a full complement of health services such as primary health nurses, doctors, Aboriginal health practitioners and psychologist. Allied health services also provide visiting services such as dental, physiotherapist, radiologist, optometrist and audiologist. The PHC team also provide emergency and acute care and on-call services for after hour cares.</p> <p>There is a strong focus on the needs of women in prison with provision of daily clinic and health delivery onsite in the women's section. There is strong emphasis on health issues relating to mental health, sexual health and chronic condition. The PHC team has highly skilled clinicians and women's health focused clinician including midwife in the team. Health promotion strategies have been ongoing feature of the wellbeing of women's health and education, focusing on empowering women in prison.</p>
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<p>The basics (clothing, hygiene, food, and recreational activities)</p>	<p>The women are able to utilise the library and program rooms for activities such as board games and DVD workouts broadcasted on the big TV.</p> <p>At DCC due to infrastructure damage following the May 2020 prisoner disturbance and security concerns regarding females entering a male sector to access the sports and recreation area, there has been limited access to these activities, women do have access to health and recreation activities within the Sector 4, with marked walking areas, and a basketball court. At DCC there are exercise machines available for use including running machines and bikes. Prisoners have access to pool tables in the minimum security pods.</p> <p>The Sector Manager has implemented internal gardens with vegetables and flowers being grown outside of each accommodation block. This is working well and has boosted the morale amongst the women.</p> <p>At DCC bras and briefs are a consumable item and are issued upon request - but will not exceed four bras and six briefs in total for each individual. It is expected that all women maintain their issued bras and briefs to a high standard of hygiene. Female prisoners discharged from custody are permitted to retain all issued pairs of briefs and bras. Under no circumstances will there be a one for one swap for bras and or briefs. Prisoners dispose of the used item in an acceptable manner i.e. place in a garbage bag and place in bin. All women are issued a new set of bras and or brief/s on a reasonable wear and tear basis. There is no time limit as each individual is different to the next. All sector pods have washing machines and drying areas, prisoner self-manage all laundry requirements. Prisoners can request issue of hygiene items from Sector 4 Officers at the officer station e.g. toilet rolls, soap and sanitary products at any time during business hours. Toothpaste, toothbrushes, hair ties, combs/hairbrush, prison issued shorts, shirts, pyjamas, prisoner request forms, any other approved form (with the exception of Medical forms) are actioned at 4pm daily.</p> <p>All women are provided three meals a day in accordance with the dietitian's directives. They also have the option to purchase other food goods from the Centre's Canteen and vending machine.</p> <p>All female prisoners in ASCC are issued four sets of underwear on arriving into custody and are given three sets of clothes and a personal wash bag. Washing is conducted six days a week in H Block.</p> <p>All ASCC H Block prisoners are offered sport and recreational activities after work weekdays and between 9.30 am to 5.30 pm on weekends.</p> <p>Special meals are supplied through the ASCC Kitchen for female prisoners with particular dietary needs.</p>
<p>Underlying supports (induction, legal assistance, making complaints and using interpreters)</p>	<p>The ASCC female prisoners, were informed that the Superintendent's Parade forms were replaced by the new Prisoner Complaint System. Laminated information sheets were placed around H Block. To date ASCC have not had any complaints through the new system, as staff are encouraged to interact with the prisoners, and to deal with any issues when they rise. The prisoners also know that they can speak to the area Chief Correctional Officer, if staff are unable to assist them with any concerns.</p>

	<p>Next to the Prisoner Telephone System (PTS), there is a list of pre-set numbers for organisations to assist with prisoner complaints. These include legal, Health and Community Services Complaints Commission, NT Ombudsman's Office etc.</p> <p>Additionally at ASCC, legal handbooks are given to prisoners on reception, which give an overview of advocacy and associated matters. Every female prisoner attends an induction session with the Prisoner Support Officer which outlines the guidelines, procedures and services available within ASCC.</p> <p>Female Elders from the Elders Visiting Program continue to regularly visit DCC Female Sector to meet with Aboriginal female prisoners. The DCC Sector 4 female prisoner Community Consultative Committee (Triple C) meeting is held every second Wednesday to discuss Sector activities, updated Policies & Procedures, information sharing, living entitlements and needs, recreation activities and related equipment etc. Further to this, two female prisoners are also members of the DCC Prisoner Representative Committee that meets bi-monthly with male prisoners and the Senior Management team to discuss, raise and manage concerns from prisoners across the facility including those items mentioned above similar to the Triple C. There is one female member of the DCC Lifers Committee which sits monthly.</p> <p>The DCC female Induction Booklet is current and issued to prisoners upon their arrival into custody within Sector 4 by the Prisoner Support Officer within a two or three day period and outlines the guidelines, procedures and services available within DCC.</p> <p>Flyers have been placed in the Female Sector of DCC outlining the role of the Official Visitors and all prisoners are given the opportunity to place their name on the Official Visitor list for the scheduled monthly visit. If for some reason a prisoner missed an appointment with the Official Visitor they will be offered another appointment for the upcoming month.</p> <p>Next to the PTS, there is a list of pre-set numbers for organisations to assist with prisoner complaints. These include legal, Health and Community Services Complaints Commission, NT Ombudsman's Office, Disability Royal Commission 'Your story' etc.</p> <p>In November 2020 a new version (No.4) of NT Correctional Services Directive 2.1.12 'Prisoner Complaints' process was put in place to ensure an effective system with a clear set of procedures.</p>
Children in Prison	<p>ASCC does not have a designated Mothers and Babies facility, however babies are accommodated with their mothers in single cell accommodation on the Low Security Unit of the Female Sector. A Child Care Plan is developed and reviewed relative to ongoing support and development needs of the mother and baby. Initiatives include the purchase of baby equipment and attendance at formal child care to benefit the baby's development. Grassed areas are available for mothers and babies in the Female Sector.</p> <p>DCC has a Mothers with Babies Facility which aims to assist the mother to develop and maintain a functional relationship with her child pending the mother's release, as well as developing pro-social support networks in the community in preparation for release. Continuing the bond between mother and child during imprisonment may reduce the likelihood of reoffending.</p>

	<p>At DCC one pregnant female prisoner was received in January 2022 who was managed through the Mothers and children's committee to discuss the most appropriate options in the best interest of the child.</p> <p>Within DCC, PHC provide the required health care for the mothers and babies whilst in the facility. There is a visiting child health nurse that provides the required assessments. PHC also provide all required scheduled immunisations. A Child Care Plan is developed and reviewed relative to ongoing support and development needs of the mother and baby. Initiatives include the purchase of baby equipment and attendance at formal child care to benefit the baby's development. Grassed areas are available for mothers and babies in the Female Sector.</p>
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CHAPTER 5 – OTHER OMBUDSMAN FUNCTIONS

QUALITY IMPROVEMENT

The Office engages with other independent offices, public authorities and public sector officers, through a range of mechanisms aimed at improving government services.

Legislative and policy reform

The Ombudsman is a member of the Northern Territory Law Reform Committee (**NTLRC**). The NTLRC advises on issues referred by the Attorney-General relating to reform of the law in the NT.

The Ombudsman is also invited from time to time to make submissions or provide input on policy and legislative reform relating to aspects of public administration. For example, input was provided in relation to the following matters during the year:

- establishment of the Judicial Commission;
- implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*;
- correctional services operations;
- a review of Independent Commissioner Against Corruption legislation;
- a review of the Community Justice Centre;
- issues relating to the COVID-19 pandemic; and
- a review of police disciplinary processes.

Complaints and review bodies

Our Office strives to minimise the potential for duplicated effort in dealing with complaints and matters of public interest, while at the same time ensuring that all matters of significance are dealt with by the body best placed to deal with them.

To that end, we meet or liaise with other independent offices to discuss matters that have come to our attention that may touch on issues within their jurisdiction. These discussions will usually result in an agreed course of action and potentially the formal referral of a complaint. This may involve provision of information already obtained by the Office and, in some cases, provision of support to another office.

More generally, we make every effort to facilitate ongoing co-operative relationships with NT complaints and review bodies. We have entered into the following memorandums of understanding to cement those relationships:

Entity	MoU commenced	MoU available
Children's Commissioner	June 2014	2013/14 Annual Report
Information Commissioner	May 2015	2014/15 Annual Report

We also benefit from relationships with other independent bodies across Australia and internationally. The ability to share information and draw on the knowledge, experience and materials of like bodies from our region and around the world is a major advantage for a small organisation.

In 2021/22, our involvement at this level included:

- continued membership of the International Ombudsman Institute, a global organisation for the cooperation of around 200 independent Ombudsman institutions from more than 100 countries worldwide - www.theioi.org;
- ongoing membership of the Australian and New Zealand Ombudsman's Association (**ANZOA**) a professional association and the peak body for Ombudsmen in Australia and New Zealand. ANZOA's members are individual Ombudsmen working in not-for-profit industry-based, parliamentary and other statutory offices, which meet accepted high standards of independence, impartiality and effectiveness, and which observe the *Benchmarks for Industry-Based Customer Dispute Resolution*. Through the Ombudsman's membership of ANZOA, our staff benefit from the professional development opportunities offered by participation in ANZOA's numerous interest groups - www.anzoa.com.au;
- serving on the ANZOA Executive Committee;
- remote attendance at the following meetings:
 - ANZOA AGM and Members meeting;
 - Australasian parliamentary ombudsman meeting;
 - Deputy parliamentary ombudsman meetings; and
 - OPCAT NPM network meetings.

Training and presentations

In 2021/22, our Office delivered or contributed to training and presentations to public sector officers, including:

- NT Police Recruit training;
- Prison Officer Training and information sessions;
- Foundations of Public Sector Governance course;
- Introduction to the Judicial Commission; and
- Good decision-making and complaints processes: Basic principles.

Other involvement with public authorities

We also maintained contact with public authorities and officers in the following ways:

- meetings between the Ombudsman and various public authority chief executives or senior executives;
- regular meetings with NT Police senior executives and members of the Professional Standards Command; and
- regular meetings with the Commissioner of Correctional Services and other Corrections staff;
- meetings between operational staff of our Office and other agencies to discuss general complaint handling approaches and issues.

COMMUNITY AND STAKEHOLDER ENGAGEMENT

During 2021/22, Ombudsman visits to communities and regional centres continued to be reduced due to the impact of the coronavirus pandemic.

Engagement in public and stakeholder events and consultations during the year, included:

- participating in a panel session with other Australian ombudsmen at the National Public Sector Governance Forum run by the Governance Institute of Australia;
- facilitating and chairing a national ANZOA session on *Cultural engagement and communications with First Nations People*;
- facilitating a session on *Fairness* at the ANZOA Meeting of the Minds;
- running a joint stall at the Council on the Ageing Seniors Expo; and
- engaging with various stakeholders regarding OPCAT implementation, including the NT Council of Social Service, various NT-based legal agencies, People with a Disability Australia, the OPCAT Network, the Human Rights Law Centre and Change the Record.

The Office provides access to a broad range of publications and resources through our website. Available resources include:

- Annual Reports dating back to 2002/03;
- Investigation Reports dating back to 2002;
- Surveillance Devices compliance reports;
- Controlled Operations compliance reports;
- a variety of brochures, guides and other information for enquirers and complainants;
- a set of Aboriginal language audios and a multilingual brochure containing brief introductions to the Office;
- webpages providing links to an array of complaints management resources and other resources relating to integrity, conflict of interest, accepting gifts, benefits and hospitality, corporate governance, good decision-making and stakeholder engagement.

CHAPTER 6 – WHAT WE DO AND HOW WE DO IT

MANY STRATEGIES FOR BETTER GOVERNMENT

The *Ombudsman Act 2009* (the Act) provides that our job is to:

- (a) give people a timely, effective, efficient, independent, impartial and fair way of investigating, and dealing with complaints about, administrative actions of public authorities and conduct of police officers; and
- (b) improve the quality of decision-making and administrative practices in public authorities.

To do our job, we adopt a broad range of strategies:

- **Major investigations** – Complex investigations involve major commitment of resources and usually involve systemic issues. These may be initiated by a complaint or on the Ombudsman's own initiative. The reality is that almost all approaches and complaints are finalised without the need for a separate tabled report, even if there has been a formal investigation. We did not produce any separate major investigation reports for tabling in 2021/22.
- **Approaches – enquiries and complaints** – The bulk of our effort is spent in dealing with approaches to the Office. We received 2,406 approaches in 2021/22 and finalised 2,566 (including a number carried over from the previous year). In dealing with approaches, we emphasise speedy and informal resolution of issues, with agencies as far as possible taking responsibility for resolution of matters involving them.
- **Police conduct complaints** – A total of 612 of the approaches we received in 2021/22 were about police conduct. Complaints about police conduct have their own statutory framework set out in the Act. While the emphasis remains on speedy and informal resolution of matters, more serious matters are subject to comprehensive investigation and reporting. In these cases, investigations are usually carried out by the NT Police Professional Standards Command under Ombudsman oversight. General information on how police conduct cases are dealt with is set out at the end of this Chapter.
- **Law enforcement auditing and investigation** – In relation to surveillance devices, telecommunications interception and controlled operations powers of law enforcement agencies, we have ongoing statutory obligations to audit/investigate and report on certain functions. Reports on surveillance devices and controlled operations powers are tabled in the Legislative Assembly on a regular basis and are available on our website. In addition, we are required to conduct a 'one-off' review of the implementation of new Firearm Prohibition Order powers.
- **Quality improvement** – Working with agencies and stakeholders in a co-operative manner outside the formal investigation process and facilitating exchange of information between agencies about initiatives and developments in public administration. This includes training and presentations to public sector bodies and officers.
- **Community and stakeholder engagement** – Other issues can be raised, clarified and resolved in the course of, or as a result of, stakeholder meetings, presentations and public discussions or through provision of information and links to information, for example, on the Ombudsman website.

OUR APPROACH

Independence

Independence and impartiality are key drivers of the Office. The Act makes it clear that the Ombudsman is independent of government in relation to complaints and investigations:

12 Independence in relation to complaints and investigations

(1) The Ombudsman is not subject to direction by any person about:

(a) the way the Ombudsman exercises or performs the Ombudsman's powers or functions in relation to complaints and investigations; or

(b) the priority given to investigations.

(2) The Ombudsman must act independently, impartially and in the public interest in the exercise or performance of the Ombudsman's powers or functions in relation to complaints and investigations.

That independence has been strongly maintained in the 44 years since the Office commenced.

The Office is resourced through NT Government budgetary processes but that is also true of judges, the courts and other independent officers such as the Auditor-General.

There are a range of special features that strengthen the independence of the Ombudsman, including:

- appointment as Ombudsman can only be made on recommendation of the Legislative Assembly;
- members of parliament, local councils and political parties, along with people who have a recent political affiliation, are not eligible for appointment;
- appointment is for a fixed five year term (a person may be re-appointed for one further five year term);
- a broad power to report to the Legislative Assembly (through the Chief Minister) on the performance of the Ombudsman's functions or on a particular case;
- conditions of appointment that cannot be altered to the detriment of the Ombudsman during his or her term;
- termination for misconduct or incapacity can only be affected through a 2/3 vote of the Legislative Assembly; and
- the Ombudsman appears each year before the Budget Estimates Committee of the Legislative Assembly to report directly on appropriations matters.

Impartiality

It is important to stress that independence from government does not mean that the Ombudsman represents or takes the side of complainants and enquirers. Nor does it mean that the Ombudsman must be immediately critical of all or any particular position taken by the government of the day.

Our Office makes every effort to ensure that complainants get a fair go in their dealings with government. However, we do not represent complainants or provide legal advice to them.

The Office assesses and investigates complaints impartially. In doing so, we attempt to resolve individual complaints and identify broader problem areas, particularly systemic issues, and push for improvements in those areas.

Scope of powers

Of course, while independent, the Ombudsman is bound to comply with the law and act within the boundaries set by the Act. The powers of the Ombudsman relate to the administrative actions of public authorities and police conduct.

