



 **mbudsmant**NT



# Annual Report 2017/18

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





The Honourable Michael Gunner MLA  
Chief Minister  
Parliament House  
Darwin NT 0800

Dear Chief Minister

I am pleased to present to you the Annual Report for the Ombudsman for the Northern Territory for the financial year 1 July 2017 to 30 June 2018.

In respect of my duties as Accountable Officer, I advise that to the best of my knowledge and belief:

- a) proper records of all transactions affecting the Office were kept and employees under my control observed the provisions of the *Financial Management Act*, the *Financial Management Regulations* and *Treasurer's Directions*;
- b) procedures within the Office afforded proper internal control, and a current description of these procedures can be found in the Accounting and Property Manual which has been prepared in accordance with the *Financial Management Act*;
- c) no indication of fraud, malpractice, major breach of legislation or delegations, major error in or omission from the accounts and records exists;
- d) in accordance with section 15 of the *Financial Management Act*, the internal audit capacity available to the Office is adequate and the results of internal audits were reported to me;
- e) the financial statements included in this Annual Report have been prepared from proper accounts and records and are in accordance with *Treasurer's Directions*; and
- f) all *Employment Instructions* issued by the Commissioner for Public Employment have been satisfied;
- g) the Office has implemented processes to achieve compliance with the archives and records management provisions prescribed in Part 9 of the *Information Act*.

In addition, in relation to items (a) and (e) above, the Chief Executive of the Department of Corporate and Information Services has advised that to the best of her knowledge and belief, proper records are kept of transactions undertaken by that Department on behalf of this Office and the employees under her control observe the provisions of the *Financial Management Act*, the *Financial Management Regulations* and *Treasurer's Directions*.

Yours sincerely

A handwritten signature in blue ink, appearing to read "P. Shoyer".

**Peter Shoyer**  
**Ombudsman**  
**28 September 2018**





## Annual Report 2017/18

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# INTRODUCTION

## OMBUDSMAN'S OVERVIEW

### Challenges that must be met

My Office has always had a focus on police and corrections issues (our two biggest sources of complaint). This focus has intensified in recent times.

From a corrections perspective, our most substantial piece of recent work in the area has been the *Women in Prison II* report<sup>1</sup>, tabled in August 2017. From a police perspective, there have been numerous investigations of police conduct, a significant proportion of which have involved complaints made on behalf of children (see for example, my report on *Taser use and Management of NT Police conduct issues*).<sup>2</sup> Given the overrepresentation of Aboriginal people in the justice system, these matters have often been intertwined with Indigenous issues.

The *Royal Commission into the Protection and Detention of Children in the Northern Territory* has shone a spotlight on youth justice issues and made sweeping recommendations for reform. My Office has made a number of recommendations relating to the treatment of women and children in the justice system, as well as recognising a broader need for change.

Both have made clear the need for fundamental or paradigm change. Tweaking or incremental modifications will not be effective. These calls for systemic change are far from isolated and the NT Government has clearly recognised the need for such change.

In *Women in Prison II*, I said:

*... the reality is that, if [prisoners'] problems are not squarely addressed now, experience shows that there is likely to be a lifetime of ongoing cost and harm to the community. In the absence of effective rehabilitation now, these are not problems that will go away.*

...

*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.*

*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.*

*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.*

Government is faced with a diabolical dilemma. It is confronted with severely straitened economic circumstances but, if these problems are not to continue to plague society for generations to come, it must invest now.

There are no easy answers but if transformational initiatives are not well-planned, fully-funded and wholeheartedly supported by Government over the long term, the only guarantee is that the problems we face now will continue and almost certainly worsen for all our children.

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<sup>1</sup> *Women in Prison II* report, discussed in Chapter 4 of this report.

<sup>2</sup> *Taser use and Management of NT Police conduct issues* report, discussed in Chapter 4 of this report.

## Freedom of Information and Privacy Protection transfer

Following on from a recommendation in the Martin Report (which led to the establishment of the Independent Commissioner Against Corruption) the Office of the Information Commissioner (OIC) functions have been transferred to the Ombudsman's Office. In August 2018, we welcomed the staff of the OIC.

I have been appointed as Information Commissioner in addition to my role as Ombudsman. The former Information Commissioner has taken up the position of Deputy Ombudsman and Deputy Information Commissioner. All other OIC staff have also transferred.

The transfer had been anticipated for some time, and some appointments and initiatives in my Office were delayed in order to facilitate a smooth transition. This impacted to some extent on the capacity of the Office during the reporting period.

I wholeheartedly thank my staff for their application, flexibility and understanding during this transitional period. I also thank the staff of the OIC for their extremely positive approach to the new arrangements.

## Office operations

In 2017/18, we saw a substantial increase in approaches, reaching 2,304 compared to 2,036 in the previous year. The number of annual approaches has fluctuated substantially over the past five years within a range of around 2,000 up to over 2,700. The figure this year fits within the middle of that range but is higher in the context of a historical average over many years of just over 2,000 approaches per year.

Major contributors to the increase over the previous year were NT Police, Fire & Emergency Services (105 more approaches), Correctional Services (77 more) and Jacana Energy (51 more).

Interestingly, the year was one of two distinct halves, with 1,001 approaches in the first half rising to 1,303 in the second half. Increases were experienced across the board but analysis to date has been unable to identify any particular reason for the trend, which continued in the first two months of 2018/19.

Of the approaches completed in 2017/18 (2,293), we finalised 92% of general approaches within 28 days and 92% of Police conduct approaches within 90 days.

In the great majority of cases, we attempt to deal with and resolve approaches informally. There is a more detailed description of what we do and how we do it in Chapter 3.

In 2017/18, we finalised two major investigations on *Administration of a high volume, low value, subsidy scheme* and *Taser use and Management of NT Police conduct issues*, with reports to the Chief Minister for tabling in the Legislative Assembly.

My Office also contributed to a major investigation by the Children's Commissioner by providing the services of one of our senior investigators for five weeks.

In addition to dealing with approaches, we conducted a broad range of community engagement and quality improvement initiatives. Highlights during the year included:

- continuing our indigenous engagement strategy, including visits to 12 Aboriginal communities;
- publishing a set of eight Aboriginal language audios and a multilingual brochure containing brief introductions to the Office (available on our website);
- contributing to NT Government policy development by:
  - providing input to the development of legislation relating to the Independent Commissioner Against Corruption, domestic and family violence information sharing, and facilitation of compliance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);
  - serving on the Northern Territory Law Reform Committee;
- facilitating, undertaking or contributing to a range of training and presentations, including the Certificate IV in *Government (Investigations)* and *Foundation of Public Sector Governance* courses;
- serving on the Executive of the Australian and New Zealand Ombudsman Association and on the planning committee for its biennial conference.

I again thank all staff of the Office for their support and commitment during the year.

**PETER SHOYER**  
**OMBUDSMAN**

## 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.

## KEY PERFORMANCE INDICATORS

Key Deliverables	2015/16	2016/17	2017/18
<p><b>Total approaches received</b></p> <p>Comprises all enquiries and complaints, including matters referred on to another body or found to be outside jurisdiction.</p> <p>The baseline average for the eleven years from 2003/04 to 2013/14 was 2,063 approaches.</p>	<b>2,568</b>	<b>2,036</b>	<b>2,304</b>
<p><b>Total approaches finalised</b></p> <p>Includes approaches carried over from the previous year and approaches reopened after the end of that year.</p> <p>90 approaches were open at 30 June 2018 (73 being Police-related) compared to 78 at 30 June 2017.</p>	<b>2,572</b>	<b>1,999</b>	<b>2,293</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>97%</b>	<b>97%</b>	<b>92%</b>
<p><b>Other approaches finalised within 28 days</b></p> <p>Refers to all non-Police approaches, including local government.</p>	<b>96%</b>	<b>96%</b>	<b>92%</b>
<p><b>Recommendations accepted</b></p> <p>Government or an agency may partially accept a recommendation or accept the principle behind a recommendation but decide to implement it in a modified form. In those cases, a proportional figure is allocated.</p>	<b>91%</b>	<b>95%</b>	<b>88%</b>
<p><b>Statutory audit/inspection and reporting requirements met</b></p> <p>The Ombudsman is required to undertake audit or investigation functions and make reports under telecommunications interception, controlled operations and surveillance devices laws within certain timeframes.</p>	<b>100%</b>	<b>100%</b>	<b>100%</b>



## CHAPTER 1 – FOCUS AREAS

The Office dealt with a large range of issues over the course of the year. A number of activities or issues on which the Office focussed are discussed below.

### POLICE ISSUES

#### Youth justice

The approach by NT Police to youths and young children has been the subject of consideration by the Royal Commission. I discuss the Royal Commission in more detail in Chapter 2.

Issues relating to the treatment of children have also arisen in the context of a number of recent complaints to my Office, for example in:

- the Case studies at pages 43-57 of my 2016/17 Annual Report;
- my report on *Taser use and Management of NT Police conduct (2017)* – discussed in Chapter 4 of this report;
- Case studies 2, 4 and 7 in this Annual Report (in Chapter 7 of this report).

It is essential that NT Police review its approaches, corporate documentation and training in relation to how police treat and interact with children.

#### Body worn video

The advent of the body worn videocamera (BWV) represents a substantial advance in terms of fact finding in investigation of offences and complaints against police conduct.

Audio and video recording acts both as a moderator of the behaviour of all concerned and is just as likely to provide clear evidence that officer conduct is justified as not.

However, numerous instances have arisen over the past year where officers have failed to wear BWV equipment that they have been issued or failed to turn it on at an appropriate juncture. In some cases, it has been suggested that officers have not had time to turn on the BWV in the haste of a developing situation. The lack of relevant video footage is frustrating and limits the ability of investigators to establish the truth of allegations.

The process for turning on BWV is not complex or time consuming. I cannot stress strongly enough how important it is for all officers issued with BWV cameras to turn them on at the earliest possible opportunity if they are or may be likely to exercise a police power.

For example, officers approaching a reported domestic violence situation, a rowdy crowd or a situation where there is a potential for adverse interaction with a member of the public should turn on BWV on approach rather than waiting to see if a problem develops. There is no downside to turning on BWV in anticipation.

Turning on BWV sooner rather than later frees officers to attend to their other duties as well removing any ambiguity should their actions be challenged at a later date. Effective BWV use is an important matter which our Office will continue to monitor closely.

## Updating and ensuring the accuracy of corporate systems

A number of cases have arisen where individuals have been taken into custody on the basis of faulty information or inadequate interrogation of information on police or court systems (see for example, Case studies 6 and 7 in Chapter 7 of this report).

Sometimes this arises due to delay in data entry. In other cases, it arises from inattention to the details on the system. Wrongful arrest or detention undermines one of the fundamental liberties of our society. While delays and mistakes can occur, considerable effort should be put into system design and officer education to minimise the potential for such mistakes.

Both NT Police and Court systems are in the process of redevelopment. This will hopefully address some instances but it is always incumbent on NT Police to do comprehensive checks and to bear in mind that errors can and do happen.

## De-escalation and arrest as a last resort

The NT Police *Arrest* General Order makes it clear that arrest should be a last resort.

A number of cases during the year raised the issue of when and how police interact with individuals in relation to minor matters, including public order matters (see, for example, Case studies 4, 5 and 8 Chapter 7 of this report).

The reality is that police involvement can rapidly escalate a matter which in turn can lead to a requirement for greater police involvement. A complainant who has not initially done anything wrong or has committed a minor public order infraction may become more and more agitated as police intervene. The continuing involvement of police may exacerbate the situation to a point where the complainant commits an offence, or a more serious offence.

Individuals may bait or antagonise police. The people police face will frequently be under the influence of drugs or alcohol or for other reasons feel compelled to offend or challenge authority. Their offence or abuse may lead to temptation on the part of officers to bait, antagonise or escalate in turn. This is a perfectly natural inclination but one which police must strive to guard against.

Police must do their best to shrug off personal insult and judge what is best from the point of view of the public. Particularly in such public order situations, they should always give consideration to whether de-escalation or disengagement and maintaining watch are better options, at least in the first instance.

I do not suggest that these are easy decisions for police. However, it is important that they be constantly aware that, particularly with regard to relatively minor public order offences, their own conduct can contribute to, and escalate, situations.

## ABORIGINAL COMMUNITY DEBTS

In my report, *'Bills, Bills, Bills' Essential Services – Power and Water billing and debt management practices in an urban indigenous community* (March 2016)<sup>3</sup>, I discussed how the Power and Water Corporation (PWC) had dealt with, and should deal with, billing and debt management for water supply to urban indigenous communities. This was in the context of a particular community that had incurred a substantial (some might say overwhelming) debt over a number of years.

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<sup>3</sup> *Bills, Bills, Bills* report discussed further in Chapter 4 of this report.

I noted that residents of indigenous communities are in a special position because of the nature of land tenure in those communities. No matter how many houses sit within a community, community title usually vests in one incorporated body. No matter how long a person has lived in a house, the house is not 'owned' by that person. This group tenure has many implications for individual householders. Among them is the relationship they have with essential service providers.

The report raised no issue with group tenure in indigenous communities. It did not suggest that individual tenure is superior or the preferred model. However, it did conclude that there are differences arising from group tenure that should be recognised and accommodated by organisations such as PWC. I provide an update on implementation of that report's recommendations in Chapter 4.

Notwithstanding that report, complaints regarding the management of large debts owed to public authorities by Aboriginal communities continue to reach my Office. Issues have recently been raised not only in relation to debt owed for essential services but also debt arising from assessed rates.

In the latter case, the community faces a huge and ever-growing rates bill on land which is largely bushland, with only a small portion used for residential or commercial purposes — a bill that it is unlikely to be able to repay and which the Council has little realistic prospect of recovering.

That case presents two variations on the theme I identified in *Bills, Bills, Bills*. One is that general rates are levied in the nature of a tax rather than as direct payment for services provided. The other is that the potential for future use or disposal of the rated land is significantly reduced by legal and cultural limitations. This land is substantially different in nature to other land in the Council area held by private individuals or corporations. Its cultural value may be high but its zoning and unimproved capital value (UCV - the traditional means of assessing rates) almost certainly overstate its financial value.

In this case, I suggested that, in recognition of Indigenous land tenure and disadvantage, Council could consider a varied approach in relation to the community land and potentially any other Indigenous community land in Darwin which faces a similar situation. A special approach to rating might be taken which does not rely on UCV or which utilises a nominal rate, at least for areas that have not been developed or zoned specifically for development. During the course of enquiries, the potential for a change in the approach to concessions was suggested as an alternative to a change in rating.

Looking to the large historical debt, a repayment plan which sees small contributions lost in a sea of ever growing debt (to the Council and many others) is unlikely to be an attractive or realistic proposition for the community or the Council.

This and other liabilities of the community have the real potential to create a debt spiral, where there may never be a genuine chance to repay monies owed. The prospect of such large debts can cast a debilitating shadow over the ability of the community to meet its current and future obligations to its members and service providers.

This would be of no benefit to the community or ratepayers in the Council area. A paper debt which sits on the Council's books and grows larger each year (with no prospect of recovery) creates a false impression which must be regularly explained and accounted for.

This is a problem for the community and the Council. It deserves careful consideration leading to development of a realistic and ongoing solution. My Office will continue to pursue this issue with the Council.

However, this case is illustrative of an issue that is considerably broader than its impact on one community or one authority. I have discussed developments in relation to the Town Camps Review Report in the context of my *Bills, Bills, Bills* report in Chapter 4. My Office will continue to pursue the broader issue with the NT Government and relevant authorities.

## ESSENTIAL SERVICES AND FINANCIAL HARDSHIP

Difficulties with historical debt are just as likely to arise in individual cases. A substantial proportion of Territorians face difficulty from time to time in paying the many competing bills they receive from service providers on a regular basis. A substantial proportion of complaints and enquiries we receive about essential service providers like PWC and Jacana Energy (Jacana) arise from financial hardship.

Both PWC and Jacana have financial hardship policies and programs to assist people who are facing difficulty paying their bills. However, we continue to receive complaints and concerns about implementation of those policies.

One issue that causes significant concern is when individuals have incurred debt to such an extent that they have little or no prospect of paying off that debt and maintaining payments for their ongoing essential services. These situations are often complicated because there is unlikely to be just one debt but a range of debts owed to various providers.

The debt, or part of it, may have arisen for any number of reasons – entering into an arrangement to help a son or daughter starting out in life, a need to move due to domestic violence, a departure from a group living situation, a messy break up in domestic arrangements or simply an inability to pay a debt at that time.

Where a historical debt has built up, a person may have no real prospect, even with careful financial management, of paying off that debt and others that may have accrued while being able to meet ongoing commitments. Yet ‘essential services’ are just that. They are basics of life.

In these circumstances, it is incumbent on essential service providers to regularly review and update financial hardship policies to ensure they represent best practice. This is an area where it is also important that NT Government be engaged to ensure that it is comfortable with the level of support given to people to ensure ongoing access to essential services.

I will be pursuing this issue with the NT Government and essential service providers during the course of 2018/19.

## CRIMES VICTIMS SERVICES UNIT

I have previously reported on a large number of complaints received about the Crimes Victims Services Unit (CVSU) - a unit within the Department of the Attorney-General and Justice (AGD) that, amongst other things, processes applications for financial assistance under the *Victims of Crime Assistance Act*.

The primary issue of complaint has been delay in processing applications, a significant number of which stretch back over a number of years. The main reasons given for delay have included:

- delays in obtaining necessary information from NT Police relevant to the disposition of applications;
- delays in obtaining information from health providers;
- delays in securing appointments with specialist health providers to assess victims, exacerbated when an appointment is made but the claimant does not attend;
- the advent of fresh applications which complicate consideration of earlier applications by the same person;
- the build-up over time of a large backlog of applications which itself takes time to manage.

My Office has been working with CVSU and AGD for some time in an effort to facilitate process improvements to streamline procedures and attack the backlog.

There were fewer complaints during the reporting period and many of the applications that gave rise to complaints have now been finalised.

CVSU has made structural improvements and streamlined processes. There has also been a notable improvement in NT Police response times for provision of information. These enhancements are illustrated by the increase in the number of decisions made. In 2016/17 there were 213 decisions made under the Act resulting in \$1.134m paid out to victims. In 2017/18 this increased to 383 decisions with \$2.783m paid to victims. Inroads have also been made into the oldest applications in the backlog.

An internal audit of the CVSU commissioned by AGD has made a number of recommendations for enhancement of structure and processes. These are currently being considered for implementation.

My Office has been given a copy of the audit report and is provided with quarterly updates of progress in resolution of applications involving Ombudsman complaints and the backlog generally. We will continue to meet regularly with the CVSU Director to monitor progress.

