



 **mbudsmant**NT



# Annual Report 2022/23

*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 2022/23

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## OVERVIEW

The Ombudsman's Office operates jointly with the Office of the Information Commissioner (**OIC**) and the Judicial Commission Office (**JCO**). The Ombudsman is the Information Commissioner and Principal Officer of the Judicial Commission. In addition, the Ombudsman is the interim NT National Preventive Mechanism for the United Nations *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (**OPCAT**).

There are dedicated staff within the OIC, JCO and OPCAT function however 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 and OPCAT functions 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 growing challenges faced by agencies tasked with implementing strategic and operational objectives within confined budgets;
- the need to implement paradigm change within correctional services and more generally within the justice system and society as a whole;
- ongoing challenges with respect to a large backlog of applications for victim assistance and the importance of considering law reform in that area;
- the benefits of seeking external advice or input in appropriate circumstances;
- two investigative reports finalised during the year on use by NT Police of spit hoods and restraint chairs on youths and NT Police use of body worn video cameras; and
- developments in relation to the implementation of OPCAT.

### *Approaches received and finalised*

This year saw a decline in the number of approaches to the Office to 2,155, chiefly attributable to the huge reduction in the number of COVID-19-related complaints and a substantial fall in police conduct approaches. The reasons for the latter decline are not clear but the reduction did provide the chance for NT Police to make inroads into the substantial backlog of cases that has persisted in recent years. That backlog seriously impacted the effectiveness of *Ombudsman Act* complaints and NT Police disciplinary processes. The situation has improved substantially, with only two pre-2023 police conduct complaints open at the time of writing. However, there is still much work to be done to ensure truly timely finalisation of complaints for the benefit of complainants, police officers, NT Police and the community as a whole.

The decrease in the number of total complaints allowed our Office to reduce the number of approaches on hand, with 2,199 approaches finalised during the year. This left 109 approaches open at 30 June 2023, somewhat higher than historical averages but still manageable. Overall timeliness figures for the period were reasonable, with 90% of all matters completed in the period finalised within 90 days. The timeliness of police conduct finalisations was substantially impacted by the closure of a large number of older matters that formed the bulk of the backlog. This is expected to improve in 2023/24.

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

Police conduct complaints continue to represent a major part of the Ombudsman function. They are routinely dealt with by the NT Police Professional Standards Command, subject to the oversight of our Office. Chapter 3 discusses some issues of relevance to NT Police, including care in custody, handling of domestic violence and sexual abuse allegations, use of force, use of police dogs, vehicle safety and youth justice. It includes a variety of examples to illustrate the points discussed.

Chapter 4 analyses police conduct approaches and complaints received and finalised during the year, including a description of outcomes and the subject matter of sustained complaints. The Chapter also describes how police complaints are handled, along with some of the statutory audit, inspection and review functions undertaken by the Office in relation to law enforcement agencies.

Correctional Services is routinely one of the top two sources of approach to our Office. Chapter 5 discusses Correctional Services issues, including heat stress in prisons, intensive management plans, *Women in Prison II* implementation and mothers and babies in prison. It also analyses Correctional Services approaches received during the year and provides some examples of cases dealt with.

### *Other Ombudsman functions and activities*

Chapter 6 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;
- working co-operatively with other NT integrity and complaint bodies; and
- undertaking or contributing to training activities and presentations for public sector staff and a variety of community and stakeholder engagement.

Chapter 7 sets out detailed information about how we do what we do, while Chapter 8 provides information about corporate aspects of the Office and our staff.

It would be hard to overstate the impact of the fallout from COVID-19 on the operations of public bodies. Our Office is no exception. The work environment has fundamentally changed and with it the challenges of leading and managing an office or agency have grown. As usual, I am indebted to the staff of the combined offices and, in particular, to the Deputy Ombudsman and others in my Senior Management Group.



**PETER SHOYER**  
**OMBUDSMAN**  
**28 September 2023**

## KEY PERFORMANCE INDICATORS

Key Deliverables	2020/21	2021/22	2022/23
<p><b>Total approaches received</b></p> <p>Comprises all enquiries and complaints, including matters referred to another body or found to be outside jurisdiction.</p>	<b>2,458</b>	<b>2,406</b>	<b>2,155</b>
<p><b>Total approaches finalised</b></p> <p>Includes approaches carried over from the previous year and approaches re-opened after the end of that year.</p> <p>109 approaches were open at 30 June 2023, compared with 153 at 30 June 2022 and 313 at 30 June 2021.</p>	<b>2,342</b>	<b>2,566</b>	<b>2,199</b>
<p><b>Police approaches finalised within 90 days</b></p> <p>Includes enquiries and preliminary enquiries undertaken by the Office and matters dealt with by Police under oversight of the Ombudsman.</p>	<b>78%</b>	<b>68%</b>	<b>68%</b>
<p><b>Other approaches finalised within 28 days</b></p> <p>Refers to all non-police conduct approaches, including local government.</p>	<b>82%</b>	<b>86%</b>	<b>91%</b>

## 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

### INVESTING IN CHANGE

When my Office raises possible recommendations for positive change, we are commonly faced with the refrain that it sounds like a great idea but budgetary restrictions mean the agency “can’t possibly afford to” implement them.

In saying this, I do not seek to malign agency officers who are doing the best they can to carry out assigned functions within budgetary limits. I very much wish to acknowledge the incredible commitment of the officers with whom we deal to the service of the community. However, the growing reality is that many agencies working within budgetary restraints are finding it harder and harder to carry out their basic daily tasks, let alone innovate and explore approaches that will provide long term improvements. The need to find savings is a regular mantra but, after decades of efficiency dividends and in the absence of fundamental change, this simply equates to reducing service levels.

With the enormous challenges that face them in the NT, agencies are very much being drawn down a survival path, juggling resources on a day to day basis just to meet the demands of business as usual. Agencies required to operate on a subsistence level have little capacity to consider and implement changes that will lead to enhancements in service levels and ultimately save money by effectively addressing societal problems. Rather, they are trapped into maintaining a *status quo* that the evidence shows is not achieving underlying strategic objectives.

For actual progress to be made, there are things Government can’t afford not to do. Vision and planning needs to be backed by adequate resources for implementation. Investment towards positive change is required now to deliver improvements and savings in the future.

### PARADIGM CHANGE

One area where external reports have time and again called for increased investment in alternative approaches and paradigm change is the justice system. Current approaches have, broadly speaking, been tried and tested for decades without evident amelioration of problems. There is a regularly increasing number of people going through the traditional cycle of police, courts, corrections, repeat.

With respect to the correctional system in particular, there has been a steady stream of reports from independent reviewers, essentially repeating the need for fundamental or paradigm change. They include:

- *Women in Prison* (2008)<sup>1</sup>
- Hamburger report (2016)<sup>2</sup>
- *Women in Prison II* (2017)<sup>3</sup>
- Paget report (2020)<sup>4</sup>.

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<sup>1</sup> NT Ombudsman report, Ombudsman Richards.

<sup>2</sup> Hamburger K, Ferris A, Downes L, Hocken J, Ellis-Smith T & McAllister N. *A safer Northern Territory through correctional interventions: Report of the review of the Northern Territory Department of Correctional Services*. BDO. Perth / Knowledge Consulting. Brisbane.

<sup>3</sup> NT Ombudsman report, Ombudsman Shoyer.

<sup>4</sup> Dr J R Paget, *Review Investigation into the Events of a Break Out of Accommodation and Concerted Indiscipline on 13 May 2020*.

For example, the Hamburger report stated:

*A paradigm shift is required in NTDCS to recognise that the services NTDCS delivers in its correctional centres, community corrections and in youth justice are essentially for a majority of Indigenous people and a non-Indigenous minority population, rather than the opposite. To support this paradigm shift, Indigenous considerations must be mainstreamed within NTDCS including the need for culturally appropriate services across the agency.*<sup>5</sup>

I also called for fundamental change in *Women in Prison II*, stating:

*19. There must be a shift away from stone walls and iron bars towards an environment that will promote rehabilitation and reintegration. This is in the interests of the prisoners but it is also very much in the interests of the community.*

*20. We need a system that will help prisoners to become valuable members of their communities and society and in doing so, minimise the prospects for future crime.*

*21. Over time this will free up resources that are currently committed to a horrendously expensive detention model. However, there is no doubt that, initially, there will be a need for additional resources to implement re-engineering of the system. To adapt the enduring truism, 'it takes money to save money'. Investing in better practice now will pay off for society as a whole in the long run.*<sup>6</sup>

The NT Government has published the following summary of the Paget report's key recommendations<sup>7</sup>:

- *Properly funding the NTCS Operating Philosophy to arrest declining performance outcomes and to improve poor prisoner regimes*
- *Properly funding the DCC staffing model to reduce the incidence of unscheduled lockdowns, the inefficient use of overtime and to improve staffing stability in the Sectors of DCC*
- *Matching NTCS delegations to responsibilities within the risk management architecture*
- *Implementing fully the Sentence Management Manual 2020*
- *Limiting DCC acting positions by numbers and duration*
- *Establishing emergency management MOUs with Police, Fire and Emergency Services and St Johns Ambulance*
- *Implementing new emergency procedures based on the Australian Inter-Services Incident Management System*
- *Training on the new procedures*
- *Upgrading intelligence capabilities*
- *Addressing infrastructure weaknesses, while avoiding the "hardening" of the prison*
- *Improving riot control capabilities*
- *Reducing overcrowding*
- *Reducing the population of short sentence prisoners*
- *Investing in adequate treatment services to match prisoners' treatment needs and to assist the Parole Board reduce the waiting list for ERD releases*
- *Implementing a structured day of meaningful activity including education, work treatment and recreation*

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<sup>5</sup> Hamburger report, page 7.

<sup>6</sup> *Women in Prison II*, Volume 1, page 4.

<sup>7</sup> NT Correctional Services is Moving Forward Together webpage:

<https://justice.nt.gov.au/news/2023/nt-correctional-services-is-moving-forward-together>

- *Invest in developing the cultural competence of all NTCS staff*
- *Implementing comprehensive assessments of prisoners' cognitive functioning*
- *24/7 on-site health care.*

A Correctional Services Organisational Review report followed in October 2021, containing 46 recommendations for change.<sup>8</sup> Correctional Services subsequently adopted the *Forward Together* strategic plan which it describes as follows:

*NT Correctional Services (NTCS) is moving forward with its 3 year change project to expand the workforce, improve offender outcomes and build a stronger, more capable organisation.*

...

*Under the Forward Together agenda, NTCS is focusing on three key business areas:*

*Operations – Investing in workforce capability and capacity to uphold statutory and safety standards by upgrading infrastructure, modernising systems and process, and improving recruitment and retention practices.*

*Service delivery – Designing and delivering programs and services that support offender rehabilitation, improve community outcomes and reflect mandatory sentencing reforms, which commence in late 2023.*

*Planning and performance – Ensuring operational decisions comply with legislation to withstand scrutiny, are governed by best practice and address recommendations from the Paget Report and NTCS Organisational Review.*

The strategic directions proposed in these plans align closely with the need to place care, rehabilitation and reintegration at the forefront of NT correctional services. I do not question the desire or resolve of the officers who have devised and are charged with implementing them. However, I do maintain significant concerns as to whether they will be able to give sufficient prominence to those objectives given external pressures and the resources currently available to them.

The enormous strain on correctional services is exacerbated by the record and seemingly growing numbers of people in custody, exceeding stated operational capacities, with the need to open new areas within prisons and resort to the use of police watch houses to accommodate them. This places burdens on both staff and on prisoners.

If these external factors and budgetary limitations are not prioritised and addressed, substantial pressure will persist on Correctional Services to focus on security and safety and basic operation of facilities, with limited or no time and resources left to engage in transformative actions.

Within the correctional services sphere, transforming the system to focus on prevention of further offending through rehabilitation and reintegration is the baseline for success but it is an aspiration that requires adequate investment of resources.

## THE BIGGER PICTURE

In *Women in Prison II*, I said:

217. There is no doubt that offending levels are linked closely with socio-economic conditions. Low incomes, poor education, and limited access to facilities and opportunities all contribute to an environment where crime is more likely.
218. The criminal justice system is only one element in addressing the conditions and motivations that give rise to offending. In truth, it should be regarded as a strategy of last resort.

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<sup>8</sup> [Northern Territory Correctional Services organisational review - Executive summary and recommendations](#)

219. The Victorian Ombudsman put it aptly:

*The statistics are compelling: the average prisoner, male or female, did not complete high school, was unemployed at the time of committing the crime and had a history of substance abuse. Many female prisoners are victims of some form of abuse, and over 40 per cent are homeless upon release. The children of prisoners are six times more likely to be imprisoned themselves – so it’s not just this generation where the impact is hard felt. How do you address recidivism when prison is the place some people feel safest? And how can we reintegrate former prisoners into a society where many have always been marginalised?*

...

*... it is patently clear that long-term solutions do not lie within the walls of our prisons or with a single government department. The successful innovations elsewhere have come as a result of a concerted whole-of-government response. The state needs a comprehensive approach – across the justice system, education, health and housing – to focus on the causes of crime rather than its consequences.*

220. Given the high number of Territorians with low socio-economic status and the extraordinary dispersal of the population over many small remote communities, the challenges faced by the Territory in addressing these societal issues is overwhelming. The Hamburger Report stated:

*Clearly the Northern Territory’s imprisonment rate indicates a social, economic, and law and order crisis of devastating proportions for the Territory as a whole and for Indigenous people in particular. It has been a longstanding crisis.*

...

*We have pointed to international experience where a business planning method that takes a whole of community approach and is founded in objective data on the cost of crime, and expected savings and benefits to be achieved over the life of the plan is an effective way to reduce imprisonment rates. This approach has applicability to the Northern Territory and we recommend it is adopted.*

Reflecting recommendations from the Victorian Ombudsman, I recommended that:

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.*

There are strategic directions to address such issues in place and in planning but agencies need adequate resources and adequate support to successfully implement them. The requirement to “find resources from within” has rarely led to genuinely positive and effective change. The best laid plans for change need to be backed by sufficient resources across the board.

There remains substantial ongoing scope to consider bold and even radical new approaches that will fundamentally address factors that currently lead to involvement (and frequently repeated involvement) of individuals with the justice system as offenders and as victims.

## VICTIM FOCUS

A key aspect of the justice system is providing support to victims. I continued to liaise with the Crimes Victims Services Unit (**CVSU**) - a unit within the Department of the Attorney-General and Justice (**DAGJ**), which 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 and we have monitored efforts to address this backlog over several years.

There were only three complaints to our Office about delay of this type in 2022/23. Again, I consider this is a testament to the efforts of DAGJ and the CVSU to increase resources, streamline operations and improve communication with applicant representatives.

Nevertheless, a backlog remains. A total of 1,715 open applications at mid-May 2023 was very similar to the figure at 30 June 2022. There was a significant and welcome drop in the number of pre-2018 applications over the same period (down from 452 to 239). Even so, there were 755 pre-2020 applications open at mid-May. The CVSU had substantially increased the number of decisions made and the amounts paid out over the previous period but incoming applications are simply replacing older matters.

I am advised a number of potential amendments to deal with the backlog are currently under consideration by Government.

The backlog and the need to ensure the scheme provides effective and timely assistance to victims of crime in the future are matters of considerable importance. I again urge continued resource support for the CVSU to eliminate the backlog and that work on policy and legislative reform be given priority within Government.

## WORDS OF WISDOM (BENEFITS OF EXTERNAL EXPERTISE)

The NT makes up less than 1% of the Australian populace and its public sector agencies are small compared with those in other jurisdictions. Given this, it will often be important for agencies to look to external sources to review operations and actions and point to best practice. In this regard, input from external and independent stakeholders and experts can be invaluable. They are likely to point to differing perspectives and avenues of approach than internal agency sources.

One situation where obtaining external input can be important involves the consideration of the conduct of police and whether NT Police should take criminal or disciplinary action against their own officers, particularly in relation to critical incidents involving use of force.

Both the Ombudsman and the Independent Commissioner Against Corruption (**ICAC**) have capacity to provide external oversight in relation to police conduct. However, there are other external sources of expertise which NT Police has in the past relied on, and should in the future continue to call upon, in significant or complex cases. Those sources include the NT Director of Public Prosecutions (**DPP**) in relation to the potential for prosecution and use of force experts (either from the private sector or another police force) in relation to the reasonableness of use of force.

Seeking external expert opinion should neither be seen as a matter of last resort or as an acknowledgement that criminal or disciplinary action should be taken. In a small jurisdiction, where the paths of almost all officers cross from time to time, there is ample justification for getting a second, expert and independent opinion in cases of significance.

Internal officers should not be put in the position of gatekeepers who bar recourse to external expertise other than in exceptional circumstances. Referrals for advice to an external expert should be the preferred and regular course of action where there is any significant incident or potential for concern. This does not mean it should be required in every case but it should be the natural inclination in cases that involve critical incidents or which may raise perceptions of significant wrongdoing.

Referrals for advice should be regarded as an important tool in ensuring the transparency and accountability of NT Police which provides the public with a high level of assurance and confidence in its officers. That second, expert opinion may well coincide with views expressed internally. In any event, independent expert views will be an important consideration in the course of oversight by bodies like the Ombudsman and ICAC.

Our Office raised these issues in the course of a complaint which is nearing finalisation, although similar points have been raised previously and our comments were intended to have general application. An extract from the response of NT Police at senior officer level is reproduced below, in so far as it relates to the general propositions we put forward:

*It is provided that your office considers these to be important steps in maintaining the probity of the investigation, though taking them does not necessarily imply that there is concern about wrongdoing in the mind of the investigating officer. It is provided that they would provide for independent experts to review a situation where a major adverse outcome has occurred due to the use of a lethal weapon. Obtaining such independent advice is important from the perspective of the complainant, the subject officer and the reputation of NT Police generally. ...*

*The two suggestions provided have been considered. To adopt the suggestions would require significant changes to the current investigative practice and the DPP referral framework.*

*With respect to [the] suggestion [to] obtain an opinion from external expert, there is no internal policy or legislative requirement to mandate the use of external experts. It is a matter that should be considered on a case by case basis. This aspect also is not a mandate across other policing jurisdictions across Australia. Though it is preferable from an independent perspective, police officers within the Northern Territory Police have similar skills and qualifications to jurisdictional counterparts. The principles of assessment are applied in assessment of the application and use of force and justification as detailed within the Criminal Code Act 1983 (NT). [NT Police then pointed to relevant evidence being made available to the DPP in the course of prosecution, with the potential for the DPP to raise any concerns about use of force.]*

*With respect to [the] suggestion ... to refer the matter to the DPP for independent advice on the prospects of successful prosecution, ... [a]ny referral for independent assessment or advice from DPP should have at a minimum the basis for a prima facie case where there is enough evidence existing to substantiate a criminal charge ... . The DPP on a referral in such instance of a prima facie case will then assess and decide whether to prosecute in accordance with the DPP guidelines. It would be problematic for police to refer matters to the DPP where the investigator clearly does not see any criminality, especially for an investigation that has been the subject of a high level of scrutiny and oversight.*

*I do note that from a public perception perspective, the issues raised by your office are valid concerns. ... [NT Police then went on to suggest the potential for further discussion in the course of my Assessment.]*

With regard to expert use of force opinion, I take no issue with the skills or qualifications of NT Police experts. However, the NT is a much smaller police force than other jurisdictions. Consequently there are fewer experts and more likelihood of interaction between them and the officers whose conduct is subject to investigation. In the NT, they may well also have had less exposure to a broad range of serious incidents than colleagues in larger police forces interstate. That is why, in the most serious cases, bringing in an external expert is important to ensure the probity of the investigative process. It helps the NT Police demonstrate how seriously it takes the small number of critical incidents within its jurisdiction.

With respect to referral to the DPP, what I suggested would not be part of the standard criminal process where police decide what should go forward for prosecution. It is equally problematic for police officers to make a decision to decline the prosecution of fellow officers without further input. In a relatively small police force, there are obvious reasons why taking external legal advice on the

conduct of fellow officers will improve the process and minimise the potential for alleged conflicts of interest in decision making about the strength of the case for prosecution. That is why, in marginal cases or where serious harm occurs, I consider it appropriate for NT Police to go to the DPP to seek legal advice on the prospects of successful prosecution.

My suggestion for adopting a routine approach in matters of this type would involve a handful of cases. It would not have major resource implications for NT Police or the DPP. It would enhance transparency and accountability of the NT Police Force and its officers for the general public, as well as for independent authorities and civil society groups who maintain external scrutiny of police conduct. I will pursue the matter with the Commissioner.

The same can also be said in situations where expertise from other external experts, for example, health professionals, may contribute to the consideration of an incident or provide input as to the preferred way forward for the future. The approach should be to seek out and give careful consideration to expert external advice in such cases, rather than relying solely on internal perceived wisdom.

### **EXTRAORDINARY RESTRAINT (SPIT HOODS AND RESTRAINT CHAIRS)**

During the year, I finalised a report on police use of spit hoods and emergency restraint chairs (**ERCs**).<sup>9</sup> Its primary focus was on their use on children and the investigation was conducted in co-operation with the Office of the Children's Commissioner (**OCC**).

The investigation scrutinised all 30 cases of police use on children in 2020 and 2021. It identified a number of deficiencies in decision making and practical application of NT Police policies and procedures around the use of the devices and scrutiny of use. These included, for example, the use of spit hoods in incorrect circumstances, incorrect placement of hoods, inadequate monitoring of wellbeing, and failures to identify non-compliance or other opportunities for improved performance during supervisory reviews.

I also identified, with assistance from the OCC, serious physical and psychological risks for children. Physical risks include restricting the ability to breathe. For spit hoods, this could be through pressure of the material of the hood or due to the presence of vomit or other bodily fluids, with a number of reports from other jurisdictions identifying spit hood use as a contributor to deaths. For ERCs, physical harm can arise due to restraints being unnecessarily tight. Psychological harm from use of these devices may include the immediate trauma of being subjected to such restraint, as well as longer term stress arising from the incident and potential impacts on development (up to age 25).

Running counter to these factors, I clearly acknowledged that spitting is abhorrent behaviour and being spat on can disrupt the lives of police who need to take precautionary measures. Police deserve to be adequately protected. However, I found that concerns held by police about the potential for contracting communicable disease were not supported by evidence.

I also pointed out that the practical efficacy of spit hood use must be considered in light of comments around the ineffectiveness of alternatives such as Personal Protective Equipment (**PPE**) worn by officers in a physical struggle. I said that, having considered the incidents scrutinised in this investigation, along with many years of reviewing police conduct complaints, it would be a rare occasion on which PPE or spit hoods are used in an initial apprehension situation, where uncontrolled physical struggle is more likely to take place.

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<sup>9</sup> [https://www.ombudsman.nt.gov.au/sites/default/files/downloads/restraints\\_report\\_final.pdf](https://www.ombudsman.nt.gov.au/sites/default/files/downloads/restraints_report_final.pdf) .

I finally noted there are a range of alternative measures already adopted in other jurisdictions that can reasonably be utilised such that the absence of spit hoods does not create an increased risk for officers. These included increased use of PPE by members, tactical body positioning, and improved training on strategies to anticipate and de-escalate such behaviour.

Ultimately, there is a need to strike the right balance between the fundamental goal of the protection of children and the need to ensure there are adequate safeguards for officers performing their duties. I considered the risk of harm to children by continued use of spit hoods is high. That risk is increased when, as here, officers do not always comply with policies and procedures. The incidence of spitting can be reduced by improved understanding of, and communication with, children. There are viable alternative measures and protective equipment available to adequately protect police against spitting. I therefore concluded that cessation of use of spit hoods on children should be maintained, in line with action taken in other jurisdictions, and that the NTG consider legislating to that effect.