Within those boundaries, members of the public can rest assured that the Office of the Ombudsman will consider and, where appropriate, independently investigate complaints and allegations relating to administrative actions and improper conduct of public sector officers with fairness and integrity.

Investigations in private – reporting on outcomes

The Ombudsman is required by the Act to conduct investigations in private.⁶ There are confidentiality provisions that make the inappropriate disclosure of information relating to inquiries and investigations an offence.⁷

In each case, we make every effort to ensure that the enquirer or complainant and the agency concerned are kept up to date with the progress of the matter and informed about the final outcome.

The Ombudsman can publish conclusions and recommendations at the end of an investigation (by way of reports to Ministers and through them to Parliament). The Ombudsman can also include information about investigations in the Annual Report. However, the clear statutory scheme is for investigations to be conducted in private.

Even a major investigation may or may not result in findings that require publication. It may find that unpublished damaging allegations are baseless. It may deal with highly sensitive personal matters. Or a narrowly confined issue may be best addressed by simply raising it with the relevant agency.

The decision is ultimately for the Ombudsman as to whether the public interest is best served by creating a report for tabling.

Identifying and prioritising issues

We identify issues or potential issues of concern by a range of methods including analysis of complaints received, monitoring parliamentary debates, media reports, developments in other jurisdictions, and community and stakeholder engagement.

The Office must act within the resources available to it and accordingly must make decisions on the priority given and resources allocated to its various statutory functions, including investigation of particular complaints. The overall guide to allocation of resources and priority within the Office is what best serves the public interest, bearing in mind the objects and provisions of the Act and other relevant legislation.

The Office has in place a **Strategic Priorities** document as a guide for our actions from 2020 to 2024: https://www.ombudsman.nt.gov.au/system/files/fileuploads/strategic_priorities_jun20.pdf.

Our Strategic Priorities recognise that NT public sector agencies and our Office will operate under the influence of a range of key environmental factors which include the transformational and extraordinary times in which we live and the unique demographic make-up of the Territory population.

⁶ *Ombudsman Act*, s.49(1).

⁷ *Ombudsman Act*, s.120.

The strategic priorities are identified under five aspirations which are briefly described below.



Fair and Open

There is an ongoing need for government to ensure its systems are fair, relevant and accommodate the needs of the community and the individuals and businesses on which they impact. This includes maintaining clear communication about the functions, rights and responsibilities of those involved and being transparent about government decision-making.

Diversity

In the conduct of government and the provision of government services, it is essential to take account of the many and varied needs and rights of individual Territorians to ensure that each Territorian has a realistic opportunity to participate in the functioning of government and has reasonable access to government services.

Prevention

Major problems facing government are often the outcome of underlying issues that have escalated over time. There can be a tendency to devote more resources to obvious and acute outcomes than to tackling first-tier issues in a way that prevents or limits the potential for escalation. It is important for government to take the initiative and address root causes. This involves planning and system design that acknowledges and incorporates risk assessment.

Partnership

In a federal system, in a rapidly changing environment, with many government and nongovernment stakeholders able to contribute to solutions, it is imperative for government to co-operate and engage widely and to enter into partnerships with a broad range of interested parties to meet its objectives.

Foundations

Government is a key provider of services that establish strong foundations for a vibrant and cohesive community. These include health, energy and water, education, housing, justice, sustainable environment and family and community support.

Other individual factors used to assess the significance of issues and the priority they should be afforded, include:

Potential harm involved

- Death of a person
- Physical harm to a person
- Loss of liberty
- Loss, dislocation or disruption of residence

- Financial or asset damage or loss
- Loss of a benefit or financial hardship
- Mental stress or harm
- Harm to animals or the environment
- Denial of human or statutory rights, unfair treatment
- Damage to reputation
- Annoyance, inconvenience, disruption
- Harm to the public generally or a community or community group

Other factors

- Extent of potential harm – how much harm
- Number of people impacted or likely to be impacted
- Potential for ongoing future impact – is this a one off issue or will it continue in the future
- Number of similar complaints
- Unreasonable delay or disruption
- Potential corruption / criminal conduct
- Urgency, for example:
 - Statutory time limit for action
 - Potential for harm is imminent
- Serious / systemic issues
- Existence of prior investigations on similar issues – has the issue already been dealt with
- The extent of prior interaction by the complainant with agency – has the agency had a reasonable opportunity to deal with the issue
- Steps already taken by the agency to address the issue
- Availability of other suitable avenues for review, investigations / actions already in progress.

Alternative avenues

This final factor can be a particularly important consideration. There a variety of different entities in the NT that can investigate matters of concern or provide a forum for resolution of a dispute.

There are a number of other statutory complaints entities such as the Anti-Discrimination Commission, the Children's Commissioner and the Health & Community Services Complaints Commission. Further, the Independent Commissioner Against Corruption investigates improper conduct and the NT Police investigate criminal conduct. Many disputes can be dealt with by a court or tribunal and the Coroner investigates events relating to the death of a person.

Taking the Coroner as an example, if the circumstances surrounding the death of person relate in some way to NT Police or Corrections officers, my Office may well seek a briefing on the circumstances to gain an understanding of what was involved, whether there were any aspects of the matter with respect to which we should take action, and to assure ourselves that appropriate investigative steps are being undertaken. We might also liaise with a relevant agency in relation to any general points or immediate actions that the circumstances might present to us. However, following such preliminary investigations, it is likely we would refrain from any substantive investigative action while the coronial process takes its course rather than unnecessarily duplicating or complicating investigative efforts.

Likewise, if investigation or resolution of a complaint appears to better fit within the powers and interests of another complaints entity, we will engage with them to establish who is best placed to deal with the matter and proceed from there.

Or, if achievement of the aims of a complainant is better suited by another forum, we may advise them of their options and decline to pursue an investigation further. For example, bearing in mind our powers are recommendatory only, a person seeking a large monetary sum in compensation from a government agency will usually be better placed to pursue it through a court or tribunal that has powers to compel payment.

Ultimately, any decision on resource allocation and priority is one for the Ombudsman acting on the information provided by complainants and agencies and the advice of Ombudsman staff.

HOW POLICE CONDUCT APPROACHES ARE DEALT WITH

Complaints about police conduct are addressed in detailed provisions of the Act. Conduct of a police officer is defined as any decision or act, or a failure to make any decision or do any act, by the police officer for, in relation to or incidental to, the exercise of a power or performance of a function of a police officer. The focus is therefore on conduct relating to the exercise of police functions or other official functions rather than private conduct.

The Act requires the Commissioner of Police and the Ombudsman to notify each other, upon receipt of a complaint and to provide details of the complaint. It provides a framework for the investigation of complaints against police and defines the role of the NT Police Professional Standards Command (the **PSC**).

The provisions of the Act are supplemented by a detailed Police Complaints Agreement entered into between the Commissioner of Police and the Ombudsman under section 150 of the Act. The agreement, as in force at 30 June 2022, is set out at Appendix A to this Report.

Enquirer assistance and preliminary inquiries

Many issues raised with the Office can be addressed simply by the provision of information. A person may be making enquiries about the scope of the Ombudsman's powers and processes or may be calling to seek information for a friend. They may be enquiring about an issue that is beyond the powers of the Ombudsman, for example, a court decision.

In other cases, NT Police can deal with minor matters as customer service inquiries that do not require classification as complaints. In addition, there are matters where the Office will conduct preliminary inquiries with NT Police and determine that there is no basis on which to further pursue an enquiry or complaint.

The Ombudsman may decline to deal with a complaint under section 67 of the Act on a variety of grounds, including that the complaint is trivial or vexatious, that the complainant does not have a sufficient interest, that disciplinary procedures have commenced or charges have been laid against the officer in question, or that dealing with the complaint is not in the public interest.

Most approaches are finalised in the above ways without the need for a formal investigation.

Complaint assessment

Once a complaint against Police is determined to be within jurisdiction, the complaint is assessed in consultation with the PSC, according to the level of response considered necessary.

Careful consideration is given to the potential seriousness or importance of the complaint, whether it is appropriate for the Police to deal with the matter in the first instance, and the responsible allocation of resources.

The classification of complaints is intended to be flexible and, if necessary, may be changed according to the results of enquiries/investigations as they develop. The final decision on the classification of a complaint rests with the Ombudsman.

Complaint Resolution Process

The Complaint Resolution Process (**CRP**) is an informal process undertaken by NT Police where early personal contact between police officers and complainants may lead to a quick and effective resolution. A CRP may involve explaining to a person why a particular course of action was taken, the legal and practical considerations surrounding the incident or an apology. The CRP is a means of dealing with common complaints about practices, procedures, attitudes and behaviours and is not intended to be an approach focused on fault-finding or punishment.

The CRP will often involve a significant amount of investigation to establish the facts and enable assessment of the conduct of officers. Our Office may make suggestions as to the approach to be adopted as part of the categorisation process. We also obtain and review copies of outcome documentation.

Ideally the police officer and the complainant should be satisfied with the outcome but this may not always be achievable. Complainants are informed by NT Police that they can approach our Office if they are not satisfied with the outcome of the process.

There is provision for formal conciliation in the Act. Conciliation may only be undertaken by agreement between the parties. It is not intended to absolve police officers of any misconduct or action. The process is an alternative dispute resolution process which is directed at reducing the need for civil matters proceeding to the courts. In practice, matters that might be resolved by this process are dealt with as CRPs.

More serious complaints

For complaints that are assessed as more serious, there are a number of options for action. Categorisation is based on the allegation in the complaint unless there is compelling evidence immediately available to contradict the allegation. It does not otherwise represent an assessment of the credibility or validity of the complaint.

These matters are routinely investigated by PSC officers under supervision of our Office as Category 1 or Category 2 complaints. Our Office identifies relevant issues for investigation in the course of categorisation. For both categories, a report is prepared on the investigation. Our Office monitors progress and reviews the draft investigation report prior to finalisation in order to identify any additional issues or further lines of enquiry and to query findings and recommendations where necessary.

For Category 2 matters, NT Police correspond directly with the complainant to inform them of the outcome and complainants are advised that they can approach our Office if they are dissatisfied with that outcome.

For Category 1 complaints (involving more serious allegations), there are additional steps, including a formal Assessment by the Ombudsman of the investigation report and response of the Commissioner (or delegate). In these cases, our Office directly informs the complainant of the outcome.

If criminal proceedings or disciplinary procedures have been or will be commenced in relation to police conduct, our Office may discontinue investigation pending the outcome of those proceedings or decline to deal further with the matter (sections 107 and 67(1) of the Act).

In practice, we will consider discontinuance on application by NT Police. In order to adopt this approach, we need to be satisfied that the proceedings will encompass all the substantive issues raised by the particular complaint. If satisfied that is the case, we may then defer further investigation until completion of the proceedings. On completion of the criminal or disciplinary proceedings, NT Police advise our Office of the outcomes and we consider whether any further action is necessary.

The Ombudsman may also decide to commence an 'own initiative' investigation into a matter or to directly investigate any Police complaint if satisfied it:

- concerns the conduct of a police officer holding a rank equal or senior to the rank of PSC Commander;
- concerns the conduct of a PSC member;
- is about the practices, procedures or policies of NT Police; or
- should be investigated by the Ombudsman for any other reason.

Investigations

Both NT Police officers and Ombudsman officers have substantial powers to conduct investigations in relation to complaints about police conduct.

One question that may arise in the investigation of more serious police complaints is whether to recommend that consideration should be given to whether disciplinary action or, in some cases, criminal proceedings should be commenced against an officer.

The criminal standard of proof, beyond a reasonable doubt, is higher than the level of satisfaction required to establish a breach of discipline, so different considerations apply when weighing the answers to these two questions.

NT Police investigators have a power to direct an officer to answer a question or provide information in relation to an alleged or suspected breach of discipline even if to do so might incriminate the officer or make the officer liable to a penalty - section 79A of the *Police Administration Act 1978* (the PAA).

However, the answer to such a question or the information provided is not admissible as evidence against the officer in civil or criminal proceedings in a court (section 79A(3) of the PAA). This can mean that information provided by an officer about their conduct that can be used for the purposes of a disciplinary proceeding is not available for the purposes of a criminal prosecution.

If that information is central to establishing the case against an officer, this may mean that a breach of discipline can be established but there is no reasonable prospect of securing a criminal conviction.

Outcomes

For the less formal CRP process, the outcome may be recorded as Successful if the complainant advises they are satisfied or Unsuccessful if they do not. If a CRP is Unsuccessful, a detailed letter is provided to the complainant to explain the information and evidence reviewed as part of the CRP and the complainant is advised they can contact our office to pursue any outstanding issues.

For other categories of complaint, the following potential findings are set out in the Police Complaints Agreement:

- (a) **Unresolved** - Given differing versions, where the Ombudsman and PSC are unable to come to any conclusion about the allegation. This finding may be used in respect of allegations when the only available evidence is the complainant's version against that of the members or all witnesses provide a differing/inconsistent version;
- (b) **No evidence to support the allegation** - Based on the material, there is no evidence to support the allegation. This finding may apply to an allegation of minor assault (e.g. push/slap) and there is no medical evidence to support the allegation, there are no witnesses to the incident, there is no video evidence or other members present, to positively support the fact that it did or did not occur;
- (c) **Insufficient evidence to sustain the allegation** - Based on the material there is some evidence to support the complainant, but it is insufficient to sustain the allegation. This may apply where there is some evidence to support the allegation but the quality of the evidence is unreliable, or taking into account other evidence (e.g. the medical evidence or the evidence of the police), the evidence as a whole is insufficient to sustain the allegation;
- (d) **Action / conduct was not found to be unreasonable given the circumstances** - This finding may be used in cases where a member may have done something unusual or *prima facie* questionable, but the surrounding circumstances are such that it is inappropriate to make an adverse finding against the member;
- (e) **Police action / decision was reasonable** - This is a positive finding to the effect that the Ombudsman / PSC supports the action / decision by the police;
- (f) **Allegation sustained** - Where there is sufficient evidence to sustain the allegation on the balance of probability; and
- (g) **Allegation is found to be wilfully false** - Where an investigation into a complaint against Police reveals that the allegation was wilfully false, that finding will be brought to the attention of the Ombudsman to consider a prosecution under the Act. Any criminal charges arising from a wilfully false allegation will be referred to the Commander, PSC for action.

In addition to issues identified by complainants, our Office or PSC investigating officers may identify ancillary matters in the course of an investigation. Often these involve failure to undertake a particular procedure or adequately complete relevant records but they may nevertheless be serious issues. Complaints may also give rise to ancillary issues regarding staff management and supervision where a complaint is substantiated against a more junior officer. In such cases, a supervisor may also be subject to appropriate guidance or action.

An investigation report may include recommendations that disciplinary or other action be taken in respect of particular officers or that more general action be taken in relation to matters such as police training, awareness, policies and procedures. Our Office may also make additional recommendations if we consider it necessary.

Disciplinary action in relation to an individual officer may be taken under Part IV of the PAA. For less serious disciplinary matters, there is also an option to take action in the form of Managerial Guidance under section 14C of the PAA. For other matters requiring guidance but not disciplinary action, an officer may be given remedial advice by a superior officer (which is documented on their record).

Depending on its categorisation, either our Office or NT Police will advise the complainant of outcomes of the complaint. Our Office is limited in the information that we can disclose to a complainant regarding the outcomes of disciplinary proceedings (section 106(3) of the Act).

CHAPTER 7 – OUR OFFICE

CORPORATE GOVERNANCE, PLANNING AND PERFORMANCE

Under the *Ombudsman Act 2009*, the Ombudsman is independent of Government in relation to complaints and investigations (section 12). However, for administrative purposes, the Ombudsman's Office is an Agency under the administrative responsibility of the Chief Minister and the Ombudsman is the Chief Executive Officer of the Agency.