Even so, I believe that there is merit in reviewing the entire structure of the scheme with a view to enhancing timeliness and meeting the immediate needs of victims.

## CORRECTIONAL SERVICES

My Office continued a focus on correctional services during the year, including:

- monitoring implementation of *Women in Prison II* recommendations (see Chapter 4);
- pursuing improvements to the monitoring and review of critical incidents and use of force;
- reviewing the interaction between police and correctional officers in relation to incidents that occur in correctional facilities;
- reviewing interaction between police and correctional officers in relation to the health and care of people in custody;
- reviewing the utilisation of CCTV cameras at the Darwin Correctional Precinct;
- reviewing aspects of the Integrated Offender Management System.

## CHAPTER 2 – ROYAL COMMISSION

The final report of the *Royal Commission into the Protection and Detention of Children in the Northern Territory* was handed down in November 2017. It made a number of recommendations relevant to police administration and police conduct, areas that fall within the jurisdiction of the Ombudsman. I set out below a number of recommendations of particular relevance to NT Police.

### **Recommendation 25.1**

1. *The position of Aboriginal Community Police Officers be expanded and include the position of Youth Diversion Officers.*
2. *Establish a specialist, highly trained Youth Division similar to New Zealand Police Youth Aid.*
3. *All officers involved in youth diversion or youth engagement be encouraged to hold or gain specialist qualifications in youth justice and receive ongoing professional development in youth justice.*
4. *Northern Territory Police organisation and remuneration structures appropriately recognise officers with specialist skills in youth justice.*
5. *All Northern Territory Police receive training in youth justice which contains components about childhood and adolescent brain development, the impact of cognitive and intellectual disabilities including FASD and the effects of trauma, including intergenerational trauma.*

### **Recommendation 25.2**

1. *Northern Territory Police undergo training every two years to reinforce their obligations under the Police Administration Act (NT), Youth Justice Act (NT) and Police General Order – Arrest in relation to the exercise of their discretion to arrest children and young people.*
2. *Northern Territory Police collect data on the incidence of arrest of children and young people, the reasons for the use of arrest, rather than summons, the outcome of the charges laid against children and young people who were arrested, and prepare a report to be published annually.*
3. *The Northern Territory Commissioner of Police amend the Police General Order – Arrest to provide that children and young people must not be arrested at school unless there is a substantial risk the child or young person will abscond or reoffend if not arrested at school.*
4. *The Northern Territory Commissioner of Police review Police General Orders and police training to ensure police understand the basis on which charges may be laid against a child or young person.*
5. *Undertake a review of charging practices over the last three years with respect to children and young people.*

### **Recommendation 25.3**

1. *The Northern Territory Government ensure all police cells are made suitable for detaining children.*
2. *Provision be made in either the Police Administration Act (NT) or the Youth Justice Act (NT) that children and young people may be held in custody without charge for no longer than four hours. Any extension up to a further four hours may only be granted by a Judge.*

### **Recommendation 25.4**

1. *A custody notification scheme be introduced requiring police to notify a lawyer from an appropriate legal service as soon as a child or young person is brought into custody.*
2. *The Northern Territory Government commit to resource the custody notification scheme following the initial three-year funding from the Commonwealth Government, including funding the legal services to provide the custody notification scheme.*

**Recommendation 25.6**

1. The Youth Justice Act (NT) be amended to provide that a child or young person must not be interviewed by police:

- until they have sought and obtained legal advice and assistance, or
- after exercising their right to silence.

2. The Northern Territory Government take immediate steps:

- to ensure the register of support persons established under section 14 of the Youth Justice Act (NT) includes people from Aboriginal Law and Justice Groups and/or other Aboriginal community bodies for each area of the Northern Territory
- to amend section 14 of the Youth Justice Act (NT) to require that a person may only be on the register of support persons if they have undertaken training by an approved provider on their role as a support person
- to ensure police provide support people who are not lawyers with information in an easily understood form, including orally, with the use of an interpreter if necessary, or by providing a document or showing a video explaining the support role and outlining what the support person can or cannot do to assist the child during the interview, and
- to ensure all decisions by police to use a support person from the register of support people are reviewed by a senior officer, including the steps taken to locate a member of the young person's family or an alternative support person.

**Recommendation 25.7**

The Northern Territory Commissioner of Police refresh and reissue Police General Order – Youth promulgated 22 February 2007.

**Recommendation 25.8**

The Northern Territory Police Youth Diversion Unit be resourced to provide a comprehensive diversion service with adequate specialist staff members and facilities, to give effect to the principles of the Youth Justice Act (NT).

**Recommendation 25.9**

The definition of the 'serious offences' that exclude a young person from eligibility for diversion be reviewed, with a view to removing preclusion from diversion for less serious offending.

**Recommendation 25.10**

The Youth Justice Act (NT) be amended to remove the restriction on police consideration of diversion in section 39(3)(c).

**Recommendation 25.11**

The references to offences against Part V and Part VI of the Traffic Act (NT) be reviewed with a view to enabling children and young people charged with offences under these provisions to be eligible for diversion under section 39 of the Youth Justice Act (NT).

**Recommendation 25.12**

The Northern Territory Commissioner of Police amend Police General Order – Youth Pre-Court Diversion to remove the requirement that a child or young person must admit to committing an offence when an officer is considering them for diversion and require instead that the child or young person 'does not deny' the offence.

**Recommendation 25.13**

*The Youth Justice Act (NT) be amended to require reports about a child or young person's participation in a diversion program be tendered in court and made available to the child or young person's legal representative.*

**Recommendation 25.14**

*Youth diversion programs in remote communities be developed and operated in partnership with, or by, Aboriginal communities and/or Aboriginal controlled organisations.*

**Recommendation 25.18**

*A formal administrative arrangement between the Office of the Director of Public Prosecutions and Police be developed to update bail and bail condition information to avoid erroneous arrest.*

**Recommendation 25.19**

*The Bail Act (NT) be amended:*

- 1. to provide that a youth should not be denied bail unless:
  - a. charged with a serious offence and a sentence of detention is probable if convicted*
  - b. they present a serious risk to public safety*
  - c. there is a serious risk of the youth committing a serious offence while on bail, or*
  - d. they have previously failed to appear without a reasonable excuse**
- 2. to require that when imposing bail conditions the police and courts take into consideration:
  - a. the age, maturity and circumstances of the young person, including their home environment, and*
  - b. the capacity of the young person to comply with the conditions**
- 3. to require that at the time bail is granted to a young person, each bail condition and the consequences of breach of that condition be explained to the young person, taking steps to ensure their understanding, using interpreters or modified means of communication if necessary*
- 4. to exclude children and young people from the operation of section 37B (offence to breach bail), and*
- 5. to give police the power to:
  - a. issue an informal or formal written warning to a young person believed to have breached any bail condition, or*
  - b. where a breach has occurred more than once, issue a summons to a young person who has breached bail requiring them to come before the court to determine the consequences of any breach.**

**Recommendation 25.20**

*The Commissioner of Police issue a Directive setting out:*

- guidelines for the police in relation to curfew checks, including the circumstances in which they should be used or avoided, and their frequency, and*
- that police only arrest a child or young person for breach of bail where the breach occurs as a result of or in connection with further offending and after police have considered and rejected as inappropriate issuing a summons, or where the breaching conduct clearly indicates a materially increased risk of non-attendance at court or further offending.*

**Recommendation 25.33**

*The Commissioner of Police by Directive require police to take all reasonable steps to obtain the contact details of a responsible adult for a young person taken into police custody and provide those details to the young person's legal representative as soon as possible.*

In response to the report of the Royal Commission, the NT Government developed a plan to implement reforms to better support children, young people and families experiencing vulnerability and to deliver the recommendations of the Royal Commission. *Safe, Thriving and Connected: Generational Change for Children and Families 2018-2023* was published in April 2018. With regard to initiatives that specifically relate to Police, it states:

*Initiatives Identified in Response to the Royal Commission*

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

Acknowledging that a number of recommendations require involvement from multiple agencies and that overall implementation is being managed by the whole-of-government Reform Management Office, I requested an update on implementation of police-related recommendations.

In response, NT Police advised:

- *A detailed Business Case Proposal for the establishment of a specialist and highly trained Youth Division similar to New Zealand Police has been submitted for the consideration of the Northern Territory Police, Fire and Emergency Services Executive in line with Recommendation 25.1.2. Within this Business Case is a proposal to further expand the position of Aboriginal Community Police Officers to include the position of Youth Diversion Officer in line with Recommendation 25.1.1.*
- *A detailed analysis of existing Youth Justice Training identified the opportunity to create five separate training packages to upskill NTP officers. Specifically, in reference to Recommendation 25.1.5, a full day training session for all police officers will be delivered across the months of October and November, 2018 focussing on youth justice, including components about childhood and adolescent brain development, the impact of cognitive and intellectual disabilities including FASD and the effects of trauma, including intergenerational trauma.*
- *In respect to Recommendation 25.1.3, one of the aforementioned training packages to be developed will be an intensive week long course for police officers working in Youth Justice, allowing these officers to be provided a fit for purpose professional development opportunity that allows them to specialise within the Youth Justice Field.*
- *A review of charging practices over the last three years with respect to children and young people has commenced in line with Recommendation 25.2.5.*
- *An organisational wide instruction has been disseminated by broadcast reinforcing police need to take all reasonable steps to obtain the contact details of a responsible adult for a young person taken into police custody and provide those details to the young person's legal representative as soon as possible. This meets Recommendation 25.33.*
- *An organisational wide instruction has been disseminated by broadcast reinforcing police only arrest a child or young person for a breach of bail where the breach occurs as a result of or in connection with further offending and after police have considered and rejected as inappropriate issuing a summons. This meets Recommendation 25.20.b.*
- *Police have met with and provided detailed feedback on the draft protocol being developed by Territory Families pertaining to the out of home care service sector and interaction with the police to address management and response to criminal behaviour in the out of home care environment. This has contributed to significant progress towards meeting Recommendation 35.2.*

My Office will continue to monitor implementation of police-related recommendations in so far as they relate to matters within our jurisdiction.

## **CRIMINAL INVESTIGATIONS**

I have also made preliminary enquiries with NT Police in relation to its response to the various allegations of a criminal nature that have arisen from matters considered by the Royal Commission.

In that regard, I was provided with a copy of the NT Police Youth Detention Task Force report on *A review of Northern Territory Police involvements in Youth Detention Centres 2006-2016*.

The Task Force was established immediately following the announcement that the Royal Commission would be convened. Its terms of reference included, in relation to the period since 2006:

- reviewing all reports made to police of incidents involving youths in detention;
- examining all information relating to allegations of criminal offending by Correctional Services employees, staff and management at youth detention facilities;
- reviewing any inquiries or reports conducted into youth detention centres, including those conducted by the NT Children's Commissioner, which may relate to criminal conduct by any person;
- reviewing all previous police investigations involving alleged assaults on youths whilst in detention;
- identifying instances of criminal offending by any person and where appropriate, investigating and preparing prosecution files as necessary;
- reviewing all Intelligence held by the NT Police in relation to youth detention.

NT Police identified and assessed a number of matters arising over the course of the ten year time span. The Task Force analysed 478 matters, with 71 subject to full review in accordance with the provisions of the NT Police Major Crime Plan and 306 audit reviews completed.

Inadequacies in approach were identified in some cases. Matters that were considered to require further assessment or investigation were identified and dealt with. A number of general recommendations were made aimed at improving operations for the future.

NT Police also advised that a number of individual complaints or issues had been brought to its attention in the time period during which the Royal Commission was in operation. NT Police further advised that it undertook a thorough review of all Adverse Material notices sent to it by the Royal Commission and a review of the final report of the Royal Commission to identify any matters that might require further assessment or investigation.

It appears to me that NT Police has undertaken a thorough process to identify any matters arising in this context since 2006 that might have involved commission of an offence.

NT Police then went through a process of assessment and, where appropriate, further investigation in relation to each matter identified.

I was provided with a schedule which lists over 70 allegations, along with a description of actions taken and outcomes. The majority involve complaints of youths or staff against youths but there are also a number involving complaints of youths against staff.

A significant number of these incidents occurred many years ago. In many cases, when contacted by Police, the victim either indicated that they did not now wish to pursue the matter or declined to provide information to Police.

Ultimately, no fresh prosecutions have been commenced. In a small number of cases, including a number that gained notoriety in the lead up to and in the course of the Royal Commission, prosecutions had already been pursued, in one case to the level of appeal, without success.

In many cases, the decision not to proceed was based substantially on the victim's indication that they did not wish to pursue a complaint or failure to provide information. There may of course be various reasons why a victim does not wish to pursue a matter. In older matters, they may have moved on and decide that the matter is best forgotten or take the view that a prosecution is unlikely to succeed

given the lapse of time. They may not be prepared to go through the social and emotional trauma that revisiting the events may raise. Alternatively, they may lack trust in authority or lack confidence that the matter will be pursued to a substantive outcome. A decision not to pursue should not necessarily be seen as a concession that the events did not take place.

I have not attempted to scrutinise the circumstances of the individual matters listed in the schedule. If anyone has previously raised a criminal complaint in relation to one of these matters and wishes to pursue the matter or to obtain an explanation of the outcome of police investigations and assessments in their case, I urge them to contact NT Police to discuss the matter.

## CHAPTER 3 – WHAT WE DO AND HOW WE DO IT

The *Ombudsman 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:

- **Approaches – enquiries and complaints** – The bulk of our effort is spent in dealing with approaches to the Office. We received 2,304 approaches in 2017/18 and finalised 2,293 (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 545 of the approaches we received in 2017/18 were about Police conduct. Complaints about Police conduct have their own statutory framework set out in the *Ombudsman Act*. While the emphasis remains on speedy and informal resolution of less serious matters, more serious matters are subject to comprehensive investigation and reporting. In these cases, investigations are usually carried out by the Police Standards Command under Ombudsman supervision.
- **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. They may be finalised by a report to the Chief Minister for tabling in Parliament. We finalised two major investigation reports for tabling in 2017/18 (see Chapter 4).
- **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 (Chapter 5).
- **Stakeholder and community 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.
- **Statutory auditing and investigation** – In relation to surveillance devices, telecommunications interception and controlled operations powers of law enforcement agencies, we have statutory obligations to audit/investigate and report on certain functions. Reports on surveillance devices and controlled operations powers are tabled on a regular basis and are available on our website.

## DEALING WITH APPROACHES AND COMPLAINTS

The focus of our Office is on achieving informal and timely resolution of approaches. In some cases, we may not have the power to investigate a matter but we may be able to point the enquirer in the right direction. For example, an approach may be about a private sector service provider or a Commonwealth department. In those cases, we assist enquirers by putting them in touch with the relevant complaints body or giving them contact details.

In other cases, we provide details of the enquiry to the relevant department or agency and ask it to respond directly to the enquirer. We may ask the agency to advise us of the outcome or let the enquirer know they can contact us again if they are unhappy with the agency's response.

Alternatively, we may make preliminary enquiries or require investigations to be undertaken, with a report to our Office. This, in itself, may take considerable time and effort and may or may not result in a formal investigation by our Office.

Chapters 6 and 7 contain a detailed analysis of approaches received during the reporting period.

## MAJOR INVESTIGATIONS

In a small number of cases, the Ombudsman may determine that it is necessary to conduct a major investigation into an issue. This may arise from a complaint or may be undertaken on the Ombudsman's own motion.

The conduct of major investigations depends on the resources available to the Office and the issues that arise for consideration. Major investigations are very resource intensive. A major investigation may well involve a significant commitment of resources for up to or in excess of a year from the time the issue is identified.

There is no particular pattern as to when the need for a major investigation may arise and no target for a number of major investigations in a year. The number of major investigations resulting in tabled reports has typically been low, varying from year to year in recent times between 0 and 3. This is consistent with the approach in many other Australian jurisdictions.

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.

## STAKEHOLDER & COMMUNITY ENGAGEMENT

In 2017/18, Ombudsman staff visited the following Aboriginal communities:

Alyangula	Galiwinku	Pirlangimpi
Amangal (Adelaide River)	Kullaluk	Umbakumba
Angurugu	Maningrida	Warruwi
Belyuen	Naiyu (Daly River)	Wurrumiyanga

On these visits our staff talk with as many community members and groups as possible, engaging the support and help of local community members, elders and officials. Brief presentations about the work of our Office will be followed by individual or small group discussions about topics of interest. We will explain to community members what we can and cannot do but will listen to all their concerns.

On occasion we will present at a meeting or group discussion that has previously been organised. More often, we will, without being intrusive, talk to people where we find them, wherever they feel comfortable talking to us.

Where we can, we co-ordinate visits or at least the timing of visits with other bodies, for example, the Top End Women's Legal Service or NT Legal Aid.

Where a matter is within our power, we take it on board. If it is not, we will either point the person in the right direction or undertake to pass it on to relevant authorities. The intention of the visits is not to raise a large number of complaints but to establish our presence and let people know we are there if they need us.

We are a small office and so our capacity to undertake engagement in remote areas is limited. Travel during the period was limited to some extent depending on availability of staff. The majority of travel was focussed on Top End communities, following travel to the Katherine and Roper Gulf region in March and June 2017. A schedule of travel for 2018/19, incorporating the Katherine, Barkly and Central regions has been developed and is being implemented.

Further community engagement was encouraged through participation in stalls at:

- Supreme Court Open Day;
- Council of the Ageing (NT) Seniors Expo, Palmerston.

We also finalised and published a set of eight Aboriginal language audios and a multilingual brochure containing brief introductions to the Office (available on our website).

The Office provides access to a broad range of publications and resources through its 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;
- pages 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.

## **INVESTIGATIONS CONDUCTED IN PRIVATE – REPORTING ON OUTCOMES**

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.

However, the Ombudsman is required by the *Ombudsman Act* to conduct investigations in private.<sup>4</sup> There are confidentiality provisions that make the inappropriate disclosure of information relating to inquiries and investigations an offence.<sup>5</sup>

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.

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<sup>4</sup> *Ombudsman Act*, s.49(1).

<sup>5</sup> *Ombudsman Act*, s.120.

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.

## INDEPENDENCE

Independence and impartiality are key drivers of the Office of the Ombudsman. The *Ombudsman 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 40 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 from the Legislative Assembly;
- appointment is for a seven year term, which gives security of tenure;
- appointment is non-renewable, so there can be no speculation about favouring government interests in order to gain re-appointment;
- 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;
- 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 NT Government of the day.

My 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 *Ombudsman 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.

## IDENTIFYING AND PRIORITISING ISSUES

The Office of the Ombudsman identifies issues or potential issues of concern by a range of methods including analysis of complaints received, monitoring parliamentary debates, media reports and 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 *Ombudsman Act*. Factors used to assess the significance of issues and the priority that should be afforded to issues 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
- Availability of other suitable avenues for review, investigations / actions already in progress
- 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 redress the issues.