I also concluded that the available material pointed with broadly equal force to cessation of spit hood use on adults.

The position with respect to use of the emergency restraint chairs is more complex. ERC use is intended to be limited to protection against self-harm. The use of ERCs is confronting, but patently preferable alternatives to dealing with violent attempts at self-harm are not self-evident. I said communication should always be the option of first resort, with early involvement of family and community members encouraged. However, there are likely to be a very small number of cases where other action is needed - and the padded cell, sedation and hand/leg cuffing all present significant concerns of their own.

I concluded that the preference is to cease use of ERCs entirely but there must be suitable options available to deal with those rare situations where violent attempts at self-harm need to be addressed immediately and efforts at communication and support are ineffective. In that context, I recommended that NT Police consult with the Department of Health, Territory Families and other stakeholders to formulate and test a plan for utilising alternatives to ERC use, with a view to absolute minimisation of use, followed by cessation.

With respect to implementation of changes, I said it is essential for NT Police to support, educate and equip its officers including:

- providing officers with sufficient information, guidance, equipment and support to give them confidence that they can effectively and safely perform their duties without such devices, as officers already do in other jurisdictions;
- implementing a training and development strategy for members with respect to child development, the impact of trauma and disability on behavioural responses, and specific de-escalation strategies for children and more generally;
- exploring options to fill the therapeutic gap for crisis support for persons in custody who are exhibiting extreme emotional distress or behavioural disturbance but are unable to be admitted to a medical facility for any reason.

I made a number of recommendations for action by NT Police for so long as any use of these restraints is continued. NT Police responses to my recommendations are discussed in Chapter 3.

The NT Government has demurred from extending the cessation of spit hood use to adults. I can understand a desire to support police officers and express disgust at the act of spitting on officers who are merely carrying out their duties. However, the available evidence simply does not support use of spit hoods as a viable ongoing option. That is reinforced by cessation of use in all but one other police facility in Australia. The grounds for entirely ceasing spit hood use, and relying instead on alternatives, are compelling. We will continue to engage with NT Police on implementation of recommendations.



## KEEPING A WATCHFUL EYE (BODY WORN VIDEO)

I also finalised a report on police utilisation of body worn video (**BWV**): *Keeping a watchful eye*.<sup>10</sup> The report noted the substantial benefits of BWV for NT Police reviewing the actions of individual officers. BWV can be tremendously helpful in resolving conflicting versions of events regarding particular incidents. It is frequently crucial in quickly identifying the truth of the situation.

I concluded it is just as likely to provide evidence that police acted reasonably as it is to raise problematic officer conduct issues. However, where there are identified concerns about officer conduct, it can provide valuable evidence as to the background and progress of incidents to give context to the decision-making and actions of officers. It often places supervisors and senior managers in a much better position to consider the reasonableness of police conduct and any further investigative steps that may need to be taken.

BWV ultimately enhances the ability of NT Police managers to identify any need for corrective action in respect of individual officers, for example, through approaches such as remedial training, personnel management processes or disciplinary action.

In addition to individual corrective action, BWV footage is a valuable tool for identifying systemic issues that require NT Police attention, for example, failings in current guidance or the need to enhance guidance or improve training for officers. It can also prove a useful tool for broader training and other personal development of officers.

Further, as BWV technology develops, the scope for senior officers to monitor events in real-time and provide immediate guidance and support to frontline police will continue to improve.

Flowing on from direct benefits to NT Police, the report also discusses the enormous advantages of NT Police BWV as a tool for independent external complaint and oversight mechanisms, such as the Ombudsman, which aim to establish the truth of complaints and promote effective and appropriate police conduct.

The report further explored other significant benefits of BWV, such as utilisation of footage for evidentiary purposes, as a contemporary record (or as an aid to memory recall) for criminal and civil proceedings.

It recognised mixed views in the academic literature on the suggested impact of BWV on moderating the conduct of officers and the people with whom they come into contact, and the impact of BWV awareness on the confidence of officers engaging with people in the performance of their duties.

In addition to identifying benefits, the report acknowledged the limitations of BWV and noted potential hurdles to effective implementation of the BWV program.

Crucially, the evidence shows that BWV is a major asset for NT Police in terms of enhancing transparency, accountability and public confidence in the organisation. The ultimate conclusion of the report was that BWV represents a substantial but essential ongoing investment for NT Police for a host of reasons.

Like any program, it is important it continues to be well managed and actively promoted internally. The report proposed a range of potential policy and procedural enhancements to promote effective ongoing administration of the program. Twelve recommendations were made, aimed at both strategic and operational levels, with NT Police accepting all (one relating to training was accepted in part).

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<sup>10</sup> [https://www.ombudsman.nt.gov.au/sites/default/files/downloads/bwv\\_report\\_final.pdf](https://www.ombudsman.nt.gov.au/sites/default/files/downloads/bwv_report_final.pdf)

NT Police has recently provided an update on implementation, stating:

*A representative from the ... NT Police is the chair of the Whole of Government AXON Products Working Group and this group has taken ownership surrounding the governance of each recommendation. Each recommendation is recorded as an action item for reporting on at each monthly meeting.*

*The Commander Professional Standards Command has ownership of Recommendation 12:*

#### **Recommendation 12**

##### **NT Police:**

- ***consider, as a matter of priority and in consultation with the Ombudsman's Office and stakeholders, the potential to facilitate simpler options for complainants' legal representatives to view footage in a manner that duly recognises the privacy of other individuals appearing in video or audio;***
- ***ensure that adequate resources are provided to promptly respond to information access applications in compliance with its obligations under the Information Act.***

*The Professional Standards Command, in conjunction with a representative from the North Australian Aboriginal Justice Agency (NAAJA) and a representative from your office have been meeting monthly to work through alternative methods to facilitate simpler options for complainants legal representative to view BWV footage.*

*A memorandum of understanding (MOU) has been developed between NT Police and NAAJA to facilitate the sharing of BWV footage with NAAJA via evidence.com.*

*It is anticipated that by sharing the BWV with NAAJA in the early stages of the complaints process, it will ultimately reduce the number of complaints against police. If this is realised, this will reduce the workload on police, NAAJA and your office.*

We have been provided with a copy of the finalised MoU between NT Police and NAAJA. We will continue to monitor progress with implementation of recommendations.

## **PREVENTION BETTER THAN CURE (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, but are not limited to, prisons, youth detention centres, police watch houses, court cells and closed environments in mental health, disability and aged care facilities.

### ***Subcommittee on prevention of torture and ill treatment***

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).

The SPT visited Australia in October 2022. SPT members visited several places of detention in the Northern Territory but were denied access to some places in other Australian jurisdictions. The SPT initially suspended, and ultimately terminated, its visit because Australia was unable to provide assurance within a reasonable timeframe that the SPT would be able to carry out its visits to Australian detention facilities without restriction. Rwanda is the only other country where the SPT has decided to terminate a visit.

## *National Preventive Mechanism*

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, one or more NPM bodies have been or will be established by each of the Commonwealth, states and territories in relation to their own places of detention.

The NT has passed amending legislation to support NPM functions, the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Amendment Act 2022*, but the legislation has not yet commenced.

The Ombudsman is currently the Interim NPM for the NT. The Ombudsman, Children's Commissioner (**OCC**) and Principal Community Visitor (together referred to here as the **NT NPMs**), are all likely to be appointed to NPM roles once the amending legislation commences.

Funding for the Ombudsman of \$160,000 for each of 2021/22 and 2022/23 was approved by the NT Government to support establishment. No funding was provided to the other NT NPMs. The question of resourcing NT NPM operations on an ongoing basis, including any contribution from the Australian Government, is yet to be settled.

During 2022/23, the NT NPMs undertook functions preparatory or complementary to the NPM role, including:

- providing input on development of the amending legislation;
- actively participating in the Australian National Preventive Mechanism Network;
- contributing to a range of joint statements and submissions;
- attending sessions with members of the SPT;
- attending a broad range of other information sessions on the role of NPMs and topics of specific interest;
- consulting with a range of stakeholders; and
- conducting visits to centres where people are detained.

Details of relevant activities of other NPMs will be included in the Annual Report of the Australian NPM. Brief information on relevant activities of the NT Ombudsman in 2022/23 is set out below.

The Ombudsman, in co-operation with the OCC, finalised a thematic investigation into the use of spit hoods and emergency restraint chairs on children in the NT (discussed above).

In addition, the Ombudsman commenced an own initiative investigation into separate confinement practices in Darwin Correctional Centre under the *Ombudsman Act 2009*. The Ombudsman has previously highlighted concerns about separate confinement practices in correctional facilities in various reports. The objective of the own initiative investigation is to introduce an NPM-style thematic report with a strong focus on prevention and dialogue. The findings from the own initiative investigation will be reported on in 2023/24.

Ombudsman officers undertook *ad hoc* visits to adult correctional facilities to speak with prisoners about conditions, their experiences and potential complaint resolutions. We also took the opportunity to speak with prison staff and leadership about prisoner management, emerging or systemic issues of concern and the role of the Ombudsman under OPCAT.

During the period, we commenced preparation of a detailed report for the Commissioner of Corrections (finalised after the end of the period) which covers various themes arising from visits and complaints made over the past two years. This will form a basis for ongoing discussion with the Commissioner and Correctional Services around the treatment and care of prisoners.

In order to address record numbers of people in custody, Correctional Services operationalised the Darwin Police Watch House and the Peter McAulay Centre (a police facility) as temporary accommodation for prisoners. We visited these centres to observe the conditions for prisoners and identify areas where there was scope for improved comfort and safety of staff and prisoners.

We identified several issues relating to the treatment and conditions of prisoners who are being held on two week rotations at these facilities. At the Darwin Watch House issues raised included:

- Prisoners lacked exposure to sunlight or access to outdoor space/fresh air over the 2 week period (although they had an exercise area in a car park);
- Incident, behaviour and risk management processes could have a detrimental impact on prisoners due to factors including but not limited to reduced staffing capacity, facility layout, and distance from back-up and available resources in emergencies; and
- Prisoners experienced interrupted or limited access to legal visits, continuity of care and supports, and contact with family.

At the Peter McAulay Centre issues raised included:

- The outdoor environment did not meet best practice standards for prisons. The outdoor yard was not suitable for the number of prisoners, lacked features such as seating, exercise equipment, and protection from weather. It felt oppressive and dis-incentivised prisoners from spending time outdoors to relax, socialise or exercise.

We made a number of recommendations and corresponded with Correctional Services to improve and generate dialogue about these issues.

Use of the Peter McAulay Centre was discontinued shortly after our first visit but has since been reinstated to meet increased prisoner numbers. The reality is that many of the identified shortcomings are inherent in the facilities.

Corrections has identified, and is utilising, other parts of prison facilities in order to deal with increased prisoner numbers but is still finding it necessary to use watch house facilities. Prisoners we interviewed did not raise major objections to being placed in a watch house for a short period but this is clearly not an option that should be exercised in the long term. It is far from ideal from the perspective of both prison operations and prisoner welfare.

These activities are a fraction of the broader mandate on which a fully resourced NPM should focus but illustrate the potential scope for a proactive, preventive lens on places of detention in order to strengthen positive outcomes for NT society.

Further information about OPCAT in the NT is available on the NT Ombudsman's [website](#).

## CHAPTER 2 – APPROACHES AND COMPLAINTS

### NUMBER OF APPROACHES

In 2022/23, there were 2,155 approaches to the Office (compared with 2,406 in 2021/22). 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 significantly from the previous year, primarily due to substantial reductions in police conduct and COVID-related approaches. In-jurisdiction approaches in 2022/23 were notably lower than the average for the previous 5 years (1,763) but closely aligned with the 10 year average (1,563).

	2018/19	2019/20	2020/21	2021/22	2022/23
<b>In-jurisdiction cases</b>	1,829	1,773	1,859	1,827	1,554

The number of more complex approaches declined from the previous year in line with the overall reduction in approaches received, although the proportion of approaches that fell within the two most complex categories rose slightly (to 30% compared to 27% in the previous year).

Complexity	2019/20	2020/21	2021/22	2022/23
<b>Complex matters</b>	303	331	267	224
<b>Resolved Expediently</b>	374	352	386	426
<b>Enquiries</b>	1,858	1,770	1,751	1,504

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 2022/23 are listed below.

Department / Agency	2019/20	2020/21	2021/22	2022/23
<b>Correctional Services<sup>(1)</sup></b>	575	517	530	497
<b>Police, Fire and Emergency Services</b>	637	687	653	492
<b>Jacana Energy</b>	141	115	86	131
<b>Families, Housing and Communities<sup>(2)</sup></b>	99	125	103	102
<b>Attorney-General and Justice</b>	56	71	48	63
<b>Power and Water</b>	74	53	43	56
<b>Infrastructure, Planning &amp; Logistics</b>	35	48	36	47
<b>Health</b>	18	44	190	23
<b>Charles Darwin University</b>	13	13	3	23
<b>Education</b>	27	29	16	18
<b>Industry, Tourism and Trade<sup>(3)</sup></b>	-	36	20	11
<b>City of Darwin</b>	18	20	16	11
<b>Litchfield Council</b>	11	10	14	11

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

## VARIATIONS AT AGENCY LEVEL

Police, Fire & Emergency Services approach numbers were subject to a major decline, from 653 to 492. The decline in police conduct complaints is discussed in Chapter 4.

Approaches relating to the Department of Health also declined markedly, from 190 in the previous year to 23 in the current reporting period. This was primarily due to the cessation of regulatory measures introduced to deal with the COVID-19 pandemic.

Correctional Services approaches also reduced from the previous year by 6%.

Families, Housing and Communities approaches remained steady, as did Housing-related approaches within that Department (83 compared with 77 the previous year). Likewise, approaches in relation to local government councils remained at a similar level (38 this year compared to 40 the year before).

On the other hand, both Jacana Energy and Power and Water approaches increased during the year. The proportionate rise in Jacana Energy approaches was substantial, although it was coming off a very low figure compared to the previous year.

Charles Darwin University also saw a substantial increase from very low numbers in the previous year. Seven approaches related to nursing courses, with four related to placements.

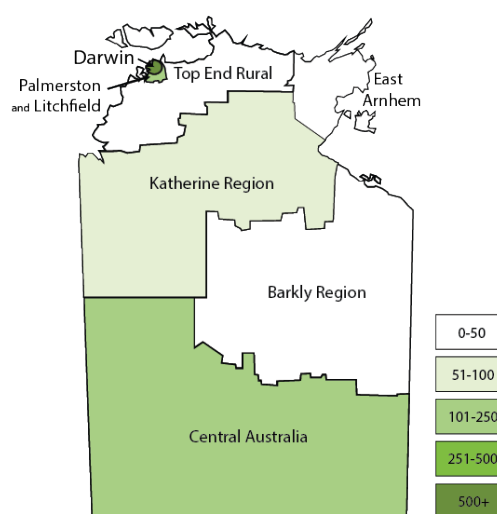
Attorney-General and Justice approaches also increased, with the most significant contributors to approaches being NT Work Safe (17), the Public Trustee (13), the Crimes Victims Services Unit (6), and the Fines Recovery Unit (5).

An increase was also experienced in approaches regarding Infrastructure, Planning and Logistics, which included 28 approaches about the Motor Vehicle Registry.

## 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'.<sup>11</sup>

Region	%
Darwin	53.0
Palmerston/Litchfield	17.4
Alice Springs/Central	14.2
Katherine	7.5
Top End Rural	3.0
Barkly	3.4
East Arnhem	1.5



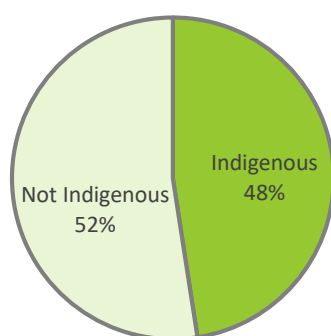
For similar reasons, it can be difficult to establish in the course of dealing with an approach whether an enquirer identifies as Indigenous. Our Office considers it important to obtain such information to help us identify any gaps in service provision and ways to improve our service.

<sup>11</sup> 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 2022/23, 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, 48% were Indigenous or represented an Indigenous person. This is broadly consistent with previous years.

### Complainants identifiable as Indigenous



### HOW APPROACHES ARE MADE

The Office offers a range of options for contact.

In 2022/23, well 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	58
e-mail	21
Referred (eg NT Police, ICAC)	12
Online form	5
Letter	2
In person	2

### HOW QUICKLY APPROACHES ARE DEALT WITH

In 2022/23, 2,199 approaches to the Office were finalised, with 90% of finalised matters completed within 90 days, compared with 89% in the previous year.

#### Time taken to finalise - approaches finalised in 2022/23

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	32%	15%	21%	13%	20%	517
Other	75%	16%	7%	1%	1%	1,682
<b>Total</b>	<b>1,417</b>	<b>352</b>	<b>219</b>	<b>91</b>	<b>120</b>	<b>2,199</b>

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

The proportion of police conduct matters that took more than 180 days to finalise remained high. Delays of this extent should be infrequent. It is in the interests of everyone concerned that matters be dealt with expeditiously. However, I acknowledge the high proportion did reflect significant efforts by NT Police to reduce an ongoing backlog. I anticipate time taken will improve in 2023/24.

The table below shows that, at 30 June 2023, there remained 12 police conduct matters that had been open for over 180 days. This is a considerable improvement on the 47 such matters that were open at 30 June 2022 and the 86 that were open at 30 June 2021.

#### Age of open matters - at 30 June 2023

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	0	11	35	13	12	71
Other	0	6	17	6	9	38
<b>Total</b>	<b>0</b>	<b>17</b>	<b>52</b>	<b>19</b>	<b>21</b>	<b>109</b>

Total open police conduct matters fell from 183 on 30 June 2021 to 123 on 30 June 2022 and again to 71 on 30 June 2023.

Overall the number of open matters has fallen to about one third of the level they reached at 30 June 2021 (from 313 to 109).

## 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 an Australian Government 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.



### *Referral to another independent body*

In some cases, other complaint and investigative bodies have exclusive jurisdiction to deal with matters, while in others we may share 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 2022/23, we dealt with 601 outside jurisdiction approaches compared with 577 in the previous year.

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

<b>Sector</b>	<b>2020/21</b>	<b>2021/22</b>	<b>2022/23</b>
<b>Consumer affairs</b>	96	102	102
<b>Employment</b>	52	74	59
<b>Health services</b>	33	42	50
<b>Financial services</b>	45	36	40
<b>Commonwealth government</b>	54	27	30
<b>Telecommunications</b>	22	10	17
<b>Private housing</b>	18	15	13

## ISSUES AND EXAMPLES FROM SPECIFIC AUTHORITIES

### Utilities complaint handling

As I have noted in my Annual Report for the last few years, the 2014 separation of the Power and Water Corporation into two government owned corporations – Jacana Energy and the Power and Water Corporation – has caused ongoing complications for consumers seeking to deal with an electricity issue.

This is because, despite Jacana Energy taking over responsibility for retail power in the great bulk of the NT urban market, the Power and Water Corporation has retained responsibility for power distribution, which means it is still involved in many aspects of the consumer experience.

From our conversations with complainants, the delineation of responsibility is often not clear to the consumer, who, is often not well placed to know which of the two agencies is responsible for dealing with their problem.

Exacerbating this confusion is the fact that frequently a consumer's issue (and any remedial action) will involve the actions of both Jacana Energy and the Power and Water Corporation, necessitating the two agencies work together to address the problem.

Jacana Energy and the Power and Water Corporation have told us they are aware of these structural tensions, and in previous years have advised they are working more closely with one another to ensure consumers are not caught between the two.

Despite these assurances, our Office has continued to receive complaints where a failure or delay in communication between the two agencies has caused problems for consumers, and instances where consumers have tried to address a problem, only for each to advise the consumer that it is the other's responsibility.

To their credit, Jacana Energy and the Power and Water Corporation have often resolved appropriate matters once they have reached our Office. However, this has included less complex matters with obvious errors that should have been addressed by the agencies when they were initially brought to their attention.

It is concerning to see the same problems continue to arise, and in the coming year we intend to examine more closely what Jacana Energy and the Power and Water Corporation are doing to place the consumer's experience at the forefront of the work.

### *Access and estimation*

An ongoing problem, which cuts across both utilities and many of the issue categories listed in the tables below, is securing access to properties to read meters for ongoing billing and for connection/disconnection. These functions are conducted by Power and Water Corporation contractors. Jacana Energy relies on reads to bill consumers.

The reality of Territory life is that many properties have fences with locked gates and some have animals that make meter reading problematic for the contractor. If a meter cannot be accessed, an estimate must be relied on. Further, an estimate may have to be made if a meter proves to have been faulty or broken.

Estimates are problematic. If an estimate is too high it can cause financial detriment. If a series of estimates are too low, a large debt can build up when an actual read is taken. If estimates are relied on for too long, meter or system faults or water leaks may not be identified for a prolonged period.

The room for dispute is broad. Consumers may contend that access was reasonably available and that it has taken too long to take an actual reading — that the utility has not tried hard enough to arrange a reading. They may dispute the method or figures adopted to make an estimate or estimates.

Access problems and estimation issues will continue to engender disputes falling within many of the categories of the issues listed below until such time as remote reading of meters is a widespread capability.

### *Jacana Energy*

Jacana Energy approaches rose to 131 in 2022/23. This compared with 86 in 2021/22, 115 in 2020/21 and 141 in 2019/20. The proportionate rise in Jacana Energy approaches is substantial but is coming off a very low base last year, which may have been impacted by a fall in complaints experienced in a number of areas due to COVID-19. The figure for 2022/23 falls in between the respective figures for the two previous years.

Issues raised in relation to Jacana Energy in 2022/23 are set out in the table below. The figures that follow are based on issues raised, not sustained issues.

#### **Jacana Energy – Issues raised – 2022/23**

<b>Issue</b>	<b>Notes</b>	<b>No.</b>
<b>Excessive charges</b>	Includes issues arising from estimation process and issues with payment of refunds	<b>48</b>
<b>Billing</b>	For example, bill not received, two bills received at same time, for wrong property, delay in sending	<b>24</b>
<b>Changed circumstances</b>	Includes problems arising due to change in address or living arrangements, administration of estates	<b>13</b>
<b>Solar</b>	Includes issues relating to solar rebate changes, delay in paperwork for new systems, high estimates not taking solar installation into account	<b>12</b>
<b>Contact and communication</b>	Includes problems with contacting Jacana Energy and poor communication	<b>10</b>
<b>Credit listing</b>	Querying or seeking to remove listing with a credit agency	<b>7</b>
<b>Disconnection</b>		<b>6</b>
<b>Fees</b>	Includes issues relating to fees for connection and disconnection and administrative fees	<b>4</b>
<b>Connection</b>	Includes delay in connection	<b>4</b>
<b>Financial hardship</b>		<b>3</b>

Allegations of excessive billing increased. This is not surprising as people are always more likely to scrutinise their bills more closely in straightened economic times. Issues relating to access and estimation are common themes in these approaches.

Billing issues were also raised more often this year, with a number of complaints of delayed billing, changes in billing and misdirected billing. Issues around changed circumstances chiefly related to complaints of failings in communication or action when owners or tenants departed or changed. Again, access issues played a prominent part.

Pleasingly, credit listing fell from the most prevalent of issues in the previous year to sixth. Also welcome was the fall in issues relating to solar power.

## Power and Water

Power and Water Corporation approaches rose to 56 in 2022/23. This compared with 43 in 2021/22, 53 in 2020/21 and 74 in 2019/20.