This means that under the *Financial Management Act 1995*, the Ombudsman is the Accountable Officer for the Ombudsman's Office Agency, and has responsibility for the efficient, effective and economic conduct of the Office. It also means that the Ombudsman has responsibilities as a Chief Executive Officer under the *Public Sector Employment and Management Act 1993 (PSEMA)*. These responsibilities extend to financial and personnel aspects of the operations of the Office of the Information Commissioner (**OIC**), the Judicial Commission Office (**JCO**) and OPCAT functions.

The Statement of Accountable Officer is on the first page of the Financial Statements for 2021/22, which are set out at Appendix B.

The Office's Strategic Priorities document provides guidance and a general framework for strategic operations and annual business planning. A copy of the current Strategic Priorities is available online at <http://www.ombudsman.nt.gov.au/about-us/our-policies>. Within the constraints of available resources and in alignment with the strategic and business plans, financial planning is undertaken and an annual budget prepared for each financial year.

Monthly Staff, Management Board and Complaints Management meetings are held to facilitate the administration of the Office, provide forums for discussions with staff and monitor progress against budget, strategic and business plans. Internal Audit meetings are held quarterly. In addition, weekly Senior Management Group meetings are held to update current projects and facilitate open communication and discussion between senior managers.

OUR STAFF

The functions of the Ombudsman's Office Agency include the operation of the OIC, the JCO and Interim NT National Preventive Mechanism under OPCAT. There are dedicated staff within the OIC and JCO but other staff have roles within both offices, for example, the Business Services Unit supports corporate aspects of all operations, and the Deputy Ombudsman is also Deputy Information Commissioner and Deputy Principal Officer of the Judicial Commission.

Staffing levels vary throughout the year depending on the needs of the Office, flexible working arrangements, staff taking long term leave and staff acting in other positions. Actual staffing for the combined offices at 30 June 2022 is set out in the table below. FTE is Full Time Equivalent staff and, in some cases, may be made up of more than one staff member working on a part-time basis.

Level	FTE	Status
EC05	1.0	Statutory appointment
EC02	1.0	Executive Contract
SA02	0.7	Ongoing
SA01	4.3	2 ongoing, 1 fixed period, 1.3 HDA
AO7	2.0	Ongoing
AO6	3.0	1 ongoing, 2 fixed period
AO5	1.0	HDA
AO4	3.1	2.1 ongoing, 1 fixed period

Public Sector Principles

The Ombudsman's Office upholds the public sector principles relating to administration management, human resource management (including merit and equality of employment opportunity) and performance and conduct set out in the PSEMA.

As a small organisation we frequently rely on the work of the Office of the Commissioner for Public Employment, the Department of Corporate and Digital Development, other large NT agencies and our counterparts in other jurisdictions to assist in policy development in this area, adopting or adapting policies and the like as the needs of the Office require. Their contributions in this regard are most appreciated.

Professional Development

Opportunities for staff professional development conducted or supported by the Office during 2021/22 included:

- Cultural engagement and communications with First Nations People (ANZOA);
- Resilience/Emotional Intelligence;
- Administrative Decision Making Masterclass;
- Merit Selection and Special Measures;
- Information Officer training;
- Appropriate workplace behaviors.

SYSTEMS, POLICIES AND PROCEDURES

The operations of the Office are supported by a range of systems, policies and procedures. The *Accounting and Property Manual* deals with a wide range of issues, including financial and procurement matters, corporate systems, Information and Communications Technology, Risk Management and Audit. During the reporting period, the Manual was reviewed to ensure consistency with new or varied Treasurer's Directions.

The day to day work of resolution and investigative officers is also guided by the Office's *Operations Manual*. The *Delegations and powers* chapter of the Manual was reviewed during the reporting period to reflect the shared roles of some staff across the Office with the addition of the JCO function.

The work of our officers is supported by the Office's case management system, Resolve. The maintenance and development of the system involves a substantial ongoing investment of staff time and resources but it has proven to be of great benefit in terms of the management of individual matters and more general reporting.

During 2021/22, enhancements to Resolve were primarily centred around the implementation of the JCO function and improvements to OIC workflows regarding NTCAT processes. Other minor changes included efficiencies for case managers in closing outside jurisdiction matters and reporting improvements.

Numerous other independent offices in the NT have taken up the Resolve system. We continue to provide assistance and advice to offices that are considering acquiring the system or are working on developing or implementing it.

WORKPLACE HEALTH AND SAFETY

The Ombudsman's Office is committed to providing a safe and healthy working environment for all of our staff and visitors in line with the *Work Health & Safety (National Uniform Legislation) Act 2011* and *Employment Instruction 11 – Occupational Health and Safety Standards and Programs*.

Workplace Health and Safety (WH&S) is a standing agenda item on monthly Staff and Management Board meetings. An officer has been assigned primary responsibility for WH&S issues and regular WH&S audits are conducted.

The need to make adequate provision for the health and welfare of staff and visitors in response to the coronavirus pandemic was again a significant element in the work and planning of the Office during the year. Otherwise, only minor WH&S issues were identified. They were recorded and rectified promptly. Should any significant WH&S issue arise which cannot be promptly addressed by the Office, the regulator NT Work Safe will be contacted for advice/assistance.

RECORDS MANAGEMENT, DISCLOSURE AND CORRECTION

The Ombudsman's Office complies with the relevant requirements of Part 9 of the *Information Act 2002 – Records and Archives Management*.

Information held by the Office

The Ombudsman holds information in the following categories:

- information relating to inquiries and investigations into complaints concerning Northern Territory Government agencies, local government councils or the conduct of NT Police officers. This information includes complaints, correspondence and consultations with complainants and agencies, other information sources such as background material, records of conversation, analysis and advice and reports;
- information relating to the Ombudsman's role as the chief executive of an NT Agency with a particular set of responsibilities, in terms of the development or implementation of administrative process, policy or legislation; and
- information relating to the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

The following are specific types of information held by the Ombudsman.

Administrative and policy files

The Ombudsman keeps files of correspondence and other documents, indexed by subject matter, on issues concerning office administration and management.

There are records on a wide range of policy and general questions concerning the Ombudsman's functions and powers, the operation of the Office and the approach taken by the Ombudsman to particular classes of complaints. Files may relate to the Ombudsman's jurisdiction over a particular body or over particular classes of action, or they may represent the recording and consolidation of information on subjects or issues that have arisen in the course of investigations.

Access to information held on these files may be provided depending on the content of the relevant documents. Charges may also apply (see 'Providing access to information' below).

Complaint files

The Ombudsman keeps detailed records of all complaints made under the *Ombudsman Act 2009*. Incoming complaints are registered in a relational complaints management database, which allows indexing and searching on a large number of fields including the complainant's name, the agency complained about, issues, outcome, related parties and the subject of the complaint.

Physical files of documents relating to written complaints may also be maintained. On completion of matters, physical files or documents are stored in the Darwin office or at an off-site storage facility until moved to archives or destroyed in accordance with approved disposal schedules.

Access to the information on these files is generally restricted depending on who is seeking the information.

Legal opinions

The Ombudsman maintains a copy of legal opinions the Office has been provided with. These opinions cover issues arising during the investigation of complaints and issues involving the Ombudsman's functions and powers. They are not routinely disclosed.

Annual reports

Copies of the current Annual Report and some previous Annual Reports are available for downloading on the Ombudsman website.

Brochures

The Ombudsman's Office has a range of brochure material available to the public. The material details the functions of the Ombudsman and provides a guide to using the services of the Office. Some printed copies of these brochures are available free of charge from the Ombudsman's office in Darwin and some are available for downloading on the Ombudsman website.

Policies, manuals and guidelines

The Ombudsman has a variety of policy and procedural documents and guidelines. A number are available on the Ombudsman website. Access to information contained in these documents may be provided depending on the content of the relevant documents. Charges may apply.

Service Standards

The Ombudsman's Service Standards set out the standards of service you can expect. The Service Standards are available on the Ombudsman website.

Providing access to information

Publicly available documents

Numerous documents are available for download through the Ombudsman website. Hard copies of some brochures may be obtained from the Office on request, depending on availability.

Administrative arrangements for access to information

General inquiries and requests for access to documents may be made in person, by telephone or in writing. Alternatively, current or past complainants or respondents may choose to approach the relevant case officer directly. The Office is open between 8.00am and 4.30pm on weekdays (excluding public holidays).

Access under Part 3 of the *Information Act*

One object of the *Information Act 2002* is to extend, as far as possible, the right of a person to access government and personal information held by government.

Initial inquiries about access to documents under Part 3 can be made to the Deputy Ombudsman through any of the contact options set out on the last page of this Report. An application to access information under Part 3 should be in writing and addressed to the Deputy Ombudsman. It may be sent by letter or email or hand delivered.

While some information held by the Ombudsman is available under these provisions, a considerable amount is exempt from disclosure. For example, information is exempt from disclosure under section 49C of the *Information Act* if it is:

- contained in a complaint under the *Ombudsman Act 2009*; or
- obtained or created under that Act in the course of or for making preliminary enquiries, or the conduct of conciliation, mediation, the police complaints resolution process or an investigation.

Applications for this type of information will be transferred to the organisation from which information in the control or custody of the Ombudsman was sourced.

In 2021/22, the Ombudsman received no information access requests under the *Information Act 2002*.

Procedures for correcting information

The *Information Act 2002* also provides for applications to correct personal information.

Initial inquiries about correcting personal information under Part 3 can be made to the Deputy Ombudsman through any of the contact options set out on the last page of this Report. An application to correct personal information under Part 3 should be in writing and addressed to the Deputy Ombudsman. It may be sent by letter or email or hand delivered.

In 2021/22, the Ombudsman received no personal information correction requests under the *Information Act 2002*.

APPENDIX A – POLICE COMPLAINTS AGREEMENT

AGREEMENT BETWEEN COMMISSIONER OF POLICE (NT) OMBUDSMAN FOR THE NT

This agreement is made pursuant to section 150 of the *Ombudsman Act*. It records the joint commitment of the Commissioner of Police NT and the Ombudsman for the NT to the open, accountable and fair resolution of complaints against Police and describes agreed administrative procedures to achieve that outcome.

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1. Scope of Terms

Commander, PSC:	PSC Commander or their delegate.
Commissioner:	Commissioner of Police (NT) or their delegate. The Commissioner is charged with the general control and management of the Police Force. As such, the Commissioner is responsible for the taking of appropriate action on complaints including the institution of both formal and informal disciplinary and criminal actions against police members where appropriate. The Commissioner has issued a General Order to members clarifying their obligations in this regard.
General Order:	Complaints Against Police.
Ombudsman:	Ombudsman or their delegate. The Ombudsman is charged with investigating, overseeing and reporting on complaints against Police and may make recommendations to the Commissioner concerning how a complaint may be resolved.
PSC:	Professional Standards Command of the NT Police Force is tasked with the internal administration, coordination and investigation of all reported complaints against Police. Functions include ensuring the obligations of the Commissioner of Police under the Act are observed and liaising with the staff of the Ombudsman on all complaints and investigations. The term Professional Standards Command is to be read as meaning the Police Standards Command as referred to in the <i>Ombudsman Act</i> .
The Act:	<i>Ombudsman Act</i> .
The Parties:	The Ombudsman and the Commissioner.

2. Introduction

This Agreement for dealing with police complaints has been made between the Commissioner of Police (NT) and the Ombudsman for the NT pursuant to section 150 of the Act.

Specifically, the Agreement provides for the following matters:

- (a) the kinds of complaints for which the police Complaints Resolution Process (CRP) may be conducted;
- (b) the conduct of the CRP process;
- (c) report of the result of the CRP process;
- (d) the kinds of complaints for which PSC report under Part 7, Division 6, Subdivision 1 or Subdivision 2 is required; and
- (e) other matters the Ombudsman and Commissioner consider appropriate for dealing with the complaints mentioned in paragraphs (a) and (d).

The Parties agree that the CRP procedures will be specified in the General Order: Complaints Against Police (the General Order) for the benefit of those members who are conducting an investigation into a Complaint Against Police (CAP).

The Commissioner agrees to consult with the Ombudsman prior to promulgating the General Order and before making any amendments to the General Order.

3. Purpose and Intent of the Agreement

The purpose of this Agreement is to facilitate the sound investigation and appropriate determination of CAPs whether made to the Commissioner or the Ombudsman. The Agreement gives effect to the obligations placed on both the Ombudsman and Commissioner by virtue of the Act and the *Police Administration Act*.

Bearing in mind the differing obligations and roles of the Ombudsman and Commissioner, this Agreement outlines the manner in which the various categories of police complaints will be considered, investigated and reported.

The Parties mutually agree to:

- (a) consult and jointly consider complaints to ensure they are resolved thoroughly, impartially and according to law;
- (b) facilitate the open exchange of information, materials and cooperation between the NT Police and the Ombudsman;
- (c) monitor and review the operation of the police complaints process; Police Complaints
- (d) provide accurate, thorough and timely reports on the outcome of complaints; and
- (e) comply with the rules of natural justice and fairness to both complainants and police officers subject to any provisions which authorise information not be released.

4. Obligations of Professional Standards Command

Section 34H(b) of the *Police Administration Act* authorises PSC to investigate and otherwise deal with CAPs under Part 7 of the *Ombudsman Act*. In so doing the PSC will ensure that the Ombudsman's obligations in respect of complaints are met by the provision to the Ombudsman of timely and complete information as necessary.

5. Obligations of Police Officer

Police officers who receive a CAP are required to record and immediately report that complaint to the Commander, PSC and comply with the terms of the General Order issued by the Commissioner.

A police officer is not to accept a CAP from a person if the complaint concerns that member's conduct. The member is to inform the person to make the complaint to another police officer or directly to the Ombudsman.

6. Notification on the Making of a Complaint

To facilitate the efficient handling of complaints, the Parties agree to notify each other of the making of a police complaint as soon as reasonably practicable. Wherever possible, notice of the making of a complaint will be provided to the other party within **ten (10) working days** of receipt of the complaint.

In accordance with section 65(2) of the Act, the notice provided to the Ombudsman by PSC will be submitted in writing and include:

- (a) if the complaint was made in writing, a copy of the complaint, or
- (b) if the complaint was made orally, a copy of the statement of particulars of the complaint prepared by the police officer to whom the complaint was made.

The Commander, PSC may include in the notice written recommendations to assist the Ombudsman in assessing and deciding how to deal with the complaint under section 66 of the Act.

The Parties acknowledge that the Commissioner may take immediate action against a member under section 80(1) of the *Police Administration Act* upon receipt of a police complaint. The Commissioner agrees to notify the Ombudsman of any action taken as soon as it is reasonably practicable to do so.

7. Assessing and Determining Whether to Deal With a Complaint

7.1 Complaints Made Out of Time

The Ombudsman may refuse to deal with a complaint if it was lodged out of time and the complainant has failed to establish any special circumstances or there is no public interest in accepting the complaint (section 25(3)) of the Act.

7.2 Preliminary Inquiries

On receipt of a complaint the Ombudsman may make preliminary inquiries for the purposes of determining whether to exercise jurisdiction or to decline to deal with the complaint.

The Parties agree that except where the Ombudsman states otherwise, the notification of a complaint by the Ombudsman to the Commander, PSC includes a request that PSC makes preliminary inquiries into the grounds of the complaint and recommends:

- (a) a particular classification under section 66 of the Act; or
- (b) that the Ombudsman decline to deal with the complaint.

7.3 Declining a Complaint

Under section 67 of the Act, the Ombudsman may decline to deal with a complaint, or decline to continue the investigation of a complaint, if the Ombudsman is of the opinion the complaint is:

- (a) trivial, frivolous, vexatious or not made in good faith;
- (b) the complainant does not have sufficient interest in the conduct that is the subject of the complaint; and there are no special reasons justifying dealing with the conduct under Part 7 of the Act;
- (c) disciplinary procedures have been started against the police officer whose conduct is the subject of the complaint for a breach of discipline in relation to the conduct;
- (d) the police officer whose conduct is the subject of the complaint has been charged with an offence in relation to the conduct;
- (e) dealing with the complaint is not within the public interest; or
- (f) another complaint's entity has, or will, investigate the conduct at substantially the same level the Ombudsman would otherwise have investigated the complaint.