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

## CHAPTER 4 – MAJOR INVESTIGATIONS

The identification of issues may give rise to a major investigation by the Ombudsman's office. A major investigation may be initiated based on one or more complaints or on the Ombudsman's own motion.

A major investigation involves a substantial commitment of resources by the Office and may result in the preparation of a report to the Chief Minister that is tabled in Parliament.

Two major investigation reports were provided to the Chief Minister in 2017/18 for tabling:

- *Taser use and Management of NT Police conduct issues*
- *Little Fish Are Sweet: Administration of a high volume, low value, subsidy scheme.*

Updates on developments relevant to those reports and the following reports finalised in earlier years, are set out below:

- *'Women in Prison II' – Alice Springs Women's Correctional Facility* (May 2017)
- *'Bills, Bills, Bills' Essential Services – Power and Water billing and debt management practices in an urban indigenous community* (March 2016)
- *'Let there be light' – Response by Department of Housing and Power and Water to widespread incidents of damage to electricity meters in a remote community* (June 2015).

All tabled reports are available at <http://www.ombudsman.nt.gov.au/publications>.

### TASER USE AND MANAGEMENT OF NT POLICE CONDUCT ISSUES

This report examined the benefits and risks of Taser (or ECD) use by NT Police in the context of a particular incident involving the use of a Taser on a 12 year old child who was running from Police. It discussed the current state of the literature on Taser use, NT Police rules regarding Taser use and the circumstances of the particular case. It supported the finding of the NT Police investigator that an officer breached rules made by NT Police in relation to Taser use.

I concluded that the current state of the literature is such that no definitive causal connection can be drawn between Taser use and death. However, I considered that the occurrence of a substantial number of deaths associated with Taser use cries out for caution. Given the large number of times Tasers have been deployed, compared with even the highest estimates of associated deaths, the risk of death must be realistically assessed as very low. But the severity of the potential outcome is extreme. I concluded that a rigorous and cautionary approach to Taser use must prevail.

I further concluded that, while the evidentiary basis is somewhat equivocal, there are pointers to people with certain vulnerabilities being more susceptible to harm following use of a Taser. Children, and more particularly children who are small in stature, fall within that group and even greater caution must be adopted with regard to these individuals.

Although I noted contrary views, I did not form the view that Taser use on children (even 'young' children) should be banned, so long as appropriate restrictions are maintained that limit the circumstances of use. However, given the opposing views, I suggested this was a matter on which the NT Government and the Commissioner of Police may wish to deliberate, informed by my report and other relevant material.

I also examined options available for action by NT Police in relation to management of police conduct issues and discussed potential future directions, as well as the action taken by NT Police in relation to the specific incident.

I made recommendations relating to Taser use including the need for retention of specific restrictions, increased emphasis on training, guidance and monitoring and review and clarification of the circumstances in which Taser use is open.

I also made recommendations relating to management of police conduct issues concerning the need for additional guidance for decision-makers regarding the circumstances in which particular options for action should be adopted and in which particular disciplinary sanctions should be considered.

## **Implementation of Ombudsman recommendations**

As indicated in my report, NT Police advised that it broadly accepted my recommendations and that work was ongoing in relation to implementation. Where relevant, my recommendations are set out below, along with a discussion on implementation to date.

### *Justification for use*

#### **1) NT Police continue to maintain specific restrictions on Taser use.**

NT Police provided me with a copy of its June 2018 *Operational Safety and Use of Force Instruction*. It maintains specific restrictions on Taser use. However, I noted a change in drafting which might arguably be interpreted as broadening the scope for Taser use. I raised this ambiguity with NT Police. They confirmed that this was not intended and the Instruction was immediately amended to clarify that the 'immediate physical threat of serious harm' test (referred to in paragraph 95 of my report) still applies.

### *Guidance and training*

**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.**

NT Police has provided copies of the:

- new *Operational Safety and Use of Force* General Order and Instruction;
- Defensive Tactics - Session 1 – Defensive Tactics - Facilitator Guide v3.1 - the **Defensive Tactics Guide**; and
- Defensive Tactics - Session 3 – Electro-muscular Control Devices -Participant Guide v4.1 - the **ECD Guide**.

NT Police also referred to the 'Taser X2 Operator' Online – yearly theoretical re-qualification course.

The ECD Guide (70 pages) does contain a number of references to risks of Taser use (for example, at pages 37, 41, 42, 44 and 47). It contains a full page discussion of 'At Risk' persons at page 49, including specific reference to Aboriginal people. It also attaches at pages 62-69, the detailed Taser product safety warning. There is also discussion in the Guide of the importance of considering alternatives to Taser use and use of force generally, including utilising communication strategies as a first resort.

So long as sufficient prominence is given to those aspects of the ECD Guide in the course of training then officers should be reasonably apprised of the risks involved. Even so, I consider the Guide would benefit from a clear statement in the Overview that Taser use comes with significant risks.

I also note that the Guide has not yet been updated to align with the new GO and Instruction (for example, pages 32-33).

The Defensive Tactics Guide (83 pages) provides detailed instruction of the approach to use of force within the framework of the Tactical Options Model. There is considerable discussion of alternatives to use of force. However, it does not refer to the absolute pre-conditions for use of particular weapons like the Taser. In my report, I said:

*237. In that regard, the Use of Force GO was quite clear in describing the restrictions on Taser use, including the limitation to immediate physical threat of serious harm and inability to protect by less forceful means.*

*238. ..., I do consider that there is some potential for conflict within NT Police corporate documentation between the idea a continuum of use of force options (Tactical Options Model) and the absolute restrictions on Taser use in the Use of Force GO. This could potentially encourage a tendency to place less emphasis on the absolute restrictions.*

*239. In this regard, it is arguable that there should be a greater corporate emphasis on recognition of the risks of Taser use and the importance of compliance with relevant requirements rather than a simple reliance on what may appear reasonable in the circumstances.*

I take no issue with the general approach adopted in the Defensive Tactics Guide. However, there should be clear references in that Guide to the fact the some options are only available if pre-conditions are met.

#### ***Taser use on children and others with vulnerabilities***

**4) NT Police carefully consider the question of whether Tasers should be used on children and, if they continue to be used, consider the inclusion of Taser use on a child (regardless of age) as a special circumstance.**

**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:**

- a. defining 'young child', if that remains a separate special circumstance;**
- b. use on people with small stature or slight build;**
- c. use on people with other vulnerabilities;**

The new *Operational Safety and Use of Force* Instruction extends the circumstances where 'additional consideration' is to be given to:

*246.2 a child (i.e. a person who is apparently below the age of 18 years), and particularly against a young child (a young child is any person who is apparently below the age of puberty), or a person of small stature or slight build;*

This goes some way to addressing issues relating to children and people with small stature referred to in Recommendation 5.

I also note that the ECD Guide contains specific references to the circumstances of vulnerable or 'at risk' people.

### *Regular monitoring and reporting*

**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.**

NT police advise that monitoring and reporting of Taser use is conducted by the Risk Management and Internal Audit Division.

### *Guidance on action to be taken in relation to the conduct of individual officers*

**8) NT Police produce substantial written guidance to decision makers to assist them in determining which option to recommend or pursue when considering action in relation to the conduct of an individual officer.**

**9) NT Police produce substantial written guidance to decision makers to assist them in determining which sanction (if any) to recommend or impose in relation to the conduct of an individual officer.**

NT Police have provided my Office with guidelines concerning the manner in which performance issues and minor breaches of discipline may be dealt with outside of Part IV of the *Police Administration Act*. I am informed that work on the review of the disciplinary regime continues. My Office will continue to liaise with NT Police in regard to these matters.

## LITTLE FISH ARE SWEET

This report looked at issues relating to the administration of high volume, low value subsidy schemes, and in particular at structures and control measures that can be utilised to ensure that scheme beneficiaries and the Territory community obtain the best value for money out of the scheme.

The Northern Territory Pensioner and Carer Concession Scheme (the Scheme) provided concessions or benefits on a large number of transactions to a large number of Territorians. Concessions were provided on utilities (energy, water, sewerage, and garbage), vehicle registration, drivers' licences, public transport, travel and spectacles.

The concessions were frequently administered with the assistance of the external provider who supplied the relevant good or service. In the case of travel, a travel agent may be involved. In most cases, the provider/agent had direct interaction with the member and provided necessary paperwork directly to the NT Government.

The concession in most cases was limited to a relatively low value, so the overall risk of financial loss to the Territory on an individual transaction was therefore low. Regardless of likelihood, the amount of any loss would be limited. However, the involvement of providers and agents who dealt with multiple transactions substantially increased the level of risk to be addressed.

I concluded that the risks inherent in particular transactions would vary. Services supplied by Government providers in situations where prices or unit prices were essentially fixed still required monitoring and control. However, in a private sector setting where products and prices were subject to substantial variability, the opportunities for mistakes, misunderstandings and deliberate misconduct increased significantly.

I concluded that there should be a particular emphasis on ensuring that scheme structures and internal controls are designed to minimise the potential for errors, misinterpretation and fraud that may compromise the objectives of the scheme. I said it was also important to recognise that an appropriate level of administrative oversight (the much maligned 'red tape') is essential if the community is to have confidence that a scheme is effective.

While the report was produced in the context of the Scheme, I considered it would have relevance to other grant and subsidy schemes across government. No specific recommendations were made, as the approach relating to each scheme will vary. The report discussed relevant principles, available guidance and options for action.

The Scheme was subject to a comprehensive review and an extensive public consultation process which resulted in the creation of two complementary schemes and significantly enhanced administrative procedures. My report was also considered by the Department of Treasury and Finance in the development of Treasurer's Directions and guidance documents on Fraud Control.

## WOMEN IN PRISON II

*Women in Prison II* 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 shows the number and proportion of female prisoners in the NT has 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 that the fundamental purpose of the correctional system should be rehabilitation and that, 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 that things will only get better if we invest in the future of offenders. We need to explore alternatives to custody and create an environment in custody and afterwards that encourages and assists people to build better lives for themselves, their families and their community. We need to facilitate non-offending.

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

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

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

## **Implementation of Ombudsman recommendations**

The Chief Minister's initial response to the report, stated on its tabling in the Legislative Assembly, is set out in my 2016/17 Annual Report.

In January 2018, the Chief Minister provided me with a detailed *Women in Prison Strategic Action Plan* prepared by Correctional Services. In his letter, he stated:

*The Action Plan articulates specific elements of the NTCS reform agenda that targets Report recommendations and has been structured to outline:*

- *broad reform strategies to achieve outcomes;*
- *focus areas to direct resources to priority actions; and*
- *specific projects that deliver output activities.*

*The Action Plan highlights broad Government initiatives as well as projects and activities that target recommendations applicable across all correctional services. This includes the proposed actions to address Recommendation 7 in relation to female prisoners held at the Alice Springs Correctional Centre as per findings in Chapter 8 and Volume 2 of the Report.*

*A number of concerns identified in the Report align with recommendations of earlier reports including the 'A Safer Northern Territory Through Correctional Interventions' Report (the Hamburger Review) and the Council of Australian Governments 'Prison to Work' Report. These recommendations more specifically relate to broad issues surrounding access to employment, education and cultural programs for female offenders.*

*As part of the NTCS Continuous Improvement Program, a mapping exercise has been undertaken to ensure each reports' recommendations are addressed through the NTCS business planning process, and that projects, activities and initiatives that improve conditions for women in prison are not developed in isolation.*

*In order to ensure that reforms are implemented and sustained at an operational level, a Female Offender Management Working Group was established in 2017 and its terms of reference have been revised to target the specific improvements outlined in Chapter 8 and Volume 2 of the Report. A copy of the revised terms of reference and draft workplan are attachments A and B to the Action Plan.*

*The Action Plan is necessarily expansive to adequately address the strategic, directional and immediate intentions of the recommendations. It is foreseen that the Action Plan will remain a living document during the period of its implementation and will be the subject of revisions, by agreement, between the Office of the Ombudsman and the Commissioner of Correctional Services.*

My Office has continued to pursue with Correctional Services and the Department of the Attorney-General and Justice (AGD) the specific issues raised in Recommendation 7 and Volume 2 of my report. I have met with the Commissioner of Corrections on a monthly basis and also with the Chief Executive of AGD and the Attorney-General in relation to the recommendations. In February 2018, I visited the Alice Springs Correctional Centre with the then Commissioner to review progress.

In an update received in September 2018, the AGD made the following general comments:

- *as previously indicated, many of the issues raised in the Report are similar to issues in other reports in past years including the Hamburger Report released in 2016. These issues have directed the work and reforms in Correctional Services;*

- *the Government maintains its commitment to addressing recidivism and reduce incarceration rates. The Government is working towards finalising a Justice Reform Framework which will provide direction for justice reforms to address these objectives. The Justice Reform Framework will acknowledge that achieving justice objectives requires change across government to address systemic dysfunction;*
- *NT Correctional Services implemented or considered strategies responding to a number of aspects in the Report prior to the Report being finalised and has continued to work towards addressing issues raised in the Report;*
- *AGD is operating under significant budgetary restraints, which has required consideration when adopting the recommendations;*
- *AGD continues to support the need to ensure that female prisoners are not treated less favourably than their male counterparts;*
- *the NT has a very small female prisoner population and the rate is therefore subject to large fluctuations. Nevertheless, the current rate is sitting approximately 30% lower than the rate in 2015. Additionally, the rate of prisoners returning to prison in the NT (male and female) has declined from 62.4% in 2012-13 to 57.1% in 2016-17 (5.3% decrease); and*
- *the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 was passed during the August 2018 Sittings of the Legislative Assembly and assented to on 6 September 2018. Work is occurring in consultation with the Department of the Chief Minister and with the Commonwealth towards commencing the Act and, consequently, the monitoring of prison circumstances.*

The first six recommendations in the Report are broad in nature:

- 1. *The NT Government adopt a whole-of-government approach to reduce offending and recidivism and to promote rehabilitation of offenders, to include:***
  - a. a common intent and set of shared objectives to reduce offending and recidivism;*
  - b. appropriate governance arrangements, both at ministerial and departmental levels;*
  - c. creation and publication of targets and performance measures common across justice, education, health and human service system agencies; and*
  - d. improved collection, sharing and use of data across agencies to drive evidence based reforms and improved service delivery.*
- 2. *Using justice reinvestment methodology, the NT Government pilot and evaluate local approaches to crime prevention and community safety in disadvantaged communities with the aim of reducing reoffending and increasing community safety.***
- 3. *The NT Government, the Department and Corrections acknowledge and publicly promote rehabilitation and reintegration as the primary focus of the correctional system, in the best interests of the whole community in minimising future offending.***
- 4. *The NT Government, the Department and Corrections acknowledge the importance of differentiating between the needs and characteristics of female prisoners compared with male prisoners in facility, policy and program development, as well as the importance of addressing the needs and characteristics of individual prisoners.***
- 5. *The NT Government and the Department place strategic emphasis on further development of non-custodial options for dealing with female offenders by way of diversion and other programs both prior to entry into the justice system and by providing viable, well-resourced and timely program options for consideration by courts when dealing with offenders.***

**6. The NT Government, the Department and Corrections fundamentally reconsider the approach to custody of female prisoners, with an emphasis on decentralisation, community and family support, ensuring that security matches the actual risk they present and providing an environment that facilitates rehabilitation and reintegration, including viable, well-resourced and timely accommodation and program options.**

In its September 2018 update, AGD advised generally in relation to those six recommendations:

*The NT Government has a number of inter-related policy reforms that address the broader social issues which impact upon the justice system. These include the:*

- *Starting Early for a Better Future: Early Childhood Development in the Northern Territory 2018-2028;*
- *Safe, Thriving and Connected: Generational Change for Children and Families 2018-2023;*
- *Domestic Family and Sexual Violence Reduction Framework 2018-2028;*
- *NT Homelessness Strategy;*
- *Remote Housing Program - Our Community, Our Future, Our Homes;*
- *Education NT Reform Strategy; and*
- *Local Decision Making Framework.*

*A Justice Reform Framework is also under development which includes the NT Government's policy commitment to correctional services reform as a priority, including the implementation of the recommendations into the management of women in correctional centres. Strengthening systems to ensure appropriate data sharing and use of data as well as good governance structures also form part of the priority commitments in the Framework.*

*The reform principles of the Justice Reform Framework will include use of evidence, collaboration, focus on rehabilitation measures and improving access to services. The Aboriginal Justice Agreement falls under the Justice Reform Framework and a key principle underpinning the Agreement is to deliver on the government's commitment to reassert local power and increase the role for traditional leadership in the Northern Territory justice system through partnering with Aboriginal Territorians.*

*The Justice Reform Framework will guide the way Government implements reforms in the justice system and will form the basis in addressing the issues addressed through all of the recommendations in the report.*

*It is anticipated that the Justice Reform Framework will be finalised in coming months.*

With specific regard to Recommendation 2, AGD advised that work is occurring to progress alternative to prison models in partnership with Aboriginal communities.

Recommendation 9 is also of general application:

**9. Given the overwhelming proportion of Indigenous female prisoners, consideration and implementation of all recommendations be conducted in consultation with Indigenous communities and elders as well as prisoners and other stakeholders.**

In relation to this recommendation, AGD advised:

*The Aboriginal Justice Unit is continuing consultations towards the development of an Aboriginal Justice Agreement. A key principle underpinning the Agreement is to deliver on the government's commitment to reassert local power and increase the role for traditional leadership in the Northern Territory justice system. This is also reflected within the Justice Reform Framework under development which prioritises partnering with Aboriginal Territorians including through the Aboriginal Justice Agreement.*

Recommendations 7 and 8 relate to specific and immediate concerns regarding the many issues raised in the report:

**7. Corrections develop, in consultation with the Ombudsman, a detailed plan to pursue and address all of the issues raised in Chapter 8 and Volume 2 of this report. The plan should set out an initial response to each issue, a description of proposed actions to address the issue, the resource implications of those actions, the source of any additional funding required, measurable outcomes and a timeline for action. The plan should provide for action on priority issues within a matter of weeks or months but in any event should provide for implementation of all actions within two years of finalisation of this report. The broad topics covered by the plan will include:**

- a. overcrowding;**
- b. housing and facility issues;**
- c. education and rehabilitation programs;**
- d. employment opportunities;**
- e. health care;**
- f. the basics (clothing, hygiene, food, and recreational activities);**
- g. underlying supports (induction, legal assistance, making complaints and using interpreters); and**
- h. children in prison.**

**8. Corrections provide the Ombudsman with a copy of the initial plan within three months of the finalisation of this report, and updates on progress every three months thereafter. Corrections meet with the Ombudsman staff to discuss progress on each occasion.**

I received a detailed update on progress of these recommendations from the Acting Commissioner of Corrections in August 2018. The Acting Commissioner referred to the considerable work undertaken in developing a Throughcare Integrated Case Management model that appeared likely to address many aspects of the issues I raised in my report. However, a decision on whether investment in this model is the best way forward is still pending. The schedule containing the detail of the August update is set out on the following three pages.