Issues raised in relation to Power and Water Corporation in 2022/23 are set out in the table below. The figures that follow are based on issues raised, not sustained issues.

### Power and Water Corporation – Issues raised - 2022/23

Issue	Notes	No.
<b>Excessive charges</b>		<b>31</b>
<b>Works</b>	Includes safety issues, failure to provide infrastructure, cost of provision or connection, inaccurate information, damage due to works, remediation issues	<b>6</b>
<b>Solar</b>	Includes delay in paperwork for new systems, high estimates not taking solar installation into account, issues relating to solar rebate calculation, change in rate	<b>4</b>
<b>Billing</b>	Includes delay in billing or refund	<b>5</b>
<b>Delay</b>	Includes delay in communication, meter reads, connection, disconnection	<b>5</b>
<b>Damage or loss due to fault</b>	Includes loss caused by faulty infrastructure or equipment	<b>3</b>
<b>Financial hardship</b>		<b>1</b>

By far the majority of issues related to concerns about excessive charging. These often arise due to access and estimation issues (see above), water leaks and queries around the accuracy of meters.

Some case examples of utilities-related approaches are set out below.

### Case examples

#### Example – Estimating electricity usage for a faulty meter

A consumer contacted our office after being back-billed for electricity as a result of their meter being faulty for an extended period of time. The meter fault meant the consumer's electricity usage hadn't been recorded for a number of billing periods, and required Jacana Energy to bill the consumer based on an estimation of how much electricity they would have used.

The consumer reviewed the estimated usage in the bill and compared it against his previous usage, which is the method Power and Water Corporation generally uses to calculate estimated electricity usage for Jacana Energy to prepare a bill.

Based on his review, the consumer believed Jacana Energy and Power and Water Corporation had overestimated usage and underestimated how much solar energy he would have generated.

He raised this concern with Jacana Energy, who, rather than contacting Power and Water Corporation to confirm how it had calculated the estimated usage and whether there had been a mistake, instead reviewed the consumer's estimated usage against a short period of his actual usage under the replacement meter. This was despite that not being a method designated to calculate estimated electricity usage for billing purposes.

Jacana Energy's review indicated the consumer had not been overcharged and they declined to revise his bill.

The consumer approached our Office and we contacted both Jacana Energy and Power and Water Corporation to confirm how the consumer's electricity usage had been estimated in the first place. Power and Water Corporation told us it didn't have a record of how it had calculated the estimated usage, but clarified that in these circumstances it would estimate a consumer's usage for a billing period based on their average usage for the prior three years for the same billing period.

We asked Power and Water Corporation to provide us the consumer's historic data and did the calculation ourselves. Using that basis for an estimate, the consumer would have been overcharged for his electricity usage and underpaid for his solar generation. Power and Water Corporation confirmed this with its own recalculation and both agencies agreed to refund the consumer based on those estimates.

To address the underlying issues in this matter, Jacana Energy and Power and Water Corporation established a joint process for dealing with billing complaints, whereby Jacana Energy acts as the contact point for consumers and works together with Power and Water Corporation in the background to review the estimation. Power and Water Corporation also agreed to record how it conducts estimations, which it has said will soon become an automatic process when it replaces its billing system in the near future. Both agencies agreed to update the publicly available information on their respective websites to clarify the process.

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#### **Example – A different take on estimated usage**

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Notwithstanding our findings in the example above, our experience with other complaints about estimated bills hasn't indicated there is a broader problem with the accuracy of calculations.

For example, in a separate complaint, another consumer approached our office with similar concerns about substituted water bills he believed may have overestimated his water usage.

The consumer had also experienced an extended meter fault, which required his water usage to be estimated for several periods, and which meant that his actual usage for the estimated period could no longer be determined by obtaining an actual meter read.

In this case, the consumer was concerned that Power and Water Corporation's approach to calculating estimated usage – by estimating based on average historic use for the same time of year – would be unfair in the circumstances as he had experienced water leaks in previous years, which would potentially result in an inaccurate and inflated amount.

We contacted Power and Water Corporation about the consumer's concerns. It provided information indicating that it had not taken into account any period where usage appeared abnormally high, and that the estimation genuinely reflected the consumer's historic average use.

Separately, the consumer advised that he had been unaware that his meter had faulted, and noted that while his bills said they had been estimated, Power and Water Corporation's publicly available information didn't mention meter fault as a reason a bill might be estimated.

Power and Water Corporation acknowledged that its information didn't indicate estimated bills are potentially indicative of a faulty meter, and it agreed to update the information to help consumers better understand why their bill may have been estimated.

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#### **Example – Failure to communicate – A quick resolution**

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A consumer approached our office with a complaint that Jacana Energy had inappropriately 'credit listed' the consumer's partner for unpaid bills.

The consumer advised they and their partner had moved out of the NT two years prior and had only just been made aware that the partner had been listed. They advised they were unaware of any remaining debt with Jacana Energy and said they had not been contacted about it.

The consumer stated they had raised the matter with Jacana Energy, which looked into the complaint and informed them that it had indeed contacted the consumer's partner about the debt a number of times.

Our Office made inquiries to clarify the discrepancy, and in doing so obtained a copy of the disconnection form submitted by the consumer before leaving the NT.

The form demonstrated the consumer had provided updated contact details with the disconnection request, and Jacana Energy confirmed that the consumer's contact details had not been updated in line with the form, resulting in correspondence about the debt being sent to outdated contact addresses.

Once aware of the error, Jacana Energy agreed it had not properly informed the consumer and their partner of the debt and removed the partner from the credit listing.

### **Example – Trouble disconnecting – A matter that shouldn't have required escalation**

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A consumer approached our Office after a failed attempt to disconnect their electricity.

When lodging their disconnection request with Jacana Energy online, the consumer provided their gate access code in the 'additional access instructions' field. However, Jacana Energy did not pass that information on to the contractor performing the disconnection.

Jacana Energy did not tell the consumer the contractor had failed to disconnect their power, and the consumer remained unaware until they received their next bill just under a month after the requested disconnection date, which charged them for electricity usage after that date.

The consumer contacted Jacana Energy to query the bill, noting they had requested to disconnect the electricity and that while they had a locked gate, Jacana Energy had their gate access code. It was only in response to that query that Jacana Energy informed the consumer their disconnection had been unsuccessful.

Perplexingly, Jacana Energy's response didn't address the consumer's advice about their gate code, and instead provided the note from the contractor: 'CONTRACTOR RANG ... AT 11:25AM LOCKED PREMISES UNABLE TO COMPLETE JOB', and reminded the consumer of their obligation to provide clear and safe access to the meter. The response also informed the consumer that they would now need to arrange a special appointment to disconnect the electricity, which would be charged on top of the original disconnection fee.

The consumer responded to reiterate that Jacana Energy had access to their meter as it had their gate code, and also advised they did not receive a call from the contractor.

Jacana Energy said it would look into the matter further and provide the consumer an outcome at the end of its investigation.

Despite waiting months, the consumer advised they never received the promised outcome, and instead was next contacted by a debt collector some five months after they raised the matter, who advised that Jacana Energy had passed the outstanding debt onto them, though this was not confirmed as part of our inquiries.

The consumer approached our Office a short while after, and we made inquiries to understand what had happened.

In response, Jacana Energy confirmed that it never contacted the consumer with the result of the investigation as the consumer's matter had been overlooked. It acknowledged it had not accurately investigated the consumer's concerns, despite multiple contacts from the consumer to try and resolve the matter.

Jacana Energy also confirmed that it had indeed failed to provide the consumer’s gate code to the contractor and as such it would finalise the consumer’s account as if the electricity had been disconnected on the requested day. In acknowledgement of the consumer’s difficulty in dealing with the matter, it also waived the disconnection fee and a small outstanding debt from the period before the disconnection.

The consumer was thankful that we were able to assist them, and we are glad Jacana Energy quickly resolved the matter once our Office became involved. However, we note this was a relatively simple matter that should have been addressed long before it was brought to us.

In further correspondence, Jacana Energy confirmed that the contractor’s reference to a call was in fact a call to the metering department in Power and Water Corporation (which organises disconnections) and not to the consumer. It advised that contractors don’t call consumers when they can’t access their property as it is not a service they provide, and that Jacana Energy has no obligation to contact consumers about failed disconnection attempts, which is why it did not contact the consumer.

While it may not be an obligation, our Office notes a call to the consumer may have prevented this matter from becoming a problem in the first place, and we will be further considering this practice in the context of a range of issues around access.

## Housing

The Housing function is now located within Territory Families, Housing and Communities. There were 83 public housing related approaches in 2022/23. Issues raised in approaches received in 2022/23 are set out in the table below. The figures that follow are based on issues raised, not sustained issues.

### Housing – Issues raised - 2022/23

Issue	Notes	No.
<b>Conduct of tenants and third parties</b>	Includes complaints about tenants, neighbour disputes, theft or damage to tenant property and anti-social behaviour	<b>29</b>
<b>Repairs &amp; Maintenance</b>	Includes accommodating special needs	<b>18</b>
<b>Allocation of housing</b>	Includes priority housing	<b>11</b>
<b>Financial issues</b>	Includes rental amounts, debts, deductions and rebates	<b>10</b>
<b>Transfer of tenancy</b>	Includes refusal to transfer and delay	<b>7</b>
<b>Contact</b>	Difficulties in contacting Housing	<b>7</b>
<b>Termination/banning</b>	Includes termination of tenancy, banning from premises and trespass notices	<b>1</b>
<b>Property loss or damage</b>	Caused by Housing or contractor	<b>1</b>

Approaches relating to disputes between neighbours and the conduct of other tenants and visitors fell during the period but remained the number one complaint issue for Housing.

There were increases in the number of approaches relating to repairs and maintenance, financial issues and difficulties contacting Housing. Allocation of housing, whether initial allocation or transfer, with long attendant waiting times, continues to be a subject for concern for complainants.

## Other authorities

### Example – MVR response to data breach

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In the wake of a much publicised data breach, there was considerable concern about the security of key identification credentials (**ID**) such as driver licences. A complainant contacted our Office with such concerns.

We made enquiries with the Motor Vehicle Registry (**MVR**) and researched what comparable interstate bodies were doing to protect people's identities.

The MVR advised that, since 1 September 2022, new rules and security measures have been implemented to include a requirement for a unique Licence Card Number to pass the Commonwealth's National Document Verification Service (DVS) check, in addition to the Licence Number. They advised that DVS checks are used by institutions such as banks, financial providers and the MVR to verify a person's identity. The NT driver licence will only be validated as an authentic ID credential via DVS if the unique Card number matches the most recently issued record held by MVR.

MVR advised that a free replacement card was available to any affected Territorian, which would bear a new Card Number but the Licence Number could not be altered.

MVR contacted the complainant and discussed the situation with her. They offered to renew her licence again with a new photo and Card Number. The complainant agreed to this.

Our research showed some variation in approaches in different states but the approach adopted by MVR was broadly comparable. As regular media reporting shows, we live in a time where the frequency and scale of data breaches is increasing. It is essential that all organisations that require provision of information (including ID) only record it to the extent absolutely necessary and only keep it for the minimum time possible. If an organisation does not hold information, it cannot be stolen from them.

The unfortunate reality is that there will continue to be breaches of this type and it will simply be impractical for an agency like the MVR to issue new licences, with new Card and Licence numbers, on each occasion there is a privacy breach involving a private sector business. In this case, the complainant accepted the outcome and we did not identify any maladministration.

### Example – Ensuring due process in local government

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An Aboriginal health corporation contacted our Office to complain that a local government council was refusing to provide it a rates exemption. The corporation owned a number of properties and had requested the council exempt several of the properties from rates on the basis that they were not being used for a commercial purpose.

The council refused the request for exemption, advising that in their understanding the properties were being used for a commercial purpose.

In its complaint, the corporation said it was finding it difficult to engage with the council on this matter, and that it hadn't received clear information from the council about why the council considered the properties were being used for a commercial purpose. It asked that we look into the decision.

In the process of our inquiries, we became aware that the corporation had an avenue to appeal the council's decision, first internally at the council level, and then externally to the Northern Territory Civil and Administrative Tribunal.



We would usually not intervene where there is an avenue for review or appeal, as it is most often more appropriate for the matter to go through the specific review processes. However, we noted the council had failed to inform the corporation about these avenues of review in its decision letter and the timeline to appeal the decision had passed.

The council acknowledged its communication with the corporation had not been clear, and we suggested in the circumstances that it would be appropriate for the council to extend the deadline for the corporation to appeal its decision, which the council agreed to do.

In addition, the council said it would accept the corporation's invitation to visit the properties in question to further consider their use, and would potentially be revising its decision based on the visit. It stated that if it did so, it would ensure the corporation had the opportunity to appeal any further decision it makes.

The Aboriginal health corporation was thankful that we were able to facilitate better engagement from the council and ensure due process was followed.

## CHAPTER 3 – NT POLICE – ISSUES AND EXAMPLES

This Chapter discusses a number of specific issues identified in relation to NT Police operations, and includes a range of case examples.

### BACKLOG, DISCIPLINARY TIME LIMIT AND DELAY

I have previously commented on a substantial backlog of police conduct cases under investigation by NT Police Professional Standards Command (**PSC**) subject to the oversight of our Office. Significant progress has been made in addressing that backlog. The number of open police conduct matters at end of financial year has fallen from 183 in 2021 to 71 in 2023. By 30 June 2023, the number of open police conduct matters over 6 months old had fallen to 12.

While this progress is welcomed, there is still work to do. 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.

As I noted in my last Annual Report, delay in an area such as this is particularly significant when one considers the strict time limit on commencing disciplinary action against police officers under section 162(6) of the *Police Administration Act 1978* (the **PAA**).

The PAA places a 6 month time limit on laying disciplinary charges against police officers. This time limit 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 6 months.

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.

One problem with the time limit is that it is arguable the clock may start ticking as soon as any 'prescribed officer' becomes aware of an issue. This may 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.

There is provision for extension of the time limit, and extensions have been sought and granted on a number of occasions. However, varying interpretations of the extension provisions have given rise to much debate, delay and uncertainty, in several cases resulting in failure to pursue, or withdrawal of, disciplinary charges. This represents 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 reviewing the current time limit and mechanism for seeking an extension in order to ensure ongoing effectiveness of the disciplinary system. Prompt investigation and response to complaints will always be the preferred option but it is important that the legislative scheme does not present unreasonable hurdles to disciplinary action. We have advocated for this with NT Police and consider it is an area that deserves concentrated consideration.

I should also note there have been a number of cases finalised in recent times in which there was extraordinary delay on the part of NT Police, despite our best efforts to progress them. I have written before about various reasons that may explain delay in police dealing with a complaint but the extent of some delays defied justification.

These delays were frustrating and disappointing for all concerned. In relation to those matters, I went to some lengths to relay to the Commissioner's delegate and other senior officers how unacceptable the delay was. I also ensured apologies were provided to complainants for the delays.

The number of police conduct cases over six months old has now fallen dramatically, and, at the time of writing, there were only two unfinalised police conduct complaints made prior to 2023. Although there is still work to be done to improve timeliness, I do not propose to repeat my comments in detail. It is, however, crucial that extraordinary delay of that nature is not repeated. I apologise to complainants and officers involved for being unable to bring those matters to finalisation much sooner.

## CARE IN CUSTODY

We continue to monitor cases involving provision of care in custody.

The *Extraordinary Restraint* report discussed in Chapter 1 considers in detail challenges that can be faced in caring for individuals who attempt self-harm.

The following two cases raised significant issues about care in custody. The first involved a situation where restraint was used and maintained due to concerns over risks to officers. The second looks at challenges faced in caring for an individual who made multiple attempts at self-harm.

### Example - Prolonged restraint

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The adult complainant was found lying on the ground outside a cafe. Police attempts to engage with him and then take him into custody resulted in an altercation, during which he fought police including grabbing, kicking, spitting on and biting them. He was hand and ankle cuffed and a spit hood was applied before he was carried to a police vehicle. An attempt to conduct a Custody Health Assessment (CHA) in the cage of the vehicle at the watch house was unsuccessful. He was then carried by five officers into a cell and placed on a mattress. The ankle cuffs were removed but he was left handcuffed with his arms behind his back. Eight minutes later, officers re-entered the cell, conducted a search and removed the spit hood.

The initial plan was to leave him in the cell handcuffed and, once he calmed down, to get him to approach the cell door hatch backwards, which would allow officers to remove them from outside the cell. The reception process could then be undertaken while he was in the cell. The PSC Investigating Officer (IO) considered that the use of force by police in his arrest and transfer to the cell was not excessive.

Once in the cell, the complainant walked around for a time, exhibiting a level of aggression. After 17 minutes, he lay down and moved himself into a very awkward position whilst trying but failing to move his handcuffed arms to the front of his body. His hands became wedged under his thighs/knees, leaving him hunched over and unable to easily rectify his posture. He remained so, largely laying on the mattress in this position for almost 3 hours. He unsuccessfully attempted to stand on a few occasions.

Officers physically checked on him three times before he eventually managed to stand up, hunched over and the handcuffs were removed via the hatch. There was no audio available to catch the detail of those interactions. The position in which the complainant remained for that period appeared to be at least incredibly uncomfortable and potentially risked adverse health outcomes.

The IO concluded that it was unnecessary for the complainant to remain in handcuffs for the entire time. They should have been removed in a timely manner. If the complainant was unable or unwilling to comply with a direction to facilitate removal through the hatch, the responsible officer should have sought assistance or guidance from a senior member. The officer was provided with managerial guidance under section 14C of the PAA.

## Example – Self harm

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The complaint primarily related to the transport of an arrested person and her subsequent treatment at a watch house in the first half of 2019. Complaints of excessive use of force were not sustained. However, the IO recommended that remedial advice be provided to officers to discuss alternatives that could have better managed and de-escalated the situation.

The IO found an allegation of rudeness sustained and recommended that an officer be provided feedback to consider better strategies to professionally manage such incidents, which are an inevitable part of policing.

### Responding to self-harm attempts

An initial search of the complainant was conducted by a female officer prior to the complainant being placed in the cage of the vehicle. However, the officer noted at the watch house that she had yet to search the complainant's bra. The complainant was agitated when she arrived at the watch house and was placed in a cell before further search. Soon after, she brandished a pair of scissors but then placed them on the floor of the cell.

When asked whether she had any other items, the complainant proceeded to remove all of her clothing. She was transferred to another cell and given new clothes and a blanket. She proceeded to tear the blanket and wrap it around her neck in an apparent effort at self-harm. Police took the blanket away and moved her to another cell. She removed her new shirt and tore it and that was taken away. She then attempted to tear a mattress in the cell and that was taken away.

The complainant then tore long pants she had been given by police. It appears she was successful in tearing a strip which she put around her neck, again in an apparent attempt at self-harm. Shortly after this, police entered and a female officer removed the pants, with two male officers assisting by holding her. She was left with no cover for over five hours and twenty minutes.

The IO was not prepared to find police conduct unreasonable in so far as it related to allegations about failing to arrange for a mental health assessment or failing to properly ensure the complainant was fit for custody. The IO considered police records about the complainant and the records of the custodial episode, including the notes of the Custody Nurse. There was also BWV and CCTV footage available for the initial apprehension and parts of the complainant's custodial episode. However, the CCTV footage did not have audio and there was no footage beyond a certain time, as it was not retained beyond one year.

The IO found that the officers who dealt with the complainant believed her behaviour to be a result of intoxication and circumstance rather than mental health issues. The IO concluded that the complainant's actions during the evening were insufficient to support any inference of mental illness or impairment or that she was unfit for custody. The IO stated that prior instances of mental health concerns are not sufficient to determine a person has a mental health issue on another occasion.

The IO sustained findings in relation to failing to detect the scissors in the complainant's possession and failing to conduct and record timely observations of the complainant as an At Risk person. With regard to observations, although officers advised these would have been undertaken regularly, there was little in the records to support this and the age of the incident meant specific recollections had faded. The available (but limited) CCTV footage showed limited observations through the windows of the cell but there may have also been observations via CCTV monitors or through line of sight.

The IO recommended that remedial advice be given to the Custody Sergeant as follows:

- a. the importance of obtaining timely medical advice and assistance when dealing with At Risk individuals, particularly when they have attempted self-harm, and recording efforts and advice in the WebEOC offender journal (with reference to section 516 of the *Custody and Transport Instruction*);

- b. the need to formally raise with superior officers any issue that impacts on the ability to properly manage the safety of individuals in the watch house;
- c. the importance of careful decision making about placement of At Risk individuals where there is a known issue impacting on the ability to monitor them closely;
- d. a debrief be conducted with regard to the decision to utilise a particular cell, with knowledge of the complainant's self-harm history, her secretion of an edged weapon into the watch house and known issues with regard to visibility into that cell, with advice on how to better manage such circumstances in the future, taking into account all of the above recommendations.

The IO also recommended a Broadcast to all watch house staff around duty of care issues in cases like this, including the substance of paragraphs a and b above and the importance of recording details of all cell checks in WebEOC as required by section 293 of the *Custody and Transport Instruction*.

The IO noted a significant delay in the conduct of the CHA and stated that the Custody Nurse considered the complainant was unsafe for assessment at the time she came into custody. The Custody Sergeant stated police would have been unable to send the complainant to the mental health team due to her intoxication, as they would not have been able to assess her while she was drunk.

In my view, this was a situation where there had been five self-harm attempts and the complainant was exhibiting a level of agitation. It was a case that warranted involvement of, or at least prompt consultation with, mental health professionals. There is no denying this was a complex situation. The complainant was intoxicated and agitated. Officers were called on to make difficult judgements about what to do. They had the support of a Custody Nurse but, due to the complainant's behaviour, there were significant obstacles to any meaningful health assessment.

The health assessment of a person in custody who appears to be agitated, aggressive or attempting self-harm raises clear issues for officers who have to exercise a duty of care in relation to them. It is important that officers who have to handle such situations are given the highest level of support possible. This will include the assistance of a Custody Nurse (if available) but should, in my view, extend to a capacity to seek assistance or guidance from mental health professionals. If this cannot be provided in the watch house, there should be a straightforward mechanism to consult and seek advice on what courses of action are available.

I recommended that NT Police engage with the Department of Health around the potential for greater advice and assistance from mental health professionals for people in custody and for watch house staff who are called on the address such challenging situations in the future.

#### Removal of clothing and dignity

The IO found Police did not tell the complainant to take her clothes off. The complainant removed items of her own clothing on a number of occasions and at different times tore a blanket and clothing and placed them around her neck in apparent attempts at self-harm. She also attempted to tear a mattress, apparently to the same end. Police initially provided replacement clothing but ultimately made a decision to remove clothing to limit the potential for self-harm. The one item of clothing removed by police was long pants, from which it appears the complainant had torn a strip to place around her neck. These were removed by a female officer who was accompanied by two male officers. The IO was not prepared to find unreasonable police conduct around removal of clothing.

The IO sustained the allegation in so far as it related to the extended time period for which the complainant remained without clothing or cover for modesty. CCTV footage only covers a portion of the period. The Custody Sergeant stated he did not provide the complainant with any further clothing/blankets until satisfied that she was no longer a threat to herself. She was then given a blanket and taken to have a shower before being given clean clothes. The Custody Sergeant stated he did not have the option of using an anti-tear smock as there were none available.

The IO recommended:

- a. Once a suitable 'anti-tear' product has been identified and successfully trialled, they should be made available in every Northern Territory Watch House.
- b. On introduction of the anti-tear smocks, the *Custody and Transport Instruction* be amended to include a requirement for Custody OICs to ensure this product is stocked and available to members for use, and an Internal Broadcast be circulated advising of the change.
- c. A further amendment be made to the *Custody and Transport Instruction* to include the requirement to conduct and record regular reassessment of persons in custody who have been stripped of their clothing, or whose clothing is otherwise removed, in order to return that persons modesty as soon as is possible with regard to safety and associated risks and an Internal Broadcast be circulated advising of the change. Additionally, in such circumstances, detailed notes are to be recorded in WEBEOC to document the decision making and rationale to justify this course of action.