In addition, the Ombudsman may defer a decision on how to deal with, or to decline to deal with, a police complaint under Part 7 of the Act if satisfied that:

- (a) a proceeding before a court or tribunal has been, or is to be, commenced in relation to the conduct the subject of the police complaint; or
- (b) disciplinary procedures against a police officer whose conduct is the subject of a police complaint have been or are to be commenced in relation to the conduct (section 107(1)) of the Act.

NOTE: There is no presumption or rule that the investigation of a police complaint under the Act should be delayed if proceedings are commenced. Each case will be assessed on its facts and consideration given to the issues being considered by the respective Court or Tribunal.

As a general rule:

- **Civil Proceedings** — If civil proceedings have been instituted there is unlikely to be any justification for delaying action on a complaint solely by reason of the existence of these proceedings; or
- **Criminal Proceeding** — If a complaint is made while criminal charges are pending, and the complaint relates to the same incident from which the charges arose, the complaint is likely to be delayed if the elements of the charge(s) will result in the Court deciding the issues of the complaint.

If a complaint is declined by the Ombudsman it will be processed in the following manner:

- (a) if the complaint was made directly to the Ombudsman by the complainant or their representative:
 - i) the complainant or their representative will be notified by the Ombudsman that no further action will be taken on the matter;
 - ii) the file will be closed; and
 - iii) the complaint will not be forwarded to PSC;

- (b) if the complaint was submitted by PSC to the Ombudsman:
 - i) the complainant or their representative will be notified by PSC that no further action will be taken on the matter;
 - ii) PSC will send confirmation to the Ombudsman; and
 - iii) the file will be closed.

Reasons for the refusal to accept the complaint or for discontinuing the investigation will be given to the complainant or their representative.

8. Classification of Complaints

If a complaint is accepted, the Ombudsman agrees to consult with the Commander, PSC on the classification of the complaint.

Complaints fall into one of the following classifications:

- (a) conciliation under Part 7, Division 3;
- (b) CRP under Part 7, Division 4;
- (c) investigation of category two (2) complaint (section 66(2)(d)(i)) of the Act - PSC investigates and reports to complainant under Part 7, Division 4, Subdivision 2;
- (d) investigation of category one (1) complaint (section 66(2)(d)(ii)) of the Act — PSC investigates and reports to Ombudsman under Part 7, Division 4, Subdivision 2; or
- (e) section 86 Investigation — Ombudsman investigation under Part 7 Division 5 of the Act.

If the Ombudsman and the Commander PSC are unable to agree on the classification of a complaint, the Ombudsman's decision will be final.

Careful consideration is to be given to:

- (a) the seriousness of the complaint;
- (b) any relevant police practices, procedures or policies; and
- (c) the responsible allocation of resources in determining the classification.

The classification process is intended to be flexible. This means a complaint may be changed at any time to another level of classification based on the particular circumstances of the case.

9. Re-Classification of Complaint

Consideration may be given to re-classification of a complaint if:

- (a) the complainant is dissatisfied with the CRP process, the outcome of the CRP process or does not agree to continue with the CRP process;
- (b) evidence indicates the complaint is not suitable as a CRP;
- (c) a CRP process is otherwise unsuccessful, or likely to be unsuccessful;
- (d) inquiries reveal the complaint is more or less serious than first considered; or
- (e) the Ombudsman's own motion powers are utilised.

If the complainant is dissatisfied with the CRP process, they are to be advised of their right to request that the Ombudsman decides whether to have the matter dealt as a PSC or an Ombudsman investigation. PSC is to record the complainant's request and include details in their notification to the Ombudsman. This notification will be provided in the completed CRP Form (also advising unsuccessful resolution).

If the police officer conducting the CRP becomes aware the CRP will be unsuccessful, the officer is to suspend the CRP and notify the Commander, PSC.

The Ombudsman may refuse the request to re-classify a complaint if satisfied the issues raised by the complainant are being, or have been adequately dealt with in the CRP.

Where a complaint is being investigated as a PSC Investigation, Category 2 Complaint and evidence establishes the complaint is more serious than initially considered, the investigator is to suspend the investigation and notify the Commander, PSC. The Commander, PSC is to immediately notify the Ombudsman of the suspension of the investigation and the reasons for it.

The Ombudsman agrees to consult with the Commander, PSC on the re-classification of the complaint. In the event the Ombudsman and the Commander, PSC do not agree on the relevant classification, the Ombudsman's decision is final.

The Ombudsman is to notify the complainant of the manner in which the complaint is to be investigated.

10. Conciliation [Part 7, Division 3]

The Parties jointly recognise that a successful conciliation greatly reduces the likelihood of future civil litigation against the Commissioner. If a complaint might be resolved through the conciliation process, the Parties agree to use their best endeavours to progress the complaint in this manner.

Conciliation is not intended to absolve the police officers of any misconduct or action. Rather, the process is an alternative dispute resolution process directed towards facilitating agreeable results arising out of the grounds of complaint.

The complainant, a police officer, PSC or the Ombudsman may, at any time, request a complaint be dealt with by way of conciliation.

The Ombudsman acknowledges the Commissioner is a 'relevant official' for the purposes of the conciliation process. The appointment of a conciliator is to be made by mutual agreement.

The conciliator's functions are to be as agreed between the Parties however, in general terms the conciliator is to settle a complaint by:

- (a) explaining the conciliation process and the voluntary nature of the conciliation process;
- (b) explaining privilege and confidentiality as described under section 114 of the Act;
- (c) arranging discussions and negotiations between the complainant and the provider;
- (d) assisting in the conduct of discussions and negotiations;
- (e) assisting the complainant and provider to reach agreement; and
- (f) assisting in resolving the complaint in any other way.

10.1 Representation at Conciliation

Approval may be given for a party to the conciliation to be represented by another person. If the conciliation is being administered by PSC, approval is to be given by PSC, otherwise approval will be given by the Ombudsman. Approval may not be granted if PSC or the Ombudsman is satisfied the proposed representative person's attendance will adversely affect the conciliation process.

The Parties agree to consult each other on the question of whether a representative is an appropriate person.

11. Complaint Resolution Process (CRP) Procedures [Part 7, Division 4, Subdivision 1]

The Commissioner and the Ombudsman have jointly agreed to the CRP procedures referred to in this agreement. It is agreed by the parties that the CRP includes the following elements and processes:

- (a) that the early intervention into minor complaints may lead to a quick resolution of the complaint. This may involve listening to the complainant's specific issues and an explanation as to why a particular course of action was taken by members, the legal and practical considerations relating to the incident or the offering of a simple apology;
- (b) the CRP is not focused on fault-finding or punishment. The CRP is a means of dealing with common complaints about practice, procedures, attitudes and behaviour. One of the aims of

this procedure is to settle and finalise minor complaints without proceeding to formal disciplinary action against members.

If some inappropriate conduct is identified, a member is advised / assisted by the CRP officer to correct the conduct; and

- (c) the informal resolution may be undertaken by the police officer taking the complaint or some other police officer, but not the police officer whose conduct initiated the complaint.

11.1 Ombudsman's Oversight

The Parties acknowledge that in accordance with section 85 of the Act, the Ombudsman maintains a supervisory role for all CRPs.

If the Ombudsman takes an action of the kind described in section 85(1), the Ombudsman agrees to consult with the Commander, PSC on the process to be taken to resolve the outstanding CRP to the satisfaction of all parties.

11.2 Categories of CRP Conduct

The following categories of complaints can be dealt with as a CRP:

- (a) failure to:
 - i) take a complaint seriously;
 - ii) respond promptly during inquiries;
 - iii) promptly attend the scene of a minor complaint;
 - iv) return telephone calls;
 - v) keep people informed of the progress of inquiries;
 - vi) charge a person (in minor cases only, e.g. motor vehicle disputed); and / or
 - vii) return property;
- (b) rudeness / incivility;
- (c) perception of a threat or harassment, subject to severity and nature of threat or harassment;
- (d) unreasonable treatment of a minor matter, e.g. matters where the police action appears appropriate and justified by law and the complaint arises from a misunderstanding of police powers, practices and procedures;
- (e) impartiality, e.g. allegedly taking sides with one of the parties in a dispute;
- (f) a complaint of police driving or parking behaviour which is not aggravated or is able to be reasonably explained;
- (g) a complaint made by a person who has an apparent mental dysfunction or is otherwise disturbed or obsessive and the complaint has either been made previously or appears, by its nature, to be without substance and consistent with the complainant's apparent state of mind;
- (h) a complaint concerning an incident of minor force associated with an arrest or other lawful police conduct. This may include jostling, pushing and shoving in the execution of duty — without any intended features such as intimidation or attempts to obtain a confession — but excludes unlawful assaults or unnecessary or unreasonable use of force; and/or
- (i) other such conduct as the Ombudsman and the Commander, PSC determine should be subject to CRP.

11.3 CRP Process

The Parties agree that the CRP should be carried out in accordance with the following process.

The OIC of a station / section / unit, being a member of or above the rank of Sergeant, is authorised to informally resolve minor CAPs. This officer will be acknowledged as the CRP Officer.

On being advised of a complaint, the CRP Officer is to determine whether the conduct complained about comes within one of the authorised categories.

If the matter is appropriate to be dealt with as a CRP and is capable of being immediately resolved the CRP Officer is to:

- (a) ensure reasonable steps have been, or are being, taken to preserve evidence;
- (b) ensure the complainant is clearly identified on the CRP Form;
- (c) personally contact the complainant (if not present) within twenty four (24) hours if possible;
- (d) explain the CRP as well as the formal investigation process to the complainant;
- (e) ask the complainant's view on the outcome he / she expects;
- (f) obtain the complainant's agreement to the matter being informally resolved. The CRP is a voluntary process and if the complainant does not agree, the process should not be commenced;
- (g) contact the member(s) involved, advise the details and explain the CRP process. Ensure the member(s) are aware of the no-blame procedure and invite an explanation; and
- (h) attempt to settle the issues arising out of the complaint. To do so it may be appropriate for the CRP Officer to arrange a meeting between the complainant and the member(s) concerned.

A CRP Officer has a large degree of flexibility available to them in order to manage the CRP complaint. For example, it is not necessary for sworn statements or records of interview to be taken in support of the investigation, unless the CRP Officer establishes the complaint is unlikely to be resolved.

11.4 Successfully Completed CRP

If the complainant is satisfied with the process, the CRP Officer is to record the details of the complaint and mark that the complaint was successfully resolved on the CRP Form.

The CRP may be resolved through the following means, the details of which are to be included in the CRP Form:

- (a) remedial advice given to member(s) — complainant satisfied;
- (b) apology given to complainant — complainant satisfied. Generally an apology may be offered personally by the member or on behalf of the member through the CRP Officer. A personal apology can only be offered where the member gives consent;
- (c) action taken by NT Police Force explained to the satisfaction of the complainant;
- (d) acknowledgement by complainant where, on enquiry, the complainant accepts error or misunderstanding made by himself / herself;
- (e) complainant satisfied for the matter to be brought to the attention of the member(s) concerned;
- (f) complainant and member(s) fail to agree on subject of complaint but complainant satisfied that everything possible has been done to resolve the matter; and/or
- (g) complainant was offered and accepted reimbursement for minor expenses, i.e. dry cleaning of clothes, etc.

Proof of the outcome agreed upon by the complainant is to be provided (for example, by signature, email or some other form of proof).

On completion of the CRP, the CRP Officer is to identify any outstanding issues of concern which arise from the enquiries made. Those issues are to be identified on the CRP Form. Where issues are within the responsibility of the CRP Officer he / she is to take the necessary steps to address those issues.

Where the issues relate to the responsibilities of another member, the CRP Officer is to ensure those issues, along with the recommendations, are sent to that member for follow up. This matter is also to be addressed on the CRP Form submitted to PSC at the completion of the process.

The Commander, PSC is to forward the CRP Form to the Ombudsman at the earliest opportunity but within seven (7) days of the CRP being finalised.

On receipt of the CRP Report the Ombudsman will consider the complaint and determine whether:

- (a) the action taken was reasonable;
- (b) there are any outstanding issues;
- (c) the complaint was resolved; and
- (d) further action is required.

The Ombudsman will finalise the complaint as a CRP if the matter requires no further action.

The Ombudsman may determine that the CRP is not suitable for finalisation and may re-classify the complaint where:

- (a) the complainant is dissatisfied with the CRP, the outcome of the CRP or does not agree to continue with the CRP;
- (b) evidence indicates the complaint is not suitable as a CRP;
- (c) a CRP is otherwise unsuccessful or likely to be unsuccessful;
- (d) inquiries reveal the complaint is more serious than first considered; or
- (e) on the Ombudsman's own motion.

If the Ombudsman is of the view the complaint should be dealt with in another way, the Ombudsman will notify the complainant of that decision.

11.5 Unsuccessful CRP

If the complainant is dissatisfied with the outcome of the CRP they may ask the Ombudsman to have the complaint investigated by PSC under Part 7, Division 4, Subdivision 2, or by the Ombudsman under Part 7, Division 5, Subdivision 2 of the Act.

In the event the complainant is dissatisfied with the CRP, the complainant is to be advised of their right to request the Ombudsman to have the matter dealt with as a PSC or an Ombudsman investigation. The CRP Officer is to record the complainant's request and PSC are to include this in their notification to the Ombudsman. This notification will be provided in the completed CRP form (also advising unsuccessful resolution).

Where the CRP Officer forms an opinion the CRP will be unsuccessful, the CRP Officer is to suspend the CRP and notify the relevant Command Management Team (CMT) and the Commander, PSC.

In the event of an unsuccessful CRP, the relevant CMT is to send a letter to the complainant detailing what action was taken to resolve their complaint and their right to contact the Ombudsman to have the matter reinvestigated. The letter will include the following paragraph:

- a) If you are dissatisfied with the outcome it is necessary for you to set out detailed reasons as to how the investigation was inadequate and forward these to the Ombudsman. However, please note, the Ombudsman may refuse to review your continued concern if satisfied the issues raised have been dealt with in the investigation.*

If the Ombudsman is satisfied the issues raised in the complaint are being, or have been, adequately dealt with in the CRP, the Ombudsman will refuse the request.

If the Ombudsman agrees with the request, the Ombudsman and the Commander, PSC will re-classify the complaint and the Ombudsman will notify the complainant of the terms of the new investigation.

11.6 Police Officer Dissatisfied

A police officer who is dissatisfied with the progress or the outcome of the CRP may make a written submission to the Commander, PSC. Upon receipt of the submission the Commander, PSC will consider the submission and if satisfied the CRP will be unsuccessful, notify the Ombudsman.

The Commander, PSC and the Ombudsman will re-classify the complaint if appropriate and the Ombudsman will notify the complainant of the terms of the new investigation.

11.7 Police Officer's Rights

The Ombudsman and the Commissioner agree that evidence obtained from a police officer in the CRP cannot be used in any disciplinary investigation or proceedings against the member [section 114(1) of the Act].

There will be no records kept on the personnel file of the member in respect to the results of any CRP.

11.8 Enquiries Reveal a Matter is More Serious

If enquiries reveal that the matter is more serious than first thought, or if evidence indicates the complaint is not suitable as a CRP, the CRP Officer is to suspend the enquiries and forward all documents to the Commander, PSC.

The following factors could lead to a suspension of the CRP:

- (a) identified inculpatory evidence warranting a formal PSC investigation;
- (b) additional issues requiring further enquiry; and/or
- (c) evidence of involvement of other police officers in the police conduct.

The Commander, PSC and the Ombudsman will re-classify the complaint. The Ombudsman will notify the complainant of the terms of the new investigation.