In its September update, AGD advised:

*A further update is anticipated for October 2018, to include reference to female prisoner engagement with the Transitional Accommodation Program (Prison to Work initiatives), and the recommendations made by the Corrective Services Administrators' Council and the Corrective Services Ministers' Council, those being:*

- to develop evaluation frameworks for programs designed by women (which the NT is already undertaking);*
- to improve access to community and health services for vulnerable women when released from custody; and*
- for all jurisdictions to distribute Women in Prison action plans.*

Progress is being made but much still needs to be done even at the most basic levels. Planned initiatives need to be funded, implemented and sustained.

As I noted in my Ombudsman's overview, there are no easy options for Government. There is enormous need. There must be fundamental change. It requires substantial investment in challenging economic times. But it is an essential investment for all of our futures.

**Attachment 1: Update on Recommendation 7 of the Ombudsman's Report - Women in Prison II**

Sub-Recommendation	Comment
Overcrowding	<p>The infrastructure recommendations/development to address overcrowding in the ASCC is under review as part of the Female Offender Management Working Group (FOMWG). Initial progress was made in planning for container accommodation which was to be modified on site using prison labour. While initial quotes/estimates have been obtained this process has halted temporarily due to staffing shortages. Planning in the form of an accommodation master plan, options and total costs including recurring ones is still under way. In addition due to a budget gap a source of funding needs be secured for this to proceed.</p> <p>This delay is mitigated to some degree by the number of woman prisoners in the ASCC decreasing since the time of the Ombudsman fact finding visits in relation to his review. The "Rising Prisoner Numbers Committee" will be reconvened and Terms of Reference are being developed.</p>
Housing and facility issues	<p>The 'At Risk' cell specifically for women at the Alice Springs Correctional Centre has been established and it is fully operational.</p> <p>Two shade sales have been erected in the Female Sector at Alice Springs, one is adjacent to the Low Security Unit and the other is in the Horticulture area. Shade is to be also installed outside the demountable.</p> <p>Options and quotes are being explored for improving the bathroom facilities in H Block Alice Springs while those in H2 Low Security and Medium/High Security side bathrooms are in general good condition and well maintained</p>
Education and rehabilitation programs	<p>The Women of Worth Program (WOW) is funded by the Tim Fairfax Family Foundation and delivered by YWCA Darwin. WOW provides 6 months pre and 12 months post release support to women involved in the justice system. The aim of the program is to support women to reengage with the community and to reduce reoffending. The NTCS Programs, Services and Improvement directorate has been working with the YWCA, the WOW Coordinator and the external consultant they have engaged, to provide data on participants in the program, such that the consultant can assess the data from the program. The WOW program has been funded for an additional six months until mid-year to maintain the support to women in DCC until information from the evaluation is forthcoming.</p> <p>At the ASCC female prisoners are able to enrol in education programs, bible studies or, when available, legal clinics with Central Australian Women's Legal Services or programs from other service providers. Weekly education is delivered by the Batchelor Institute of Indigenous Tertiary Education and the Safe, Sober, Strong program is delivered by the Prisoner Services Treatment Team.</p> <p>The Italk 10 week program operates in the female industries area once per week. ITalk is a multi-media initiative (computer, software, script creation, graphics, music, voice overs) where aboriginal women create work and personal stories for use within the correctional centre and external stakeholders. An intention for Italk is to eventually creating stories in different aboriginal language about woman's issues as informed by the FOMWG and the consultative councils.</p> <p>Plans are being developed to modify a portion of H Block (Female Sector of ASCC to accommodate the University of Southern Queensland (USQ) program. This will also require a review of IT requirements including a new USQ specific platform which will allow the use of desktop computers.</p> <p>There is also potential for the use of a refurbished Transitional Housing Program house for female offenders post release to aid in their reintegration and rehabilitation.</p>

	<p>Quotes are being obtained in Alice Springs to facilitate a hair salon and computer hub; a small library has been established and the Manager, Prisoner Services is exploring health lifestyle options for the females additional to services such as exercise and physical activities.</p>
Employment opportunities	<p>Many of the woman prisoners are employed in various employments throughout H Block of ASCC as: Block Cooks, Cleaners, Breakfast packers, Gardeners, and Laundry workers.</p> <p>The following programs are also or will be available in the future:</p> <ul style="list-style-type: none"> <li>• Upcoming Transitional Accommodation Program</li> <li>• Obtaining a job site White Card</li> <li>• Obtaining a Working at Heights qualification</li> <li>• Obtaining a Certificate I in Construction</li> <li>• Obtaining a Certificate II Construction</li> </ul>
Health care	<p>Templates have been developed for use between the health disciplines i.e. Forensic Mental Health, Aged and Disability, and others. These will be consistent across both DCC and ASCC for referring female prisoners and aim to develop information sharing. These will better affect how female prisoners are triaged in the mental health space.</p> <p>The Breast Screen Bus visits both the DCC and the ASCC</p> <p>Medical diets are available for female offenders with renal failure, cardiac and diabetic conditions including those who are lactating or pregnant.</p> <p>ASCC Sport and Recreation Officers deliver activities to female prisoners every Tuesday and Thursday subject to weather, operational requirements and prisoner participation. A Sports and Recreation Officer is an accredited Health and Fitness Trainer who can develop programs for obese prisoners and those with chronic health problems.</p> <p>A partnership developed with Reclink Australia creates pathways to improved health and wellbeing, socially inclusive and life-changing opportunities for female prisoners. They attend on a weekly basis and provides evidence based sport and art programs to disadvantaged peoples. Reclink volunteers attend ASCC once a month with a team from the local Amooguna community to play sport with Open and Low security female prisoners on the ASCC oval.</p> <p>The H Block (ASCC) observation cells (HC001) has been refurbished and can now be used for female prisoners who are identified as 'At Risk'. If for any reason an 'At Risk' female prisoner cannot be housed in HC001, Deputy Superintendent ASCC approval is required before housing the female prisoner in any other area of ASCC.</p> <p>Upon Reception at ASCC every female prisoner receives an Immediate Risk Needs Assessment (IRNA) and is assigned a Default Security classification. The IRNA identifies their individual risk/needs i.e. At Risk status, history of offences, if there are cultural or payback issues, medical or psychological issues, physical and intellectual ability and substance abuse.</p> <p>At Reception or when practicable ASCC prisoners are seen by a Registered Nurse prior to being escorted to their housing. They are seen by a Doctor within 24 hours or where practicable following Reception. If there is an emergency situation an out of hours contact at the Alice Springs Hospital is called for advice.</p> <p>Pre and post release supported accommodation programs are facilitated with Drug and Alcohol Solutions Australia (DASA) where the special needs of female prisoners are managed and assessed relative to their suitability for referral to a program.</p>
The basics (clothing, hygiene, food, and recreational activities);	<p>The stock of female underwear has been increased within the ASCC which allows for female prisoners to be supplied with the same allocation as Darwin (4 of each). This occurs on a daily basis when new receptions are processed into H Block.</p> <p>The issuing of laundry bags with identifying numbers to each prisoner has ensured underwear is washed in the relevant bag and not mixed with those of other prisoners nor misplaced.</p> <p>On reception each female prisoner is supplied with a "Welcome pack" which includes a</p>

	<p>toothbrush, toothpaste, soap and plates, bowl and cups. The prisoners are also issued with clothing relevant to their classification, towel and bedding.</p> <p>DCC provide hygiene products in communal toilets and are available via request. Sector 4 has approximately 85% female staff for prisoners to request items from as required.</p> <p>ASCC provide programs to female prisoners that are tailored to their needs and include life skills programs (Kunga Case Management Program for Aboriginal prisoners), drug and alcohol programs, Drink Driving Courses, First Aid, and individual counselling amongst others.</p>
Underlying supports (induction, legal assistance, making complaints and using interpreters)	<p>Female Elders from the Elders Visiting Program regularly visit the DCC and ASCC Women Sector to meet with Aboriginal female prisoners</p> <p>As part of the cultural development for female offenders within the ASCC, an external Aboriginal female from Congress now forms part of the Cultural Advisory Group to provide wider community content.</p> <p>The ASCC Female Prisoner Representative Committee commenced on 22 August 2017 and meets bi-monthly.</p> <p>The DCC Female Prisoner Representative Committee has already been operating and meets bi-monthly.</p> <p>ASCC are exploring the possibility of conducting two family days a year, These could be held in the Visit Area for female prisoners and their families. These would probably link to significant celebrations such as Mother's Day.</p> <p>DCC will be taking the Low and Open rated female prisoners to the Howard Springs Recreation Park for a Mother's Day celebration involving their children. The activity is being held shortly after Mother's Day to ensure the facility is less crowded.</p> <p>A review of the ASCC Female Sector Induction Booklet has been conducted while DCC is currently reviewing its prisoner handbook.</p> <p>Flyers have been placed in the Female Sectors (ASCC and DCC) outlining the role of the Official Visitors.</p> <p>A prisoner newsletter is available at DCC which communicates relevant information.</p> <p>Next to the Prisoner Telephone System (PTS) there is a list which identifies pre-set numbers on the PTS related to prisoner complaints (legal, Health Commission, Ombudsman's Office etc). Additionally, at ASCC legal handbooks are given to prisoners on reception which give an overview of advocacy and associated matters.</p> <p>Every female prisoner attends an induction session with the Prisoner Support Officer which outlines the guidelines, procedures and services available within DCC and the Female Sector.</p>
Children in prison	<p>DCC have a Mothers with Babies Facility which aims to assist the mother to develop and maintain a functional relationship with her child pending the mother's release. Continuing the bond between mother and child during imprisonment may reduce the likelihood of reoffending</p> <p>ASCC does not have a designated Mothers and Babies facility, however babies can be kept with their mother in the Women's Sector. A Child Care Plan was developed and reviewed relative to ongoing support and development needs of the mother and baby. Initiatives include the purchase of baby equipment and attendance at formal child care to benefit the baby's development. Grassed areas are available for mothers and babies in the Female Sector. Additional improvements will be explored through the FOMWG.</p> <p>The possible option to establish a Mother's and Babies Unit in front of H Block in ASCC by installing a standalone container/demountable is being explored. This would allow one or two mothers and their children to be accommodated without isolating them from the general population while still ensuring the safety of the child or children.</p>

## BILLS, BILLS, BILLS

This report discussed how the Power and Water Corporation (PWC) has dealt with, and should deal with, billing and debt management for water supply to urban indigenous communities. Residents of indigenous communities are in a special position because of the nature of land tenure in those communities. No matter how many houses sit within a community, community title usually vests in one incorporated body. No matter how long a person has lived in a house, the house is not 'owned' by that person. This group tenure has many implications for individual householders. Among them is the relationship they have with essential service providers.

The report raised no issue with group tenure in indigenous communities. It did not suggest that individual tenure is superior or the preferred model. However, it did conclude that there are differences arising from group tenure that should be recognised and accommodated by organisations such as PWC. The report discussed the special arrangements that have previously been put in place by PWC in recognition of the special position of indigenous community residents and the rationale for continuing and enhancing those arrangements.

It dealt primarily with one urban indigenous community but the discussion has broader relevance to similar communities throughout Darwin and other urban areas. The central finding of the investigation was that it is essential for an effective process to be refined and implemented, in consultation with each relevant indigenous community, to ensure that each individual householder contributes equitably towards their share of water costs.

The recommendations made in the report are set out below.

- 1. That PWC — having a responsibility to individual householders in the Bagot Community who paid money to it for the supply of water to their households — in consultation with BCI, take all reasonable steps to reconcile and credit/repay overpayments by those individuals. [It is noted that compliance with this recommendation is contingent on PWC obtaining detailed tenancy information from third parties (from BCI or potentially from individual householders)].*
- 2. That PWC promptly move to reinstate a process that recognises and facilitates payments by individual householders in the Bagot Community for the supply of water services. That the process be developed in consultation with the NT Government and Bagot Community representatives, taking into account the factors and issues discussed in Chapters 2 and 3 of this Report.*
- 3. That the NT Government and PWC undertake wide-ranging consultations with representatives of relevant indigenous communities to discuss the best approach or approaches to recognising and facilitating payments by individual householders in indigenous communities — and in doing so give careful consideration to the option of providing PWC meters for individual houses and discrete billing for individual householders.*
- 4. That PWC, in consultation with the NT Government and relevant community representatives, review its approach to management of current debt owed by indigenous communities*
- 5. That consultations be undertaken utilising the services of Indigenous interpreters where necessary and records of consultations be widely published within relevant communities.*
- 6. That PWC review its billing and debt management practices to ensure that it has in place appropriate mechanisms for flexible and timely debt management in the future.*

When tabling the report in the Legislative Assembly, in addition to addressing specific recommendations, the then Chief Minister stated:

*The two key themes from the report are the complex arrangements in place in relation to the delivery of services on town camps and the need for greater engagement and consultation. This reinforces the government's decision to undertake a comprehensive and inclusive review of town camps in the Northern Territory with the aim of delivering better services. The aim of the town camp review is to find new opportunities to improve living conditions on these communities.*

*The key areas to be considered in the review include lease arrangements, infrastructure, service delivery, housing legislation and capacity for local organisations to be engaged in the economy. Importantly, the review recognises that a one-shoe-fits-all model will not work for all town camps. Rather, the review will develop place-based approaches specific to each individual town camp.*

...

*For this reason, I have asked the Department of Local Government and Community Services, which is coordinating the review, to include considerations of the report's findings and recommendations in the town camp review.*

*Living on the edge*, the Northern Territory Town Camps Review report was published in April 2018. It made a number of general recommendations relating to governance, land tenure, leasing and legislation which are of relevance to the issues discussed in my report. The NT Government has published an Initial Response to the Town Camps Review Report and an Initial Response to the Town Camps Review Report Recommendations. It has created a Town Camps Futures Unit to guide future progress.

Some of the general recommendations of particular relevance in the context of my report are set out below, along with the NT Government's initial position and comments.

### Land Tenure, Leasing and Legislation

Recommendation	Position	Comments
<p><b>Create certainty in land tenure</b></p> <p>Current tenure arrangements should be simplified and restructured so that town camp owners are empowered to control their own space and seek development opportunities.</p>	<p>Support in-principle, subject to further consultation</p>	<p>The Northern Territory Government will work with landowners, residents and the Australian Government to ensure the land tenure arrangements are fit for purpose and provide contemporary options for long-term sustainability.</p> <p>This aligns with the Northern Territory Government's broader commitment to ensure land ownership delivers on economic and social aspirations of Aboriginal Territorians.</p>
<p><b>Remove or reduce restrictive legislation</b></p> <p>A statutory review of the <i>Special Purpose Lease Act</i> should be undertaken to modernise its provisions, and remove restrictive barriers to land dealings.</p>	<p>Support</p>	<p>The Northern Territory Government will undertake a statutory review of the <i>Special Purpose Lease Act</i> that focuses on improved opportunities and outcomes for town camp residents which are practical and achievable.</p> <p>Consultation with special purpose lease holders and the broader community will be undertaken.</p> <p>This aligns with the Northern Territory Government's broader commitment to ensure land ownership delivers on economic and social aspirations of Aboriginal Territorians.</p>

Recommendation	Position	Comments
<p><b>Establish clear roles and responsibilities</b></p> <p>A legal framework needs to be established which delineates clear roles for each of the funding parties, town camp owners, residents and service providers. This can be achieved by implementing agreements between the parties detailing the obligations and rights of each. These should be supported by rigorous reporting and compliance monitoring to ensure those roles and responsibilities are being upheld.</p>	Support	<p>The Northern Territory Government supports providing clarity of functions for entities engaged with town camps.</p> <p>The newly established Town Camps Futures Unit will be tasked with bringing all stakeholders together, including government agencies, to develop a framework that is best matched to achieving a clear and transparent model suitable for each individual town camp.</p>

Town Camps Review Report recommendations specific to essential service provision are set out below, along with the NT Government's initial position and comments.

### Housing

Recommendation	Position	Comments
<p><b>Create effective collection structures</b></p> <p>Through strong governance frameworks provide structured support to town camps for the development of sustainable collection frameworks.</p>	Support in-principle, subject to further consultation	<p>The Northern Territory Government will assist town camp landowners to implement tenancy agreements and charge rent where appropriate.</p> <p>As part of its work in planning and coordinating service delivery in town camps, the Town Camps Futures Unit will review tenant contributions to the costs of housing.</p>

### Municipal and essential services

Recommendation	Position	Comments
<p><b>Upgrade water networks</b></p> <p>Town camps that are non-compliant should undergo major upgrades to the water supply in order to comply with Power Water Corporation standards and provide the required capacity. The water supply to the town camps is proposed to be measured with bulk water meters located on the community boundary.</p>	Support in-principle the intent of the recommendation, subject to the development of a long term Policy and Implementation Plan by mid-2019	<p>Urgent works will be undertaken to ensure the safety of town camps residents; however, the upgrading of infrastructure to meet current standards will require significant investment which the Territory is not able to immediately fund.</p> <p>The transition from bulk meters to individual meters will be considered as part of the development of the Policy and Implementation Plan by mid-2019.</p> <p>Support from the Australian Government will be sought to jointly invest in improving town camps' infrastructure.</p>

With regard to my recommendations, PWC provided the following update:

*PWC provided support and input into the Town Camps Review as relevant. ... Now that the Towns Camp Report has been published, PWC looks forward to engaging with government and other stakeholders on reviewing, and where possible and appropriate, implementing the recommendations. Since your report, PWC has been in contact with the Aboriginal Development Foundation and its representative Yilli Housing to address debt management.*

Notwithstanding the action discussed above, the situation in relation to the particular community does not appear to have progressed. I am advised that the corporate body for the community (BCI) remains in administration and that, while PWC has responded to queries from the administrator, it has not been possible for PWC to engage with BCI directly on water and sewerage charges.

PWC also advises that since 2016, it has not received any payments from community residents via Centrelink arrangements. This runs directly counter to the theme of individual choice and responsibility that I stressed in my report.

My Office will continue to seek updates on progress in relation to both the specific case and the more general issues.

## LET THERE BE LIGHT

The report outlined the findings of an investigation into the responses of the Department of Housing and PWC to widespread incidents of criminal damage to electricity meters and other electrical fixtures and fittings for houses in the remote indigenous community of Wadeye.