In my 2018/19 Annual Report (Part 1, Chapter 5), I discussed a case involving duty of care in a watch house which had some points in common with this case. In that case (noting my Assessment and recommendations were provided after the current incident took place), I recommended NT Police:

- *investigate additional options for clothing / blankets that will minimise the potential for use in attempted self-harm, whether by hanging or choking.*
- *take all practical steps to promote the privacy of individuals when their clothing is removed. Except to the extent that risks to the individual or others preclude it, this should routinely include:*
  - *removal of clothing only by, and in the presence of, officers of the same sex as the individual;*
  - *use of a blanket to cover the person as far as possible during removal;*
  - *returning their clothing, or if this is not possible, another appropriate form of cover, as soon as possible;*
  - *ensuring that monitoring is only open to, and undertaken by, officers of the same sex as the individual.*
- *consider the broader implications of these events for custody management in other situations and:*
  - *review/amend relevant guidance materials as required; and*
  - *consider the need for varied or additional training.*

Given the circumstances of the current case and the options available at the time, I did not dispute the IO's conclusion that they were not prepared to find unreasonable the initial removal of clothing.

However, this would appear to me to have been a case where a blanket could have been used to cover the complainant as far as possible during removal of her clothing, particularly when two male officers were involved in restraining her, while a female officer removed her pants. I noted a female officer had to be called in from General Duties to effect the removal.

As to the length of time the complainant was kept without cover, the IO noted that a mattress was placed against the glass door to provide an added measure of privacy and other prisoners were diverted so they could not look into the cell. The mattress covered the lower pane of the glass door but not the higher panes. Reviewing the available (but limited) footage, this was not a high traffic area but officers would walk past occasionally. There was no indication that anyone consciously looked into the cell unless they were conducting a check.

The IO concluded there was insufficient evidence to show that adequate checks or re-assessments of the situation were conducted over the five hour plus period following removal of clothing. It is essential that there be regular, recorded checks on an At Risk prisoner and frequent recorded reconsideration of the circumstances of anyone who is held without appropriate cover to maintain their dignity.

There is no question in my mind that NT Police should have a tear-proof option available to cater for such circumstances. In the absence of such an option, there was a difficult question as to how long officers should wait before attempting to provide some form of cover. In the earlier case referred to above, the complainant was only without cover for approximately 50 minutes. Even then, there were earlier attempts at engagement to re-assess the mental state of the complainant.

While there is no natural time limit, regular checking, communication and re-assessment should have been at the forefront of officer's minds, with a view to providing some form of cover as soon as possible. I accepted that waiting for a 'cooling off' period was not unreasonable. There was a risk of re-engaging too soon and re-escalating the situation. Unfortunately, the CCTV footage does not have audio, so even for the limited time it is available, we cannot discern what the complainant was saying or any continuing level of agitation that may have been evident in her words. It is therefore hard to judge with hindsight how long a 'cooling off' period may have been warranted.

After the initial interaction with the scissors, the complainant did not appear to represent a physical risk to the officers, so the real risk was that the complainant might again attempt self-harm if she was given access to clothing or a blanket. However, so long as she was closely monitored, if she had again been given cover at a much earlier point, officers could have quickly intervened and removed materials if self-harm was repeated.

Given the nature of the risk involved, and the gravity of leaving the complainant totally uncovered in a cell with glass windows, I considered there was ample room for significantly more forthright and timely attempts at polite contact and re-engagement to reassess her state of mind.

The absence of footage covering the bulk of the period and the lack of records made it hard to establish what, if any, further efforts were made to engage and reassess prior to the five hour and 20 minute mark. There is no evidence of such efforts. An apparent delay of this duration was far too long.

While I acknowledged the considerable passage of time since the events in question, I recommended the IO findings in relation to the time period for which the complainant remained without clothing or cover and my comments on this allegation be brought to the attention of the Custody Sergeant as part of recommended remedial advice. I further recommended that NT Police give the highest priority to stocking watch houses with effective tear-proof clothing and/or blankets.

In reply to my Assessment report, the delegate of the Commissioner confirmed acceptance of the IO's recommendations and added further remedial advice to the Custody Sergeant to ensure details of every cell check are appropriately recorded.

With regard to my general recommendations, he stated:

*I note your recommendation [to engage with the Department of Health] and can advise that the Custody Steering Committee have this issue as an agenda item with the view for improvements in this area.*

*[In relation to the recommendation that NT Police give the highest priority to stocking watch houses with effective tear-proof clothing and/or blankets] I advise that the Custody Steering Committee are currently overseeing a trial of tear-proof smocks.*

I have subsequently been informed that new tear-proof modesty smocks have been sourced locally and that consideration of draft provisions dealing with care of individuals who remove their clothing or have it removed is nearing completion.

## DOMESTIC VIOLENCE AND SEXUAL ASSAULT MATTERS

Some of the most common and most complicated matters NT Police deal with involve domestic violence allegations. Police often arrive at an incident with limited knowledge. They may face multiple accounts and conflicting versions of events. They often need to act quickly to bring situations under control, yet need to deal with people in heightened states of emotion in a constructive and sensitive manner.

Sexual assault matters are also frequently highly complex and require careful handling, with empathy shown to victims while ensuring an effective investigation to facilitate progress to a prosecution.

These types of cases can overlap when there are allegations of domestic violence that also involve sexual assault.

The Office receives a relatively limited number of complaints regarding police conduct in such matters each year. With regard to domestic violence allegations, there is a roughly even split between complainants who are victims of domestic violence and alleged perpetrators who feel aggrieved by the way in which police have responded to an allegation. This moderate number must be judged against the huge number of interactions police have with people in this space on a daily basis but also against the natural barriers to a victim who is dealing with trauma being willing to relive issues in yet another forum.

Of matters finalised by the Office this year that were raised by people as victims of domestic violence or sexual abuse, the following resulted in sustained findings against police:

- 10 involved failings in behaviour towards, or treatment of, victims;
- 9 of those involved delay or failure to adequately investigate or progress matters; and
- 2 of those involved issues around interpreter use.

Action taken in relation to officers as a result of such findings included provision of remedial advice, managerial guidance under section 14C of the PAA, requirement to undergo further training, counsel and caution, good behaviour requirements and reduction in pay.

Following are some examples of matters of this type finalised during the year that involved sustained findings.

### *Domestic violence matters*

#### **Example - No help for protected person**

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The complainant called police to report an assault by her ex-partner at a public venue, in the presence of her young children. The complainant was a protected person under a Domestic Violence Order (DVO) and advised police of her ex-partner's history of violence. She also advised police there were two witnesses and asked police to speak to them. Police made no effort to obtain their details or talk to them.

The IO describes what happened next:

*You replied that you didn't (have a reference number). Police stated, "would you like a reference number so you can speak with us when you're ready?" Demonstrating your visible frustration, you said, "I would like you to speak to the witness who witnessed what happened to me, cause she can tell you better than I can what happened." Police responded by saying to you, "I suggest you calm down, ok?" You replied, "Why, cause you'll arrest me if I don't?" To which the police replied "maybe".*



*You turned to walk away and said, "well go away then, go and do your job somewhere else". Police said "ok", turned and walked towards the front door. You replied "cause ...(inaudible)... clearly good at fuck ...(inaudible)... You go arrest me.... See ya, have a good afternoon".*

*Police then responded to a call over the police radio network and within hearing of yourself said, "yeah just getting attitude from the complainant". ...*

An officer then approached a worker at the venue to ask whether they would like the complainant removed from the premises.

The IO went on to say:

*The investigation into your complaint disclosed that attending police conducted no investigation into your allegations of domestic violence. The investigation concluded that at no time did police provide you with any reassurance; attempt to de-escalate the situation, attempt to obtain any details in relation to witnesses, children or the alleged offender and failed to follow up other avenues of enquiry such as CCTV footage. Police did not follow up with the alleged offender, nor did they confirm the welfare of the involved children, who were reported as distressed and in the company of an alleged domestic violence offender. The actions of attending police were not in line with the NTPF General Order – Domestic and Family Violence. The matter was referred back to the ... Police Station for further action and I understand Police spoke with you ... regarding your original request for police assistance.*

Disciplinary action was commenced in relation to the officer involved. NT Police apologised to the complainant.

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#### Example - Missed call

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The NT Police Joint Emergency Services Communication Centre (**JESCC**) received a report of a domestic disturbance. The reporter advised that a DVO was in place, children were present and there were threats to burn the house down. They said they were worried what might happen if the complainant (who was not then at home) returned. A Police Auxiliary at JESCC appeared to commence recording the information as a domestic violence report but then changed their mind and advised the reporter that *"police can't do anything now because there is nothing happening"*. The Auxiliary ultimately did not record the information, so no job was created for consideration or despatch by the JESCC supervisor. Consequently, police did not attend. Nothing further happened but the next morning police did attend following a domestic violence report by an organisation.

The JESCC training team conducts random audits of calls but this call was not caught by that process. It was separately audited for the purposes of the investigation, with a finding that the call should have been recorded as a domestic disturbance.

On interview, the Auxiliary accepted that not creating a job for review and dispatch could have dire consequences and offered a full apology to the complainant. The Auxiliary was issued with managerial guidance under section 14C of the PAA and also undertook a further training package. NT Police apologised to the complainant.

This complaint also raised issues regarding procedural requirements for service of a DVO and the level of satisfaction as to service needed for police to take action for a breach of DVO. Essentially, administrative errors or delays within courts and police administration in recording DVO status on relevant systems led to uncertainty on the part of police officers as to whether the DVO had been effectively served at the time of the incident. Police took steps to ensure that the DVO was served and the parties became involved with the local Family Safety Framework. The IO noted that no statement about the incident had been provided by the complainant. In the circumstances, the IO did not consider the officers dealing with the alleged breach had erred in not initiating a prosecution for breach of a DVO at the time.

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### Example - Picking sides

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The complainant and her partner separately complained to police, each alleging domestic violence by the other. The complainant alleged she had been physically assaulted. Officers were dismissive of the complainant's allegations. They issued a full non-contact DVO against her. They did not take a statement from her. On the next day, the complainant and her legal representative attended the police station. They were left to wait for 40 minutes and then she was told to recount her story in a reception area. An officer was rude to both the complainant and her lawyer, and incorrectly stated that she had been subject to a previous DVO. The officer refused to take a statement. A statement was only taken a week later following prompting from the legal representative.

On investigation, all three officers admitted their actions in relation to this matter did not meet the expectations placed on serving police officers when responding to and investigating incidents of domestic and family violence. One officer separated from NT Police. Disciplinary action was taken in relation to two others. NT Police apologised to the complainant *"for the substandard treatment, inaction and incivility she endured during the officers' response to this incident, which was clearly deficient and not up to the standards expected of Northern Territory police officers."*

### Sexual assault allegations

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#### Example - Go home

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At a little before 5:00 in the morning of a festive occasion, an officer guarding premises with a broken window was approached by a woman who claimed she had been raped by man who was then walking in front of her. There were many people in the area. The officer believed the woman was intoxicated and did not take her seriously, saying, "go home, go home get out of here" and "piss off you're drunk". The officer did not make any attempt to stop or question the alleged offender.

Another person (the complainant) objected to lack of action by the officer. The officer told the complainant repeatedly to go home. The officer did not obtain the complainant's details as a potential witness.

The woman again approached the officer and repeated her allegation but the officer did nothing to make further enquiries or assist the woman. Other police arrived but the officer did not inform them of the allegation or seek to investigate it further.

The woman left the area and reported her allegation to other police, who commenced investigations. The first officer did not provide any information to those officers (saying he did not hear any request) and on later enquiries provided only basic information.

The officer admitted several breaches of discipline and indicated he felt deeply embarrassed that he didn't take immediate action and was deeply sorry to the woman. He acknowledged that he should have been more professional and responded promptly and in accordance with General Orders. Disciplinary action was commenced in relation to the officer. Another officer who was present was provided with managerial guidance under section 14C of the PAA.

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#### Example - Indecent assault

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The complainant alleged she had been sexually assaulted and indecently assaulted on a vessel arriving in an NT port from another jurisdiction and sought police assistance to obtain her possessions from it. The complainant's first language was not English which gave rise to some difficulties in communication.

Attending police assisted the complainant to retrieve her belongings but were dismissive of her assault claims, despite her saying she wanted to pursue the matter criminally. They downplayed the likelihood of successful prosecution and did not take a statement. The PROMIS entry did not record the complainant as a victim or any alleged offender.

The complainant attended a police station four days later. An interpreter was not available that day but a statement was taken from her with an interpreter on the next day. The statement was reviewed by the Sex Crimes Division which noted the most serious offence was alleged to have taken place in another jurisdiction and referred the matter back to general duties officers. Later contact from one of the attending officers continued to be dismissive and the matter was finalised without a clear resolution.

The IO sustained a number of findings in relation to the handling of the allegations and apologised to the complainant. Disciplinary action was commenced against one officer but discontinued on legal advice. That officer was subsequently given managerial guidance under section 14C of the PAA in relation to sexual assault response and investigation and use of interpreters. This included advice on making referrals to relevant support services. Another officer was given remedial advice on those issues. A third separated from NT Police prior to finalisation of the complaint. A supervisor was given remedial advice to ensure that information recorded on PROMIS is an accurate reflection of the incident and that all avenues of inquiry are explored prior to finalisation.

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#### Example – Handling of alleged sexual assault

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A paramedic attending an incident in early 2020 complained about comments made by an officer (Officer A) to paramedics, saying they were dismissive of a sexual assault complainant (Ms A) and suggesting that police were merely going through the motions. The paramedic described the comments as *“biasing, stigmatising and much stronger than required.”* The paramedic further added, *“Behaviour such as that exhibited by [Officer A] on this occasion contributes to the culture that reduces the amount of victims of sexual assault who report on their assault and on whether they pursue or withdraw their report during the legal process.”*

Investigation of the complaint gave rise to consideration of a range of issues, including:

1. Offensive and Biased Behaviour;
2. Investigation – Inappropriate Response by Police:
  - the importance of combating common myths about sexual assault and the reporting of sexual assault;
  - the appropriateness of general duties officers investigating, taking statements, and making decisions in relation to allegations of rape which can involve specialist knowledge about trauma, the impacts of sexual abuse, and sophisticated questioning techniques;
  - the extent to which the conduct of the officers involved was consistent with the NT Charter of Victims' Rights;
  - whether it was appropriate for the police officers to take a statement from the victim while she was under the influence of alcohol;
3. Investigation - Interviewing of Vulnerable Persons:
  - why the officers involved did not pause to consider the use of an interpreter for both the victim and the alleged perpetrator in circumstances where both were displaying some signs of speaking English as a second language;
4. Training – NTPF Unconscious Bias Training status.

While all but the first allegation were identified as ancillary issues, I noted in my Assessment report that all issues related to core and very evident problems regarding the deficiencies of officer conduct in their approach to Ms A as a sexual assault complainant and their attitude to the proper investigation of her very serious allegations.

I stated these are fundamental and highly serious issues which require careful investigation and response from NT Police. I stressed that the fact that a third party complainant identified concerns with police conduct towards Ms A from the dismissive comments of one officer, but was not privy to specific interactions between police and Ms A or the detail of the investigation, should in no way detract from the need for NT Police to identify and deal with the significant failings that occurred in this case.

#### Offensive and biased behaviour

The IO determined the complaint of offensive and biased behaviour was sustained, stating, *“There is further evidence throughout the BWV footage of the attending members that supports that [Officer A] appeared dismissive of Ms [A’s] complaint and that his mind-set contributed to her complaint of sexual assault not being investigated.”*

#### Inappropriate Response by Police

The IO found the issues sustained, concluding that the *“police interactions with [Ms A] were disrespectful, doubtful and contradict the Northern Territory Police Force Code of Conduct and Ethics. It is evident that [Ms A] was concerned that the attending officers did not believe her account. Having had such an experience, and following the traumatic experience that she had provided detail of, it is understandable that [Ms A] may not have wished to participate in any follow-up meetings with police.”*

These were very significant failings in the approach adopted by officers to Ms A and in the proper investigation of an allegation of a serious crime. In my Assessment, I stated that the officers should be left in no doubt that their conduct in this case reflects poorly on their own conduct and on the mission of the NT Police Force to serve and protect.

#### Interviewing of Vulnerable Persons

The IO found the issue sustained, commenting:

*[Ms A’s] ability to understand the English language or her level of sobriety, are all considerations that the officers must consider. Having regard to all the circumstances, the decision to attempt to take a written statement from [Ms A] on the night was erroneous on many levels.*

*There was sufficient account on the BWV footage to instigate a referral to a specialist unit and for whom the onus of considering sobriety and ability to understand the English language lay.*

#### Training – NTPF Unconscious Bias training status

The IO concluded, *“It is quite evident, that despite attending the requisite training, the attending members allowed their biases to impact on an important investigation, which was ultimately finalised as a ‘disturbance general’. As a result of the investigation into this complaint against police, the criminal complaint has been referred to the Sex Crimes Division to follow up, albeit that much of the evidence has been lost, as a result of the attending members’ poor and disgraceful response.”*

Disciplinary action was commenced in relation to Officer A and another officer but discontinued due to *“jurisdictional issues pertaining to the time limit for commencing Part IV disciplinary actions”* (see discussion in *Backlog, disciplinary time limit and delay*, above).

In the circumstances, managerial guidance under section 14C of the PAA was given to Officer A and recommended in relation to the other officer. The IO also recommended three other officers be given remedial advice in relation to various aspects of their conduct.

It is vital for NT Police to ensure that all its officers participate in initial and ongoing refresher training in relation to interaction with the diverse range of members of the Northern Territory community, including training on issues such as unconscious bias. In that regard, I note that the PSC report advised:

*An online college has ... been developed and is being delivered through the NTPF College Online learning platform on an ongoing basis. The course is a mandatory course that must be completed by all sworn members of the NTPF, who have not completed the face to face Unconscious Bias training. In addition, the Anti-Discrimination Commission continue to offer half day workshops on challenging unconscious bias that is open to all Northern Territory Government employees.*

In reply to my Assessment report, the delegate of the Commissioner accepted my recommendations and referred to work underway to improve disciplinary processes.

## **SPIT HOODS AND RESTRAINT CHAIRS - SPECIFIC RECOMMENDATIONS**

In relation to my *Extraordinary Restraint* report (see Chapter 1), the Commissioner of Police has agreed or agreed in principle to 16 of the 18 recommendations, advising that implementation of 10 of them has been completed, with the balance ongoing.

### ***Not agreed***

With regard to total cessation of spit hood use, the Commissioner stated:

*I do not support the cessation of the use of spit guards (replacement for spit hoods) as a protective measure for my members. I am obligated to provide a safe working environment for my members and the act of being spat on or bitten presents an unacceptable risk that is reasonable mitigated by the correct use of spit/bite guards in strict and controlled environments.*

*Ongoing controls around the use of spit guards have been strengthened and each application is subject to an independent review by Risk Management and Internal Audit Division (RMIA).*

With regard to consideration of legislating cessation, the Commissioner stated he was unable to comment as this was a matter for Government.

I indicated in Chapter 1 that the available evidence does not support use of spit hoods on anyone as a viable ongoing option. Spitting is abhorrent behaviour and being spat on can disrupt the lives of police who need to take precautionary measures. Police deserve to be adequately protected. However, concerns held by police about the potential for contracting communicable disease are not supported by evidence. The numerous errors in spit hood application, supervision and review identified in my investigation do not instil confidence as to their future use and monitoring. Spit hoods present substantial immediate and long term risks to health. There are reasonable alternatives to protect police. The lack of justification for ongoing use is reinforced by cessation of use in all but one other police facility in Australia. As I indicated, the grounds for entirely ceasing spit hood use, and relying instead on alternatives, are compelling.

### ***Agreed or agreed in principle***

The Commissioner has recently provided responses and updates on implementation of recommendations agreed or agreed in principle.

#### **Communication and patience**

Recommendations 1 and 14 deal with advancing enhanced communication and patience, in NT Police documentation, guidance and training. The Commissioner advised:

*Northern Territory Police, Fire and Emergency Services (NTPFES) College are committed to reviewing current training practices and agree to undertake further improvements within the training environment in consideration of these recommendations. PFES College continues to review and improve training documentation and delivery, including reviewing de-escalation*

*methods and applying risk assessments. Recruit training now includes reality based training that assess recruits in realistic situations to both train a desired performance and assess competency during a number of scenarios. In-service training days can be used to upskill police officers.*

...

*As per recommendation 1, NT Police commit to ongoing reviews of all training material with a view to incorporating elements of child development, the impact of trauma and disability on behavioural responses. NT Police further agree to consult with partner agencies to develop a strategy to best deliver this training with a view to maintaining ongoing development of frontline officers. However due to competing priorities, this review has yet to commence, ... [The Commissioner then reiterated his comments on recommendation 1].*

### Use of spit hoods

With regard to cessation of spit hood use on youths, the Commissioner stated:

*The NT Police have as per NT Government direction ceased the use of spit hoods on youths in custody as of 14 October 2022.*

*The Custody and Transport Instruction 'Spit Guards' paragraph 369 now states that:*

*'Spit guards are not to be used on a youth in custody **under any circumstances** and that they are solely intended for adults. Members are to don personal protective equipment (PPE) and utilise appropriate Operational Safety Training and Tactics (OSST) techniques to reduce the risk of a bio hazard exposure when a youth in custody is displaying behaviour where spitting is a perceived risk'.*

Recommendations 5 to 7 deal with provision of personal protective equipment (PPE) for officers and necessary steps if any level of spit hood use is retained. The Commissioner advised:

*The Custody and Transport Instruction has been updated and now contains clear directions regarding the use of [PPE] in a controlled Watch House environment. Sufficient procedures exist to ensure there are sufficient stocks of PPE available at all times.*

..

*As per recommendation 1, the NTPFES College will undertake a review of all training material related to custodial practices inclusive of ERC and spit guard use.*

*The items listed for consideration in ... recommendation [6] will form part of the scope of the review of the training programs and materials. However due to competing priorities, this review has yet to commence, but as per recommendation 1 the PFES College continues to review and improve training documentation and delivery, including reviewing de-escalation methods and applying risk assessments. ...*

...

*Northern Territory Police have updated the new Custody and Transport General Order with these recommendations [7]. The new general order is currently undergoing its final review prior to promulgation.*

### Use of emergency restraint chair (ERC)

Recommendations 8-13 deal with ERC use, focussing on development of a more comprehensive therapeutic plan to promote alternative approaches and support mechanisms for people who are At Risk or in crisis. The Commissioner advised:

*At the current time, Custody Nurses are employed in Palmerston, Alice Springs and Katherine watch houses. Tennant Creek does not have a dedicated custody nurse. Persons in police custody in Tennant Creek, requiring medical assessment or treatment are conveyed to the Tennant Creek Hospital.*

*In conjunction with the Department of Health, NT Police undertake to review the current operating procedures and memorandum of understanding regarding the deployment of custody nurses.*

...