11.9 Withdrawal of Complaint

If a complainant wishes to withdraw a minor complaint, it is to be confirmed in writing by the complainant and the CRP Officer and forwarded to PSC. The withdrawal should include the complainant's reasons for withdrawing the complaint.

11.10 CRP Action Requirements

Complaints dealt with under the CRP are to be completed within fourteen (14) days of the complaint being received.

An application to extend the period may be made to the Commander, PSC at any time before the expiry of the fourteen (14) days. The application is to provide particulars of the reasons for the delay in finalising the CRP within the specified period. Applications will only be approved on the joint approval of the Commander, PSC and the Ombudsman.

Completed CRP forms are to be forwarded by the Commander, PSC to the Ombudsman at the earliest opportunity but within seven (7) days of the complaint being finalised.

12. Professional Standards Command Investigation

There are three (3) types of Investigation undertaken by or on behalf of the Professional Standards Command. Those are:

- **Preliminary Inquiry (PI)** - An investigation carried out by PSC or other member on behalf of PSC upon initial receipt of a complaint against police. The investigation is carried out to examine available material and allow for a considered recommendation to be made to the Ombudsman on the categorisation of the complaint;
- **Category 2** - An investigation carried out by PSC or other member on behalf of PSC where the Commissioner or his/her delegate reports directly to the complainant (Part 7, Division 4, Subdivision 2 and Part 7, Division 6, Subdivision 1 of the Act). These are complaints relating to incidences of minor misconduct that are not suitable for CRP or sufficiently serious to be subject to a category one (1) classification; and
- **Category 1** — An investigation carried out by PSC or other member on behalf of PSC where the Commissioner or his/her delegate reports to the Ombudsman, who considers the report and reports to the complainant (Part 7, Division 4, Subdivision 2 and Part 7, Division 6, Subdivision 2 of the Act). These are serious complaints relating to alleged serious misconduct or maladministration.

All three types of investigation are evidence based and intended to collect evidence to either sustain or negate the grounds of complaint.

12.1 Preliminary Inquiry

Authorised Conduct of Preliminary Inquiry

The purpose of a PI is to source, secure and examine all relevant evidence upon initial receipt of a complaint against police. This is done to ensure that the Ombudsman is fully apprised of all the facts of a matter when making a determination on the classification of the complaint.

Although this is an initial enquiry and no formal determination of complaint classification has been made, investigative rigour is still to be applied through all stages of the PI.

The PI can involve any of the following actions by an investigator:

- (a) examination of PROMIS, IJIS or any other NT Police computer systems;
- (b) examination of all relevant CCTV footage, including watch house audio recordings;
- (c) examination of any Territory Communications Section records including audio files of telephone calls and radio transmissions;
- (d) examination of any written documentation relevant to the complaint, including any notes made by a police officer;
- (e) contact with a police officer to clarify any aspect of the complaint;
- (f) contact with the complainant, a witness or other person to clarify any aspect of the complaint;
- (g) examination of any legislation, policy or procedure relevant to the complaint; and
- (h) examination of any evidence the investigator deems relevant to the enquiry.

All evidence examined during the PI will be made available to the Ombudsman.

The PI is to be conducted within **ten (10) days** of receipt of the complaint unless an extension has been granted by the Ombudsman. Any extension of the time to complete a PI will be made by the Ombudsman on a case by case basis. Factors that can be considered by the Ombudsman are the size and complexity of the matter, the availability of witnesses or reasonable delays in sourcing other evidence.

The PI may result in PSC recommending to the Ombudsman that a complaint be dealt with in the following manner:

- (a) as a Category 1 Complaint Against Police;
- (b) as a Category 2 Complaint Against Police;
- (c) as a matter suitable for conciliation under Part 7 Division 3 of the Act;
- (d) as a matter suitable for the Complaint Resolution Process;
- (e) as a Customer Service Enquiry; or
- (f) the complaint should be declined under section 67 of the Act.

12.2 Category 2 PSC Investigation

Authorised Conduct of Category 2 Complaint

These are complaints relating to police misconduct that are not suitable for CRP or sufficiently serious, or of such a nature as to warrant a section 66(2)(d)(ii) Investigation (Category 1) or direct Ombudsman involvement (section 86 of the Act.).

Subject to any direction given by the Commissioner or the Ombudsman, a Category 2 investigation will normally be carried out with limited oversight from the Ombudsman.

A complaint may become a Category 2 investigation due to an unsuccessful CRP process or when evidence establishes the complaint is more serious than originally considered.

Notwithstanding the Ombudsman's decision that the complaint may be investigated by PSC, the complainant may, at any time, ask the Ombudsman to investigate the complaint.

Assignment of complaint to Investigating Officer

If a complaint is classified as a Category 2 and the Ombudsman did not instruct that the complaint was to be investigated by a PSC member, the Commander, PSC will notify the Commander of the relevant station / section / unit to arrange to have the complaint investigated.

The relevant Commander will assign the investigation to an appropriate investigating officer (IO). In determining who to allocate the Complaint against Police to, the relevant Commander is to consider:

- (a) whether the proposed IO's rank is above that of the subject member;
- (b) if the proposed IO's skill, capacity and training is adequate to complete the Complaint against Police;
- (c) the IO's leave requirements and/or other commitments; and
- (d) any obvious conflict of interest (being a supervisor or manager of the subject member alone does not constitute a conflict of interest).

Functions of Investigating Officer

It is the function of the IO to collect and consider all relevant evidence available to either prove or disprove the allegations made against the subject member including:

- (a) collecting all relevant information and evidence (both inculpatory and exculpatory) relating to the grounds of complaint;
- (b) investigating and reviewing the information and evidence;
- (c) reaching a reasonable and logical conclusion; and
- (d) preparing a report and other supporting documentation for the Commissioner or delegate's consideration.

Responsibilities of Investigating Officer

The IO is to:

- (a) immediately declare any conflict of interest when a conflict, or perceived conflict, arises;
- (b) conduct the investigation impartially and in a timely manner in accordance with the timeline requirements for Category 2 investigations in the General Order;
- (c) conduct the investigation in a manner that preserves the subject member's common law rights to natural justice;
- (d) maintain confidentiality in accordance with NTPFES Instructions and Procedures: *Internal and Sensitive Investigations Security* and in accordance with the General Order;
- (e) comply with any instructions from the Ombudsman, Commissioner or Commander, PSC;
- (f) regularly consult with the complainant about the conduct of the investigation; and
- (g) if practicable and where it will not compromise the investigation, regularly advise members involved of the status of the investigation.

The IO is to immediately contact the complainant, advise them of their assignment to the investigation and attempt to schedule an interview with the complainant or otherwise obtain a statement from them.

It is essential that the IO takes all reasonable steps to obtain or secure the evidentiary material, if not already completed. Failure to take these critical steps early in the investigation will cause irreparable damage to the outcome of the investigation, especially if the evidence is likely to be lost with the passage of time.

At the completion of the investigation, the IO is to prepare a Final Report on the findings of the investigation. The report is to include an assessment of the conduct of the subject member and may include:

- (a) an assessment on whether the conduct of the subject member:
 - i) constituted an offence or breach of discipline or was contrary to law;
 - ii) was unreasonable, unjust, oppressive or improperly discriminatory;
 - iii) was in accordance with an Act or a practice, procedure or policy that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
 - iv) was based either wholly or partly on a mistake of law or of fact;
 - v) was otherwise wrong in the circumstances;
 - vi) exercised a power for an improper purpose or on irrelevant grounds; and/or
 - vii) in exercising a power in a particular way or refusing to exercise a power:
 - a. irrelevant considerations were taken into account in the course of reaching the decision to exercise the power in that way or to refuse to exercise the power; or
 - b. a person was entitled at law to have been given, but was not given, the reasons for deciding to exercise the power in that way or to refuse to exercise the power; or
- (b) recommendations that one or more of the following actions be taken:
 - i) a member be charged with an offence;
 - ii) disciplinary action be taken against a member for a breach of discipline;
 - iii) conciliation in relation to the conduct of the member subject of the investigation be conducted;
 - iv) a decision made by the subject member be reconsidered, varied or reversed or reasons be given for a decision;
 - v) the effects of a decision, act or omission made by the subject member be rectified, mitigated or altered; and
 - vi) an Act, practice, procedure or policy on which a decision, act or omission was based be amended.

Any ancillary issues identified during the investigation are to be reported on.

A copy of the completed complaint file, including the report, a draft letter endorsing the report to the Ombudsman and a draft letter of response to the complainant is to be forwarded to the relevant Assistant Commissioner.

The draft letter to the complainant is to advise of their right to ask the Ombudsman to have the complaint investigated by the Ombudsman under Part 7, Division 5, Subdivision 2 of the Act. The letter will include the following paragraph:

- a) *'If you are dissatisfied with any aspect of the investigation you may request the Ombudsman to consider reinvestigating your matter. In that event, it is necessary for you to set out detailed reasons as to how the investigation was inadequate, however please note, the Ombudsman must refuse this request if satisfied the issues raised in your complaint have been dealt with in the investigation.'*

Re-classification of Complaint

Where a complaint is being investigated as a PSC investigation, Category 2 complaint and evidence establishes the complaint is more serious than initially considered, the investigator is to suspend the investigation and notify the Commander, PSC. The Commander, PSC is to immediately notify the Ombudsman of the suspension of the investigation and the reasons for it.

The Ombudsman agrees to consult with the Commander, PSC on the re-classification of the complaint. In the event the Ombudsman and the Commander, PSC do not agree on the relevant classification, the Ombudsman's decision is final.

The Ombudsman is to notify the complainant how the complaint is to be investigated.

Where a complainant makes a statement requesting the CAP to be withdrawn, the PSC will seek authorisation from the Ombudsman to discontinue the investigation. Should the Ombudsman agree that the CAP is to be discontinued, the CAP file is to be returned to the PSC for case finalisation.

Ombudsman Review

In the event the complainant exercises their rights and asks the Ombudsman to re-investigate the complaint, the Ombudsman must consider the request. The Ombudsman must refuse the request if satisfied the complaint has been adequately dealt with.

Requirements when Serious Breach of Discipline Identified

Should a serious breach of discipline be identified during the investigation, the IO is to suspend the enquiries and forward all the documents to the Commander, PSC.

Commissioner Notification to the Ombudsman

Should disciplinary proceedings or criminal charges be brought against the subject member during the investigation of the Complaint, the Commissioner is to notify the Ombudsman within **five (5) days** of:

- (a) the commencement of proceedings or laying of the charges; and
- (b) the final outcome.

Deferral of Investigation

An investigation may be deferred or discontinued by the Ombudsman at any time if:

- (a) proceedings against the subject member in relation to the conduct have been, or are about to be, commenced in a court or tribunal; or
- (b) disciplinary procedures have been, or are about to be, started against the subject member.

An investigation may be deferred pending the finalisation of court proceedings or disciplinary procedures.

12.3 Category 1 PSC Investigation

Authorised Conduct of Category 1 Complaint

Category 1 complaints relate to serious police misconduct. Allegations of Police misconduct will result in a Category 1 complaint if the conduct:

- (a) involved alleged criminal behaviour;
- (b) involved a breach of some other Act;
- (c) was, or appeared to be, deliberate;
- (d) resulted in the use of a firearm or other weapon;
- (e) involved a threat or harassment of a serious nature;
- (f) was recklessly indifferent to the negative outcome of the specific conduct;
- (g) resulted in death or injury, major property damage or financial loss to the claimant or some other person;
- (h) constitutes an issue which is in the public interest; or
- (i) is likely to identify significant questions of police practice or procedure.

Category one (1) complaints, when sustained, may result in one or more of the following outcomes pursuant to Part IV of the *Police Administration Act*:

- (a) counselling;
- (b) formal caution in writing;
- (c) good behaviour Bond (GBB);
- (d) fine;
- (e) pay compensation/restitution;
- (f) transfer;
- (g) reduce rate of salary;
- (h) suspension — paid/unpaid;
- (i) demotion; or
- (j) dismissal.

A Category 1 complaint will receive Ombudsman oversight and will be reviewed and reported on by the Ombudsman.

Complaints may be classified as a Category 1 complaint because of:

- (a) the serious nature of the alleged police misconduct; or
- (b) the complaint has been re-classified:
 - i) because evidence established the police misconduct was more serious than first considered; or
 - ii) at the request of the complainant to the Ombudsman.

Assignment of Complaint to Investigating Officer

Allegations, which if true, would involve substantial breaches of the criminal law, are to be assigned in consultation with the Commander, PSC to PSC investigators, Crime Division members, Commissioned Officers or an experienced criminal investigator.

Functions of Investigating Officer

It is the function of the IO to collect and consider all relevant evidence available to either prove or disprove the allegations made against the subject member. It includes:

- (a) collecting all relevant information and evidence (both inculpatory and exculpatory) relating to the grounds of complaint;
- (b) investigating and reviewing the information and evidence;
- (c) reaching a reasonable and logical conclusion; and
- (d) preparing a report and other supporting documentation for the Ombudsman's consideration.

Responsibilities of Investigating Officer

The IO is to:

- (a) immediately declare any conflict of interest when a conflict, or perceived conflict, arises;
- (b) conduct the investigation impartially and in a timely manner in accordance with the timeline requirements for category one (1) Investigations in the General Order;
- (c) conduct the investigation in a manner that preserves the subject member's common law rights to natural justice;
- (d) maintain confidentiality in accordance with Instructions and Procedures: *Internal and Sensitive Investigations Security* and in accordance with part two of the General Order;
- (e) comply with any instructions from the Ombudsman, Commissioner or Commander, PSC;
- (f) regularly consult with the complainant about the conduct of the investigation; and
- (g) if practicable and where it will not compromise the investigation, regularly advise members involved of the status of the investigation.

The IO is to immediately contact the complainant, advise them of their assignment to the investigation and attempt to schedule an interview with the complainant or otherwise obtain a statement from them.

It is essential the IO takes all reasonable steps to obtain or secure the evidentiary material, if not already completed.

At the completion of the investigation, the IO is to prepare a final report on the findings of the investigation. The report is to include an assessment of the conduct of the subject member and may include:

- (a) an assessment on whether the conduct of the subject member:
 - i) constituted an offence or breach of discipline or was contrary to law;
 - ii) was unreasonable, unjust, oppressive or improperly discriminatory;
 - iii) was in accordance with an Act or a practice, procedure or policy that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory;
 - iv) was based either wholly or partly on a mistake of law or of fact;
 - v) was otherwise wrong in the circumstances;
 - vi) exercised a power for an improper purpose or on irrelevant grounds; and/or
 - vii) in exercising a power in a particular way or refusing to exercise a power:
 - a. irrelevant considerations were taken into account in the course of reaching the decision to exercise the power in that way or to refuse to exercise the power; or
 - b. a person was entitled at law to have been given, but was not given, the reasons for deciding to exercise the power in that way or to refuse to exercise the power; or
- (b) recommendations that one or more of the following actions be taken:
 - i) a member be charged with an offence;
 - ii) disciplinary action be taken against a member for a breach of discipline;
 - iii) conciliation in relation to the conduct of the member subject of the investigation be conducted;
 - iv) a decision made by the subject member be reconsidered, varied or reversed or reasons be given for a decision;
 - v) the effects of a decision, act or omission made by the subject member be rectified, mitigated or altered; and

- vi) an Act, practice, procedure or policy on which a decision, act or omission was based be amended.

Findings in relation to the complaint allegations are to be provided as outlined within Part Ten of the General Order.

Any ancillary issues identified during the investigation are to be included in the report.

13. Ombudsman Investigation [Part 7, Division 5, Subdivision 2]

The Ombudsman may decide to investigate a CAP:

- (a) on the Ombudsman's own initiative under section 14 of the Act;
- (b) where the Ombudsman considers the complaint should be investigated by the Ombudsman under section 86 of the Act; or
- (c) where parliamentary reference is made for the investigation of police conduct under section 87(1)(b) of the Act.