One recommendation remains outstanding — that PWC develop and implement an appropriate customer charter or similar document for Wadeye and other nominated remote communities and towns. In that regard, PWC advises:

*The formulation of such a charter or similar document is a priority for PWC but is intrinsically linked to PWC's existing framework of customer contracts and charters. PWC is in the process of reviewing its customer contract suite, particularly in light of the transition to the National Electricity Market.*

*PWC have recently secured the approval of the Utilities Commission (UC) for its Network Access and Coordination Agreement template for use with electricity retailers. Agreements with the retailers have now been signed and are in effect.*

*Further, PWC has reviewed its Network Customer Connection Agreement and received the UC's approval of this agreement. This will apply to customers where PWC is the electricity network provider upon it being published on PWC's website. PWC has also recently received the UC's approval for an updated Customer Charter which will shortly be published on the website.*

*An internal review of the customer contract for water and sewerage services (and for electricity retail customers, being only customers in Jabiru, Nhulunbuy and Alyangula) is currently underway.*

*Work has commenced on a framework to apply to remote communities including Wadeye but outcomes are related to government processes such as the funding of PWC's subsidiary which provides remote services (Indigenous Essential Services Pty Ltd). At this stage PWC is unable to give a timeline for completion of this framework.*

## CHAPTER 5 – QUALITY IMPROVEMENT

The *Ombudsman Act* has two objects. The first relates specifically to investigating and dealing with complaints.

The second, and equally important object, is to “improve the quality of decision-making and administrative practices in public authorities”. While information gained in the course of dealing with complaints may inform the Office in its pursuit of the second object, that object is considerably broader than the formal investigation of complaints.

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

### COMPLAINTS AND REVIEW BODIES

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

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

For example, in 2017/18, the Children’s Commissioner approached my Office and the Commissioner for Public Interest Disclosures regarding a high profile matter surrounding the alleged sexual assault of a child in Tennant Creek. Initial enquiries suggested that there may be issues relating to police conduct in addition to matters relating to Territory Families. In the circumstances, it appeared likely that each of our agencies might have some jurisdiction.

This was clearly a matter of substantial public interest. However, there would have been little value in pursuing three separate enquires about related issues.

Upon the Children’s Commissioner confirming that she had jurisdiction to conduct an inquiry into the relevant issues, it was agreed that the Children’s Commissioner would conduct an inquiry and that our Office and the Commissioner for Public Interest Disclosures would support the inquiry by each providing one of our staff members for the time required to conduct the inquiry. Our Office provided a Senior Investigation Officer to work on the Children’s Commissioner’s inquiry for a period of five weeks.

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

Entity	MoU commenced	MoU available
<b>Commissioner for Public Interest Disclosures</b>	August 2010	2013/14 Annual Report
<b>Children’s Commissioner</b>	June 2014	2013/14 Annual Report
<b>Information Commissioner</b>	May 2015	2014/15 Annual Report

We also benefit from relationships with other 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 2017/18, our involvement at this level included:

- membership of the International Ombudsman Institute (IOI), a global organisation for the cooperation of more than 190 independent Ombudsman institutions from more than 100 countries worldwide - <http://www.theioi.org/>;
- 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;
- serving on the Planning Committee for the biennial ANZOA conference;
- attending the following meetings and conferences:
  - ANZOA AGM and Members meeting;
  - ANZOA conference;
  - Australasian parliamentary ombudsman meeting;
  - Deputy parliamentary ombudsman meeting;
- meeting interstate and national counterparts as the opportunity arises, for example, hosting visits by staff of the Commonwealth Ombudsman.

## LEGISLATIVE AND POLICY REFORM

One of the roles of the Ombudsman is to take part in meetings 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 Northern Territory.

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 issues during the year:

- development of legislation establishing the Independent Commissioner Against Corruption, including whistleblower protections;
- development of domestic and family violence information sharing legislation ;
- development of legislation facilitating compliance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);
- a review of the Charter of Victim's Rights;
- development of a Treasurer's Direction and guidance documents on Fraud Control.

## TRAINING

In 2017/18, my Office delivered training and presentations to public sector officers in the following forums:

- Trainee Correctional Officer course;
- OCPE Foundation of Public Sector Governance sessions;
- NT Police Capability & Specialist Services Senior Leadership meeting;
- Electorate Officer forums;
- Visits to Electorate offices;
- National Police Standards Command Forum.

The Office also facilitated formal training for a range of investigators across Government through co-ordinating delivery of a nationally accredited Certificate IV in *Government (Investigations)* course.

This specialist qualification covers the competencies required by those responsible for statutory investigation under a range of legislation, regulations, mandated government and organisational policies and instructions. It is a 2 week intensive course.

Providing the course internally, as this office has done in the past, requires suitably skilled and formally trained staff at senior level within the Office. It also requires considerable effort to maintain national accreditation through a registered training organisation.

With the departure of a staff member who previously conducted the course, the Office must consider the best way to facilitate the provision of appropriate investigative training for NT public sector officers in the future. This may involve internal provision but may equally involve acting as a facilitator or proponent for such training. While these options are considered, the Office has directed interested applicants to alternate training sources.

## OTHER INVOLVEMENT WITH PUBLIC AUTHORITIES

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

- numerous meetings between the Ombudsman and various public authority chief executives or senior executives;
- regular meetings with Police senior executives and members of the Police Standards Command;
- regular meetings with Correctional Services, PWC and Jacana Energy.

## CHAPTER 6 – APPROACHES – ENQUIRIES AND COMPLAINTS

### NUMBER OF APPROACHES

In 2017/18, there were 2,304 approaches to the Office (compared with 2,036 in 2016/17 and 2,568 in 2015/16). These varied from matters outside our jurisdiction (which we refer on where possible) to quick queries, to matters requiring more work on our part and ultimately to complaints requiring significant investigation.

The top government agencies by approach received in 2017/18 are set out below.<sup>6</sup>

Department / Agency	2015/16	2016/17	2017/18
<b>Police, Fire and Emergency Services</b>	560	504	609
<b>Correctional Services<sup>(1)</sup></b>	430	324	401
<b>Jacana Energy</b>	85	83	134
<b>Attorney-General and Justice<sup>(2)</sup></b>	54	58	67
<b>Housing &amp; Community Development</b>	102	75	66
<b>Power Water</b>	84	44	46
<b>Infrastructure, Planning &amp; Logistics<sup>(3)</sup></b>	-	43	33
<b>City of Darwin<sup>(4)</sup></b>	28	17	25
<b>Education</b>	30	7	23
<b>Charles Darwin University</b>	25	20	22
<b>Health</b>	18	17	21
<b>Territory Families</b>	15	17	20

#### Notes

- (1) Numbers for Correctional Services will continue to be reported separately although it is now part of the Department of the Attorney-General and Justice.
- (2) Includes Fines Recovery Unit (19).
- (3) Includes Motor Vehicles Registry (14).
- (4) In total, there were 49 approaches in relation to local government councils compared with 44 in 2016/17.

### VARIATIONS FROM PREVIOUS YEARS

In 2017/18, the total number of approaches to the Office fell between the approaches recorded in the two previous years. This did represent an increase over 2016/17 with the major contributors being NT Police, Fire & Emergency Services (105 more approaches), Correctional Services (77 more), Jacana Energy (51 more) and the Department of Education (16 more).

The year was one of two distinct halves, with 1,001 approaches in the first half rising to 1,303 approaches in the second half.

NT Police conduct approaches followed that trend with a 17% increase in the second half of the year, thanks primarily to very busy months in April and June.

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<sup>6</sup> The list reflects the names and structures in place at 30 June 2018. Substantial changes to the structure of some Government agencies were made following the advent of the new Government in August 2016. In some cases, this will make comparisons with earlier years problematic.

There was an increase of just over 100 in the number of Police conduct approaches received during the year over the previous period (545 compared with 443). While there had been almost 500 such approaches in 2015/16, this still represents a substantial increase.

Approximately one third of the increase over the previous year came from an increase in more serious complaints (Category 1 and 2). There was also an increase in the number of more serious complaints substantiated (from 9 to 21) although analysis of the sustained issues does not point to any particular trend. There were a small number of multiple complaints about the same event or incident.

There does appear to have been a tendency to increased reporting of youth complaints with the advent of the Royal Commission into the Protection and Detention of Children in the Northern Territory. NT Police figures for the calendar years 2016, 2017 and 2018 show complaints on behalf of youths rising from 33% to 44% to 50% of all Category 1 and 2 complaints. They also note that a number of recent youth complaints have involved multiple complainants regarding the same incident. They state that the level of substantiation for completed youth complaints has not increased, with only two finalised complaints in 2016 and 2017 and one so far in 2018 involving substantiated allegations.

I accept that increased public consciousness arising from the Royal Commission has contributed to an increased number of youth complaints. It may well have also made some adults more inclined to complain. With regard to substantiation rates of youth complaints, I note that many complaints raised in recent times remain subject to investigation and that there will always be obstacles in sustaining complaints where the only substantive evidence is the conflicting versions of events of complainants and officers.

The increase in youth complaints is one factor contributing to the rise in approaches. Other contributing factors are not immediately apparent. The overall increase is certainly a matter that requires ongoing monitoring. There is further discussion of Police conduct complaints in the next chapter.

Correctional Services approaches increased from 324 in the previous year to 401. This was still lower than the 430 approaches received in 2015/16. Correctional Services saw a 60% increase in approaches in the second half of the reporting year. Approaches relating to the Darwin Correctional Centre increased from 119 to 197, while approaches relating to Alice Springs Correctional Centre rose from 29 to 40. A contributing factor to the increase is likely to have been a reported increase in prisoner numbers.

Jacana Energy approaches were substantially higher than in previous years. Approaches rose by 79% in the second half of the reporting year.

The number of approaches relating to the Department of Education rose from 7 in 2016/17 to 23 but this should be compared to the 30 approaches in 2015/16.

The number of more complex approaches again rose in 2017/18 compared with the previous year, with numbers of the two most complex categories rising from 559 to 617.

<b>Complexity</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
<b>Complex matters</b>	94	117	263
<b>Resolved Expeditiously</b>	346	442	354
<b>Enquiries</b>	2,128	1,477	1,687

Approaches relating to administrative actions of corrections, energy and water and housing agencies are discussed later in this Chapter.

## HOW APPROACHES ARE MADE

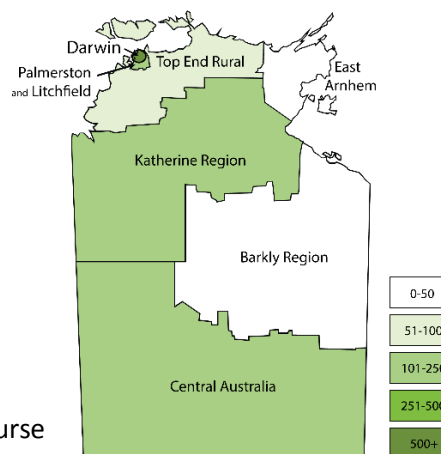
The Office offers a range of options for contact. In 2017/18, close to two thirds of enquirers made initial contact with the Office by telephone. This compared with 18% of people who utilised either e-mail or the Office’s online web form.

Manner of approach	%
Telephone	65
e-mail	12
Referred by police	12
Online form	6
In person	3
Letter	2

## SOURCES 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, the online complaint form or facsimile 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>7</sup>

Region	%
Darwin	47
Palmerston/Litchfield	18
Alice Springs/Central	16
Katherine	9
Top End Rural	6
Barkly	2
East Arnhem	1

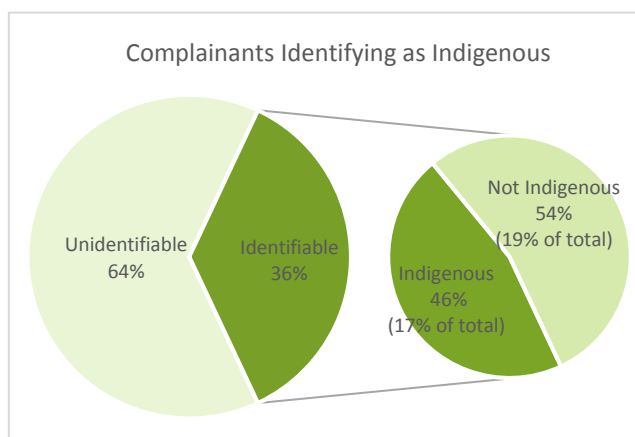


For similar reasons, it can be difficult to establish in the course of dealing with an approach whether an enquirer identifies as Indigenous. My Office considers it important to obtain such information to help us establish any gaps in service provision and ways to improve our service.

We have therefore developed 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 complaints form.

However, as we stress to enquirers, it remains a matter of their personal choice whether they wish to answer any or all of these questions.

In 2017/18, 17% of enquirers identified or were identifiable as Indigenous. However, over half of enquirers did not identify a background at all. Of those whose background was identifiable, 46% were Indigenous. That being the case, these statistics are at best broadly instructive rather than definitive.



<sup>7</sup> The figures also exclude prisoners at correctional centres.

## HOW APPROACHES ARE DEALT WITH

Approaches to the Ombudsman NT can be dealt with in a number of ways.

Dealt with as	Description
<b>Ombudsman matters</b>	Approach within jurisdiction and dealt with by our Office.
<b>Agency referral</b>	If the complainant has not previously raised the issue with the agency, our Office will in almost all cases refer the complainant back to the agency to give it a chance to resolve the issue.
<b>Complaint entity referral</b>	There are other complaints and review bodies that deal with specific issues. Our Office may formally refer a matter to one of those bodies.
<b>Outside jurisdiction</b>	Enquirer advised our Office has no jurisdiction. Referred or provided with contact details for another complaints body (government or private sector) if possible.

### Ombudsman matters

The Ombudsman NT deals with complaints about NT government agencies, local government councils and the conduct of NT Police. Complaints against Police have special rules regarding their conduct and approaches of this type are discussed in Chapter 7.

For other matters, the Ombudsman may make preliminary enquiries of a public authority to establish whether the Office is authorised to investigate a complaint and whether the action should be investigated.

Ombudsman matters may be resolved informally or a formal investigation may be undertaken.

The Office may decline to deal with a complaint for a variety of reasons, including that the complaint 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 entity.

### Giving the agency a chance to resolve the complaint

Our Office maintains 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, complainants who come to our office without first addressing their concerns with the relevant agency will be assisted by our staff in making contact with the agency.

This often involves our staff contacting the agency by phone and providing a letter or email that simply outlines the complainant's concerns. The process works well and is appreciated by both the agency involved and the complainant. If the agency is unable to resolve the complaint, the complainant can return to our Office for further assistance.

### Referrals to another complaints entity

There are a number of other NT Government complaints entities that deal with specific issues. In some cases, they have exclusive jurisdiction to deal with complaints of that type while in others there may be shared jurisdiction. The Ombudsman NT may refer inquiries of this kind to another entity (section 32 of the *Ombudsman Act*).

NT complaints entities that we may refer a matter to include:

- Commissioner for Public Interest Disclosures;
- Information Commissioner;
- Children’s Commissioner;
- Health and Community Services Complaints Commission;
- Anti-Discrimination Commission.

To assist the smooth referral of complaints and exchange of information between offices, our Office enters into memorandums of understanding covering the practical aspects of referrals, confidentiality and information sharing, the sharing of resources and minimising the risk of duplication.

## Outside jurisdiction

Each year the Office also 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 2017/18, we dealt with 778 outside jurisdiction approaches (compared to 763 in 2016/17). The following table lists the most common outside jurisdiction sectors where approaches were referred on to another complaints body or forum.

Sector	2015/16	2016/17	2017/18
Employment	150	108	99
Consumer affairs	131	122	94
Financial services	80	58	70
Telecommunications	57	70	53
Commonwealth government	82	76	50
Private housing	68	44	41
Health services	57	43	38

## HOW QUICKLY APPROACHES ARE DEALT WITH

In 2017/18, 2,293 approaches to the Office were finalised. The bulk of approaches are dealt with expeditiously by the Office. This year, 92% of Police conduct approaches were finalised within 90 days and 92% of other matters were finalised within 28 days.

A total of 90 matters remained open at 30 June 2018, compared with 78 at 30 June 2017.

### Time taken to finalise approaches - approaches finalised in 2017/18

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police conduct	41%	25%	27%	3%	5%	521
Other	80%	12%	6%	1%	<1%	1,772
<b>Total</b>	<b>1635</b>	<b>341</b>	<b>249</b>	<b>34</b>	<b>34</b>	<b>2,293</b>

### Age of open matters - at 30 June 2018

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	12	21	13	8	19	73
Other	8	4	0	4	1	17
<b>Total</b>	<b>20</b>	<b>25</b>	<b>13</b>	<b>12</b>	<b>20</b>	<b>90</b>

During the year, there was a noticeable increase in time taken to finalise some Police conduct matters, with 5% of closed matters taking over 180 days to finalise and 19 matters still outstanding at the end of the period having been open for at least 180 days. Of matters remaining open at the end of the period, 81% were Police matters.

Police conduct matters are often more complex and having some matters extend beyond 180 days is not unusual or concerning. Some matters take time for the NT Police Standards Command to investigate thoroughly. It should also be noted that this build-up of matters has been contributed to by a substantial increase in numbers of Police conduct complaints.

However, it is important that this build-up be addressed before it becomes a major issue. NT Police has recognised the issue and has put additional resources into dealing with complaints. It is making progress towards resolving the issue. By 28 September 2018, the number of open Police conduct matters had dropped to 54 and the number of open matters over 180 days old had dropped to 7, with a number of those close to finalisation.

## OUTCOMES

The Office achieves a large number of informal positive outcomes. These can take many forms, including:

- A better explanation of the reasons for a decision;
- A chance for the complainant to restate their case;
- A change in a decision or approach by an agency for the particular complainant;
- An apology;
- A change to procedures to improve systems.

Some examples of informal outcomes are set out on the following page.