*NT Police strongly support any proposal to expand the operating hours and locations of custody nurses across the NT, with a view to providing a greater therapeutic model of support for persons in police custody who require medical intervention. NT Police strongly support the expansion of Co-Response Operational Protocol for Collaborative Care, between Top End Mental Health and Other Drug Services (TEMHAODS), St Johns Ambulance Australia (NT) Inc and the NT Police Force.*

*The Co-Response team consists of members from TEMHAODS, St Johns Ambulance and NT Police during a single shift period. The aim is to deliver a more streamlined response to a person experiencing a mental health emergency or crisis through early intervention and support to help them remain in the community as opposed to police custody.*

*The co-response function currently only operates in Darwin (Northern Suburbs) between Monday to Friday, 12:00pm to 8:00pm. NT Police strongly support any proposal to further expand this model and provide greater coverage across the NT to persons requiring mental health intervention with a view to reducing the number of persons coming into police custody.*

...

*The NT Police is in agreement with the intent of this recommendation [10 and 11] on each of the specific points provided. As previously noted the NTPFES College is reviewing all associated training material and programs at this time.*

*The NT Police custodial facilities do not have audio coverage within the actual cells. However, an internal broadcast was sent to all sworn staff on 9 May 2023, directing that, members issued with BWV are reminded to activate their BWV at all times when dealing with a person in custody in order to ensure visual and audio evidence is captured. The Custody and Transport General Order has been updated to reflect this requirement.*

The Commissioner advised that recommendation 12, storing ERCs out of sight, has already been implemented.

As for recommendation 13, ensuring that spit hoods and ERCs are not used in combination, the Commissioner advised:

*The NTPF supports the intent of this recommendation. There will however be rare instances when a person wearing a spit guard will need to be placed into an ERC for their own safety. In this event the spit guard will be left in place whilst the person is secured into the chair. As soon as the person is secured and staff are out of the range of biohazardous material the spit guard will be immediately removed.*

*The NT Police does not support the extended use of spit guards on persons in an ERC for their own safety.*

#### Quality assurance and record keeping

Recommendations 15 to 18 deal with quality assurance and record keeping. The Commissioner advised:

*Risk Management and Internal Audit Division now have access to BWV and are now able to review infield and in transit CIIR events. If BWV is not available, this is noted in the Sentinel Review and PSC is notified as per the CIIR SOP.*

*Risk Management and Internal Audit Division now record both positive and negative interactions and de-escalation attempts by staff as part of each review as appropriate. Any issues identified are reported to Professional Standards Command to make assessments surrounding any police misconduct.*

...

*All spit hood, ERC and Padded Cell uses undergo Sentinel reviews at this time and any issues identified are reported to Professional Standards Command and to the operational area.*

...

*The NT Police have updated the Custody and Transport General Order to reflect this recommendation [18]. SERPRO ... will enable the ability to include commentary into the Custody 'whiteboard' which is able to be extracted and reported upon.*

NT Police has also provided copies of relevant extracts from the current Custody and Transport Instruction and the draft General Order for Custody and Transport which it advises puts in place more robust measures surrounding ERC and Spit Guards. We will continue to monitor implementation of ongoing recommendations.

## USE OF FORCE

The following case involved multiple uses of force in a situation where an officer found himself alone in the pursuit of an offender.

### Example - Multiple uses of force

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In the early hours of the morning, police noted a vehicle of interest in relation to a number of recent unlawful entries. As they approached, the vehicle sped off and a pursuit ensued with the vehicle reaching speeds of up to 160 km/h in an 80 km/h zone. The vehicle drove on the wrong side of the road and mounted a roundabout. The pursuit was terminated but, shortly after, the vehicle stopped and the complainant fled on foot, jumping over a head-high fence into the yard of a private residence.

A number of police units converged on the location. Officer A pursued the complainant over that fence and over another fence into a neighbouring residence before catching up with him. Officer B injured himself in the pursuit and was only able to join in the apprehension in its later stages. Officer A was therefore on his own for most of the apprehension.

Officer A directed the complainant to stop but he initially failed to do so. He caught up with the complainant and took him to ground. The complainant then got up and ran for a short distance before Officer A caught up with him again and attempted to restrain him. There then followed four clearance strikes and four Taser discharges from Officer A, before Officer B arrived and within a short time utilised OC spray.

Officer A stated he was confronted with an unknown fleeing offender who had committed a serious offence, that he was one-up, that the offender had jumped three fences to avoid him, that he was not responding to directions and that he was in a confined space which added to environmental risks. While Officer A had his BWV activated from the initial takedown onwards, the events occurred at night and the interaction was often at very close quarters, so there are limits to what it disclosed.

The IO was not prepared to find the initial takedown unreasonable in the circumstances. Officer A was pursuing the complainant and brought him down from behind. He was pursuing an offender who represented a significant risk to the public through his dangerous driving.

#### Head strikes

In relation to the head strikes, Officer A stated the complainant had grabbed his testicles and applied significant pressure to them, resulting in extreme pain. He said the behaviour of the complainant demonstrated he was under the influence of alcohol or other drugs and had a propensity for violence.

Although an extreme level of pain and discomfort is not evident on the BWV footage, Officer A can be heard complaining in specific terms about the action of the complainant within a few minutes of the event.



An officer caught in that situation, with a significant level of physical aggression being exerted against them and the potential for immediate infliction of incapacitating pain, could be expected to act decisively to remove that threat. The IO was not prepared to find the head strikes unreasonable in the circumstances.

Any strike to the head involves significant risks and should only be undertaken in extreme circumstances. There are, nevertheless, circumstances in which an officer will be justified in taking reasonable physical action in self-defence. In this case, I was satisfied that the strikes were not undertaken with a view to punish the complainant. They were undertaken in the heat of the moment in order to remove a substantial and immediate threat of pain or injury faced by Officer A.

#### Taser use

The first three Taser discharges occurred while Officer A was standing over the complainant, who appears to be on his hands and knees. Officer A was trying to control the complainant with the weight of his body but said the complainant was not co-operating with directions that would allow him to be handcuffed and was struggling hard to overpower him and escape from his control.

The IO concluded that the complainant had hold of Officer A's testicles for a least 15 seconds and only let go of them when the Taser was first discharged. Considering the audio on the BWV, I accepted this finding. An officer facing a significant physical threat is entitled to take reasonable action in self-defence to remove that threat.

The second and third discharges in drive stun mode were effected in relatively quick succession when the complainant refused to comply with directions to put his hands behind his back. The IO found that the complainant was moving in an upward motion in an apparent attempt to stand up and escape.

A forceful upward motion in an attempt to escape is not obvious from the BWV. There is certainly ongoing refusal to follow the directions of Officer A but it is not clear how active that resistance is. Ultimately, I could not discount the statement of Officer A or the finding of the IO that there was active resistance and an effort to break free from the hold of Officer A. That finding is supported by the fact that the complainant shortly afterwards did break free and moved away from Officer A.

Officer A was faced with a situation where he had pursued a fleeing offender over fences, the complainant had just broken free from him and tried to run away, and had used force to resist him. The complainant was non-compliant despite clear directions from Officer A. Officer A was one-up and the complainant continued to resist. Officer A was no doubt tiring. There was a risk that, if not controlled, the complainant would try to flee again, raising a potential for injury to Officer A or the complainant in a further pursuit. Bearing in mind that he had just driven a vehicle dangerously, there was a risk to the community in allowing him to flee. The *Operational Safety and Use of Force Instruction* provides for use of a Taser to "protect yourself or others where violent confrontation or violent resistance is occurring or imminent" or "to protect an officer(s) in danger of being overpowered or to protect themselves or another person from the threat of injury".

These were all factors which Officer A was entitled to take into consideration when assessing the nature and level of force that was reasonable to use. Equally, it was appropriate that he consider the risks inherent in use of the Taser. It was also prudent to consider whether the Taser was having the desired impact.

Further, it was appropriate that he give clear directions (which he did) and that he allow reasonable time for the complainant to comply with his directions. As to the latter, the second and third discharges followed quickly on the heels of the prior discharge. Delaying discharge of the Taser, for a time at least, might have given him more time to consider his options, allow the complainant to comply and evaluate the effectiveness of the Taser option.

Any use of a Taser must be proportionate and made in consideration of the risks involved. Multiple discharges call for even more circumspection. It is possible Officer A could have broken off contact with the complainant after the first Taser discharge and attempted to guard him with the Taser until support arrived. This might have been successful or the complainant may have attempted to flee. Counting against that option was the fact that Officer A had no idea how long it might be before support arrived and no clear idea of where he was in order to call for backup.

The complainant then broke free, moving about two metres away and crouching in a corner. Officer A pointed the Taser at him and told him to put his hands behind his back and then to lay down on the ground with his hands behind his back. The complainant asked for water. He said he had a heart problem. He did not comply. Officer A repeatedly told him to get on the ground and put his hands behind his back. He threatened to Taser him if he did not do so.

The complainant stayed in roughly the same spot but moved from crouching to sitting to kneeling. Officer A approached slightly closer and again told him to lay face down on the ground. The complainant then moved to a standing position and Officer A discharged the Taser for a fourth time, in trigger mode. The complainant then went to ground, finishing in a reclining position.

The IO was not prepared to find the Taser discharges unreasonable in the circumstances of the case. However, he did recommend a verbal debrief with Officer A in relation to tactical options given the benefit of hindsight.

The BWV does not show any move by the complainant to take aggressive action or escape at this time. However, he is clearly not complying with directions and, when standing, is in a better position to flee or take aggressive action.

It is open to question whether this discharge could be characterised as falling within the permitted purposes in the *Operational Safety and Use of Force Instruction*. The pleading words and crouching posture of the complainant suggested he was adopting a submissive position. However, he was actively non-compliant, he had already used force to resist Officer A and he had managed to break free from him and move away twice.

Officer A was prepared to cover the complainant with his Taser and keep directing him to get on the ground for a time while he was crouching and relatively immobile. Officer A could have continued to guard the complainant in the hope that support would arrive. However, a move by the complainant to stand raised the risk level. They were in a confined area, which would make any attempt to flee, to pursue and to restrain the complainant more likely to result in injury to one of them.

A conclusion that action / conduct was not found to be unreasonable given the circumstances, "*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*" (Police Complaints Agreement, clause 13.2(d)).

There were other options open to Officer A and he acted more hastily than he could have but I acknowledged that he did not have the benefit of time or hindsight in making decisions on the night. Even so, I considered that Officer A would benefit from a genuine discussion with other officers around how to approach such situations in the future and alternative options for action. Ultimately, I did not take issue with the findings of the IO in relation to the Taser discharges, particularly noting the recommendation for a verbal debrief with Officer A.

#### OC spray discharge

Officer B arrived shortly after the fourth Taser use. There was then a period of over 30 seconds when the officers attempted to restrain the complainant and handcuff him. BWV vision of most of this time is almost entirely obscured. Both officers said he was offering substantial resistance. At one point, Officer A instructed the complainant to comply or he would be Tasered again.

After this period, Officer B asked Officer A if he should spray the complainant. Officer A said he should. Officer B deployed a one second burst of OC spray to the face of the complainant and he was secured very shortly thereafter. The IO found the discharge of OC spray reasonable and made no recommendation.

The *Operational Safety and Use of Force Instruction* provides for use of OC spray when there is a threat of physical injury. I accepted there was an ongoing struggle leading up to the use and there was continuing non-compliance despite clear directions. The level of physical resistance/aggression displayed by the complainant was not ascertainable from the BWV but is described in the officer's statements.

Given the background to the discharge, the wording of the Instruction and the available evidence, a conclusion that action / conduct was not found to be unreasonable given the circumstances may have been preferable but, in any event, I considered there was not sufficient evidence on which to base a finding against the officers.

### General comments

I previously produced a report that touched on the risks of Taser use, *Taser Use and Management of NT Police Conduct Issues* (December 2017):

[https://www.ombudsman.nt.gov.au/sites/default/files/downloads/taser\\_use\\_and\\_management\\_of\\_nt\\_police\\_conduct\\_issues.pdf](https://www.ombudsman.nt.gov.au/sites/default/files/downloads/taser_use_and_management_of_nt_police_conduct_issues.pdf).

My recommendations in that report included the following:

- 1) *NT Police continue to maintain specific restrictions on Taser use.*
- 2) *NT Police supplement the Use of Force General Order by additional guidance, illustrations and scenarios to better inform officers of the inherent risks of Taser use, particularly in relation to special circumstances.*
- 3) *NT Police training materials and courses be reviewed to ensure substantial emphasis on consideration of alternatives to use of force and specific restrictions on use of accoutrements like Tasers and chemical sprays.*
- ...
- 5) *NT Police review the special circumstances list in the Use of Force GO with consideration to the issues discussed in Chapters 1 and 2, including:*
  - ...
  - b. use on people with small stature or slight build;*
  - c. use on people with other vulnerabilities;*
- 6) *NT Police review the specific restrictions on Taser use, with consideration to:*
  - a. whether there is a need to provide some differentiation in terms of the circumstances in which use is allowed between the different uses of a Taser;*
  - b. extension of the circumstances for use of a Taser to a fleeing suspect where there is a reasonable belief that a suspect being pursued in relation to a serious violent crime presents a real risk that, if not immediately detained, they will cause serious harm in the future.*

*(But only after the additional measures in relation to training and guidance discussed in these recommendations are implemented).*
- 7) *NT Police maintain a system for regular monitoring and reporting on Taser use to a senior executive officer responsible for oversight of all instances of Taser use.*

My report identified that risks to a person include risk of death associated with Taser use and potential medical implications such as adverse effects on the heart, circulation and respiratory system triggered by the psychological stress induced by the discharge, and cardiac capture from the electrical discharge specifically linked to probes or electrodes in close proximity to the heart.

In this case, the complainant alleged that repeated use of the Taser during apprehension caused significant scarring. The IO finding in this regard was Unresolved, although they pointed to limited evidence to support any significant injury. The complainant's medical notes suggested a number of health impacts that Taser use may have been responsible for or implicated in. However, there was no evidence that these were more than transient in the complainant's case.

I have witnessed a number of instances where Taser use appears to have been of limited effect in controlling offenders. This is something for officers to bear in mind when assessing the best option for use of force and, in particular, repeated use of a Taser in the face of earlier ineffective outcomes. It is essential that officers equipped with Tasers are fully aware of limits on their efficacy, the risks involved in their use, and the factors that may escalate risk.

I recommended that NT Police review written guidance, training materials and courses, in line with my earlier recommendations 2 and 3, to ensure that all officers are being made aware of the inherent risks of Taser use (including multiple discharges), the importance of considering alternatives to use of force and specific restrictions on use of accoutrements like Tasers and chemical sprays.

#### Other findings

The IO found an allegation of offensive language and ancillary issues relating to failure to activate body worn video in a timely manner, delay in providing aftercare, and failure to complete a Custody Incident & Illness Report were sustained and recommended managerial guidance under section 14C of the PAA.

Regarding aftercare, there was a delay of just under five minutes from the completion of arrest to provision of water by way of a hose to decontaminate the OC spray. The complainant made a number of pleas for help during this time. This was considered too long a period in the circumstances, even taking into account the injury to one officer, the time needed for the officers to recover from the struggle and from the OC Spray, and the time taken to locate a water source. An ambulance was requested by a third officer who attended the scene shortly after the apprehension but it took over 30 minutes to attend. While waiting, water continued to be applied to the complainant's face and the third officer removed a Taser probe from the complainant's side.

#### NT Police response to Assessment report

The delegate of the Commissioner agreed with my Assessment report and recommendations, stating:

*I can confirm that since your recommendations in 2017, a number of changes have occurred;*

*General Order - Operational Safety and Use of Force has been updated and was promulgated on 14 June 2018. There is now a yearly requirement for officers, trained in Taser, to undertake an annual theory online course. This course contains a number of video's and warnings in relation to Taser use and its lawfulness as well as the risks of Taser use. The online theory course supplements training within their annual defensive tactics requalification.*

*Police recruits now undertake reality based training during their time within the college and this is progressing into being incorporated into the annual defensive tactics requalification training for all operational officers.*

*Training documents in the use of force space dictate that officers consider time, distance, cover and communication to avoid force in circumstances where that is possible. This is reiterated in decision making training, reality based training, use of force training, the online annual Taser course and will also feature within the proposed updated tactical options model to ensure a focus on de-escalation continues.*

*Further to the above work, which is already in place, the current General Order is being updated with the intent for it to be promulgated this year. This will further govern the restrictions on Taser use, the use of Taser on 'children', 'young children, people with small stature or slight build' and 'people with vulnerabilities' - specifically speaking to the risks and circumstances when use should be avoided. The proposed General Order will also specifically cover further reporting requirements for officers who 'draw' any tactical option.*

*The Operational Safety Section is also undertaking an agency wide review of all use of force incidents moving forward including the use of Taser.*

## USE OF POLICE DOGS

One case finalised during the year involved threatened use of a dog to encourage compliance by a person being walked to a police vehicle.

### Example - Do you want to get bitten?

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A youth was arrested at a residence for obtaining benefit by deception. The youth was handcuffed to the front and escorted towards a police vehicle. Four officers were present. The youth became non-compliant while in a hallway and pulled his arms away from escorting police. He was told to calm down but repeated the behaviour once outside.

One officer who did not assist with the escort told the youth there was a dog present and said "do you want to get bitten by a dog?" Shortly after, the same officer said to the dog handler, "can you get the dog out", and to the complainant, "that officer is going to get the dog out and if you play up the dog is going to bite you."

The dog handler ran to another nearby police vehicle and released the dog. The dog ran unrestrained towards the vehicle where the complainant was being put into the cage and another officer said, "See that dog is coming for you if you don't calm the f\*\*\* down."

The dog ran around the back of the cage to within about one metre of the complainant and the officers. It did not bark or otherwise display any aggression and by the time it reached that point, the youth was entering the cage.

The IO concluded that, while a police dog can be deployed as a 'challenge', it was not appropriate in these circumstances. Remedial advice was provided to three officers in relation to their behaviour and the threatened use of the dog.

Complaints regarding use of police dogs have not been common in the past but their use is gaining greater public attention. I wrote to the Commissioner of Police in general terms regarding use of dogs. I urged the Commissioner to consider a review of the *Instruction – Dog Operations* and dog handler training in light of recent developments in various jurisdictions. To provide background, I set out links to a number of publications:

- a 2022 report on deployment of police dogs, by the WA Corruption and Crime Commission (WACCC): <https://www.ccc.wa.gov.au/sites/default/files/2022-05/A%20report%20on%20the%20deployment%20of%20police%20dogs.pdf>;

- media articles about a recent case involving injury to a 13 year old in WA:
  - <https://www.9news.com.au/national/wa-police-perth-boy-13-in-hospital-after-police-dog-takedown/2c275439-0218-4b78-b4df-910cc6d6d18a> ;
  - <https://www.theguardian.com/australia-news/2022/nov/21/indigenous-advocates-call-for-ban-on-unmuzzled-police-dogs-in-wa-as-disturbing-pattern-emerges> ;
- two recent decisions of the New Zealand Independent Police Conduct Authority (NZIPCA):
  - <https://www.ipca.govt.nz/includes/download.ashx?ID=162983>;
  - <https://www.ipca.govt.nz/includes/download.ashx?ID=163749>;
- a 2019 United States journal article on, *K-9 Catch-22: The Impossible Dilemma Of Using Police Dogs On Apprehension Of Suspects*, University of Pittsburgh Law Review, Vol. 80, Spring 2019: <https://lawreview.law.pitt.edu/ojs/lawreview/article/view/630/423> .

I noted that the WACCC report describes the risks of injury to a subject of apprehension as follows:

*[187] The review considered the likelihood of a police dog to cause injury.*

*[188] Thirty four percent of police dog incidents considered as part of this thematic review resulted in a person being apprehended and requiring medical treatment. Only one person received significant injuries that may have been considered likely to endanger life, or cause permanent injury to health.*

*[189] Based on this limited information, the risk that a police dog will cause grievous bodily harm appears to be low. However, the sample size is too small to be definitive.*

*[190] Nevertheless, the Commission considers a police dog apprehension is likely cause **serious injury** [emphasis added]. WA Police defines serious injury as a 'bodily injury of such a nature to cause or be likely to cause any person to require medical care'.*

*[191] This view appears consistent with the Use of Force policy for the management and use of police dogs as a tactical option.*

*[192] WA Police intranet states '[general purpose] canine deployments have a high likelihood of resulting in serious injury' and on a linear model 'the application of a general purpose canine is considered to be between a firearm and Taser'.*

*[193] Given this risk, it is critical that police dog apprehension is avoided where possible. The verbal challenge remains the key strategy in managing the risk of serious injury.*

I indicated the US journal article provides the following graphic examples and commentary:

*In Robinette, a police officer and his police dog, Casey, were called to the scene of a suspected burglary at a car dealership. Under the department's K-9 division policy, Casey was trained to track and apprehend suspects by seizing a suspect's arm; however, testimony revealed that if "a suspect's arm is not available, the dog will 'get the first thing that [is] offered to him.'" As the two arrived at the scene, the officer shouted a warning that the dog would be released if the suspect did not surrender. After repeating this warning without success, the officer released Casey with the command "find him," and the dog proceeded to search for the suspect. When the officer caught up with the dog, he found "Casey had the suspect's neck in his mouth [and] the man was lying face down on the floor with half of his body underneath a car." The officer noted the suspect had lost a substantial amount of blood and continued to bleed from his neck. The officer ordered the dog off and called for an ambulance, but the suspect was pronounced dead at the scene.*

...

*Robinette is not the only instance where death resulted from the use of a police dog. There are three other known and documented deaths. In March of 1990, Laurene MacLeod, a homeless woman who had sought shelter in an abandoned West Palm Beach home bled to death following an attack by a police dog sent into the home to locate and subdue the trespasser. On May 20, 2011, a police dog in Hayward, California severely bit an 89-year-old man, Jesse Porter, in his*

*backyard. The bite led to gangrene and amputation, and Porter never recovered, dying two months later in a rehabilitation center. Most recently, on July 8, 2018, 51-year-old Joseph Pettaway was killed by a police dog during an apparent burglary in Montgomery, Alabama. The police department is currently investigating the incident, but the family disputes that Pettaway was involved in any robbery. These are the known deaths, but there may be others undocumented because there is no central source of statistics on police dogs. Additionally, police dogs may be involved in other deaths, but are not reported as such. For example, Philip White of Vineland, New Jersey reportedly died of a heart attack while in police custody, but a video surfaced of a police dog attacking him prior to his death, and some community members believe the dog played a role in the death.*

*Deaths may be rare, but serious bodily harm is not. While the statistics regarding police dog bites are scarce, a simple scan of case law can give the reader an understanding of the severity of injuries inflicted by police dogs. There have been relatively few empirical studies of police dog bite data, and those that do exist are focused on data from Los Angeles during the 1990s when the city's police force was under scrutiny for its use of dogs. The data came from King Drew's Medical Center and revealed that police dog bites were much more serious, and caused more severe injuries than most domestic dog bites. Compared to domestic dog bites, bites from police dogs resulted in higher rates of hospitalization and surgery, and more frequent vascular injuries, bone fractures, and tendon injuries. As many as 20% of people bitten by police dogs experienced severe complications, including permanent disfigurement. While deaths are rare, the injuries are not "band-aid" injuries, as often suggested.*

I also noted the media articles regarding the 13 year old in WA present an illustration of the significant injury that can be done by a dog when apprehending a person. Both the WACCC report (34% requiring medical treatment) and the US journal article (as many as 20% severe complications) suggest that injury is likely to occur in a substantial proportion of cases.