The Ombudsman may, or may not, notify the Commissioner of the investigation.

If the Ombudsman's draft report contains an adverse finding about police conduct, the Ombudsman is to provide the member and the Commissioner with reasonable details about the adverse comments and allow the member the opportunity of making any submissions. Any submissions are to be dealt with in the report.

13.1 Finalisation Process

Following completion of the investigation, the Ombudsman is to provide the Commissioner with a copy of a draft report of the investigation. The report is to contain an assessment and recommendations.

The Commissioner will notify the Ombudsman whether the Commissioner:

- (a) agrees with the Ombudsman's assessment and recommendations; or
- (b) does not agree with the Ombudsman's assessment and recommendations.

If the Commissioner supports the Ombudsman's assessment and recommendations, the Ombudsman will notify the complainant and PSC will notify the subject member of the outcome of the Complaint and of any action to be taken.

If the Commissioner does not support the Ombudsman's assessment and recommendations, the Ombudsman may:

- (a) confirm or vary the assessment or recommendation; or
- (b) substitute a new assessment or recommendation.

The Commissioner will notify the Ombudsman of the steps taken to give effect of the Ombudsman's recommendation as agreed, or as substituted or varied. Written notice to the Ombudsman is to be made within **five (5) days** of the taking of the action.

Where the Commissioner does not implement the Ombudsman's recommendations:

- (a) the Commissioner is to provide written notice as to the Commissioner's reasons for not taking the steps;
- (b) the Ombudsman may provide the Police Minister with a copy of the Ombudsman's report along with the Commissioner's written notice; and
- (c) the Ombudsman may also provide the Police Minister with a copy of a final report for tabling in the Legislative Assembly.

13.2 Complaint Findings

In the interests of complainants and the subject member, agreement is made with the Ombudsman to adopt a consistent approach to respective findings on a complaint. The broad categories agreed below are intended to operate in a flexible manner:

- (a) **unresolved** - Given differing versions, where the Ombudsman and PSC are unable to come to any conclusion about the allegation. This finding may be used in respect of allegations when the only available evidence is the complainant's version against that of the members or all witnesses provide a differing/inconsistent version;
- (b) **no evidence to support the allegation** - Based on the material, there is no evidence to support the allegation. This finding may apply to an allegation of minor assault (e.g. push/slap) and there is no medical evidence to support the allegation, there are no witnesses to the incident, there is no video evidence or other members present, to positively support the fact that it did or did not occur;
- (c) **insufficient evidence to sustain the allegation** - Based on the material there is some evidence to support the complainant, but it is insufficient to sustain the allegation. This may apply where there is some evidence to support the allegation but the quality of the evidence is unreliable, or taking into account other evidence (e.g. the medical evidence or the evidence of the police), the evidence as a whole is insufficient to sustain the allegation;
- (d) **action / conduct was not found to be unreasonable given the circumstances** - This finding may be used in cases where a member may have done something unusual or prima facie questionable, but the surrounding circumstances are such that it is inappropriate to make an adverse finding against the member;
- (e) **the police action / decision was reasonable** - This is a positive finding to the effect that the Ombudsman / PSC supports the action / decision by the police;
- (f) **the allegation is sustained** - Where there is sufficient evidence to sustain the allegation on the balance of probability; and
- (g) **the allegation is found to be wilfully false** - Where an investigation into a complaint against Police reveals that the allegation was wilfully false, that finding will be brought to the attention of the Ombudsman to consider a prosecution under the Act. Any criminal charges arising from a wilfully false allegation will be referred to the Commander, PSC for action.

In order to facilitate a prompt finalisation of the complaint, a complaint finding is to include the recommended action(s) to be taken against the subject officer, if any.

14. Reviews by Ombudsman

The Ombudsman may review files relating to investigations into complaints against Police howsoever made or reported. Where a request for a review is made by the Ombudsman, PSC will provide all records and materials relating to the particular matter and ensure that the Ombudsman has access to Police investigators with knowledge of the investigation. Requests for access to investigation files for review purposes should be in writing so as to provide an audit trail for all relevant documents.

Where, as a result of a review, the Ombudsman requires further action on a complaint, that request will be made to the Commander, PSC in the first instance.

15. Confidentiality & Immunity

Sections 114, 120, 122, 159 and 160 of the Act impose strict confidentiality and secrecy requirements and provide legal protections on persons involved in the Ombudsman complaint process.

The use of information obtained in the course of, or for the purposes of making preliminary inquiries, conducting conciliation, undertaking a CRP or conducting an investigation, is restricted. Persons administering the Act cannot be compelled to give evidence or produce documents relating to the Ombudsman's statutory duties. This protection extends to inquiries or investigations being conducted by PSC pursuant to this Agreement.

16. Suspected Criminal Conduct

Where a CAP discloses grounds to suspect that a Police Officer may have committed a criminal offence, the matter will immediately be referred to the Ombudsman to determine what further action is required in relation to the complaint. If the matter proceeds to criminal investigation by the Police the Commissioner will ensure the Ombudsman is provided with regular briefings (at least every six (6) weeks) on the progress of the investigation. Any criminal investigation arising from a police complaint should be investigated concurrently with the police complaint unless the Ombudsman directs otherwise.

17. Procedural Fairness

Any person with responsibility for investigating a CAP is to ensure that all parties are afforded procedural fairness and courtesy during the process. The complainant will be given a fair opportunity to express their complaint and reasons for complaint and receive an explanation for the police action complained about.

Police officers subject of a complaint under investigation will be advised of the particulars of complaint as soon as reasonably practicable without jeopardy to the investigation process and be given a fair opportunity to answer the complaint and provide their explanation. All information provided by the parties should be taken into account and given careful and impartial consideration when determining the outcome of a complaint.

Before assessing the PSC report, the Ombudsman may seek comment from a complainant or the complainant's legal advisor. To enable meaningful comment the relevant parts of section 95 reports may be provided. If PSC provides to the Ombudsman grounds for not disclosing the report or content in the report to the complainant or another person, the Ombudsman will consider those grounds before deciding whether to disclose all, or part, of the report.

Additionally to ensure that complainants from non-English speaking backgrounds are treated fairly, the 'tenor and spirit' of the 'Anunga' Guidelines, as described by Police Practice and Procedure: *Anunga Guidelines*, are to be applied by investigating officers during any interview process. This is particularly relevant when considering the use of interpreters generally, and any request by an Indigenous complainant to have a legal representative present at interview.

18. Other

18.1 Non-Disclosure of Information

The Commissioner may request the Ombudsman not to disclose certain information to a party to a police complaint. The Ombudsman will consider the request and if the Ombudsman does not agree to the request, is to advise the Commissioner of the decision and the reasons for refusal.

The parties acknowledge that a report prepared by PSC under section 95 of the Act (section 95 Report) may fall within a class of document for which a claim against disclosure on the basis of public interest immunity may be made. The parties agree to notify each other if any application for disclosure of a section 95 Report or part of the section 95 Report is made, including:

- (a) by a complainant or to any third party in a court or tribunal; or
- (b) by a complainant or third party to the other party;

in order to provide each other an opportunity to make submissions in relation to application for disclosure of the section 95 Report.

18.2 Restricted Use of Information

Anything said or admitted during the conciliation process or the CRP process and any documents prepared for conciliation cannot be used for any other purpose unless:

- (a) the person responsible or to whom the document relates consents; or
- (b) for the prosecution of a person who has committed an offence against the Act.

18.3 Register of Police Complaints

The Ombudsman will keep a register of all police complaints and for each complaint it will contain at least the following information:

- (a) the particulars of the decision on how the complaint was dealt with or declined;
- (b) the particulars of the decision made by the Ombudsman when a CRP or PSC investigation was referred back to the Commissioner for further investigation or to deal with in another way; and
- (c) the particulars of the conduct of the CRP or investigation.

The information contained in the Ombudsman's complaints management system will be used for this purpose.

Any party to a complaint can request an extract of the particulars mentioned above and the Ombudsman will agree to the request if satisfied it is appropriate to do so. The applicant is to be informed by the Ombudsman of the reasons for any refusal.

19. Scope of This Agreement

Nothing in this Agreement is intended to limit the powers of the Commissioner or the Ombudsman under the Act or the *Police Administration Act*.

20. Review of This Agreement

This Agreement is to be reviewed within two years of being signed but will remain in force until either party gives written notice of termination.

October 2014

APPENDIX B – FINANCIAL STATEMENTS

Ombudsman's Office

Financial statement overview

For the year ended 30 June 2022

The Ombudsman's Office has several discrete work units, each with different roles and responsibilities. These are discussed briefly below.

- The Ombudsman's role is to give people a timely, effective, efficient, independent, fair and free way of investigating, and dealing with complaints, about administrative actions of public authorities and the conduct of police officers, and to improve the quality of decision-making and administrative practices in public authorities.
- The Information Commissioner provides advice and promotes knowledge about Freedom of Information (FOI) and Privacy rights and resolves and investigates complaints about FOI and privacy matters, and related applications.
- The Judicial Commission Office receives complaints relating to the behaviour or capacity of judicial officers and NTCAT members, and provides support to the independent Judicial Commission.
- From March 2022 funding was approved for the Office to facilitate implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as the interim Northern Territory National Preventive Mechanism.

The net result for the Office during 2021-22 was a surplus of \$188,000. This was largely attributable to funding approval for OPCAT occurring later in the year, as well as mid-year commencement, and consequently delayed recruitment, for the Judicial Commission. Similarly to the prior period, savings were also made because of a reduction in travel, training and similar activities due to the ongoing effect of COVID-19.

Operating expenses for the period totalled \$3,169,000 comprising \$2,591,000 for employee expenses, and \$578,000 for administrative expenses (which included \$249,000 for the purchase of goods and services, \$311,000 for services received free of charge and \$18,000 for property management).

Certification of the financial statements

We certify that the attached financial statements for the Ombudsman's Office have been prepared based on proper accounts and records in accordance with the prescribed format, the *Financial Management Act 1995* and Treasurer's Directions.

We further state that the information set out in the Comprehensive operating statement, Balance sheet, Statement of changes in equity, Cash flow statement, and notes to and forming part of the financial statements, presents fairly the financial performance and cash flows for the year ended 30 June 2022 and the financial position on that date.

At the time of signing, we are not aware of any circumstances that would render the particulars included in the financial statements misleading or inaccurate.



PETER SHOYER
Ombudsman
30th August 2022



SARAH SCHULTZ
Business Manager
30th August 2022

Ombudsman's Office
Comprehensive operating statement
For the year ended 30 June 2022

	Note	2022	2021
		\$000	\$000
INCOME			
Appropriation	4a		
Output		3 045	2 866
Goods and services received free of charge ¹	5	311	302
Other income ²	4b	1	2
TOTAL INCOME	3	3 357	3 170
EXPENSES			
Employee expenses		2 591	2 427
Administrative expenses			
Property management		18	15
Purchases of goods and services	6	249	207
Other administrative expenses ¹		311	302
TOTAL EXPENSES	3	3 169	2 951
NET SURPLUS/(DEFICIT)		188	219
COMPREHENSIVE RESULT		188	219

¹ Includes DCDD service charges and DIPL repairs and maintenance service charges.

² Includes input tax credits for employee novated lease payments.

The Comprehensive operating statement is to be read in conjunction with the notes to the financial statements.

Balance sheet
As at 30 June 2022

	Note	2022	2021
		\$000	\$000
ASSETS			
Current assets			
Cash and deposits	8	2 132	1 943
Receivables	10	7	12
Total current assets		2 139	1 955
TOTAL ASSETS		2 139	1 955
LIABILITIES			
Current liabilities			
Payables	14	61	53
Provisions	15	465	476
Total current liabilities		526	529
TOTAL LIABILITIES		526	529
NET ASSETS		1 613	1 426
EQUITY			
Capital		295	295
Accumulated funds		1 318	1 131
TOTAL EQUITY		1 613	1 426

The Balance sheet is to be read in conjunction with the notes to the financial statements.

Ombudsman's Office
Statement of changes in equity
For the year ended 30 June 2022

	Note	Equity at 1 July	Comprehensive result	Transactions with owners in their capacity as owners	Equity at 30 June
		\$000	\$000	\$000	\$000
2021-22					
Accumulated funds		1 131	188		1 318
Capital – transactions with owners					
Equity injections		398			398
Capital appropriation		573			573
Equity transfers in		(346)			(346)
Other equity injections		171			171
Equity withdrawals		(104)			(104)
Capital withdrawal ^(d)		(104)			(104)
		295			295
Total equity		1 426	188		1 613
2020-21					
Accumulated funds		912	219		1 131
Capital – transactions with owners					
Equity injections		398			398
Capital appropriation		573			573
Equity transfers in		(346)			(346)
Other equity injections		171			171
Equity withdrawals		(104)			(104)
Capital withdrawal ^(d)		(104)			(104)
		295			295
Total equity		1 206	219		1 426

The Statement of changes in equity is to be read in conjunction with the notes to the financial statements.

Ombudsman's Office
Cash flow statement
For the year ended 30 June 2022

	Note	2022	2021
		\$000	\$000
CASH FLOWS FROM OPERATING ACTIVITIES			
Operating receipts			
Appropriation			
Output		3 045	2 866
Receipts from sales of goods and services		19	14
Total operating receipts		3 064	2 880
Operating payments			
Payments to employees		2 596	2 342
Payments for goods and services		279	236
Total operating payments		2 875	2 578
Net cash from/(used in) operating activities	9	190	302
Net increase/(decrease) in cash held		190	302
Cash at beginning of financial year		1 943	1 641
CASH AT END OF FINANCIAL YEAR	8	2 132	1 943

The Cash flow statement is to be read in conjunction with the notes to the financial statements.

Ombudsman's Office

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Ombudsman's Office

1. Objectives and funding

The Ombudsman Office's primary objective is to foster excellence in public sector services through a range of statutory oversight and complaint mechanisms. The Agency:

- receives, investigates and resolves complaints and enquiries under applicable legislation;
- conducts inspections, audits and reviews; and
- promotes, within the public sector and to the public, knowledge and understanding of Territorians' rights.

The functions of the Agency include:

- the Ombudsman role, which receives, investigates and resolves complaints about administrative actions and police conduct under the *Ombudsman Act 2009*, and carries out a range of audit and review functions under other legislation;
- the Information Commissioner role, which has responsibility under the *Information Act 2002*, for promoting knowledge about Freedom of Information (FOI) and Privacy rights, and investigating and resolving complaints about FOI and Privacy matters, as well as conducting reviews as required under other legislation;
- the Judicial Commission Office role, which receives complaints relating to the behavior or capacity of judicial officers and NTCAT members, and provides support to the independent Judicial Commission; and
- the OPCAT role, which facilitates implementation of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, as the interim NT National Preventive Mechanism.

The Agency is predominantly funded and therefore dependent, on the receipt of parliamentary appropriations. The financial statements encompass all funds through which the Agency controls resources to carry on its functions and deliver outputs. For reporting purposes, outputs delivered by the Agency are summarised into several output groups. Note 3 provides summarised financial information in the form of a Comprehensive operating statement by output group.

Additional information in relation to principal activities of the Ombudsman's Office, the Information Commissioner or the Judicial Commission may be found in their respective Annual Reports.

Ombudsman's Office

2. Statement of significant accounting policies

a) Statement of compliance

The financial statements have been prepared in accordance with the requirements of the *Financial Management Act 1995* and related Treasurer's Directions. The *Financial Management Act 1995* requires the Ombudsman's Office to prepare financial statements for the year ended 30 June based on the form determined by the Treasurer. The form of agency financial statements should include:

- 1) a certification of the financial statements
- 2) a Comprehensive operating statement
- 3) a Balance sheet
- 4) a Statement of changes in equity
- 5) a Cash flow statement and
- 6) applicable explanatory notes to the financial statements.

b) Basis of accounting

The financial statements have been prepared using the accrual basis of accounting, which recognises the effect of financial transactions and events when they occur, rather than when cash is paid out or received. As part of the preparation of the financial statements, all intra-agency transactions and balances have been eliminated.