## Examples

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*Police had seized a large sum of cash as part of a raid in a community. It had not been returned to the complainant even after a decision was made that no charges would be laid. Following intervention from our Office, Police returned the cash to the community at the direction of the complainant.*

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*An Aboriginal community resident complained that Council rangers attended his house and destroyed his dog without consultation or following procedures. When contacted by our Office, the chief executive of the Council advised that, after making internal inquiries into the circumstances and having some concerns, he would engage an independent investigator. The investigation report recommended strengthening of the Council's animal management policy and procedures. The Council undertook to implement the recommendations.*

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*A tertiary student who had completed 200 of 240 credit points in a course was excluded on the basis of unsatisfactory progress. He had appealed the decision without success. My Office contacted the complaints management unit of the institution. Following an initial explanation, we raised a number of follow-up queries about the process. On recognising possible issues with the way the matter had been handled, the institution reconsidered its position and removed the exclusion. It advised that a study plan would be developed with the student and that it was reviewing its procedures to identify potential enhancements. (It should be noted that tertiary institutions have detailed processes in place for review of academic decisions. Students should always follow those processes in the first instance. Our Office does not reassess academic decisions. We are concerned with whether the administrative actions of the institution are in accordance with established procedures and are fair and reasonable.)*

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*On reporting her passport missing, the complainant was advised that it had been handed in to Police but had since been returned to the Consulate. The complainant was annoyed that police had not contacted her but had waited two months, then sent it off to the Consulate. It was established that not all usual address checks had been conducted because it was assumed that the passport belonged to a tourist who would have left the Territory. The complainant was given an apology and advised that an instruction would be given to all front counter staff regarding name checking.*

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*A local businessman with several residential and commercial buildings had continuing problems with invoicing for water and electricity supply. Our Office referred the complainant to a senior officer in the provider who apologised to the complainant. The issues were then resolved to his satisfaction.*

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*A complainant advised that since the previous year she had been attempting to have a camera that was seized by Police returned to her. She had provided proof of ownership to Police but said she had been informed that these matters can take some time and she needed to be patient. She advised that she had been patient for some months until she needed to return to New Zealand. She said that she was back in Darwin visiting but would be flying out the next day. Police were contacted and although they were not able to release the camera before she flew out, posted the camera to her in New Zealand before the end of the week.*

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## CORRECTIONAL SERVICES APPROACHES

A list of the most common issues raised by approaches in 2017/18 is set out in the following table. Some approaches raised more than one issue.

Issue	Notes	No.
<b>External contact</b>	Includes issues with phones, mail and visits	<b>98</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	<b>69</b>
<b>Health / welfare</b>	Issues regarding health services are referred on to the Health & Community Services Complaints Commission.	<b>52</b>
<b>Officer conduct</b>	Includes rudeness, insensitivity, harassment, poor communication, inappropriate treatment of a vulnerable person	<b>50</b>
<b>Complaint processes</b>	Includes problems accessing Request to Attend Superintendent's Parade (RASP) forms	<b>41</b>
<b>Money / buys</b>	Any issues dealing with prisoner accounts and purchases	<b>37</b>
<b>Food</b>	Issues relating to quality or service of food. Includes issues relating to special dietary requirements	<b>29</b>
<b>Work</b>	Employment inside or outside prison	<b>22</b>
<b>Recreation / Amenities</b>	Matters relating to recreational activities and everyday aspects of living, eg access to publications, smoking, access to television, sporting and craft equipment	<b>21</b>
<b>Condition of facilities</b>		<b>17</b>
<b>Personal safety/security</b>	Assault, fight, threat by prisoner (4) – Assault, excessive force, threat by prison officer (6) – Housing prisoners together in a way that puts one or more at risk (5)	<b>15</b>
<b>Misconduct proceedings</b>		<b>13</b>
<b>Educational programs</b>		<b>11</b>

While complaints about health treatment are routinely referred to the Commissioner for Health and Community Services Complaints, we do deal with issues relating to how correctional officers implement health and medical advice regarding prisoners.

### Case Study – Prisoner care

A prisoner returned from hospital (after a two week stay) with a medical certificate recommending he should have access to his bed/cell during the day to enable him to rest comfortably while awaiting further medical review. On returning to prison, he attended the prison's health service and was provided with another medical certificate recommending he have access to his cell during the day to rest until a further review.

The medical certificates were not implemented by prison authorities for security and staffing reasons. The prisoner claimed he was allowed him to lie on the floor of an open area without a mattress or pillow, exposed to other prisoners.

The then prison policy on Medical Observations mainly provided guidance for prisoners requiring health care/monitoring under supervision of a health provider, and not under prison authorities.

My Office recommended that:

- Prison staff should consult with medical staff to discuss operational limitations, risks and identify any other suitable options that may be taken, with the resulting decision documented and filed appropriately;
- Corrections amend its existing policy or develop a new policy to provide guidance for staff to follow when dealing with these particular types of requests.

The Commissioner agreed and undertook to implement the recommendations. Review of the policy took some time but my Office continued to pursue the matter and a new Commissioner's Directive was ultimately put in place.

## ENERGY AND WATER APPROACHES

At the start of 2014/15, the energy functions previously undertaken solely by the Power and Water Corporation (PWC) were split over three bodies:

- Jacana Energy (Jacana) took responsibility for electricity retail in urban areas;
- Territory Generation Corporation took responsibility for electricity generation;
- PWC retained responsibility for power networks, water and sewerage services and remote operations.

PWC continues to be involved in the resolution of a number of energy complaints even in urban areas because it is responsible for energy networks and distribution right up to the power box of individual consumers. So, for example, if a consumer claims there is an excessive electricity charge due to a faulty meter, PWC may well be required to become involved even if the direct relationship is between Jacana and the consumer.

The total number of energy and water approaches for 2017/18 was 180. This was substantially higher than the 127 approaches in 2016/17, but more comparable to the total of 169 in 2015/16. This was comprised of 134 approaches recorded against Jacana Energy and 46 against PWC.

In cases where a consumer has not already approached the provider, our Office will usually encourage them to initially make direct contact with the provider, with the option to recontact the Ombudsman if they remain dissatisfied with the provider's response. Many approaches are resolved by the provider without further contact with our Office.

The top issues raised in relation to Jacana and PWC in 2017/18 are set out in the tables that follow.

A single complaint may raise a number of issues. The complainant may have received a large bill but be uncertain as to the precise cause. They may say they have not received adequate notice of the bill. They may say the size of the bill must be due to a faulty meter. They may say the provider has not been reasonable in making arrangements for repayment. They may say the provider has been too quick to disconnect. They may object to the payment of a reconnection fee.

The figures below are based on an assessment of the primary complaint. They record issues raised, not sustained issues.

### Jacana Energy – Most commonly raised issues - 2017/18

Issue	Notes	No.
<b>Excessive charges</b>	Includes issues arising from estimation process	<b>22</b>
<b>Credit listing</b>	Seeking to remove listing with a credit agency	<b>21</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	<b>18</b>
<b>Financial hardship</b>		<b>14</b>
<b>Changed circumstances</b>	Includes problems arising due to change in address or living arrangements, administration of estates	<b>10</b>
<b>Disconnection</b>		<b>9</b>
<b>Unreasonable charges</b>	Chiefly reconnection fees	<b>8</b>
<b>Billing</b>	For example, bill not received or two bills received at the same time, or sent to wrong address	<b>6</b>
<b>Reading</b>	Issues with meter reading processes	<b>4</b>

### Power and Water – Most commonly raised issues - 2017/18

Issue	Notes	No.
<b>Excessive charges</b>	Includes 8 suggested to arise from water leaks and 3 from estimation process	<b>19</b>
<b>Power supply</b>	Issues relating to inconsistency or failure of supply	<b>6</b>
<b>Credit listing</b>	Seeking to remove listing with a credit agency	<b>4</b>
<b>Unreasonable charges</b>	For example, sewerage fees on unoccupied land or common property	<b>3</b>
<b>Financial hardship</b>		<b>2</b>

### Excessive charges - estimated meter reads

Consumers are required to provide access to the service provider to allow meter reads. The reality is that many people have fenced properties with locked gates and many people have dogs, making meter reading problematic. There are therefore frequent times when a meter read is not practicable and billing is based on an estimated read. This can raise an issue in itself. If the estimate is set too high, the provider will receive complaints. If it is set too low and is continued over several periods, the consumer will receive a larger bill when a read is carried out, again giving rise to complaints.

One way to approach this issue is for providers to invest in technology that will allow automated or remote reading of meters. Providers are exploring options in this regard but implementation of these options will take time and money. In the meantime, providers can only do their best to make a fair estimate. Even so, with individual usage levels varying significantly over time for a host of reasons, this will continue to present a source of complaint.

The advent of solar systems has added to issues experienced with estimates, with a number of complaints claiming that estimates have been too high because of failure to sufficiently take into account solar rebates.

## Credit listing

The processes for credit listing and amendment or removal of listings are relatively closely regulated. Our Office receives numerous complaints about credit listings. On occasion an error in the process is identified and the listing is amended or removed. However, in the majority of cases, the listing is confirmed. We cannot direct a provider to remove a listing in such a case.

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### Case study – Bill shock

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The complainant owned a vacant block that was originally used for mooring a recreational fishing boat that had been sold a couple of years previously. He stated that the block had a single water hose leading down to the marina where the boat had been moored. He had contributed direct debit payments for over seven years to cover potential water invoices which had never exceeded a minimal amount. His water account was in credit leading up to the period in question.

Within a relatively short space of time he accrued a debt of over \$5,000 which rose to over \$11,000 within three months. There was clearly a leak but there was dispute as to the location of, and responsibility for, the leak. It was also suggested that attempts by PWC to stop the leak had been unsuccessful. Dispute regarding the amount of the bill continued for over a year.

Our Office facilitated discussion between the complainant and PWC. Eventually, they came to a resolution with the complainant agreeing to pay a substantially reduced contribution.

I raised a number of process issues with PWC including delay, failure to adequately communicate the extent of the problem on initial contact, and failure to meet with the complainant to actively pursue resolution. I suggested that PWC should look at a staged approach when unusually large bills are identified so that additional steps are taken to quickly resolve instances of grossly anomalous billing. I wrote to the Chief Executive and subsequently met with senior staff of PWC to express my concerns. They advised of a number of steps PWC had and would take to address issues of this nature.

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### Case study – Electric shock

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A 15 year old boy at a remote community received an electric shock as a result of coming into contact with a PWC meter box in the yard of a house. The complainant, who was the boy's aunt, was able to move the boy with a piece of timber however she also received an electric shock. The boy and the complainant were evacuated to Royal Darwin Hospital and received treatment.

PWC provided a response and confirmed the incident had occurred at approximately 4:45pm on 23 November 2017. NT Police attended and provided first aid and arranged for local medical treatment for both persons, who were then evacuated to Darwin via air ambulance.

Between 5:00pm and 7:00pm, the local Essential Services Officer made the site safe which was then confirmed by a PWC Remote Operations Electrical Engineer. The PWC Emergency Management Team convened soon after to review the event and undertake forward planning and action setting. It was found that the mounting bolts of the pillar had been removed by persons unknown, which caused the pillar cover to move and lift up when stood on by the boy. This allowed his leg to contact the energised cables below the cover and he received an electric shock.

The next day, PWC identified the location of all similar pillars on remote communities in the Territory, which were all inspected for safety and secured with tamper proof bolts.

An Incident Cause Analysis Method Investigation was commenced by PWC on 28 November. The investigation found that the removal of the mounting bolts from the pillar cover contributed to the electric shock incident. It could not be established who had removed the bolts. The pillar covers are designed to prevent contact with the electrical cables underneath and provide protection from rain and dust. The Investigation reported that these types of covers are commonly used in the electrical industry and are found in a range of public locations and on private property. The location of pillar covers close to a boundary fence on private property is common and meets industry best practice.

It was established that pillar covers are not subject to periodic inspection as they are designed not to require routine maintenance. However the investigation noted that pillar covers can be degraded by ultra violet light, vandalism, fires, accidental damage and termite nests.

PWC advised that general inspections of distribution assets are carried out on an annual basis and if problems are found they are referred to contractors to repair. While there was no routine inspection of pillar boxes, they are inspected internally after each flood inundation event before being returned to service. The pillar box that caused the shock may have been last inspected after a flood event in the community in around January 2017, however there was no record of this.

My Office recommended that periodic inspection and documentation of publicly accessible assets should occur as part of existing management schedules. PWC has confirmed this recommendation has been implemented. It was also recommend that PWC meet with the complainant in the community to explain how the incident was handled and the steps taken to prevent it happening in the future. PWC agreed to meet and the offer was made to the complainant.

## HOUSING APPROACHES

There were 66 approaches to the Office relating to the Department of Housing and Community Development in 2017/18 (compared to 75 in 2016/17). Some issues raised by enquirers are set out in the table below.

Issue	Notes	No.
<b>Repairs &amp; Maintenance</b>		<b>20</b>
<b>Conduct of tenants and third parties</b>	Includes complaints about tenants, theft or damage to tenant property and anti-social behaviour	<b>9</b>
<b>Financial issues</b>	Includes rental amounts, debts, deductions and rebates	<b>7</b>
<b>Transfer of tenancy</b>	Includes refusal to transfer and delay	<b>7</b>
<b>Availability of housing</b>	Includes calls for additional housing and issues relating to building new houses and refurbishment	<b>5</b>
<b>Allocation of housing</b>	Includes priority housing	<b>4</b>
<b>Termination/banning</b>	Includes termination of tenancy and banning from premises	<b>2</b>

Some examples are set out on the following page.

## Examples

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*During a remote community visit, a community member raised concerns about a house that faced the rear of the community store. He was concerned his grandchildren were in danger when they played in the yard because of a lack of a barrier to the loading bay where trucks delivered goods. Community members were also driving through unfenced yards. He had attempted to request Housing to erect fencing without success. Our Office contacted Housing and pointed out the safety concerns due to the lack of a barrier. The agency undertook to erect fencing at the house.*

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*The complainant was an aged pensioner who had had ongoing issues with taps in her bathroom for about three weeks. She advised that plumbers had been in and out without solving the problem. On the Friday she called our Office, a plumber had attended and taken her taps and left the house advising he would not be returning. She said that, on calling Housing, she was told the plumber might get to finish the job sometime next week. Our Office raised the matter with Housing Complaints and a contractor returned that afternoon and installed taps in her bathroom hand basin.*

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## CHAPTER 7 – POLICE CONDUCT

Complaints about Police conduct are addressed in detailed provisions of the *Ombudsman 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 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 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 2018, is set out at Appendix A of this Report.

During 2017/18, my Office received 545 approaches relating to Police conduct. This was a substantial increase in the number of approaches received in the two previous years — 443 and 498 respectively.

### HOW POLICE CONDUCT APPROACHES ARE DEALT WITH

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

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

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

Different ways of dealing with approaches relating to Police conduct are discussed below.

#### **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 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.

The great bulk of approaches to the Office are finalised in the above ways without the need for a formal investigation.

## Complaint Resolution Process

The Complaint Resolution Process (CRP) is an informal process undertaken by 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 a simple apology.

Ideally the Police officer and the complainant should be satisfied with the outcome but this may not always be achievable. 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.

Complainants are informed by Police that they can approach my Office if they are not satisfied with the outcome of the process. Outcomes of CRPs are provided to my Office.

In 2017/18, 210 approaches were categorised as CRP matters (compared with 96 in the previous year).

## 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. It does not represent an assessment of the credibility or validity of the complaint.

Method	Description
<b>Ombudsman investigation</b>	<p>The Ombudsman may decide to directly investigate any Police complaint if satisfied it:</p> <ul style="list-style-type: none"> <li>○ concerns the conduct of a Police Officer holding a rank equal or senior to the rank of PSC Commander;</li> <li>○ concerns the conduct of a PSC member; or</li> <li>○ is about the practices, procedures or policies of NT Police; or</li> <li>○ should be investigated by the Ombudsman for any other reason.</li> </ul> <p>The Ombudsman may decide that the investigation be undertaken in conjunction with a PSC member.</p> <p>The Ombudsman can also commence an 'own motion' investigation into the conduct of a police officer.</p> <p>In 2017/18, the Ombudsman did not initiate an investigation of this type into police conduct.</p>

Method	Description
<p><b>Category 1 complaint investigation</b></p>	<p>This category is for the most serious allegations, for example complaints:</p> <ul style="list-style-type: none"> <li>○ considered to be of a serious or urgent nature, e.g. major assault, use of fire-arm or other weapon, etc.;</li> <li>○ involving threats or harassment considered to be of a serious nature e.g. threat to kill, threat to endanger life, threat to unlawfully harass, etc;</li> <li>○ likely to result in criminal or disciplinary proceedings;</li> <li>○ raising a matter of public interest; or</li> <li>○ likely to raise significant questions of Police practice or procedure.</li> </ul> <p>Police investigate and provide a report which is assessed by this Office. The Ombudsman provides an assessment, and any recommendations, to the Commissioner. If the Commissioner agrees with the recommendations, the Ombudsman then advises the complainant of the relevant outcomes of the investigation.</p> <p>If the Commissioner and the Ombudsman are unable to agree on the outcomes and recommendations, the Ombudsman may provide a report for tabling in the Legislative Assembly.</p> <p>In 2017/18, 10 matters were assessed as Category 1 complaints (compared with 3 in the previous year). Four of those matters related to one incident and two to another.</p>
<p><b>Category 2 complaint investigation</b></p>	<p>These complaints are not at the level of Category 1 complaints but are nevertheless important enough to warrant comprehensive investigation.</p> <p>They are investigated and resolved directly by Police in the first instance. Police report on the investigation to the Ombudsman and the complainant. The Ombudsman reviews the investigation and the complainant can raise any ongoing concerns relating to the police response with the Ombudsman.</p> <p>In 2017/18, 47 matters were assessed as Category 2 complaints (compared with 20 in the previous year). Seven of those matters related to one event.</p>
<p><b>Deferral</b></p>	<p>If criminal proceedings or disciplinary procedures have been or will be commenced in relation to police conduct, the <i>Ombudsman Act</i> allows for the Ombudsman to discontinue investigation pending the outcome of those proceedings or to decline to deal further with the matter (sections 107 and 67(1)).</p> <p>In practice, I will consider this option on application by NT Police. In order to adopt this approach, I need to be satisfied that the proceedings will encompass all the substantive issues raised by the particular complaint. If satisfied that is the case, I may then defer further investigation until completion of the proceedings.</p> <p>On completion of proceedings, NT Police advise my Office of the outcome and I consider whether any further action is necessary.</p> <p>In 2017/18, 2 investigations were deferred pending the outcome of proceedings. Both resulted in disciplinary outcomes.</p>

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

## 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 complaint is whether to recommend that disciplinary action or, in some cases, criminal proceedings should be commenced against an officer.

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

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

## ISSUES AND OUTCOMES

Police conduct issues may be identified in a complaint to NT Police or our Office, by PSC or the NT Police investigating officer or by staff of our Office.

Analysis of Police conduct approaches to the Office in 2017/18 identified the following as the most common issues complained about:

- poor behaviour (includes failure to provide name or ID, harassment, abuse, non-violent threat, inappropriate treatment of a vulnerable person, rudeness and insensitivity);
- inadequate service;
- use of force;
- inadequate investigation (includes delay, failure to investigate, failure to prosecute, failure to deal with complaint);
- poor decision-making (includes unreasonable exercise of discretion, decision contrary to policy or procedure, failure to consult and failure to activate body worn camera);
- poor communication (includes failure to update or notify of decision, failure to utilise an interpreter, provision of inadequate or inaccurate information).