As for the NT, I said:

*The focus of my immediate concern is on use of dogs in apprehensions, particularly in situations where they are released to chase and apprehend. In such cases, they may be separated from their handler for a time and so not be subject to a level of immediate control. Having said that, it is important to recognise that there is always potential for a dog to be, to some extent, an independent and highly aggressive actor, even with a handler present.*

*The two recent decisions of New Zealand IPCA provide contrasting examples of scenarios where police use of a dog in an apprehension have been found to be respectively unjustified and justified. They provide useful discussion of relevant factors.*

With regard to the NT Police Instruction – Dog Operations, I said:

*The reference to apprehension of violent offenders is, in my view, of particular significance. This is the situation where the arguments for use of a dog for apprehension, even with its inherent risks, are at their strongest. Using a dog to apprehend a violent offender in order to stop further violent offences may well be justified. Use will become more open to debate where offences do not involve violence, where an offender may only have played a peripheral role in the offending and where the offender can be pursued and apprehended by other reasonable means.*

*The current position of 'Apprehension of violent offenders' within a series of dot points in clause 19, one of which is 'General policing duties', does not provide sufficient emphasis to the risk assessment that should be undertaken when using a dog in an apprehension situation. I believe there would be considerable merit in establishing much clearer and more detailed guidelines and limitations on when and how a dog should be used for apprehension.*

NT Police responded acknowledging that a review of current practices may provide an opportunity to further improve and/or enhance NT Police guidelines and consistency of practices, and advising that an initial assessment would be undertaken to conduct a cross-jurisdictional analysis of dog handling practices, both in the training and operational context.

## VEHICLE SAFETY

A number of cases finalised during the reporting period raised issues relating to vehicle safety.

### *Risks to the public, police and property*

There are obvious risks to members of the public and to property inherent in any police pursuit with a vehicle. I have raised issues with police pursuits in previous annual reports. Two such examples show concerns are not limited to pursuits involving motor vehicles:

- *Pursuit over minor matter.* A complainant on a bicycle who was not wearing a helmet was pursued by an officer on a push bike in a built up area. The IO concluded that the pursuit of the complainant through pedestrians on the footpath and through traffic was potentially dangerous and excessive, given the nature of the offence. The officer contended that pursuit was necessary to stop the dangerous and erratic riding of the complainant but the IO noted any problematic riding by the complainant was likely the outcome of being pursued. The officer was given remedial advice. (2019/20 Annual Report, p64)
- *Bicycle pursuit.* Police on bicycles pursued a youth who was riding a bike without a helmet or a light. The pursuit went on for some time in a built up area. We 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. (2021/22 Annual Report, p50).

The following complaint finalised in this period related to major damage to the vehicle of a passing road user.

### **Example – Major damage to a private vehicle**

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A stolen vehicle was being driven erratically in a built up area. Police in an unmarked vehicle initiated a pursuit, turning to follow the offenders and turning on their emergency beacons, but soon terminated it. Shortly after, the stolen vehicle collided with the complainant's vehicle, causing reported injury to the complainant and major damage to the vehicle.

NT Police concluded that the dangerous driving of the stolen vehicle was the main causal factor in the collision. It was acknowledged that police officers were working in a dynamic environment and faced with a challenging decision in an attempt to intervene to stop the actions of the driver of the stolen vehicle. They concluded:

*Ultimately the decision rests with the individual police officers when to commence a pursuit. Upon the police officers observing that the risks outweighed the objective of apprehending the [stolen vehicle], the police officers terminated the pursuit.*

*With all the known risk factors in place, the police vehicle should not have engaged the [stolen vehicle] in a pursuit. The offenders were known and there were alternative resolution strategies available to members. The police vehicle commencing the pursuit contributed to the manner of driving displayed ... . It is speculative to assume the pursuit contributed to the crash ... .*



It was determined that the officers involved failed to comply with *Emergency Vehicle Driving (EVD) and Pursuit Driving General Order* in initiating the pursuit and in the way they terminated the pursuit. There were also failings in relation to recording and seeking review of the incident. Managerial guidance was issued to the officers under section 14C of the PAA.

Another finalised complaint related to risks inherent in emergency driving in challenging conditions.

### Example - Driving to conditions

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An officer was driving one of a number of cars in pursuit of a stolen vehicle. At the time of the pursuit, there was light rain and the roads were wet, creating problematic driving conditions. The officer crossed a median strip and drove at speed on the incorrect side of the road to access a shopping centre car park in an attempt to cut off the occupants of the stolen vehicle. There were no oncoming vehicles approaching or exiting the car park and the total distance travelled on the wrong side of the road was approximately 60 metres, with warning devices activated. The officer driving considered the action “reasonable, justified and safe”.

The IO noted that the available evidence did not include a full scene analysis. However, it was also noted that the action forced another police vehicle to react suddenly to avoid a collision and consequently collide with a street sign, causing minor damage. Avoidance of a more serious crash was substantially attributable to the awareness and quick response of the other driver. When judged against the reduced risk with the occupants of the stolen vehicle having by then alighted, the level of danger had decreased and required further assessment of what action was safe and necessary. The officer was given remedial advice with respect to pursuit driving.

### *Risks to people being pursued*

We have also previously received complaints about immediate impacts on people being pursued, for example:

- *Struck by police vehicle.* A complainant fleeing other police was struck by a police vehicle in the course of apprehension, causing him to bounce off the vehicle and come to rest about 2 metres from it. I noted a number of risks inherent in the actions of the police driver, including:
  - travelling through a zebra crossing at speed, the approach to which was somewhat obscured for drivers and pedestrians - fortunately, no one was entering the crossing at the time;
  - crossing over the west-bound traffic lane – although the officer had clear vision of the road and there was no oncoming traffic;
  - mounting a kerb at a speed of around 50 km/hr could have caused the vehicle to deviate from its intended course, increasing risk of injury or damage;
  - driving between two traffic poles with the potential to hit one or to have to swerve to avoid one;
  - perhaps a culmination of the preceding factors, was that the officer, faced with these many challenges, would not be able to maintain an adequate watch on the complainant and control of the vehicle, with the potential to collide with the complainant. This did eventuate.

The driver was given managerial guidance although I considered there was evidence that could support a finding of breach of discipline on the grounds that the driver was negligent or careless. (2017/18 Annual Report, pp65-68)

- *The wrong man.* Police searching for a person believed to be in breach of bail conditions incorrectly identified the complainant and chased him when he rode away on a bicycle. Several police pursued him through streets in a built up area. On three occasions, a police vehicle was pulled into driveways trying to block him. While he came close to coming into contact with the police vehicle, he managed to evade the vehicle and continue on. Ultimately, he rode into a vacant lot pursued by the vehicle and, on his version of events, was struck by the vehicle, causing injury to his knee.

Contact with the vehicle was not established but the IO concluded the driver had failed to identify inherent dangers in using the vehicle to try to stop the complainant. He concluded that, while the officer may have been driving within his ability to control the vehicle, he could not control the actions of the complainant and the risks that might bring. He noted the need for continued risk assessment and queried the repetition of the same failed tactic. The officer was given remedial advice. (2019/20 Annual Report, p60)

Building on this history, the reporting year saw finalisation of a number of cases where the complainant alleged that a police vehicle collided with them.

### *Use of vehicle to cordon – risk of striking*

In each case below, the complainant alleged contact. In some cases, contact could not be definitively established but in all, the police vehicle and complainant came into close proximity.

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#### **Example – Who hit who?**

Territory Response Group officers pursued the complainant down a suburban street. They were responding to a complaint that a person had been seen at a shopping centre with a knife. The complainant was running on the footpath with the police vehicle on the road. The two collided, with the complainant suffering major head injuries. The police involved all stated that the complainant veered out into the road. There was no body worn footage of the events and no independent witnesses to clarify who had veered into who. Failings in preservation of the scene and the crash investigation did not assist in identifying what happened.

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#### **Example - Trail bike block**

At around midnight in a suburban park, two officers on police trail bikes were attempting to disperse a crowd of young people. Most moved on but some were slower than others. Two officers got off their bikes to move people on. One youth yelled, swore and gesticulated at police. Another was taken hold of in order to tip out alcohol he was holding. He then gesticulated and swore at police. The officers decided to arrest both youths.

An officer took hold of one youth but the other youth intervened, allowing both to run from that officer but towards the other officer who was approaching on his trail bike. One youth evaded him narrowly and ran past him but the other collided with the bike. The youth was spun around but did not suffer significant injury. He was then apprehended.

The force used in this case was found by the IO not to be unreasonable in the dynamic circumstances of the case. The speed of the bike was not considered undue. However, the officer on the bike was given remedial advice in relation to the appropriateness of using a vehicle when apprehending people due to the potential risk of serious harm and injury to one's self and others.

It was also noted that the Use of Force case note entry had no details of the use of the motorbike. The officer was given remedial advice in relation to that failure.

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### Example – Close call

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In the same chain of events referred to in *Driving to conditions* (above), the complainant was one of the youths being pursued in a built up area while fleeing, having alighted from a stolen vehicle. Conditions were wet and slippery following light rain. She complained that a police vehicle struck her while she was running, causing her to feel weak and in pain. She continued to run for a relatively short distance before being apprehended.

The IO acknowledged that police used a vehicle to block the path of the complainant but concluded that at no time was the complainant struck by the vehicle. Available evidence did not establish contact but the vehicle undoubtedly came close to the complainant. A number of officers received remedial advice for not utilising body worn video which might have shed light on the incident.

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### Example – Hit or miss?

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An off duty officer (the driver) became aware of the apparent theft of a bottle of alcohol while at a shopping centre. The driver (in his vehicle) pursued the alleged offender (the complainant, who was on foot) and caught up with him in a parking area near bushland. He drove towards the complainant, approaching closely but to one side of the complainant. The complainant then fell, either on coming into contact with the vehicle or in very close proximity to it. The complainant quickly got up and moved on. The driver got out of the vehicle to chase him. The vehicle then moved forward several metres, again in close proximity to the complainant. The complainant contended that he was struck by the vehicle but the available evidence on the point was inconclusive. He said he was bumped by the vehicle from the outset and stated he wanted to complain about being bumped.

The IO noted that the surface of the road was bitumen and blue metal, transitioning to a 2 to 3 metre section of dirt and loose gravel, before transitioning to a bitumen foot/bike path. The vehicle speed was undetermined. The driver said that he was confident in his driving ability and that he did not position the complainant in front of the vehicle. However, it was clear the vehicle was in very close proximity to the complainant when he lost his footing and fell on each occasion. The IO considered this type of surface would make it difficult to control or stop a motor vehicle if required, albeit the section of gravel was relatively small.

Considering the proximity of the complainant to the vehicle, his level of intoxication, the type of surface being driven on and that the officer lost effective control of the vehicle, this posed a potential risk of harm to the complainant. The IO concluded the use of a vehicle to chase after the complainant was not unreasonable, however the risk, when balanced against the relatively minor nature of offending, might be considered to be excessive and warranted a de-brief with respect to decision making and carrying out appropriate risk assessments. The failure to fully immobilise the vehicle was recognised as accidental but careless. The officer was given managerial guidance under section 14C of the PAA.

A further aspect of this matter involved failings in the handling of the investigation of the allegation that the officer had struck the complainant with the vehicle. The driver took steps to report the allegation but, despite the presence of other officers and being in contact with a senior officer, the driver inserted himself into dealing with the allegation on the basis that there had been no contact.

No other officers took the lead in dealing with or investigating the allegation, or preserving the scene. Officers quickly looked to see if there was any damage to the vehicle but did not inspect both sides and one even wiped dust off the bonnet. While the driver may have been confident in his position, it was not appropriate for him to involve himself beyond reporting the allegation. It was necessary for other officers to take care to ensure the allegation could be properly investigated.

NT Police concluded that, in hindsight, considering that there were no independent witnesses identified to the incident and it was a case of the complainant's word against that of the driver, it may have been prudent and fair to conduct an independent crash investigation for transparency. It was noted that, although a crash investigator attended the scene, this was merely to conduct a breath test and not with the intention of conducting such an investigation.

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#### Example – Hilux v bike

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Police investigating a domestic disturbance saw a youth on a bicycle who matched the description of an alleged offender. An officer called out to the youth, who proceeded to ride away. The officer threw a baton at the bicycle in an unsuccessful attempt to stop it.

Another officer in an unmarked police Hilux pursued the youth and blocked his path against a fence. The youth alleged he was struck by the vehicle but this was disputed by police. The youth climbed the fence and ran a short distance before stopping to talk to police. It transpired the youth had nothing to do with the disturbance.

The IO determined the youth ran into the vehicle with the bike and that there was no intention on the part of the officer to strike the complainant with the vehicle. However, the IO concluded that the action taken by the officer to prevent the evasion of the complainant was not justified by policy. A number of breaches of discipline were identified and disciplinary action commenced under Part IV of the PAA.

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#### Example – Late night slide

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Police on patrol in the middle of the night came across a youth riding a motorcycle erratically on public roads. This culminated in a collision with a police vehicle on a median strip in a roadway. Police contended that the motorcycle was driven towards a stationary police vehicle before it toppled and slid into the vehicle's tyre. The youth alleged that the police vehicle struck his bike.

Attending police did not activate their body worn video at any time. The incident was not reported to police communications, the Watch Commander or the Divisional Superintendent. The scene was not photographed or documented prior to the police vehicle being moved. No crash investigation was commenced by the attending members. Neither the officer nor the youth were breath tested.

An allegation that police caused the collision was Unresolved. Managerial guidance and remedial advice was given to various officers in respect of recording and reporting failings.

The above examples all point to the types of risks involved in utilising vehicles to pursue and cordon people. It is important that risks are assessed carefully, considering a raft of factors, including the reasons for pursuit, the nature of any alleged offence, the conditions faced and the situation of the person being pursued.

Driving is inherently risky. Around 61,500 people are hospitalised through traffic accidents in Australia each year, with over 1,000 deaths.<sup>12</sup> Police training may hone officers' skills in emergency driving but there are inherent risks that must always be factored into police decision-making around use of vehicles. Officers may well feel confident that they can control and rapidly respond to environmental factors but they can never predict with certainty the behaviour of people they are pursuing. Care and caution should prevail over reliance on luck.

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<sup>12</sup> Injury in Australia: Transport accidents <https://www.aihw.gov.au/reports/injury/transport-injuries>.

### *Failing to immobilise vehicle on exit*

*Hit or miss?* (above) involved a problem that arose because the driver of the police vehicle exited it without ensuring it was immobilised. In that case, the vehicle moved forward and the complainant alleged he was struck by it, although the available evidence was equivocal. A similar situation arose in the following case.

#### **Example – Stop right there**

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An officer chased and located a person who was thought to be in possession of alcohol in a public space. The officer got out of his car to detain the person but did not immobilise it. While he was physically restraining the person, the car moved backwards towards them. The vehicle struck the officer and the complainant alleged that the vehicle came to rest on him for a short period. Two officers stated it did not strike the complainant.

The IO considered there was some evidence that might support a finding that the vehicle came into contact with the complainant, but there was insufficient evidence to make a finding that the complainant suffered any significant injury. The IO concluded that it would be reasonable for the complainant to have felt genuine fear and shock that a vehicle was heading directly towards him.

The IO recommended remedial advice be given to the officer in relation to Operational Safety Principles, in particular Safety First and Risk Assessments and that an apology be provided to the complainant for police action that placed him at risk of significant injury.

Officers were also counselled and cautioned or given remedial advice in relation to failure to utilise body worn video and failure to report the complaint.

The risks of leaving a vehicle mobile in close proximity to an officer or subject of pursuit are self-evident. While errors can be made in the heat of pursuit, it is important that officers make every effort to take care to immobilise vehicles before they exit them to engage in pursuit.

### *Reporting and investigation of incidents*

In a number of the above cases, there were significant deficiencies in the way the allegation of the incident was reported or investigated.

Where a person raises an allegation that they have been struck by or collided with a police vehicle, it is in the interests of everyone, including officers involved, that this be immediately reported and, in the absence of any urgent need to act to the contrary, appropriate steps be taken to ensure prompt investigation by a relevant authority.

## **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.

In 2022/23, 13 of the 47 Category 1/2 complaints received by the Office were made by or on behalf of a youth. Of 58 finalised Category 1/2 complaints involving a sustained finding, 12 were made by or on behalf of a youth. Sustained findings related to:

- use of rude or offensive language (5 cases);
- use or threat to use force or restraints (4 cases, e.g., *Do you want to get bitten?*, in *Use of police dogs*, above);

- vehicle safety issues (4 cases, see examples in *Use of vehicle to cordon – risk of striking*, in *Vehicle safety*, above);
- failings in questioning, search and seizure of property (1, see case example below);
- failure to adequately investigate an offence (1); and
- failure to adequately secure handcuffs (1).

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### Example – Questioning and investigation involving youths

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An officer in a remote community attended a house pursuing an investigation regarding damaged property in the community. He was given permission to enter the house and told several youths to move into a bedroom.

The officer asked one of the boys to get an adult. An adult male attended but moved in and out of the room during the period the officer was conducting enquiries. The IO concluded it was unreasonable to assume that the adult could be regarded as a responsible adult for all five youths present.

The officer then made some cautionary statements to the youths but there was no attempt to confirm understanding of the caution with the youths or the adult and the IO did not consider they met the formal requirements for a caution.

The officer then questioned the youths. The IO concluded that, in doing so, the officer failed to comply with the *Youth Justice Act* and the *General Order – Questioning and Investigations*.

The officer took photos of the complainant's shoes and later seized them. The adult was not present in the room at the time and no consent was sought for him to do so. The IO concluded that the officer acted in breach of the *Youth Justice Act* and the *General Order – Youth*.

While the complaints were sustained, no action was taken in respect of the breaches, as the officer separated from NT Police before finalisation of the investigation.

In addition to consideration of individual complaints, I finalised an own initiative investigation into police utilisation of spit hoods and restraint chairs on youths (discussed in Chapter 1 of this report).

## CHAPTER 4 – NT POLICE - APPROACHES & PROCESS

This Chapter:

- analyses police conduct approaches received and finalised during the period;
- describes the way in which police conduct complaints are dealt with; and
- describes statutory oversight roles of the Office regarding specific law enforcement functions.

### POLICE CONDUCT APPROACHES

#### Approaches received

Police conduct approaches can be distinguished from other approaches to NT Police, Fire and Emergency Services (NTPFES). These may relate to broader issues regarding police powers, for example installation of CCTV, and other functions administered by NTPFES 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	2020/21	2021/22	2022/23
<b>Approaches</b>	628	612	465
<b>Complaint Resolution Process</b>	172	186	161
<b>Category 2</b>	78	66	44
<b>Category 1</b>	4	1	3

*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](#) later in this Chapter - and the Police Complaints Agreement at [Appendix A](#), in particular, clauses 12.3, 12.2 and 11.2.*

The total number of police conduct approaches declined markedly compared with the previous year, from 612 to 465. Likewise, the total number of more serious complaints received (Category 1 and 2) declined to 47, from 67 in the previous year and 82 in the year before that. On its face, this is a welcome development. However, we have not been able to identify an obvious cause for the decline.

Of the new Category 1/2 complaints received, 13 were made on behalf of youths, down from 18 in the previous year.

Breaking down the Category 1/2 matters by region of origin, 19 originated from Darwin/Palmerston/Top End, 15 from Central Australia, 10 from the Katherine region, 2 from the Barkly region and 2 from the East Arnhem region.

## Police conduct outcomes

Police conduct issues may be identified in a complaint to NT Police or our Office, by the NT Police Professional Standards Command (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 89 Category 1/2 complaints were finalised during 2022/23.

Category 1/2 complaints finalised	2020/21	2021/22	2022/23
<b>Category 1</b>	0	2	6
<b>Category 2</b>	46	105	83
<b>Total</b>	<b>46</b>	<b>107</b>	<b>89</b>

Of those finalised complaints, 58 involved a finding that at least one issue was sustained.

How finalised	2020/21	2021/22	2022/2023
<b>Category 1 – sustained issue</b>	0	2	5
<b>Category 2 – sustained issue</b>	31	80	42
<b>Deferred in light of disciplinary action / charges</b>	0	2	11
<b>Total</b>	<b>31</b>	<b>84</b>	<b>58</b>

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, 17 complaints finalised in 2022/23 involved sustained findings of failure to appropriately utilise a body worn video camera (BWV). That was a marked drop compared with 46 in 2021/22. In fact, most complaints giving rise to an adverse BWV finding were made in previous years, with only 2 made in 2022/23. I completed a detailed investigation into NT Police utilisation of BWV during the period. It is discussed in Chapter 1.

A further 21 cases involved findings of failings in relation to keeping accurate and comprehensive records. This included findings such as failing to complete, or to adequately complete, Use of Force entries or Custody Illness or Injury Reports and failure to take adequate notes relating to incidents.

The following table lists the number of finalised Category 1/2 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
<b>Investigation – failure to undertake / inadequate / delay</b>	17
<b>Behaviour – abuse/rudeness/insensitivity</b>	16
<b>Arrest/custody – use of force</b>	16
<b>Victim support – inadequate</b>	12
<b>Practice/procedure – failings in processes, searches, accoutrements, knowledge of powers/law</b>	10
<b>Supervision</b>	9
<b>Vehicle safety and control – includes traffic breaches</b>	8



<b>Failure to provide adequate care, eg, blankets, aftercare after spray or Taser</b>	6
<b>Complaints against police – failure to take/adequately investigate complaint, failure to report questionable conduct, delay</b>	6
<b>Practice/procedure – effecting rights of detainee or victim, eg, interview, interpreters, notification</b>	5
<b>Arrest – unlawful / inappropriate arrest/detention / fail advise reason</b>	5
<b>Property – damage, improper removal, disposal or care</b>	3

Outcomes of these matters for individual officers included provision of remedial advice, managerial guidance under section 14C of the *Police Administration Act (PAA)*, counsel and caution, formal written caution, good behaviour requirements, additional training such as unconscious bias training, transfer, salary reduction and demotion.

Outcomes for individual complainants included further explanations and apologies.

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

- circulating a broadcast on breath testing in watch houses;
- reviewing instructions on mounting BWV cameras to promote improved capture of incidents;
- confirming the importance of making detailed case note entries in relation to decisions around police-issued Domestic Violence Orders;
- circulating a broadcast to all watch house staff on the need to seek timely advice and assistance when dealing with ‘at risk’ individuals, the importance of reporting up the chain of command on issues that may impact on the ability to monitor the safety of individuals and the importance of recording details of cell checks;
- the need to make anti-tear smocks available to every watch house on completion of a trial and to review the *Custody & Transport Instruction* to improve guidance in relation to utilisation of anti-tear smocks and to require regular reassessment (with documented decision-making) of anyone in custody who has had their clothing removed, in order to restore that person’s modesty as soon as possible;
- reviewing the *Custody & Transport Instruction* to improve guidance in relation to utilisation of spit hoods;
- reviewing the *Custody & Transport Instruction* to clarify responsibility for recording Use of Force case note entries;
- a tasking to all NT Commanders to stress the importance of regular and timely supervisor audits to ensure all matters are being attended to even if assigned investigators are absent for a lengthy period.

Examples of some police conduct complaints finalised during the year appear in Chapter 3.

### *Internal Investigations outcomes*

Our Office also receives reports on matters identified by sources within NT Police which are dealt with by the NT Police Internal Investigations Division. All of those 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 our 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;
- excessive use of force;
- failings in vehicle safety or control;
- wrongful arrest or detention;
- failings in supervision;
- failure to conduct a proper search;
- inappropriate access to, or disclosure of, information.

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

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

- mistakenly holding a person in custody for a number of hours more than warranted;
- inadequate system checks;
- a failing in supervision;
- rude or offensive behaviour;
- sending an inappropriate email; and
- excessive use of force.

Further outcomes included requirement to undergo additional training, development of a Personal Improvement Program and apologies to complainants.

## 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 2023, 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 NT 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 may well 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. It 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 the *Ombudsman Act* 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 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 up 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 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 officer 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 personnel 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).