Except where stated, the financial statements have also been prepared in accordance with the historical cost convention.

The form of agency financial statements is also consistent with the requirements of Australian accounting standards. The effects of all relevant new and revised standards and interpretations issued by the Australian Accounting Standards Board (AASB) that are effective for the current annual reporting period have been evaluated.

Standards and interpretations effective from 2021-22

Several amending standards and AASB interpretations have been issued that apply to the current reporting periods, but are considered to have no or minimal impact on public sector reporting.

Standards and interpretations issued but not yet effective

No Australian accounting standards have been early adopted for 2021-22.

Several amending standards and AASB interpretations have been issued that apply to future reporting periods but are considered to have limited impact on public sector reporting.

c) Reporting entity

The financial statements cover the Agency as an individual reporting entity.

The *Ombudsman's Office* ("the Agency") is a Northern Territory Agency established under the *Interpretation Act 1978* and *Administrative Arrangements Order*.

The principal place of business of the Agency is: NT House, 22 Mitchell Street, Darwin.

Ombudsman's Office

d) Agency and Territory items

The financial statements of Ombudsman's Office include income, expenses, assets, liabilities and equity over which the Ombudsman's Office has control (agency items). Certain items, while managed by the Agency, are controlled and recorded by the Territory rather than the Agency (Territory items). Territory items are recognised and recorded in the Central Holding Authority as discussed below.

Central Holding Authority

The Central Holding Authority is the 'parent body' that represents the government's ownership interest in government-controlled entities.

The Central Holding Authority also records all Territory items, such as income, expenses, assets and liabilities controlled by the government and managed by agencies on behalf of the government. The main Territory item is Territory income, which includes taxation and royalty revenue, Commonwealth general purpose funding (such as GST revenue), fines, and statutory fees and charges.

The Central Holding Authority also holds certain Territory assets not assigned to agencies as well as certain Territory liabilities that are not practical or effective to assign to individual agencies such as unfunded superannuation and long service leave.

The Central Holding Authority recognises and records all Territory items, and as such, these items are not included in the Agency's financial statements.

e) Comparatives

Where necessary, comparative information for the 2020-21 financial year has been reclassified to provide consistency with current year disclosures.

f) Presentation and rounding of amounts

Amounts in the financial statements and notes to the financial statements are presented in Australian dollars and have been rounded to the nearest thousand dollars, with amounts of \$500 or less being rounded down to zero. Figures in the financial statements and notes may not equate due to rounding.

g) Changes in accounting policies

There have been no changes to accounting policies adopted in 2021-22 as a result of management decisions. Changes in policies relating to COVID-19 are disclosed at k) below.

h) Accounting judgments and estimates

The preparation of the financial report requires the making of judgments and estimates that affect the recognised amounts of assets, liabilities, revenues and expenses and the disclosure of contingent liabilities. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

Ombudsman's Office

Judgments and estimates that have significant effects on the financial statements are disclosed in the relevant notes to the financial statements.

i) Goods and services tax

Income, expenses and assets are recognised net of the amount of goods and services tax (GST), except where the amount of GST incurred on a purchase of goods and services is not recoverable from the Australian Tax Office (ATO). In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated with the amount of GST included. The net amount of GST recoverable from, or payable to, the ATO is included as part of receivables or payables in the Balance sheet.

Cash flows are included in the Cash flow statement on a gross basis. The GST components of cash flows arising from investing and financing activities, which are recoverable from, or payable to, the ATO are classified as operating cash flows.

Commitments and contingencies are disclosed net of the amount of GST recoverable or payable unless otherwise specified. Gross GST recoverable on commitments is disclosed separately in the commitments note.

j) Contributions by and distributions to government

The Agency may receive contributions from government where the government is acting as owner of the agency. Conversely, the Agency may make distributions to government. In accordance with the *Financial Management Act 1995* and Treasurer's Directions, certain types of contributions and distributions, including those relating to administrative restructures, have been designated as contributions by, and distributions to, government. These designated contributions and distributions are treated by the Agency as adjustments to equity.

The Statement of changes in equity provides additional information in relation to contributions by, and distributions to, government.

k) Impact of COVID-19

Management made a number of decisions as a result of COVID-19 which has impacted the 2021-22 financial statements. This includes the limitation of outreach activities and other travel, as well as face to face training and meetings.

The Office also implemented modified working conditions arranging for staff to work from home on occasion in response to the pandemic and procured additional hygiene supplies and equipment to ensure the safety of those working in the office.

Ombudsman's Office

3. Comprehensive operating statement by output group

	Note	Ombudsman's Office		Information Commissioner		Judicial Commission		OPCAT		Corporate and shared services ²		Total	
		2022	2021	2022	2021	2022	2021	2022	2021	2022	2021	2022	2021
		\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000
INCOME													
Appropriation													
Output	4a	3 045	2 866									3 045	2 866
Goods and services received free of charge	5									311	302	311	302
Other income ¹	4b		2							1	1	1	2
TOTAL INCOME		3 045	2 868							312	302	3 357	3 170
EXPENSES													
Employee expenses		1 528	1 569	516	400	183	14	30		334	444	2 591	2 427
Administrative expenses													
Property management		8	7	3	4	2				5	4	18	15
Purchases of goods and services	6	77	124	51	30	64	12	1		55	41	249	207
Other administrative expenses ³										311	302	311	302
TOTAL EXPENSES		1 613	1 700	570	434	249	26	31		705	791	3 169	2 951
NET SURPLUS/(DEFICIT)		1 432	1 168	(570)	(434)	(249)	(26)	(31)		(393)	(489)	188	219
COMPREHENSIVE RESULT		1 432	1 168	(570)	(434)	(249)	(26)	(31)		(393)	(489)	188	219

¹ Includes input tax credits for the employee novated lease payments.

² Include exceptional expenses incurred relating to COVID-19.

³ Includes DCDD service charges and DIPL repairs and maintenance service charges.

This Comprehensive operating statement by output group is to be read in conjunction with the notes to the Financial statements.

Ombudsman's Office

Income

Income encompasses both revenue and gains.

Income is recognised at the fair value of the consideration received, exclusive of the amount of GST. Exchanges of goods or services of the same nature and value without any cash consideration being exchanged are not recognised as income.

4. Revenue

a) Appropriation

	2022			2021		
	\$000	\$000	\$000	\$000	\$000	\$000
	Revenue from contracts with customers	Other	Total	Revenue from contracts with customers	Other	Total
Output		3 045	3 045		2 886	2 886
Total appropriation		3 045	3 045		2 886	2 886

Output appropriation is the operating payment to each agency for the outputs they provide as specified in the *Appropriation Act*. It does not include any allowance for major non-cash costs such as depreciation. Output appropriations do not have sufficiently specific performance obligations and are recognised on receipt of funds.

b) Other income

	2022			2021		
	\$000	\$000	\$000	\$000	\$000	\$000
	Revenue from contracts with customers	Other	Total	Revenue from contracts with customers	Other	Total
Other income ¹		1			2	2
Total other income		1			2	2

¹ Includes input tax credits for the employee novated lease payments.

Ombudsman's Office

5. Goods and services received free of charge

	2022	2021
	\$000	\$000
Corporate and information services	309	301
Repairs and maintenance	2	1
	<u>311</u>	<u>302</u>

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

Repairs and maintenance expenses and associated employee costs are centralised and provided by the Department of Infrastructure, Planning and Logistics and form part of goods and services free of charge of the Agency.

In addition, corporate services staff and functions are centralised and provided by the Department of Corporate and Digital Development and form part of goods and services free of charge of the Agency.

6. Purchases of goods and services

2022	2021
\$000	\$000

The net surplus has been arrived at after charging the following expenses:

Goods and services expenses:

Accommodation		
Advertising ¹	1	
Consultants ²	25	18
Document production	1	1
Information technology charges and communications	156	126
Insurance premiums	11	8
Legal expenses ³	19	
Marketing and promotion ⁴		2
Memberships and subscriptions	5	5
Motor vehicle expenses	2	4
Official duty fares	4	3
Regulatory and advisory boards and committees expenses	3	4
Training and study	3	9
Travelling allowance		1
Other	19	26
	<u>249</u>	<u>207</u>

¹ Does not include recruitment related advertising or advertising for marketing and promotion.

² Includes marketing, promotion and IT consultants.

³ Includes legal fees, claim and settlement costs.

⁴ Includes advertising for marketing and promotion but excludes marketing and promotion consultants' expenses, which are incorporated in the consultants' category.

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Purchases of goods and services generally represent the day-to-day running costs incurred in normal operations, including supplies and service costs recognised in the reporting period in which they are incurred.

7. Write-offs, postponements, waiver, gifts and ex gratia payments

The Ombudsman's Office had no write-offs, postponements, waivers, gifts or ex gratia payments in 2021-22 or 2020-21.

8. Cash and deposits

	2022	2021
	\$000	\$000
Cash at bank	2 132	1 942
	2 132	1 943

For the purposes of the Balance sheet and the Cash flow statement, cash includes cash on hand, cash at bank and cash equivalents. Cash equivalents are highly liquid short-term investments that are readily convertible to cash.

9. Cash flow reconciliation

The total of Agency 'Cash and deposits' of \$ 2 132 recorded in the Balance sheet is consistent with that recorded as 'Cash' in the cash flow statement.

10. Receivables

	2022	2021
	\$000	\$000
Current		
GST receivables	2	4
Prepayments	5	8
Total receivables	7	12

Receivables are initially recognised when the Agency becomes a party to the contractual provisions of the instrument and are measured at fair value less any directly attributable transaction costs. Receivables include contract receivables, accounts receivable, accrued contract revenue and other receivables.

Receivables are subsequently measured at amortised cost using the effective interest method, less any impairments.

Accounts receivable and contract receivables are generally settled within 30 days and other receivables within 30 days.

Ombudsman's Office

Credit risk exposure of receivables

Receivables are monitored on an ongoing basis to ensure exposure to bad debts is not significant. The Agency has limited credit risk exposure (risk of default). In respect of any dealings with organisations external to Government, the Agency has adopted a policy of only dealing with credit worthy organisations and obtaining sufficient collateral or other security where appropriate, as a means of mitigating the risk of financial loss from defaults.

Prepayments

Prepayments represent payments in advance of receipt of goods and services or that part of expenditure made in one accounting period covering a term extending beyond that period.

11. Property, plant and equipment

	2022	2021
	\$000	\$000
Plant and equipment		
At fair value	66	66
Less: accumulated depreciation	(66)	(66)
	-	-
Total Property, Plant and Equipment	-	-

There was no movement in the carrying amount of property, plant and equipment during 2021-22 or 2020-21 as all property, plant and equipment was fully depreciated at the end of 2017-18 and there were no new acquisitions.

Acquisitions

Property, plant and equipment are initially recognised at cost and subsequently revalued at fair value less accumulated depreciation and impairment. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other accounting standards.

All items of property, plant and equipment with a cost or other value, equal to or greater than \$10 000 are recognised in the year of acquisition and depreciated as outlined below. Items of property, plant and equipment below the \$10 000 threshold are expensed in the year of acquisition.

The construction cost of property, plant and equipment includes the cost of materials and direct labour, and an appropriate proportion of fixed and variable overheads.

Ombudsman's Office

Complex assets

Major items of plant and equipment comprising a number of components that have different useful lives, are accounted for as separate assets. The components may be replaced during the useful life of the complex asset.

Subsequent additional costs

Costs incurred on property, plant and equipment subsequent to initial acquisition are capitalised when it is probable that future economic benefits in excess of the originally assessed performance of the asset will flow to the Agency in future years. Where these costs represent separate components of a complex asset, they are accounted for as separate assets and separately depreciated over their expected useful lives.

Construction (work in progress)

As part of the financial management framework, the Department of Infrastructure, Planning and Logistics is responsible for managing general government capital works projects on a whole of government basis. Therefore appropriation for capital works is provided directly to the Department of Infrastructure, Planning and Logistics and the cost of construction work in progress is recognised as an asset of that department. Once completed, capital works assets are transferred to the Agency.

Impairment of assets

An asset is said to be impaired when the asset's carrying amount exceeds its recoverable amount.

Non-current physical agency assets are assessed for indicators of impairment on an annual basis or whenever there is indication of impairment. If an indicator of impairment exists, the Agency determines the asset's recoverable amount. The asset's recoverable amount is determined as the higher of the asset's current replacement cost and fair value less costs to sell. Any amount by which the asset's carrying amount exceeds the recoverable amount is recorded as an impairment loss.

No impairment adjustments were required within the reporting period.

Depreciation and amortisation expense

Items of property, plant and equipment, including buildings but excluding land, have limited useful lives and are depreciated using the straight-line method over their estimated useful lives.

The estimated useful lives for each class of asset are in accordance with the Treasurer's Directions and are determined as follows:

	2022	2021
Plant and equipment	10 years	10 years

Assets are depreciated from the date of acquisition or from the time an asset is completed and held ready for use.

Ombudsman's Office

12. Agency as a lessee

Recognition and measurement

Inter-governmental leases

The Ombudsman's Office only holds leases with other government entities, these largely relate to the lease of motor vehicles from NT Fleet. The Agency applies the inter-governmental leases recognition exemption as per the Treasurer's Direction - *Leases* and recognises these as an expense on a straight-line basis over the lease term.

Leases of commercial properties for office accommodation are centralised with the Department of Corporate and Digital Development (DCDD). Consequently all lease liabilities and right-of-use assets relating to these arrangements are recognised by DCDD and not disclosed within these financial statements.

The following amounts were recognised in the Statement of comprehensive income for the year where the Agency is the lessee:

	2022	2021
	\$000	\$000
Intergovernmental leases	17	16
Total amount recognised in the Comprehensive operating statement	17	16

Future minimum lease payments under non-cancellable leases not recorded as liability are as follows:

	2022 ^(a)		2021 ^(a)	
	Internal ^(b)	External ^(b)	Internal ^(b)	External ^(b)
	\$000	\$000	\$000	\$000
Within one year	17	-	17	-
Later than one year and not later than five years	20	-	37	-
	37	-	54	-

^(a) Lease commitments not recorded as liability, which meet the lease exemptions detailed in Treasurer's Direction – Leases paragraph 6 including short term leases, low value lease assets, leases of other intangible assets and intergovernmental leases (paid as real charge).

^(b) Internal commitments reflect commitments with entities controlled by the NTG only where these are real charges and not notional charges (entities listed in TAFR 19-20 Note 45: details of controlled entities at reporting date), whereas external commitments reflect those to third parties external to the NTG.

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13. Intangibles

	2022	2021
	\$000	\$000
Carrying amount		
Intangibles with a finite useful life		
Computer Software		
At cost	400	400
Less: accumulated amortisation	(400)	(400)
Written down value – 30 June	-	-
Total intangibles	-	-

Intangible assets are recognised and carried at cost less accumulated amortisation and any accumulated impairment losses.

Intangibles with limited useful lives are amortised using the straight-line method over their estimated useful lives, which reflects the pattern of when expected economic benefits are likely to be realised.

The estimated useful lives for finite intangible assets are determined in accordance with the Treasurer's Directions and are determined as follows:

	2022	2021
Computer software	6 years	6 years

14. Payables

	2022	2021
	\$000	\$000
Accounts payable	16	14
Accrued expenses	45	39
Total payables	61	53

Liabilities for accounts payable and other amounts payable are carried at cost, which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the Agency. Accounts payable are normally settled within 20 days from receipt of valid invoices under \$1 million or 30 days for invoices over \$1 million.

15. Provisions

	2022	2021
	\$000	\$000
Current		
<i>Employee benefits</i>		
Recreation leave	371	382
Leave loading	29	29
Other employee benefits		2
<i>Other current provisions¹</i>	65	63
Total provisions	465	476

¹ Includes provisions for Fringe Benefits Tax, Payroll tax and Superannuation.