## Serious complaints - Category 1 and 2

As indicated above, Category 1 and Category 2 investigations deal with more serious complaints.

For Category 1 and 2 complaints, an investigation is undertaken and a report is prepared by a Police investigating officer. The report is reviewed firstly by senior Police and then by Ombudsman investigators.

There are a variety of potential outcomes from an investigation. A complaint may be found to be sustained. It may be found to be unsubstantiated because there is no evidence or unresolved because there is insufficient evidence. The action or conduct of Police may be found to be reasonable or not unreasonable in the circumstances. More detail about potential findings can be found in the Police Complaints Agreement at Appendix A to this Report.

In addition to issues identified by complainants, 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.

Complaints may also give rise to ancillary issues regarding staff management and supervision where a complaint is substantiated against a more junior officer. In such cases, a supervisor may also be subject to appropriate guidance or action.

### *Complaints received*

Fifty-seven complaints received during the year were assessed as Category 1 or 2 matters. A number of complaints were made by, or on behalf of, multiple complainants about the same or related events.

Twenty-five of those complaints were made on behalf of youths.

The most common issues raised by those complaints related to:

- use or threatened use of force (in 45 complaints);
- use or threatened use of firearms, Tasers, capsicum spray or batons (in 12 of those 45 complaints);
- issues with arrest or detention (23);
- rude, offensive, harassing or unjustified statements (18);
- failure to turn on body worn video camera (11);
- time spent in custody by youths (10);
- health, welfare and duty of care concerns (9).

However, it is one thing for an issue or concern to be raised but another for there to be a finding that a complaint has been sustained.

### *Substantiated complaints*

Twenty-one Category 1 and 2 complaints finalised in the reporting period involved a finding that issues were sustained (either in terms of a finding on the Ombudsman complaint or the outcome of a disciplinary proceeding).

<b>How finalised</b>	<b>2015/16</b>	<b>2016/17</b>	<b>2017/18</b>
<b>Category 1 - sustained</b>	1	2	2
<b>Category 2 - sustained</b>	8	6	17
<b>Deferred in light of disciplinary action / charges</b>	2	1	2
<b>Total</b>	<b>11</b>	<b>9</b>	<b>21</b>

The table below lists the number of cases involving sustained issues of each type described. In some cases, complaints involved more than one issue. In some, there was more than one officer involved.

<b>Sustained Issue Type</b>	<b>Cases</b>
<b>Arrest/custody – unreasonable force</b>	5
<b>Behaviour – abuse/rudeness/insensitivity</b>	4
<b>Custodial – personal safety / wellbeing – failure to monitor /safeguard</b>	3
<b>Arrest – unlawful / inappropriate arrest /detention /fail advise reason</b>	2
<b>Practice/procedure – unreasonable</b>	2
<b>Investigation – failure to undertake / inadequate / delay</b>	2
<b>Property – damage, improper removal, disposal or care</b>	2
<b>Information – improper disclosure</b>	1

Ancillary issues were also sustained relating to inadequate record-keeping (in 8 complaints) and failure to utilise body worn video equipment (8 complaints).

Actions taken in relation to officers arising out of complaints finalised in 2017/18 included remedial advice, the requirement to undergo remedial training, managerial guidance under section 14C of the PAA, counselling, formal written cautions and good behaviour bonds. Remedial advice / training is not disciplinary action but is an aspect of managing the work performance of officers. Remedial advice / training is recorded on the MyCareer record of the officer.

Further detailed comments on options for action in relation to management of police conduct are contained in Chapter 3 of my report on *Taser use and Management of NT Police conduct issues* (2017).

In addition, in a number of cases, investigations gave rise to recommendations for improvements to police systems.

Case studies of some Category 1 and 2 Police conduct complaints investigated during the year appear on following pages.

## POLICE CONDUCT CASE STUDIES

### Case 1 - Struck by police vehicle

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Officer A was the driver of a police vehicle that collided with the complainant who was fleeing after being arrested. On becoming aware that the complainant was fleeing, with the stated intention of blocking the complainant's escape, the officer drove through a zebra crossing and turned across an oncoming traffic lane, mounting a kerb, applying his brakes and travelling between two traffic sign poles before coming into contact with the complainant in a car park.

The police vehicle came to a halt within a short space after impact. The complainant bounced off the vehicle and came to rest around 2 metres in front of the vehicle. An ambulance was called and the complainant was taken to hospital. Fortunately, he does not appear to have been seriously injured although his legal advisers stated, some four months after the incident, that he had residual stiffness and soreness.

The officer stated that at no time did he have any intention of initiating contact between the vehicle and the complainant. He stated he was simply trying to use the side of the vehicle to block the complainant's path, to either slow him down or cause him to change direction to allow police pursuing on foot to catch him.

I accepted that there was insufficient evidence to support a finding that the officer intended to hit the complainant. Rather, as the Officer in Charge of the NT Police Operational Safety Section put it: *"it falls into the category of 'Well-intentioned mistakes that result in undesired uses of force', and that [Officer A] has failed to 'maintain a safe distance' ..."*.

An NT Police crash analysis conducted at the time was later supplemented by a Victoria Police review. The NT report concluded that the vehicle commenced changing its course towards the car park about 2.5 seconds before impact. About one second prior to impact, the vehicle mounted the raised median and there was evidence of anti-lock brake activation. Shortly after this there was a steering input to the left but in the short time remaining before impact there was a steering input to the right, away from the complainant. The reports varied slightly but put the speed at commencement of braking at around 50-56 km/hr and the speed on impact at around 20-25 km/hr.

The NT investigator later commented that, although he conducted testing under controlled conditions, in conducting tests at speeds between 42 and 52 km/hr, he *'did not feel comfortable'* travelling at the speeds along the path travelled. He stated, *"To conduct the manoeuvre required concentration to direct the vehicle along the path whilst avoiding static hazards, pole, kerbs, etc. It would not have been possible for me to track a moving subject and ensure there were no vehicular or pedestrian traffic that would be placed at risk."*

#### **Consideration**

I noted that there were a number of risks inherent in Officer A taking the action he did, including:

- travelling through the 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 - Officer A had clear vision of the road and there was no oncoming traffic;
- mounting the 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 the risk that Officer A, 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.

I acknowledged that Officer A's conduct must be assessed against all the circumstances. The time between him turning into the west bound lane to impact was in the vicinity of 2.5 seconds. He did not have the luxury of an extended time to consider his options. He was not in a position to carefully weigh all the risks discussed above. His actions must be judged in that context.

However, this does not mean that every action can be excused because time was short. Where, as in this case, the action that presents itself to mind is very much beyond the ordinary and is likely to raise a range of risks (even if not all immediately identifiable), a real question should arise as to whether it is better to hold off for a few seconds to more fully consider the available options. In the absence of dire circumstances, it may well prove preferable to stop and weigh up the alternatives before taking urgent, extraordinary and risky measures.

There may be situations where urgent and more risky action is called for. An immediate threat of physical harm or the escape of a violent offender may tip the scales in favour of such action.

However in this case, Officer A was aware that the offender, while fleeing from police, was thought to have trespassed and possibly committed unlawful entry. These offences are not at the more serious end of the scale. There was no suggestion he was a violent offender. It would have been helpful for Officer A to cut him off or at least delay him to allow police to catch up with him but the potential benefit of his actions could be put no more highly than that.

I accepted that Officer A did not necessarily know the precise course of complications that would arise due to his decision to intercept the complainant in the way he did. But where an officer is stepping so far outside the normal course of action, this very fact should lead to a level of circumspection before action. This pause may have allowed the complainant to evade police for longer but would have avoided the risks discussed above and the collision which, by luck for all involved, ended without more serious injury.

### **Action in relation to Officer A**

NT Police prepared a brief of evidence and obtained advice from the Director of Public Prosecutions in relation to prospects of criminal proceedings against Officer A. That advice was in effect that there was no reasonable prospect of a prosecution succeeding.

NT Police concluded that Officer A should be given managerial guidance under section 14C of the Police Administration Act (the PAA) for having failed to comply with:

- the Code of Conduct and Ethics (section 20), not bringing discredit to, or adversely affecting, the police force;
- Operational Safety and Use of Force (Operational Safety Principles), particularly relating to *Safety first* and *Risk assessment* principles;
- Instructions to Members Attending Defensive Tactics Requalification.

Contrary to the view expressed by NT Police, I considered there was also evidence to support a finding that Officer A committed a breach of discipline in that he was negligent or careless in terms of section 76(b) of the PAA, in the actions that led up to the collision, although I considered that 'careless' more aptly described the situation.

Again departing from the final view expressed by NT Police, I considered that the use of the vehicle in a manner that struck the complainant was a use of force as defined in the relevant General Order and that there was evidence to support a finding of breach of discipline in terms of failure to obey a lawful direction, instruction or order, including general orders and instructions (section 76(d)).

In considering what action should be taken in respect of wrongful conduct by a police officer, it is important to consider all the circumstances of the case and the relevant background of the officer.

In fleeing at full speed from three officers over a sealed road and a sealed car park, the complainant created a situation where he and the pursuing officers were placed at risk. Even if someone was not struck by a vehicle, the complainant was likely to be tackled on a hard surface, probably resulting in some injury to himself and pursuing police. It is open to speculation whether the injury he would have suffered in that event would have been any less severe than the injury incurred in his collision with the police vehicle.

Officer A was faced with an immediate operational decision. It is accepted that he thought he was doing the right thing by trying to assist his colleagues in the re-apprehension of the complainant. However, in my assessment, he decided to embark on a highly unusual and risky course of action in a situation where there was no suggestion that the fleeing offender presented a high risk to the public.

The outcome of Officer A's actions could have been far graver. The actions he took presented a real risk of serious injury to the complainant and potentially to others who might have found themselves in the path of the vehicle. In the final outcome, even allowing for the speed at which the situation developed, I considered that the risks taken by Officer A exceeded what was justifiable in the circumstances. He put himself and others at risk by his actions. Ultimately, he collided with the complainant. I characterised his failing as an error of judgement but a substantial one.

The wording of section 76 of the PAA makes it clear that breaches of discipline are not restricted to deliberate wrongdoing. As noted above, it includes negligent and careless acts. There is clearly scope for dealing with breaches of a minor nature under section 14C or by other personnel measures. However, there will be negligent, careless or reckless conduct that is serious enough to warrant action under Part IV.

In the circumstances, I would have recommended that proceedings be commenced under that Part on the basis that the conduct of Officer A was serious enough to warrant them. The sanctions that were available under section 14C would still have been available under Part IV but there would have been a wider array of options open to the prescribed officer considering the matter. However, for reasons discussed below, by the time the matter was finalised, that option was not open.

### **Investigation process and recommendations**

The complaint of excessive force was referred to Police Standards Command (PSC) for investigation as a Category 1 complaint. Investigations had already been commenced by NT Police on the basis of a Serious Custody Incident declaration.

On receipt of an initial report, my Office raised a number of issues with the conduct of the investigation. Without further reference to my Office, Managerial Guidance under section 14C of the PAA was given to Officer A. An assurance was subsequently given by PSC to my staff that an extension of time for the commencement of disciplinary proceedings under Part IV of the PAA would be obtained. However, there was no extension within the time allowed.

Considerable further discussion, investigation and analysis was subsequently undertaken and reports provided. Advice was also obtained by NT Police from Senior Counsel on a number of issues. Copies of the various reports and the legal advice were provided to my Office. The protracted timeframe for finalisation of this matter was unnecessary and highly regrettable. That issue and a number of other ancillary matters regarding investigations have been pursued separately.

Ultimately, Officer A was subject to action, although not under the process I would have recommended.

In addition to the disposal of the specific matter, I made three general recommendations:

- 1) NT Police review its current General Orders and policies to ensure that adequate guidance is given to NT Police officers in relation to the care necessary when driving police vehicles in all situations.
- 2) NT Police produce substantial written guidance to decision makers to assist them in determining which option to recommend or pursue when considering action in relation to the conduct of an individual officer.
- 3) NT Police produce substantial written guidance to decision makers to assist them in determining which sanction (if any) to recommend or impose in relation to the conduct of an individual officer.

I am continuing to liaise with NT Police in relation to the full implementation of those recommendations.

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## Case 2 - Apprehension of three female youths

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### Use of force

Territory Response Group (TRG) members apprehended three girls (two aged 15 and one aged 12) who were the only occupants of a stolen vehicle. The vehicle stopped in front of an activated Tyre Deflation Device and reversed over a kerb and into a light pole with some force, causing the pole to fall over. Each child was then forcibly removed from the vehicle. Each child showed clear signs of injury to the face/head from the incident.

There were numerous allegations of excessive use of force against each girl, including punches to the face of one girl and another girl being dropped on her head and blacking out.

The versions of events provided by the girls and the police involved varied in material aspects. There was no body worn camera footage of the events. When this was combined with the motor vehicle accident and the fact that a number of different police were involved at different stages of the process, it made a positive finding that any particular officer or indeed any officer had used excessive force problematic. This led to a number of findings that allegations were Unresolved.

However, on any version of events, it is clear that substantial force was used in extricating the girls from the vehicle and their treatment after this. While findings were not made against individual officers, these cases squarely raise issues I have previously raised concerning treatment of children.

In a case relating to use of capsicum spray on a child (see pages 54-55 of my 2016/17 Annual Report) I recommended that NT Police:

*Take action to emphasise to officers the importance of recognising and acting on the fact that, in exercising their duty of care to children, and particularly young children, their needs and circumstances may differ appreciably from adults and there will frequently be times when a different approach is required to meet those circumstances.*

In this case, there was an added element that the police involved were from the TRG and are trained to respond to the most serious and challenging of incidents and offenders. Nevertheless, it is important that the response of every officer is proportionate to the circumstances in which they are operating.

There have been a number of similar multiple complaints in recent times involving youths. I wrote to the Commissioner of Police reiterating my earlier recommendation and added that it would be appropriate for this to be emphasised with TRG members.

### **Body Worn Video**

I also noted that the handling of these complaints would have been immeasurably assisted by:

- all officers wearing body worn video (BWV); and
- officers who wore BWV turning it on as soon as they came into contact with the public.

The second point is of some significance as a number of other cases have arisen where officers have failed to turn on BWV at all or until a substantial time has lapsed after incidents have occurred.

I stressed the importance of officers being required to turn on BWV as soon as they have or are likely to have contact with members of the public.

### **Time in Custody**

One of the allegations made by each complainant was that they were detained in custody for too long. The older girls were detained for approximately 22 hours before contact was made with a Judge and the 12 year old was held for approximately 12 hours before being released.

I noted that current legislative provisions permit custody for a reasonable time before bringing a person before a justice or court, taking into consideration a range of factors, including time allowed for 'rest' (see sections 137-138 of the PAA). However, I also noted the recommendation of the Royal Commission that custody be limited to four hours (Recommendation 25.3).

Although it is not expressly stated in the Recommendation, given the approach adopted in other jurisdictions, I assume the four hour limit would be subject to a range of 'time-outs' along the lines of the factors that currently appear in section 138 of the PAA. This would clearly extend the time well beyond four hours in many cases.

I noted that the issue would no doubt be considered in the course of deliberations regarding implementation of Royal Commission recommendations. I suggested that, in the interim, it would be beneficial for NT Police to:

- give officers guidance in relation to the interpretation of 'rest' in section 138; and
- consider requiring senior officer authorisation for detaining a youth beyond a specified fixed period.

### **Case 3 - Responses to domestic violence complaints**

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The complainant advised that, over the period of a night and the following morning, her ex-partner came to her house four times and assaulted her on each occasion. The complainant advised that the first time, Police came and took him away but he was back less than an hour later. The complainant stated that this was repeated on two occasions and each time she was assaulted. He then returned and assaulted her on a fourth occasion before Police finally took him into custody and took appropriate follow-up action.

The complainant advised that she received a broken nose and was knocked unconscious and was taken to hospital with bruising and cuts to her face.

My Office assessed the matter as a Category 1 complaint but deferred investigation under section 107 of the *Ombudsman Act*, upon being advised that disciplinary procedures had been commenced in relation to four officers concerning the matter. Each officer was subject to disciplinary action. My Office considered the outcome of the disciplinary action in each case and determined no further action was required.

## Case 4 - Use of force

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NT Police received a report that Student X was armed with a knife was threatening another person on an educational campus. They investigated and ultimately located Student X, who was with one of his parents.

Police had a discussion with Student X and his parent in a class room but Student X then left the classroom and headed down a hallway towards an exit door. Officer A followed Student X with the stated purpose of ensuring that Student X left the campus and informing him that he could not return. Officer A called out to Student X who was, by this time, at the exit door. Student X stopped and turned around and Officer A approached him.

There was then a brief discussion after which Officer A attempted to restrain Student X. Student X broke free and moved away from Officer A. A short time later he quickly approached Officer A in an aggressive manner. By this time, the parent and another officer were in the hallway and Officer A had drawn his Taser. As Student X drew near him, Officer A fired the Taser at Student X who fell to the floor. Student X was then taken to a police station.

The complaint of Student X was initially investigated by PSC and considered by my Office without the benefit of CCTV footage. Its existence was later advised by his lawyers and my Office directed reinvestigation of the matter. The failures of Officer A to record and investigators to discern the existence of the CCTV footage have been addressed as ancillary issues.

The investigation concluded that the complaint regarding the initial attempt to restrain Student X was sustained. Although it was reasonable to approach Student X to warn him to leave the premises and not re-attend, there was no apparent justification for the use of force in attempting to restrain him. Student X did not appear to be showing signs of aggression and was simply moving to exit the building.

However, the complaint regarding Taser use was not sustained. While the situation that gave rise to its use was contributed to by Officer A's attempt to restrain Student X, in the face of an impending attack, Officer A's action in deploying the Taser was not found to be unreasonable.

Remedial advice was given to Officer A regarding the use of force, including discussion of the Taser use in order to allow him to appreciate the consequences of his initial wrongful conduct, specifically that it contributed to the need to use greater force, and the impact this departure could then have had on the admissibility of evidence obtained after that use of initial force.

A complaint about failure to provide appropriate aftercare following Taser use was also sustained. Student X was taken to the police station where he waited two hours to be checked by a Custody Nurse. The investigator considered that it would have been appropriate to check with the police station to establish when a nurse might be available and if there was to be any delay, make a decision to call an ambulance or attend an appropriate medical facility. The investigator recommended remedial advice be given to the two arresting officers and an officer at the police station.

## Case 5 - Escalation

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At around 10:30pm one evening, two police officers noticed a group of people who they considered were engaging in anti-social behaviour by way of public drunkenness. After confiscating liquor from some of them, the group were asked to leave the area.