## 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.*<sup>13</sup>

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:<sup>14</sup>

*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* 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.<sup>15</sup>

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.<sup>16</sup>

No resources have been provided to our Office to conduct the review. We 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 has been delayed due to competing priorities. A report will be provided to the Minister as soon as practicable.

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<sup>13</sup> *Firearms Act 1997*, s.49E.

<sup>14</sup> *Review of police use of the firearms prohibition order search powers - Section 74A of the Firearms Act 1996* (August 2016), p. iii.

<sup>15</sup> *Firearms Act 1997*, s.49ZB(1).

<sup>16</sup> *Firearms Act 1997*, s.49ZB(2).

## Surveillance devices

The purposes of the *Surveillance Devices Act 2007 (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 5 – CORRECTIONAL SERVICES

### HEAT STRESS IN PRISONS

Environmental conditions in Alice Springs are notoriously challenging in the summer months. I continue to raise concerns regarding heat stress at the Alice Springs Correctional Centre with Correctional Services.

I acknowledge these conditions are faced by everyone in Alice Springs and surrounding regions, 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.

As I have previously stated, 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. The reality of climate change means that this issue will only get worse and needs to be effectively addressed.

During the year, similar conditions faced in the Pilbara led the Western Australian Government to commit to air-conditioning Robourne Regional Prison.

I am advised that an expert has been engaged to investigate options to address this issue. I welcome this step and will continue to liaise with Correctional Services with regard to the matter.

### INTENSIVE MANAGEMENT PLANS

Another area of interest for the Office in 2022/23 was Correctional Services' use of Intensive Management Plans (**IMPs**).

IMPs are restrictive regimes imposed by Correctional Services on prisoners in limited circumstances to deal with situations of particularly challenging and persistent behaviour. Correctional Services' guidance material describes them as providing a framework to support the assessed risks and needs of a prisoner, and a response to our inquiries further clarified they serve twin purposes: 1. to maintain safety, and 2. to assist the prisoner to address their challenging behaviour by moving through a process of rehabilitation and reintegration.

These are appropriate aims, however our review of a particular IMP suggested that, in practice, plans may rely too heavily on restrictive practices to effect behavioural change, and not provide meaningful therapeutic assistance to help a prisoner to address the cause or causes of their challenging behaviour.

The IMP we reviewed sought to achieve the purposes mentioned above by limiting the prisoner's entitlements, such as by restricting their time out of cell, who they could spend time with, and the property they had access to, and progressively reintroducing them as the prisoner addressed their challenging behaviour.

However, the plan did not appear to us to provide the prisoner sufficient support to address factors underlying their behaviour, resulting in the prisoner being subject to very restricted conditions for a period of months, with the possibility of actually worsening negative behaviour.

In summary, our key concerns were that the IMP:

- did not provide the prisoner sufficient opportunities for meaningful human contact;
- did not provide the prisoner sufficient and needs-based in-cell items to keep them stimulated throughout their period of separate confinement;
- did not provide the prisoner planned therapeutic sessions with professionals to assist them to address their challenging behaviour; and
- was overly lengthy and not reviewed frequently enough.

In light of these concerns, we wrote to the Commissioner suggesting Correctional Services review the prisoner's IMP, as well as its IMP processes more broadly. The response advised that Correctional Services was in the process of reviewing its IMP processes, but did not propose to make any changes to the particular prisoner's IMP.

Our Office welcomes Correctional Services' review of its processes but remains concerned at the lengthy periods of separate confinement that appear to be involved in implementation of IMPs.

Separately, we commenced an 'own initiative' investigation into separate confinement practices at the Darwin Correctional Centre. This will include examination of the circumstances of prisoners who have been separately confined (restricted to a cell) as part of an IMP. We aim to report on the findings of the investigation in 2023/24.

## REPORT FOR COMMISSIONER

During the period, work was conducted on preparing a report for the Commissioner of Corrections, collating a range of issues arising from complaints received and issues noted over recent years. The report, provided to the Commissioner after the end of the reporting period, contained a number of specific recommendations for change in correctional operations and interaction between our offices.

I met with the Commissioner and Deputy Commissioner to discuss the report and am currently awaiting a detailed response to the recommendations. We will consider the response and monitor implementation in 2023/24.

## 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 that 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.

I discuss similar themes regarding the justice system and correctional services generally in *Paradigm change* (Chapter 1). Many systemic issues identified in *Women in Prison II* remain outstanding. Perhaps foremost among them is the need to remove women from the environment of male prisons. This will promote development of facilities that are suitable for women, remove risks inherent in having men and women within the same facility and free up space within male prisons. This is a logical solution to numerous problems within the correctional system. It should be pursued with urgency.

We will continue to monitor specific issues relating to women in prison in the context of our complaint handling function and, to the extent that resources allow, in the performance of the OPCAT function (see *Prevention better than cure* in Chapter 1).

## CHILDREN IN PRISON

During the period, I wrote to the Commissioner to express my concern regarding the use of the Mothers and Babies Unit at the Darwin Correctional Centre for general low security prisoners, to the exclusion of mothers of newborns.

I previously expressed the importance of providing support for prisoner mothers and their babies in *Women in Prison II*. The report identified core values and guiding principles for design of women's prisons<sup>17</sup> including the fact that an emphasis should be placed on maintaining the maximum appropriate contact between mothers and babies, commensurate with a woman's security risk and institutional behaviour.

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<sup>17</sup> See *Design Principles for Women Prisons: An illustrative design resource for the unique needs of women in correctional facilities*, International Corrections and Prisons Association (ICPA), 2010.

Chapter 16 of *Women in Prison II* dealt specifically with Children in Prison. In that chapter, I noted that the primary consideration must be what is in the interests of the child, saying:

557. *Clearly, there will be a strong presumption that the interests of an infant, particularly one who is breastfeeding, will be best served by being with his or her mother. ...*
- ...
560. *... it would be problematic for a prison authority to rely on the limitations of existing infrastructure as an ongoing basis for refusing to allow a child to stay with their mother. Having established provisions that allow young children to live with their mother, it is incumbent on Corrections to provide suitable and safe accommodation and facilities for them.*
561. *It would be a hollow gesture if the scheme established by Parliament could be avoided by the simple statement that existing facilities do not provide suitable and safe accommodation.*
562. *Nor, given the emphasis of the relevant standards on the best interests of the child is it appropriate to take a policy position that no child should live in prison.*
563. *It is therefore necessary for Corrections to maintain accommodation, facilities, practices and procedures that appropriately and safely support women residing with their children in prison.*
564. *As long as an appropriate system and facilities are in place, it is then a matter of deciding in an individual case what is in the best interests of the child.*

In writing to the Commissioner, I noted that the establishment some time ago of purpose-built accommodation (the Mother and Babies Unit) at Darwin Correctional Facility was a welcome step in acknowledging the needs of a very vulnerable group - prisoner mothers and their babies and young children. I also noted directives that pointed to the best interests of the child as the primary factor for consideration in decision making.

I acknowledged there were currently operational pressures on Correctional Services given high prisoner numbers. However, I raised concerns about the prospect of high prisoner numbers and other operational stresses overriding the primary aim of acting in the best interests of the child.

I said that decisions should certainly take into account factors that would run counter to the interests of the child. However, in the face of the NT Parliament making statutory provision for mothers to care for their babies in prison and the creation of facilities specifically designed for them, I said it is crucial that the NT Government provide necessary resources to cater for circumstances where staying with their mother is in the babies' best interests.

I recommended that the Commissioner urgently review the current situation and explore solutions that would allow the Mothers and Babies Unit to be used for its intended function.

During the period, we also liaised with Correctional Services on a number of occasions regarding the case of a particular expectant mother, noting the complexities that surrounded the matter and acknowledging that the decision in any particular case depended on its circumstances and assessment of what is in the best interests of the baby. During this process, we worked with the prison to deal with the expectant mother's other concerns and ensure she had access to appropriate items.

In due course, Correctional Services reconsidered its position and decided to house the prisoner and baby in the Mothers and Babies Unit for six months, with a review of the arrangements at the end of that period. This included allowing a support person to stay in the unit with the prisoner.

We very much appreciated Correctional Services' engagement and responsiveness in working through this particularly complex and sensitive matter.

## CORRECTIONAL SERVICES APPROACHES

Correctional Services approaches totalled 497 in 2022/23, down from 530 in 2021/22. Of approaches relating to a particular facilities, just over two thirds concerned the Darwin Correctional Centre and just under one third concerned the Alice Springs Correctional Centre.

A list of the most common issues raised by approaches in 2022/23 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 - 2022/23

Issue	Notes	No.
<b>Complaint processes</b>	Includes problems accessing complaint system and investigation of complaints	<b>93</b>
<b>External contact</b>	Includes issues with visits (31), phones (30) and mail (28)	<b>89</b>
<b>Classification / Housing</b>	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	<b>85</b>
<b>Health / welfare</b>	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	<b>82</b>
<b>Officer conduct</b>	Includes rudeness, insensitivity, harassment, poor communication, inappropriate treatment of a vulnerable person	<b>60</b>
<b>Money / buys</b>	Any issues dealing with prisoner accounts and purchases	<b>40</b>
<b>Condition of facilities</b>		<b>37</b>
<b>Recreation / Amenities</b>	Matters relating to recreational activities and everyday aspects of living, eg access to publications, access to television, sporting and craft equipment	<b>35</b>
<b>Personal safety/security</b>	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 - other safety concerns	<b>30</b>
<b>Food</b>	Issues relating to quality or service of food. Includes issues relating to special dietary requirements	<b>26</b>
<b>Transfers</b>	Includes intra-Territory and external transfers	<b>21</b>
<b>Work</b>	Employment inside or outside prison	<b>16</b>
<b>Time spent outside</b>	Issues relating to lockdowns and other limitations placed on time outside of cells	<b>15</b>
<b>Educational programs</b>		<b>14</b>
<b>Information</b>	Includes requests for information and documents, complaints that information was not provided	<b>13</b>
<b>Property</b>		<b>11</b>

The top five issues this year were the same as for 2021/22 but the number of approaches for each fell. Numbers for other issues fell apart from Money/buys, Condition of facilities, Recreation/Amenities and Property.

## Correctional Services examples

### Example – Assisting a prisoner to respond to an urgent letter

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Our office received a call from a prisoner requesting help with a visa issue. The prisoner had received a letter from the Department of Home Affairs about the cancellation of their visa, which required them to respond within 28 days.

To respond, the prisoner needed to send completed documents, and the letter provided the prisoner an email address to send them to. The problem was that computer access in prisons is restricted, and to send the completed documents by post would risk them not arriving in time.

The prisoner said they had sought assistance from prison officers to both scan and send the documents on their behalf, but they were struggling to find an officer who would assist them.

Given the time pressures involved, we contacted prison management directly to ask if anything could be done to help the prisoner respond to the letter.

We received a response the next morning advising the prison would deal with the matter, and an email that afternoon advising the necessary documents had been scanned and sent.

The prisoner was thankful for our prompt assistance, and we were also grateful to the correctional centre for taking quick action to resolve the problem.

### Example – Replacing property lost when transferring prisons

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A prisoner called our office to complain about property they stated was lost when being transferred from one correctional centre to another. Usually, when a prisoner is transferred, they pack their cell and sign off the property they have packed against a list of property they own, to ensure that all items are accounted for.

In this instance, however, the prisoner had been restricted to a behavioural management cell at the time of their transfer and was not provided the opportunity to pack their cell before moving. This was done for them by prison officers.

When the prisoner arrived at the new centre and received their property, they complained that a number of items were missing: their earbuds, batteries and a radio. The earbuds and batteries were located in storage at the new centre and had not been issued to the prisoner due to electronic devices not being permitted in their block. However, the radio could not be found.

Correctional Services generally does not accept responsibility for property once it has been issued to a prisoner, as it is then the prisoner's responsibility to make sure it doesn't get lost or damaged.

In this instance, Correctional Services had a record of the radio being issued to the prisoner, but hadn't made a record of either packing the radio, or a notation that the radio was not in the cell when the prisoner's property was packed (which may have indicated the prisoner had lost it before the move). As such, Correctional Services couldn't demonstrate that it hadn't lost the radio when packing the prisoner's cell or transporting their property.

The centre agreed in the circumstances to reimburse the prisoner for the radio, and we suggested that, in future, it require officers to record their packing of a prisoner's cell where the prisoner is unable to do so themselves, or to otherwise allow the prisoner to confirm the packed property before the transfer takes place.

### Example – Delay in providing medical assistance

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We received a call from a prisoner complaining about delay in receiving medical attention when they had slipped in the shower and broken their leg.

The prisoner said they had called through the emergency intercom to seek help, but had been ignored and only taken to hospital several days later where they had surgery to fix their injury.

In response to our inquiries, the centre couldn't find a record of intercom calls made by the prisoner on the day the prisoner said they had made them, but could find calls made by another prisoner on the injured prisoner's behalf the following day.

The content of the first call indicated that the prisoner had already sought a wheelchair and medical assistance for the injured prisoner from prison officers, but had not been successful, which is why they were now using the emergency intercom to request help. The content of the second call, approximately two-and-a-half hours later, indicated that the injured prisoner had still not been provided a wheelchair or been taken to Medical.

We learned from further inquiries that despite seeing Medical on the day of the intercom calls, the injured prisoner was only transferred to hospital the following day.

Correctional Services and Prison Health Services (provided by the Department of Health), acknowledged staff had missed the seriousness of the prisoner's injury when assessing them, and noted that the prisoner should have been transferred to hospital by ambulance much sooner than they were.

To address the delay in responding to the emergency intercom calls, we suggested the centre review its current operational practices for emergency intercom calls. The centre agreed to do so, and advised that it would now also record all calls for medical assistance made over the emergency intercom so that it had records of when calls had been made and how it had responded.

### Example – Improving long-range prison transfers

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A number of prisoners approached our Office via a community legal centre to raise concerns about the conditions of a long-range road transfer from Darwin Correctional Centre to Alice Springs Correctional Centre. For context, the road to Alice Springs from Darwin is approximately 1,500 kilometres long, and presents logistical, security and safety challenges for Correctional Services.

While initially raising broad concerns, the complainants focussed their complaint on the safety aspects of the trip, including their beliefs that:

- the trip did not contain a sufficient number of stops, causing them to reduce food and water intake for fear of needing to use the bathroom before the next allocated stop;
- Correctional Services transport vehicles should contain seatbelts for prisoner passengers, particularly in the context of travelling on roads with a speed limit of 130 km/h (noting Correctional Services self-imposes a speed limit of 100 km/h for its transport vehicles); and
- each transport vehicle should be staffed by two rotating drivers to address driver fatigue.

Correctional Services agreed to resolve the first and third concern by updating its operating procedures to include additional mandatory stops and a requirement that there be at least two officers per vehicle. Regarding the third concern, it advised that its general practice was to have two drivers, but there had been an administrative oversight in the planning stage which led to one of the vehicles containing a single driver for that particular escort.



Regarding the second issue, while Correctional Services noted it had a legal exemption from the requirement to provide seatbelts in respect of its transport vehicles, it did advise it provides belted transport where possible and is exploring options of a large transport vehicle with forward facing seats and seat belts.

We thanked Correctional Services for its open and pragmatic approach to resolving the issues raised by the complainants, which will result in a more comfortable and safe trip for prisoners being transported between the facilities.

## CHAPTER 6 – 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:

- protections against wage theft, as part of an NTLRC subcommittee;
- a review of Independent Commissioner Against Corruption legislation;
- a review of the *Information Act*;
- implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*;
- a review of whistleblower frameworks;
- a review of domestic and family violence legislation;
- a review of police disciplinary processes.

#### Complaints and integrity 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, or acting in co-operation with, another office.

For example, during the reporting period, the Office entered into co-operative arrangements for particular investigations with the Independent Commissioner Against Corruption and with the Children's Commissioner. We also worked with the Children's Commissioner and the Principal Community Visitor to advance preparations and seek adequate resourcing for the National Preventive Mechanism (**NPM**) function under the OPCAT.

More generally, we make every effort to facilitate ongoing co-operative relationships with NT complaints and integrity bodies. We have entered into the following general 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 2022/23, our involvement at this level included:

- continued membership of the International Ombudsman Institute, a global organisation for the cooperation of more than 200 independent Ombudsman institutions from more than 100 countries worldwide - [www.theioi.org](http://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](http://www.anzoa.com.au);
- serving on the ANZOA Executive Committee;
- remote attendance at the following meetings:
  - ANZOA AGM and Members meeting;
  - Deputy parliamentary ombudsman meetings; and
  - OPCAT NPM network meetings.

## Training and presentations

In 2022/23, our Office delivered, facilitated 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;
- Local Government Councils complaint handling;
- Office of the ICAC – *Who is the Ombudsman* information session;
- ANZOA –Indigenous Engagement Interest Group meetings and presentations.

## 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;
- meetings with NT Police senior executives and members of the Professional Standards Command; and
- 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 2022/23, engagement in public and stakeholder events and consultations included:

- running joint stalls at Council on the Ageing NT Seniors Expos;
- visit to Kulaluk community and *Who is the Ombudsman?* information session;
- visit to Darwin YWCA;
- visit to Alice Springs, including engagement with CAAFLU, NPY Women's Council and Tangentyere Council;
- visit to Katherine, including engagement with Katherine Women's Information and Legal Service and Katherine West Area Health Board; and
- engagement with various stakeholders relating to OPCAT establishment and implementation.

The Office provides access to a 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 7 – 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 finalised two major investigation reports for tabling in 2022/23, relating to police utilisation of police body worn video cameras and police utilisation of spit hoods and emergency restraint chairs.
- **Approaches – enquiries and complaints** – The bulk of our effort is spent in dealing with approaches to the Office. We received 2,155 approaches in 2022/23 and finalised 2,199 (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 465 of the approaches we received in 2022/23 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 in Chapter 4.
- **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 45 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.<sup>18</sup> There are confidentiality provisions that make the inappropriate disclosure of information relating to inquiries and investigations an offence.<sup>19</sup>

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](https://www.ombudsman.nt.gov.au/system/files/fileuploads/strategic_priorities_jun20.pdf).

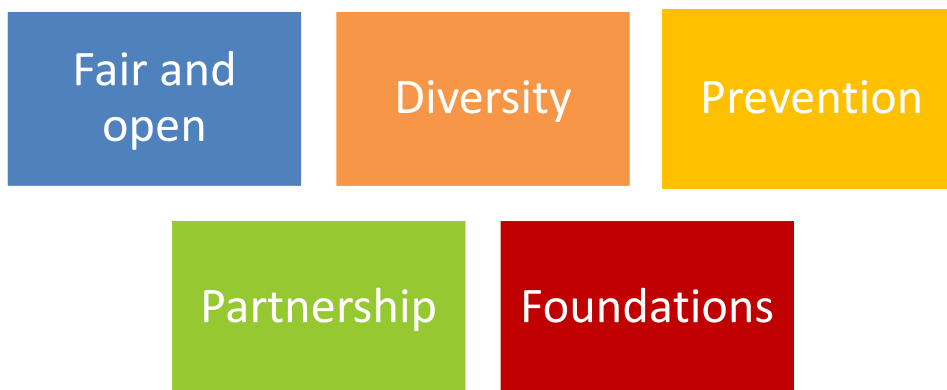
Our Strategic Priorities recognise that NT public sector agencies and our Office will operate under the influence of a range of key environmental factors which include the transformational and extraordinary times in which we live and the unique demographic make-up of the Territory population.

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<sup>18</sup> *Ombudsman Act*, s.49(1).

<sup>19</sup> *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 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 with 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.

## CHAPTER 8 – 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 function.

The Statement of Accountable Officer is on the first page of the Financial Statements for 2022/23, 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, JCO and OPCAT function but other staff have roles within all 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 2023 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	1.3	1.3 ongoing (incl 1 on HDA)
SA01	3.2	3 ongoing, 0.2 fixed period, (incl 1 on HDA)
A07	5.0	4 ongoing, 1 fixed period (incl 2 on HDA)
A06	2.0	1 ongoing, 1 fixed period
A05	1.0	1 ongoing, on HDA
A04	2.5	2.5 ongoing

## 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 undertaken by Office staff during 2022/23 (in person, remotely or online) included:

- OPCAT National Symposium
- *The importance of truth through Aboriginal eyes* – Solomon Lecture – Queensland Information Commissioner
- Merit Selection and Special Measures - OCPE
- Appropriate Workplace Behaviors
- International Day of People with Disability – internal
- 5th International Conference for Carceral Geography
- Association for the Prevention of Torture presentation
- Women in Leadership NT - Networking Breakfast
- Australian Health Practitioner Regulation Agency information session
- UK National Preventive Mechanism secretariat information session
- Unconscious Bias Training - Anti-Discrimination Commission
- *Coronial Inquests*, Victorian Aboriginal Legal Service
- *Chat GPT for Lawyers - Risks and Opportunities*
- *FASD in youth detention*
- NTG Pay Postmaster User Group information session
- *Punctuation unpacked* - Writing course
- First Aid Training
- *Complaints and Gen Z - insights into the next generation* – Commonwealth Ombudsman
- *Neurodisability in children* - internal
- Practical Mediation Skills
- Introduction to ICAC mandatory reporting
- Foundational Cross Cultural Training
- ICAC Conflict of Interest online
- *Decisions that only a CEO can make* - OCPE
- Ombudsman Office Resources, Procedures and Policies – internal
- *What is OPCAT?* – internal
- Fire warden training.

## 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, various chapters of the Manual were 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*. Two Chapters of this Manual were reviewed and updated during the reporting period.

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 2022/23, enhancements to Resolve were primarily centred around improvements to the recently implemented JCO functions along with minor workflow improvements across other areas.

Numerous other independent offices in the NT have taken up the Resolve system. We continue to provide *ad hoc* advice and assistance to these offices as requested, as well as providing advice and feedback 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 for monthly Staff and Management Board meetings. An officer has been assigned primary responsibility for WH&S issues and regular WH&S audits are conducted.

Only minor WH&S issues were identified during the year. 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 2022/23, 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 2022/23, 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**

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## APPENDIX B – FINANCIAL STATEMENTS

### Ombudsman's Office

#### Financial statement overview

#### For the year ended 30 June 2023

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 short term 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 2022-23 was a deficit of \$173,000. Compared to the budgeted deficit of \$376,000 the office remained \$203,000 under budget. This is reflective of the Office having approved carryovers from 2021-22 for Judicial Commission and OPCAT to the value of \$376,000. The majority of this saving is being sought as a carryover into 2023-24 to continue work in the OPCAT space as initial funding for this function expired at the end of the reporting period.

Operating expenses for the period totalled \$3,438,000 comprising \$2,820,000 for employee expenses, and \$618,000 for administrative expenses (which included approx. \$280,000 for the purchase of goods and services, \$324,000 for services received free of charge and \$13,000 for property management).

#### Certification of the financial statements

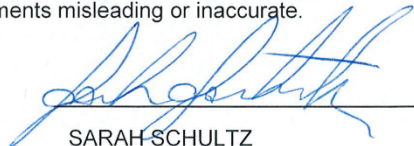
We certify that the attached financial statements for the Ombudsman's Office have been prepared based on proper accounts and records in accordance with Australian Accounting Standards and with the requirements as prescribed in the *Financial Management Act 1995* and Treasurer's Directions.