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Employee benefits

Provision is made for employee benefits accumulated as a result of employees rendering services up to the reporting date. These benefits include wages and salaries and recreation leave. Liabilities arising in respect of wages and salaries, recreation leave and other employee benefit liabilities that fall due within twelve months of reporting date are classified as current liabilities and are measured at amounts expected to be paid. Non-current employee benefit liabilities that fall due after twelve months of the reporting date are measured at present value, calculated using the government long-term bond rate.

No provision is made for sick leave, which is non-vesting, as the anticipated pattern of future sick leave to be taken is less than the entitlement accruing in each reporting period.

Employee benefit expenses are recognised on a net basis in respect of the following categories:

- wages and salaries, non-monetary benefits, recreation leave and other leave entitlements
- other types of employee benefits.

As part of the financial management framework, the Central Holding Authority assumes the long service leave liabilities of government agencies, including the Ombudsman's Office and therefore no long service leave liability is recognised in agency financial statements.

16. Other liabilities

Superannuation

Employees' superannuation entitlements are provided through the:

- Northern Territory Government and Public Authorities Superannuation Scheme (NTGPASS)
- Commonwealth Superannuation Scheme (CSS), or
- non-government employee-nominated schemes for those employees commencing on or after 10 August 1999.

The Agency makes superannuation contributions on behalf of its employees to the Central Holding Authority or non-government employee-nominated schemes. Superannuation liabilities related to government superannuation schemes are held by the Central Holding Authority and therefore not recognised in Agency financial statements.

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17. Commitments

Commitments contracted represent future obligations or cash outflows that are not recognised as liabilities on the Balance sheet and can be reliably measured. Disclosures in relation to capital and other commitments are detailed below.

Other expenditure commitments	2022		2021	
	Internal ^(a)	External ^(a)	Internal ^(a)	External ^(a)
Other non-cancellable expenditure commitments not recognised as liabilities are payable as follows:				
Within one year	-	-	-	22
Total commitments	-	-	-	-

^(a) Internal commitments reflect commitments with entities controlled by the NTG (entities listed in TAFR 19-20 Note 45: details of controlled entities at reporting date), whereas external commitments reflect those to third parties external to the NTG.

18. Fair value measurement

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

Fair value measurement of a non-financial asset takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use. The highest and best use takes into account the use of the asset that is physically possible, legally permissible and financially feasible.

When measuring fair value, the valuation techniques used maximise the use of relevant observable inputs and minimise the use of unobservable inputs.

Unobservable inputs are used to the extent that sufficient relevant and reliable observable inputs are not available for similar assets/liabilities.

Observable inputs are publicly available data relevant to the characteristics of the assets/liabilities being valued. Observable inputs used by the Agency include, but are not limited to, published sales data for land and general office buildings.

Unobservable inputs are data, assumptions and judgments not available publicly but relevant to the characteristics of the assets/liabilities being valued. Such inputs include internal agency adjustments to observable data to take account of particular and potentially unique characteristics/functionality of assets/liabilities and assessments of physical condition and remaining useful life.

The Agency does not recognise any financial assets or liabilities at fair value as these are recognised at amortised cost. The carrying amounts of these financial assets and liabilities approximates their fair value.

The Agency did not hold any non-financial assets or liabilities during the reporting period that would require measurement at fair value.

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19. Financial instruments

A financial instrument is a contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.

Financial assets and liabilities are recognised on the Balance sheet when the Agency becomes a party to the contractual provisions of the financial instrument. The Agency's financial instruments include cash and deposits; receivables; advances paid; investment in shares; payables; advances received; borrowings and derivatives.

Due to the nature of operating activities, certain financial assets and financial liabilities arise under statutory obligations rather than a contract. Such financial assets and liabilities do not meet the definition of financial instruments as per AASB 132 Financial Instruments: Presentation. These include statutory receivables arising from taxes including GST and penalties.

The Ombudsman's Office has limited exposure to financial risks as discussed below.

Exposure to interest rate risk, foreign exchange risk, credit risk, price risk and liquidity risk arise in the normal course of activities. The Territory Government's investments, loans and placements, and borrowings are predominantly managed through the NTTC adopting strategies to minimise the risk. Derivative financial arrangements are also utilised to manage financial risks inherent in the management of these financial instruments. These arrangements include swaps, forward interest rate agreements and other hedging instruments to manage fluctuations in interest or exchange rates.

a) Categories of financial instruments

The carrying amounts of the Agency's financial assets and liabilities by category are disclosed in the table below.

	Fair value through profit or loss			Fair value through other comprehensive income	
	Mandatorily at fair value	Designated at fair value	Amortised cost		Total
	\$000	\$000	\$000	\$000	\$000
2021-22					
Cash and deposits			2 132		2 132
Receivables ¹					
Total financial assets			2 132		2 132
Payables ¹			16		16
Total financial liabilities			16		16
2020-21					
Cash and deposits			1 943		1 943
Receivables ¹					
Total financial assets			1 943		1 943
Payables ¹			14		14
Total financial liabilities			14		14

¹Total amounts disclosed here exclude statutory amounts, prepaid expenses & accrued contract revenue.

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Categories of financial instruments

The Agency's financial instruments are classified in accordance with AASB 9.

Financial assets are classified under the following categories:

- amortised cost
- fair value through other comprehensive income (FVOCI)
- fair value through profit and loss (FVTPL).

Financial liabilities are classified under the following categories:

- amortised cost
- fair value through profit and loss (FVTPL).

These classification are based on the Agency's business model for managing the financial assets and the contractual terms of the cash flows.

Where assets are measured at fair value, gains and losses will either be recorded in profit or loss, or other comprehensive income.

Financial instruments are reclassified when and only when the Agency's business model for managing those assets changes.

Financial assets with embedded derivatives are considered in their entirety when determining whether their cash flows are solely payment of principal and interest.

Financial assets at amortised cost

Financial assets are classified at amortised cost when they are held by the Agency to collect the contractual cash flows and the contractual cash flows are solely payments of principal and interest.

These assets are initially recognised at fair value and subsequently measured at amortised cost using the effective interest method, less impairment. The Agency did not hold any financial assets in this category during the current or prior reporting periods.

Financial assets at fair value through other comprehensive income

Financial assets are classified at fair value through other comprehensive income when they are held by the Agency to both collect contractual cash flows and sell the financial assets, and the contractual cash flows are solely payments of principal and interest.

These assets are initially and subsequently recognised at fair value. Changes in the fair value are recognised in other comprehensive income, except for the recognition of impairment gains or losses and interest income which are recognised in the operating result in the Comprehensive operating statement. When financial assets are derecognised, the cumulative gain or loss previously recognised in other comprehensive income is reclassified from equity to the Comprehensive operating statement.

For equity instruments elected to be categorised at FVOCI, changes in fair value recognised in other comprehensive income are not reclassified to profit or loss on derecognition of the asset. Dividends from such instruments continue to be recognised in the Comprehensive operating statement as other income when the Agency's right to receive payments is established.

The Agency does not have any financial assets under this category.

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Financial assets at fair value through profit or loss

Financial assets are classified at FVTPL where they do not meet the criteria for amortised cost or FVOCI. These assets are initially and subsequently recognised at fair value with gains or losses recognised in the net result for the year.

The Agency's financial assets categorised at FVTPL include investments in managed unit trusts and certain debt instruments. Unrealised gains in relation to these investments are recognised in other economic flows in the Comprehensive operating statement, however realised gains are recognised in the net result.

The Agency does not have any financial liabilities under this category.

Financial liabilities at amortised cost

Financial liabilities at amortised cost are initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest rate method. The Agency's financial liabilities categorised at amortised cost include all accounts payable, deposits held, advances received, lease liabilities and borrowings.

Financial liabilities at fair value through profit or loss

Financial liabilities are classified at FVTPL when the liabilities are either held for trading or designated as FVTPL. Financial liabilities classified at FVTPL are initially and subsequently measured at fair value with gains or losses recognised in the net result for the year.

For financial liabilities designated at FVTPL, changes in the fair value of the liability attributable to changes in the Agency's credit risk are recognised in other comprehensive income, while remaining changes in the fair value are recognised in the net result.

The Agency does not have any financial liabilities under this category.

Derivatives

The Agency may enter into a variety of derivative financial instruments to manage its exposure to interest rate risk. The Agency does not speculate on trading of derivatives.

Netting of swap transactions

The Agency, from time to time, may facilitate certain structured finance arrangements, where a legally recognised right to set-off financial assets and liabilities exists, and the Territory intends to settle on a net basis. Where these arrangements occur, the revenues and expenses are offset and the net amount is recognised in the Comprehensive operating statement.

b) Credit risk

Credit risk is the risk that one party to a financial instrument will cause financial loss for the other party by failing to discharge an obligation

The Agency has limited credit risk exposure (risk of default). In respect of any dealings with organisations external to government, the Agency has adopted a policy of only dealing with credit-worthy organisations and obtaining sufficient

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collateral or other security where appropriate, as a means of mitigating the risk of financial loss from defaults.

The carrying amount of financial assets recorded in the financial statements, net of any allowances for losses, represents the Agency's maximum exposure to credit risk without taking account of the value of any collateral or other security obtained.

c) Liquidity risk

Liquidity risk is the risk the Agency will not be able to meet its financial obligations as they fall due. The Agency's approach to managing liquidity is to ensure it will always have sufficient funds to meet its liabilities when they fall due. This is achieved by ensuring minimum levels of cash are held in the Agency bank account to meet various current employee and supplier liabilities. The Agency's exposure to liquidity risk is minimal. Cash injections are available from the Central Holding Authority in the event of one-off extraordinary expenditure items arise that deplete cash to levels that compromise the Agency's ability to meet its financial obligations.

d) Market risk

Market risk is the risk the fair value of future cash flows of a financial instrument will fluctuate because of changes in market prices. It comprises interest rate risk, price risk and currency risk.

(i) Interest rate risk

The Ombudsman's Office is not exposed to interest rate risk as agency financial assets and financial liabilities, are non-interest bearing.

(ii) Price risk

The Ombudsman's Office is not exposed to price risk as it does not hold units in unit trusts.

(iii) Currency risk

The Ombudsman's Office is not exposed to currency risk as it does not hold borrowings denominated in foreign currencies or transactional currency exposures arising from purchases in a foreign currency.

20. Related parties

i) Related parties

The Ombudsman's Office is a government administrative entity and is wholly owned and controlled by the Territory Government. Related parties of the Agency include:

- the portfolio minister and key management personnel (KMP) because they have authority and responsibility for planning, directing and controlling the activities of the Agency directly
- close family members of the portfolio minister or KMP including spouses, children and dependants
- all public sector entities that are controlled and consolidated into the whole of government financial statements

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- any entities controlled or jointly controlled by KMP's or the portfolio minister, or controlled or jointly controlled by their close family members.

ii) Key management personnel (KMP)

Key management personnel of the Ombudsman's Office are those persons having authority and responsibility for planning, directing and controlling the activities of the Agency. These include the Chief Minister and the Chief Executive Officer.

iii) Remuneration of key management personnel

The details below excludes the salaries and other benefits of the Chief Minister as the Chief Minister's remunerations and allowances are payable by the Department of the Legislative Assembly and consequently disclosed within the Treasurer's annual financial statements.

The aggregate compensation of key management personnel of the Agency is set out below:

	2022	2021
	\$000	\$000
Short-term benefits	298	296
Post-employment benefits	27	26
Total	325	322

iv) Related party transactions:

Transactions with Northern Territory Government-controlled entities

The Agency's primary ongoing source of funding is received from the Central Holding Authority in the form of output and capital appropriation. The Agency also has significant transactions with the Department of Corporate and Digital Development for the delivery of goods and services and the Department of Treasury and Finance with regards to Payroll Tax. The Agency's transactions with other government entities are not individually significant.

Other related party transactions are as follows:

Given the breadth and depth of Territory Government activities, related parties will transact with the Territory public sector in a manner consistent with other members of the public including paying stamp duty and other government fees and charges and therefore these transactions have not been disclosed. No related party transactions in excess of \$10,000 or otherwise considered significant occurred during the reporting period.

21. Contingent liabilities and contingent assets

The Ombudsman's Office had no contingent liabilities or contingent assets as at 30 June 2022 or 30 June 2021.

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22. Events subsequent to balance date

No events have arisen between the end of the financial year and the date of this report that require adjustment to, or disclosure in these financial statements.

23. Budgetary information

Comprehensive operating statement	2021-22 Actual	2021-22 Original budget	Variance	Note
	\$000	\$000	\$000	
INCOME				
Appropriation				
Output	3 045	2 840	205	1
Goods and services received free of charge	311	309	2	
Other income	1		1	
TOTAL INCOME	3 357	3 149	208	
EXPENSES				
Employee expenses	2 591	2 483	108	2
Administrative expenses				
Purchases of goods and services	267	357	(90)	3
Other administrative expenses	311	309	2	
TOTAL EXPENSES	3 169	3 149	20	
NET SURPLUS/(DEFICIT)	188	-	188	
COMPREHENSIVE RESULT	188	-	188	

Notes:

The following note descriptions relate to variances greater than 10 per cent or \$20 000, or where multiple significant variances have occurred.

1. Significant appropriation variations include an additional \$160 000 received late in the financial year for the establishment of the new OPCAT function and an additional \$75 000 to cover one-off bonus payments to staff under government Enterprise Bargaining Agreement, offset by a reduction of \$29 000 due to the vaccination status of a staff member on long term leave not being supplied.
2. Increase in employee expenses relating to additional work associated with new and existing functions.
3. Savings partially made due to mid-year commencement of Judicial Commission and additional savings attributable to reduced travel, training and similar activities due to ongoing effect of COVID-19.

Ombudsman's Office

	2021-22 Actual	2021-22 Original budget	Variance	Note
Balance Sheet	\$000	\$000	\$000	
ASSETS				
Current assets				
Cash and deposits	2 132	1 641	491	1
Receivables	2	3	(1)	
Prepayments	5	7	(2)	
Total current assets	2 139	1 651	488	
TOTAL ASSETS	2 139	1 651	488	
LIABILITIES				
Current liabilities				
Payables	61	38	24	2
Provisions	465	406	59	3
Total current liabilities	526	444	82	
TOTAL LIABILITIES	526	444	82	
NET ASSETS	1 613	1 207	406	
EQUITY				
Capital	295	295	-	
Accumulated funds	1 318	912	406	
TOTAL EQUITY	1 613	1 207	406	

Notes:

The following note descriptions relate to variances greater than 10 per cent or \$20 000, or where multiple significant variances have occurred.

1. Greater cash holdings due to operational savings, largely due to additional output appropriation for establishment of new functions.
2. Increased payables due to increased overall budget and functions.
3. Greater provisions due to increased leave entitlements as a result of less leave taken in the reporting period relating to sustained effects of COVID-19, as well as additional provisions for increased FTE.

Ombudsman's Office

	2021-22 Actual	2021-22 Original budget	Variance	Note
Cash flow statement	\$000	\$000	\$000	
CASH FLOWS FROM OPERATING ACTIVITIES				
Operating receipts				
Appropriation				
Output	3 045	2 840	205	1
Receipts from sales of goods and services	19		19	
Total operating receipts	3 064	2 840	224	
Operating payments				
Payments to employees	2 596	2 483	113	1
Payments for goods and services	279	357	(78)	1
Total operating payments	2 875	2 840	35	
Net cash from/(used in) operating activities	190	-	190	
Net increase/(decrease) in cash held	190	-	190	1
Cash at beginning of financial year	1 943	1 641	302	1
CASH AT END OF FINANCIAL YEAR	2 132	1 641	492	

Notes:

The following note descriptions relate to variances greater than 10 per cent or \$20 000, or where multiple significant variances have occurred.

1. Variances as outlined in notes to Comprehensive Operating Statement.

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