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 2023 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  
31 August 2023



SARAH-SCHULTZ  
Business Manager  
31 August 2023

**Ombudsman's Office**  
**Comprehensive operating statement**  
**For the year ended 30 June 2023**

	Note	2023	2022
		\$000	\$000
<b>INCOME</b>			
Appropriation			
Output	4	2 948	3 045
Goods and services received free of charge <sup>1</sup>	5	318	311
Other income	6		1
<b>TOTAL INCOME</b>	<b>3</b>	<b>3 266</b>	<b>3 357</b>
<b>EXPENSES</b>			
Employee expenses		2 820	2 591
Administrative expenses			
Property management		13	18
Purchases of goods and services	7	280	249
Other administrative expenses <sup>1</sup>		324	311
<b>TOTAL EXPENSES</b>	<b>3</b>	<b>3 438</b>	<b>3 169</b>
<b>NET SURPLUS/(DEFICIT)</b>		<b>(173)</b>	<b>188</b>
<b>COMPREHENSIVE RESULT</b>		<b>(173)</b>	<b>188</b>

<sup>1</sup> Includes DCDD service charges and DIPL repairs and maintenance service charges.

*The comprehensive operating statement is to be read in conjunction with the notes to the financial statements.*

**Ombudsman's Office**  
**Balance sheet**  
**As at 30 June 2023**

	Note	2023	2022
		\$000	\$000
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and deposits	9	2 112	2 132
Receivables	11	14	7
<b>Total current assets</b>		<b>2 126</b>	<b>2 139</b>
<b>Non-current assets</b>			
Property, plant and equipment	12		
Intangibles	14		
<b>Total non-current assets</b>			
<b>TOTAL ASSETS</b>		<b>2 126</b>	<b>2 139</b>
<b>LIABILITIES</b>			
<b>Current liabilities</b>			
Payables	15	115	61
Provisions	16	571	465
<b>Total current liabilities</b>		<b>685</b>	<b>526</b>
<b>TOTAL LIABILITIES</b>		<b>685</b>	<b>526</b>
<b>NET ASSETS</b>		<b>1 440</b>	<b>1 613</b>
<b>EQUITY</b>			
Capital		295	295
Accumulated funds		1 146	1 318
<b>TOTAL EQUITY</b>		<b>1 440</b>	<b>1 613</b>

*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 2023**

	Note	Equity at 1 July	Comprehensive result	Equity at 30 June
		\$000	\$000	\$000
<b>2023</b>				
<b>Accumulated funds</b>		1 318	(173)	1 146
<b>Capital – transactions with owners</b>				
Equity injections				
Capital appropriation		573		573
Equity transfers in		(346)		(346)
Other equity injections		171		171
Equity withdrawals				
Capital withdrawal		(104)		(104)
		295		295
<b>Total equity at end of financial year</b>		<b>1 613</b>	<b>(173)</b>	<b>1 440</b>
<b>2022</b>				
<b>Accumulated funds</b>		1 131	188	1 318
<b>Capital – transactions with owners</b>				
Equity injections				
Capital appropriation		573		573
Equity transfers in		(346)		(346)
Other equity injections		171		171
Equity withdrawals				
Capital withdrawal		(104)		(104)
		295		295
<b>Total equity at end of financial year</b>		<b>1 426</b>	<b>188</b>	<b>1 613</b>

*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 2023**

	Note	2023	2022
		\$000	\$000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Operating receipts</b>			
Appropriation received			
Output		2 948	3 045
Receipts from sales of goods and services		15	19
<b>Total operating receipts</b>		<b>2 963</b>	<b>3 064</b>
<b>Operating payments</b>			
Payments to employees		2 701	2 596
Payments for goods and services		282	279
<b>Total operating payments</b>		<b>2 984</b>	<b>2 875</b>
<b>Net cash from/(used in) operating activities</b>	10	<b>(20)</b>	<b>190</b>
Net increase/(decrease) in cash held		(20)	190
Cash at beginning of financial year		2 132	1 943
<b>CASH AT END OF FINANCIAL YEAR</b>	9	<b>2 112</b>	<b>2 132</b>

*The cash flow statement is to be read in conjunction with the notes to the financial statements.*

## Ombudsman's Office

### Index of notes to the financial statements

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2.	Statement of significant accounting policies
3.	Comprehensive operating statement by output group
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5.	Goods and services received free of charge
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7.	Purchases of goods and services
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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 and 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 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 the 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 2022-23 financial year

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 adopted early for 2022-23 financial year.

#### AASB 2022-10 Amendments to Australian Accounting Standards – Fair Value Measurement of Non-Financial assets of Not-for-Profit Public Sector Entities

This standard amends the application of *AASB 13 Fair Value Measurement* to non-financial assets of not-for-profit public sector entities not held primarily to generate cash inflows. It applies prospectively to annual periods beginning on or after 1 January 2024, with earlier application permitted.

This standard is not expected to have a material impact on the financial statements when first adopted for the year ending 30 June 2025.

Several other 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.

## Ombudsman's Office

### 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.

### 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).

### 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 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, and as such, these items are not included in the agency's financial statements.

### e) Comparatives

Where necessary, comparative information for the 2021-22 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 2022-23 financial year as a result of management decisions.

### 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.

Judgments and estimates that have significant effects on the financial statements are disclosed in the relevant notes to the financial statements.

## Ombudsman's Office

### **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.

Commitments and contingencies are disclosed net of the amount of GST recoverable or payable unless otherwise specified.

### **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. Should they occur, these designated contributions and distributions are treated by the agency as adjustments to equity.

Ombudsman's Office

3. Comprehensive operating statement by output group

	Note	Ombudsman's Office		Information Commissioner		Judicial Commission		OPCAT		Corporate and shared services <sup>2</sup>		Total	
		2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022
		\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000
<b>INCOME</b>													
Appropriation													
Output	4	2 948	3 045									2 948	3 045
Goods and services received free of charge	5									318	311	318	311
Other income <sup>1</sup>	6										1		1
<b>TOTAL INCOME</b>		<b>2 948</b>	<b>3 045</b>							<b>318</b>	<b>312</b>	<b>3 266</b>	<b>3 357</b>
<b>EXPENSES</b>													
Employee expenses		1 656	1 528	395	516	402	183	87	30	280	334	2 820	2 591
Administrative expenses													
Property management		7	8	3	3		2			3	5	13	18
Purchases of goods and services	7	147	77	37	51	68	64	3	1	26	55	280	249
Other administrative expenses <sup>2</sup>										324	311	324	311
<b>TOTAL EXPENSES</b>		<b>1 810</b>	<b>1 613</b>	<b>435</b>	<b>570</b>	<b>470</b>	<b>249</b>	<b>90</b>	<b>31</b>	<b>633</b>	<b>705</b>	<b>3 438</b>	<b>3 169</b>
<b>NET SURPLUS/(DEFICIT)</b>		<b>1 138</b>	<b>1 432</b>	<b>(435)</b>	<b>(570)</b>	<b>(470)</b>	<b>(249)</b>	<b>(90)</b>	<b>(31)</b>	<b>(316)</b>	<b>(393)</b>	<b>(173)</b>	<b>188</b>
<b>COMPREHENSIVE RESULT</b>		<b>1 138</b>	<b>1 432</b>	<b>(435)</b>	<b>(570)</b>	<b>(470)</b>	<b>(249)</b>	<b>(90)</b>	<b>(31)</b>	<b>(316)</b>	<b>(393)</b>	<b>(173)</b>	<b>188</b>

<sup>1</sup> Includes input tax credits for employee novated lease payments.

<sup>2</sup> 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.*

The Agency is predominantly funded by parliamentary appropriations for the provision of outputs. Outputs are the services provided or goods produced by an agency for users external to the agency. They support the delivery of the agency's objectives and or statutory responsibilities. The above table disaggregates revenue and expenses that enable delivery of services by output group which form part of the balances of the agency.

## Ombudsman's Office

### Income

Income encompasses both revenue and gains.

Income is recognised at fair value of the consideration received, exclusive 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. Appropriation

Appropriation recorded in the operating statement includes output appropriation received for delivery of services.

	2023			2022		
	\$000 Revenue from contracts with customers	\$000 Other	\$000 Total	\$000 Revenue from contracts with customers	\$000 Other	\$000 Total
Output		2 948	2 948		3 045	3 045
<b>Total appropriation in the operating statement</b>		<b>2 948</b>	<b>2 948</b>		<b>3 045</b>	<b>3 045</b>

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.

#### a) Summary of changes to budget appropriations

The following table presents budgeted appropriations authorised during the current financial year. It compares the amounts originally identified in the *Appropriation (2022-2023) Act 2022* with revised appropriations as reported in *2023-24 Budget Paper No. 3 Agency Budget Statements* and the final end of year appropriation.

There were no changes to output appropriation throughout the financial year. Refer to Note 24 *Budgetary information* for explanation of agency's actual outcome compared to budget for revenue and expenses.

	2022-23 budget appropriation		
	Original <sup>(a)</sup> \$000	Revised <sup>(b)</sup> \$000	Final <sup>(c)</sup> \$000
Output	2 948	2 948	2 948
<b>Total appropriation</b>	<b>2 948</b>	<b>2 948</b>	<b>2 948</b>

<sup>(a)</sup> Agency's appropriation amount included in Appropriation (2022-2023) Act 2022 Schedule.

<sup>(b)</sup> Agency's appropriation amount included in 2023-24 Budget Paper No.3 Agency Budget Statements.

<sup>(c)</sup> Appropriation revenue received consistent with Agency's comprehensive operating statement.

Output appropriation reflects funding as a direct result of government-approved decisions, with actual funding received by the Agency in line with the budgeted amounts.

**Ombudsman's Office**

**5. Goods and services received free of charge**

	2023	2022
	\$000	\$000
Corporate and information services	315	309
Repairs and maintenance	2	2
<b>Total goods and services received free of charge</b>	<b>318</b>	<b>311</b>

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 incurred on the agency's assets and costs associated with administration of these expenses are centralised in the Department of Infrastructure, Planning and Logistics on behalf of the agency, and form part of goods and services received free of charge by the agency.

In addition, the following corporate services staff and functions are centralised and provided by Department of Corporate and Digital Development on behalf of the agency and form part of goods and services received free of charge by the agency:

- financial services including accounts receivable, accounts payable and payroll
- employment and workforce services
- information management services
- procurement services
- property leasing services.

**6. Other income**

	2023			2022		
	\$000	\$000	\$000	\$000	\$000	\$000
	Revenue from contracts with customers	Other	Total	Revenue from contracts with customers	Other	Total
Other income <sup>1</sup>					1	1
<b>Total other income</b>					<b>1</b>	<b>1</b>

<sup>1</sup> Includes input tax credits for employee novated lease payments.

## Ombudsman's Office

### 7. Purchases of goods and services

	2023	2022
	\$000	\$000
The net surplus/(deficit) has been arrived at after charging the following expenses:		
<b>Goods and services expenses:</b>		
Accommodation	3	
Advertising <sup>1</sup>		1
Consultants <sup>2</sup>		25
Document production	1	1
Information technology charges and communications	167	156
Insurance premiums	10	11
Legal expenses <sup>3</sup>	50	19
Marketing and promotion <sup>4</sup>	5	
Memberships and subscriptions	4	5
Motor vehicle expenses	4	2
Official duty fares	6	4
Regulatory and advisory boards and committees expenses	11	3
Training and study	6	3
Travelling allowance	1	
Other	12	19
<b>Total purchases of goods and services</b>	<b>280</b>	<b>249</b>

<sup>1</sup> Does not include recruitment related advertising or advertising for marketing and promotion.

<sup>2</sup> Includes marketing, promotion and IT consultants.

<sup>3</sup> Includes legal fees, claim and settlement costs.

<sup>4</sup> Includes advertising for marketing and promotion but excludes marketing and promotion consultants' expenses, which are incorporated in the consultants' category.

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.

### 8. 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 2022-23 or 2021-22.



## Ombudsman's Office

### 9. Cash and deposits

	2023	2022
	\$000	\$000
Cash on hand		
Cash at bank	2 112	2 132
<b>Total cash and deposits</b>	<b>2 112</b>	<b>2 132</b>

For the purposes of the balance sheet and 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.

### 10. Cash flow reconciliation

#### Reconciliation of cash

Total agency 'Cash and deposits' of \$2,112 recorded in the balance sheet is consistent with that recorded as 'Cash' in the cash flow statement.

### 11. Receivables

	2023	2022
	\$000	\$000
<b>Current</b>		
GST receivables	5	2
Prepayments	9	5
<b>Total receivables</b>	<b>14</b>	<b>7</b>

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.

#### Prepayments

Prepayments represent payments made in advance of receipt of goods and services. Prepayments are recognised on an accrual basis and amortised over the period in which the economic benefits from these assets are received.

#### 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.

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**12. Property, plant and equipment**

	2023	2022
	\$000	\$000
<b>Plant and equipment</b>		
At fair value	66	66
Less: accumulated depreciation	(66)	(66)
<b>Carrying amount as at 30 June</b>		
<b>Total Plant and Equipment</b>		

There was no movement in the carrying amount of property, plant and equipment during 2022-23 or 2021-22 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.

**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.

**Revaluation and Impairment**

Plant and equipment are stated at historical cost less depreciation, which is deemed to equate to fair value.

**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.

In certain situations, an impairment loss may subsequently be reversed. Impairment loss may only be reversed only if there has been change in the assumptions used to determine the asset's recoverable amount. Where an impairment loss is subsequently reversed, the reversal

### Ombudsman's Office

is limited so that the carrying amount of the asset does not exceed the revised estimate of its recoverable amount, nor exceed the net carrying amount that would have been determined had not impairment loss been recognised for the asset in the prior years. A reversal of an impairment loss is recognised in the comprehensive operating statement as income, unless the asset is carried at a revalued amount, in which case the impairment reversal results in an increase in the asset revaluation surplus.

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:

	2023	2022
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.

### 13. 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 are recognised in the Comprehensive operating statement for the year the Agency is the lessee:

	2023	2022
	\$000	\$000
Intergovernmental leases	16	17
<b>Total amount recognised in the Comprehensive operating statement</b>	<b>16</b>	<b>17</b>

## Ombudsman's Office

Future minimum lease payments under non-cancellable leases not recorded as a liability are as follows:

	2023 <sup>(a)</sup>		2022 <sup>(a)</sup>	
	Internal <sup>(b)</sup>	External	Internal <sup>(b)</sup>	External
	\$000	\$000	\$000	\$000
Within one year	16	-	17	-
Later than one year and not later than five years	12	-	20	-
	<b>28</b>	-	<b>37</b>	-

<sup>(a)</sup> Lease commitments not recorded as a liability, which meet the lease exemptions detailed in the Treasurer's Direction – Leases, paragraph 6, include short term leases, low value lease assets, leases of other intangible assets and intergovernmental leases.

<sup>(b)</sup> Reflects internal commitments with entities controlled by the Territory only where these are real charges and not notional charges (entities listed in TAFR 21-22 Note 48: details of controlled entities at reporting date), whereas external commitments reflect those to third parties external to the Territory.

## 14. Intangibles

### a) Total intangibles

	2023	2022
	\$000	\$000
<b>Intangibles with a finite useful life</b>		
<b>Computer software</b>		
At cost	400	400
Less: accumulated amortisation	(400)	(400)
Carrying amount at 30 June	-	-
<b>Total intangibles</b>	-	-

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:

	2023	2022
Computer software	6 years	6 years

Intangible assets with finite useful life are assessed for indicators of impairment on an annual basis. If any indicator of impairment exists, the agency determines the asset's recoverable amount. If the recoverable amount is less than its carrying amount, the carrying amount is reduced to the recoverable amount and the reduction is recognised as an impairment loss.

No impairment adjustments were reported during the period.

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### 15. Payables

	2023	2022
	\$000	\$000
Accounts payable	56	16
Accrued salaries and wages	59	45
<b>Total payables</b>	<b>115</b>	<b>61</b>

Liabilities for accounts payable and other amounts payable are carried at amortised 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.

Salaries and wages that are expected to be settled wholly within 12 months after the end of the period in which the employees render the service are recognised and measured at the amounts expected to be paid.

### 16. Provisions

	2023	2022
	\$000	\$000
<b>Current</b>		
<i>Employee benefits</i>		
Recreation leave	453	371
Leave loading	33	29
<i>Other current provisions<sup>1</sup></i>	84	65
<b>Total provisions</b>	<b>571</b>	<b>465</b>

<sup>1</sup> Includes provisions for Fringe Benefits Tax, Payroll tax and Superannuation.

#### 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 recreation leave and other employee benefit liabilities that fall due within 12 months of reporting date are classified as current liabilities and are measured at amounts expected to be paid.

All recreation leave is classified as a current liability.

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 within these financial statements.

The Agency employed 21 employees as at 30 June 2023 (19 employees as at 30 June 2022).

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### 17. 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, are not recognised in the Agency's financial statements.

### 18. Commitments

The Ombudsman's Office had no capital or other commitments at 30 June 2022 or 30 June 2023.

Commitments represent future obligations or cash outflows that can be reliably measured and arise out of a contractual arrangement and typically binds the agency to performance conditions. Commitments are not recognised as liabilities on the balance sheet.

### 19. Fair value measurement

The Agency did not hold any non-financial assets or liabilities during the reporting period that would require measurement at fair value.

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.

## Ombudsman's Office

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.

### 20. 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 and payables.

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 Northern Territory Treasury Corporation adopting strategies to minimise the risk.

#### 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		Amortised cost	Fair value through other comprehensive income	Total
	Mandatorily at fair value	Designated at fair value			
	\$000	\$000	\$000	\$000	\$000
<b>2023</b>					
Cash and deposits			2 112		2112
Receivables <sup>1</sup>					
<b>Total financial assets</b>			<b>2 112</b>		<b>2 112</b>
Payables <sup>1</sup>			56		56
<b>Total financial liabilities</b>			<b>56</b>		<b>56</b>
<b>2022</b>					
Cash and deposits			2 132		2 132
Receivables <sup>1</sup>					
<b>Total financial assets</b>			<b>2 132</b>		<b>2 132</b>
Payables <sup>1</sup>			16		16
<b>Total financial liabilities</b>			<b>16</b>		<b>16</b>

<sup>1</sup>Total amounts disclosed here exclude statutory amounts, prepaid expenses and accrued contract revenue.

## Ombudsman's Office

### 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 payments 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's financial assets categorised at amortised cost include receivables, advances paid, leases receivables, term deposits and certain debt securities.

#### Financial assets at fair value through other comprehensive income (FVOCI)

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.

The agency does not have any financial assets under this category.

#### Financial assets at fair value through profit or loss (FVTPL)

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 does not have any financial assets 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 accounts payable.



## **Ombudsman's Office**

### **Financial liabilities at fair value through profit or loss (FVTPL)**

Financial liabilities are classified at FVTPL when the liabilities are either held for trading or designated as FVTPL.

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 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 into account 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**

Interest rate risk is the risk the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rate.

The Ombudsman's Office is not exposed to interest rate risk as agency financial assets and financial liabilities, are non interest bearing.

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### (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.

## 21. Related parties

### a) 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
- any entities controlled or jointly controlled by KMP or the portfolio minister, or controlled or jointly controlled by their close family members.

### b) 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.

### c) Remuneration of key management personnel

The details below exclude salaries and other benefits of the Chief Minister as the Chief Minister's remuneration 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:

	2023	2022
	\$000	\$000
Short-term benefits	296	298
Post-employment benefits	27	27
<b>Total remuneration of key management personnel</b>	<b>323</b>	<b>325</b>

## Ombudsman's Office

### **d) Related party transactions:**

#### **i) 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.

#### **ii) 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.

## **22. Contingent liabilities and contingent assets**

The Ombudsman's Office had no contingent liabilities or contingent assets as at 30 June 2023 or 30 June 2022.

## **23. 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.

**Ombudsman's Office**

**24. Budgetary information**

The following tables present the variation between the 2022-23 original budgeted financial statements, as reported in *2022-23 Budget Paper No. 3 Agency Budget Statements*, and the 2022-23 actual amounts reported in the financial statements, together with explanations for significant variations.

<b>Comprehensive operating statement</b>	2023 Actual	2023 Original budget	Variance	Note
	\$000	\$000	\$000	
<b>INCOME</b>				
Appropriation				
Output	2 948	2 948		
Goods and services received free of charge	318	309	9	
<b>TOTAL INCOME</b>	<b>3 266</b>	<b>3 257</b>	<b>9</b>	
<b>EXPENSES</b>				
Employee expenses	2 820	2 864	44	1,2
Administrative expenses				
Purchases of goods and services	294	460	166	2
Other administrative expenses	324	309	(15)	
<b>TOTAL EXPENSES</b>	<b>3 438</b>	<b>3 633</b>	<b>195</b>	
<b>NET SURPLUS/(DEFICIT)</b>	<b>(173)</b>	<b>(376)</b>	<b>203</b>	
<b>COMPREHENSIVE RESULT</b>	<b>(173)</b>	<b>(376)</b>	<b>203</b>	

**Notes:**

The following note descriptions relate to variances greater than 10% or \$20,000, or where multiple significant variances have occurred.

1. Small variance in employee expenses partially due to delays in backfilling vacancies as staff turnover was experienced.
2. Underspend due to operational savings and delay in some anticipated expenditure to 2023-24.

## Ombudsman's Office

Balance Sheet	2023 Actual	2023 Original budget	Variance	Note
	\$000	\$000	\$000	
<b>ASSETS</b>				
<b>Current assets</b>				
Cash and deposits	2 112	1 756	356	1
Receivables	5	2	3	
Prepayments	9	5	4	
<b>Total current assets</b>	<b>2 126</b>	<b>1 763</b>	<b>363</b>	
<b>TOTAL ASSETS</b>	<b>2 126</b>	<b>1 763</b>	<b>363</b>	
<b>LIABILITIES</b>				
<b>Current liabilities</b>				
Payables	115	61	54	2
Provisions	571	465	106	3
<b>Total current liabilities</b>	<b>685</b>	<b>526</b>	<b>159</b>	
<b>TOTAL LIABILITIES</b>	<b>685</b>	<b>526</b>	<b>159</b>	
<b>NET ASSETS</b>	<b>1 440</b>	<b>1 237</b>	<b>203</b>	
<b>EQUITY</b>				
Capital	295	295		
Accumulated funds	1 146	942	203	
<b>TOTAL EQUITY</b>	<b>1 440</b>	<b>1 237</b>	<b>203</b>	

**Notes:**

The following note descriptions relate to variances greater than 10% or \$20,000, or where multiple significant variances have occurred.

1. Greater cash holdings due to operational savings as outlined in operating statement.
2. Increased payables due to increased overall budget and functions.
3. Greater provisions due to increased leave entitlements relating to increased FTE.

**Ombudsman's Office**

<b>Cash flow statement</b>	2023 Actual	2023 Original budget	Variance	Note
	\$000	\$000	\$000	
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Operating receipts</b>				
Appropriation	2 948	2 948		
Output				
Receipts from sales of goods and services	15			
<b>Total operating receipts</b>	<b>2 963</b>	<b>2 948</b>		
<b>Operating payments</b>				
Payments to employees	2 701	2 864	163	1
Payments for goods and services	282	460	195	1
<b>Total operating payments</b>	<b>2 984</b>	<b>3 324</b>		
<b>Net cash from/(used in) operating activities</b>	<b>(20)</b>	<b>(376)</b>	<b>356</b>	
Net increase/(decrease) in cash held	(20)	(376)	356	
Cash at beginning of financial year	2 132	2 132		
<b>CASH AT END OF FINANCIAL YEAR</b>	<b>2 112</b>	<b>1 756</b>	<b>356</b>	

**Notes:**

The following note descriptions relate to variances greater than 10% or \$20,000, or where multiple significant variances have occurred.

1. Variances as outlined in notes to Comprehensive Operating Statement.

## HOW TO CONTACT THE OMBUDSMAN

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