One (the complainant) took exception to the interaction with police as she was leaving the area and swore at Police as she stumbled in front of oncoming traffic requiring motorists to take evasive action to avoid hitting her.

The officers drove around the corner and encountered the complainant on another street. They stated that the complainant was continuing to shout and was chasing a relative and waving her arms around. They said that her behaviour worsened when they approached her. A decision was made to arrest the complainant for disorderly behaviour. Police stated the complainant resisted arrest and was ultimately sprayed with ASR (pepper spray). Two of the complainant's family members were also hit with spray.

In a subsequent Local Court hearing, the complainant was convicted of *Disorderly behaviour in a public place* but all evidence obtained after that event (which might have supported charges of resist police and assault police) was excluded by the Judge under section 138 of the *Evidence (National Uniform Legislation) Act*. In the course of considering the matter, His Honour made the following comments:

*The confrontation escalated resulting in the complaint before the court. General orders of the police are set out in [case law cited] 'they make good sense and ought to carefully observed but they do not have the force of law and are for guidance only'. Okay. They cannot affect the lawfulness ... of an arrest ... it's true the General Orders are the distillation of the best Police practice and it is wise and prudent for police to notice and comply with it however ... the experience of a court is that sometimes for good reason and good faith the General Orders are not complied with and that in those instances does not affect the lawfulness of the police conduct most usually.*

*However in this instance, this was a scenario where a police officer was too quick to jump to the conclusion that he would arrest a person for a minor offence. A person who had reacted to the lawful conduct of the police in an anti-social but understandable fashion. General Order 2.2 sets out the arrest of a person should be an action of last resort and police should arrest only to prevent the continuation or ... repetition of an offence as I've outlined ... this was not a scenario where ... there was likely to be a repetition of this person swearing at Police and interfering with traffic. That happened as a result of the alcohol being tipped out and her being moved along. She had desisted and had de-escalated.*

*The balance also of that guideline does not apply and ... in this instance it's not a serious offence. We don't know if a summons to appear in court ... was ... likely or unlikely to be complied with as no enquiries were made and we simply don't know on the evidence if this person was intoxicated or indeed intoxicated to the extent that they would not understand the consequences of their actions in the process of being summonsed. ... the first Police officer ... had said initially that he could smell alcohol on quote 'them' ah when he tipped out the alcohol and that her behaviour suggested to him that she may have been intoxicated. That ... is not enough and does not meet the threshold to prove for intoxication.*

*Count three resist Police in the execution of their duties. Four and five assault the police in the execution of their duty. As I've remarked it's not the standing of good faith and decency of the police officers in question doing their difficult job. It would seem to me that the clear non-compliance and use of ... the power of arrest as a first resort rather than a last resort is an impropriety. Not only in the sense of misconduct or bullying or harassment or anything of... that nature. It is an impropriety of non-compliance with the General Orders and I do have close regard to the authorities that inform me and ... I have already remarked upon what a difficult job it is that the Police do ...*

The NT Police investigating officer was not prepared to find the decision to arrest unreasonable but did recommend that the officers be provided remedial advice on policy regarding arrest being an action of last resort.

The investigating officer made a similar finding in relation to use of force, including use of ASR. They determined that the arrest was lawful and the behaviour of the complainant and the circumstances of the case justified the force used.

The investigating officer also determined that notwithstanding a ten minute delay in providing aftercare in respect of the ASR (the time it took to get to the watchhouse) it was 'commenced as soon as practicable' in the circumstances. However, they concluded that being placed and left in a cell in wet and contaminated clothes was a failure in duty of care to the complainant. Remedial advice was recommended for all watchhouse staff on that point.

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### Case 6 - Domestic Violence

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NT Police received a complaint from a protected person under a domestic violence order (DVO) that they had been assaulted by the person subject to the order (the complainant). They attended the home of the protected person and found the complainant with the protected person. They proceeded to arrest the complainant for breach of the DVO.

The complainant had been under a full non-contact order for some time. However, four days earlier the DVO had been varied to require non-contact only if the complainant was under the influence of alcohol or drugs. Both the complainant and the protected person advised the officers that the order had changed.

Further enquiries were made with the police station and checks with the court computer system (IJIS) appeared to confirm that the full non-contact order remained in place. Police continued with the arrest. The complainant remained in custody for approximately 26 hours before the existence of the new (more limited) order was confirmed.

The NT police investigating officer concluded that the actions of the individual officers involved in the arrest were reasonable as they were acting in line with the information currently on available systems. However, the investigating officer determined that the arresting officers should have made their own checks of both the police system (PROMIS) and IJIS (although it would not have resulted in a different outcome in this case).

The investigating officer concluded that the investigation of the reported assault by the complainant on the protected person was inadequate in certain respects (although noting that the protected person indicated she did not wish to pursue the matter). It was recommended that officers be given remedial advice and training in relation to that aspect and remedial advice regarding the need to conduct comprehensive searches.

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### Case 7 - Youth and bail checks

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A 14 year old was on bail in relation to a number of charges. He was originally bailed to stay at a specified residence at night time but the residence was varied three days later. There were a number of subsequent orders in relation to bail and court and police systems essentially became confused as to which residence he was ordered to stay at.

The youth was subject to 45 bail checks within the space of a month, spread over both residences. On the occasion in question, he was located in the front yard of one residence (which ultimately proved to be the correct residence) but a search by the officer conducting the check indicated that he should be at the other residence. Family members at both residences indicated that there had been an order changing the address and that they had relevant paperwork (although they did not provide it).

The youth was arrested for breach of bail and spent the night in custody before the error was identified. The case clearly pointed to deficiencies in police and court record systems. The youth was not acting contrary to his bail conditions. By the same token, the officer was acting on the result of a search of the IJIS system.

The case raised a concern regarding the need to arrest the youth. Arrest should always be an option of last resort and section 22 of the *Youth Justice Act* provides that a youth should be charged by summons except in certain cases. The arresting officer pointed to a concern that the youth had a propensity to commit property offences at night and believed if he wasn't arrested it was probable he would reoffend that night.

The investigating officer determined that the actions of the officer were reasonable but adverted to a general email from the Officer in Charge of the Judicial Operations Section containing advice regarding considerations for arrest over summons, in particular regarding youths and the use of arrest as a last resort. The investigating officer recommended that the email be sent as a Broadcast to all NT Police.

In this case, the youth was at a family residence. In a situation where family members had immediate care of the youth and were stating that he was in line with his bail conditions, it would have been far preferable to leave the child in that environment, make appropriate checks and, if necessary, take further action the next day.

In the course of the investigation, my Office pointed to the recommendations of the Royal Commission, particularly relating to the *Bail Act* and guidelines regarding bail curfew checks on youths. The investigating officer indicated that implementation of those recommendations was being undertaken on a whole of agency and whole of government basis.

### **Case 8 - Arrest and confiscation of property**

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The complainant was approached by police in the city centre. They believed he was attempting to hide something under his clothing. He showed them an unopened bottle of alcohol and told them he was going to drink it at a relative's residence in another suburb. He became agitated and told them he had not stolen the bottle. The Police required him to put the bottle down, took it, opened it and emptied it.

In the course of this interaction, the complainant became abusive and was waving his arms about. Police decided to arrest him for disorderly behaviour in a public place. They placed handcuffs on him and took him to the watchhouse. The option of issuing an infringement notice at the watchhouse was considered but rejected. Police Bail was refused because of a history of not attending court. A Bail review conducted by a Local Court Judge confirmed that he should remain in custody overnight.

The next morning, the Judicial Operations Section reviewed the case and determined that no formal charge would be laid. The complainant was eventually released by the Court at noon that day without a charge having been laid.

The investigating officer found that there was insufficient evidence to sustain an allegation of wrongful arrest. She concluded that the failure to proceed to prosecution arose primarily through a failure on the part of the arresting officers to fully describe the circumstances that led to the arrest. She recommended that the officers be given remedial advice in regard to preparation of comprehensive documentation supporting prosecution.

She also found that there was insufficient evidence to sustain the complaint of continued unlawful detention on the basis that Police did not have the power to override the decision of the Judge.

The investigating officer did find that the bottle had been unlawfully seized and recommended that remedial advice be given to the officers in that regard and that consideration be given to compensating the complainant for loss of his property. Both recommendations were accepted.

### Case 9 - Discharge of pepper spray into a crowd

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The complainants were among a large number of people who emerged from a nightclub when it closed at around 4am. There was a large crowd bunched together in the fenced area of the footpath near the entrance to the nightclub and a number of police in the vicinity.

There had been an earlier incident in the area which had heightened police awareness of the potential for violence. A number of officers were carrying OC Spray (pepper spray) containers. Officer A, who was one of several police walking down the middle of the street outside the nightclub, was carrying a large MK9 OC Spray canister. He saw an altercation involving two people in the middle of the crowd. He immediately approached the outside railings near the street and sprayed towards the individuals involved in the altercation. Inevitably, due to the concentration of people, a substantial number of others who were in no way involved in the altercation were hit by the spray or became contaminated as it spread.

Several bystanders complained. The most prominent concerns involved the decision to use the spray and the quality of aftercare provided by officers.

Officer A stated that he saw what he believed was a fight breaking out and acted quickly to stop the fight and to ensure that no-one was injured or joined into the fight. The NT Police investigating officer noted that fights involving patrons are common circumstances faced by police performing alcohol policing duties at nightclub venues. Officer A identified the area in question as one where police have previously been assaulted, as the fenced area makes it difficult for them to get away quickly when threatened or cornered. He also identified that he was concerned about 'one punch can kill' issues and that some patrons were intoxicated and the situation had the potential to become volatile very quickly. In essence, he thought by using the spray he would stop the fight and avoid others getting hurt, including the police officers present.

NT Police has detailed guidance on the use of force by officers. Use of force options are guided by the Tactical Options Model with a range of available options. Use of OC spray is allowed to resolve an incident where a person is acting in a manner to cause the officer to believe there is a physical threat to someone, and the member cannot reasonably protect themselves, or others, less forcefully. However, use of force must always be reasonable and must be the minimum force required in the circumstances.

In considering the actions of Officer A, the investigating officer noted that he had been called on to make a decision in a very short time about the best way to deal with the situation. The investigating officer concluded there may have been justification if the spray had been used in isolation on those involved in the altercation but its use in the circumstances of a large crowd of innocent bystanders was not justified. The complaints were therefore sustained. Both the officer who discharged the spray and his supervisor were subject to disciplinary action in relation to the use of the spray.

The investigating officer also advised that the policy, procedures and training for use of larger MK9 canisters were being revised in light of the incident to minimise the potential for an event like this to happen again.

That is not to say that OC Spray should never be used in a crowd situation. Where there is widespread fighting within a crowd, where the crowd itself is threatening police or members of the public or if dangerous weapons are present, use of spray might well be justified even if it might impact on a number of innocent bystanders. However, those circumstances would be very different from the situation here.

The other issue of significant concern, and a factor that made the situation considerably worse, was the lack of effective aftercare provided by police to members of the crowd. Pepper spray can create substantial pain and discomfort that can persist for an extended period. For example, one of the complainants stated that she was in pain and disoriented because the spray got in her eyes. At one stage she fell over as a result.

While there were some individual and ad hoc efforts by police to assist members of the crowd who were suffering, there was little in the way of a proactive or co-ordinated approach, with a number of police simply moving away. This was not in line with police procedures and training. The investigating officer found the complaints in this respect sustained, with two officers subject to disciplinary action and a further three subject to remedial advice in relation to their obligations with respect to aftercare and decontamination.

In any situation where multiple individuals are impacted by OC Spray, it is vital for NT Police to rapidly develop a co-ordinated approach to provision of timely and effective aftercare.

NT Police apologised to each complainant in relation to the use of the spray and the failings in provision of aftercare.

The finalisation of these complaints took a considerable length of time. I have discussed the number of conduct complaints facing police elsewhere in this report. This has obviously impacted on the time within which police have been able to progress individual matters. I have also noted that police are aware of the issue and have allocated additional resources to address it. There were a number of officers in the vicinity of the incident who needed to be interviewed as part of the investigation and officer absences on approved leave contributed to the time taken. Disciplinary proceedings against police can also take time in order to ensure that proper processes are followed and officers are afforded an appropriate opportunity to respond. Even so, the time taken to finalise these matters was disappointing. NT Police apologised to each of the complainants regarding the delay.

## CHAPTER 8 – OUR OFFICE

### CORPORATE GOVERNANCE, PLANNING AND PERFORMANCE

Under the *Ombudsman Act*, 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*, the Ombudsman is the Accountable Officer for the Ombudsman's Office, 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 (PSEMA)*.

The Statement of Accountable Officer is on the first page of the Financial Statements for 2017/18, which form Appendix B to this Report.

The Ombudsman NT Strategic Plan provides guidance and a general framework for strategic operations and annual business planning. A copy of the current Strategic Plan 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 at the start of each financial year.

Monthly Staff, Management Board and Complaints Management meetings are held to facilitate the administration of the Office and monitor progress against budget, strategic and business plans. Weekly Senior Management Group meetings are also held to update current projects and facilitate open communication and discussion within the management team.

### OUR STAFF

The staffing structure for the Office as at 30 June 2018 was as outlined below, although there was some variation at the time due to absences and vacancies.

Position Title	Level	Number	Status
<b>Ombudsman</b>	ECO5	1	Statutory appointment
<b>Deputy Ombudsman</b>	ECO2	1	Executive Contract
<b>Assistant Ombudsman</b>	SAO2	1	Ongoing
<b>Senior Investigation Officer</b>	A07	4	2 Ongoing, 2 Fixed period
<b>Investigation Officer</b>	A05	1	1 Ongoing
<b>Resolution Officer</b>	A04	3	2 Ongoing, 1 Fixed period
<b>Business Manager</b>	SAO1	1	Ongoing
<b>Business Support Officer</b>	A04	1	Fixed period

In order to aid the Business Support Unit (BSU) in the conduct of corporate and administrative duties, Resolution Officers provide additional administrative assistance as required. In turn, BSU staff assist Resolution Officers from time to time by taking initial calls from enquirers. This provides a broader skill base in a small office to deal with scheduled and unexpected absences and peaks in demand. It also adds substantially to the professional development and flexibility of the staff concerned.

## Public Sector Principles

The Office of the Ombudsman 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, larger NT agencies or 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

Staff professional development attendance conducted or supported by the Office during 2017/18 included:

- Domestic and Family Violence Work Aware Workshop - Maurice Blackburn Lawyers
- Simplified Recruitment, Merit Selection Training & Special Measures Information Session – Office of the Commissioner for Public Employment (OCPE)
- ANZSOG Policy Master Class - OCPE in partnership with ANZSOG
- Sharpen Your Teeth - Ontario Ombudsman and Tasmanian Ombudsman
- Public Sector Governance Forum - Governance Institute of Australia
- Anti-Discrimination, Harassment and Bullying - Anti-Discrimination Commission
- Improve Your Decision Making - Nicholls Consulting
- Provide first aid - Australian Red Cross
- Resolve User Group - Resolve
- Internal development sessions by various staff, including:
  - Community engagement in remote communities
  - Conflict of interest
  - Resolve case management system, including new features
  - Cross cultural awareness
  - Ombudsman electronic resources.

As indicated above, the Office conducts a regular internal development/presentation series. Sessions are aimed at updating staff on a range of topics of relevance to the Office and to complaint handling and investigations generally. All staff are encouraged to present from time to time. This also provides a valuable professional development avenue for staff to hone their presentation skills.

## 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, a number of 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*. A review of the *Operations Manual* commenced during the reporting period and is expected to be completed in 2018/19.

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.

Numerous other independent offices in the Northern Territory have taken up the Resolve system. We regularly provide assistance to offices that are considering acquiring the system or are in the process of implementing it.

## **WORK HEALTH AND SAFETY**

The Office of the Ombudsman is committed to providing a safe and healthy working environment for all of our workers and visitors to the Office. We maintain an OHS Management System, including an Occupational Health and Safety Management Plan that meets the requirements of the *Work Health & Safety (National Uniform Legislation) Act* and *Employment Instruction 11 – Occupational Health and Safety Standards and Programs*.

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

Only minor WH&S issues were identified during the year and were recorded and rectified promptly. Should any significant WH&S issue arise which cannot be promptly addressed by the Office, the regulator NT WorkSafe will be contacted for advice/assistance.

## **ANNUAL INSURANCE REPORTING REQUIREMENTS**

Under Treasurer's Directions ([M 2.1.3 – Insurance Arrangements](#)) each agency and Government Business Division is required to report insurance related information in its annual report. Details of the Office's insurance arrangements are discussed below.

WH&S assessments of possible physical injury to staff within the Office are consistently assessed as low. This risk is further mitigated through implementation and adherence to Security and Risk Management systems. No commercial insurance is required for this risk category.

The Office does not hold large amounts of physical assets and as such the highest risk exposure to the Office is the physical risk of damage to its leased motor vehicle. Risk to motor vehicles is mitigated through commercial vehicle insurance which costs the Office approximately \$1,000 per year.

## **RECORDS MANAGEMENT, DISCLOSURE AND CORRECTION**

The Ombudsman complies with the relevant requirements of Part 9 of the *Information Act – 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 against Northern Territory Government agencies, local government councils or the conduct of a member of the NT Police Force. 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*. Incoming complaints are registered in a relational complaints management database, this 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’s website at [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au).

### Brochures

The Ombudsman 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’s website.

### Policies, manuals and guidelines

The Ombudsman has a variety of policy and procedural documents and guidelines. A number are available on the Ombudsman's 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's 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 at the Darwin Office. 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* 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, facsimile or email or hand delivered.

While some information held by the Office 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*; 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 2017/18, the Ombudsman received no information access requests under the *Information Act*.

#### Procedures for Correcting Information

The *Information Act* 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, facsimile or email or hand delivered.

In 2017/18, the Ombudsman received no personal information correction requests under the *Information Act*.

# APPENDIX A – AGREEMENTS WITH OTHER BODIES

## 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 REPORT

#### FINANCIAL STATEMENT OVERVIEW For the year ended 30 June 2018

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.

During 2017-18 the net result for the Ombudsman's Office was a surplus of \$161,000. Savings were made in general administrative expenses and employee expenses due to delay in ongoing appointments pending anticipated transfer of Office of the Information Commissioner and reduction in costs due to lower staffing levels.

Operating expenses comprised \$1,565,000 for employee expenses and \$564,000 for the purchase of goods and services (which includes \$359,000 for services received free of charge and depreciation and amortisation of \$42,000).

#### CERTIFICATION OF THE FINANCIAL STATEMENTS

We certify that the attached financial statements for the Ombudsman's Office have been prepared based on proper accounts and records in accordance with the prescribed format, the *Financial Management Act* 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 2018 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

30 Aug 2018



SARAH SCHULTZ

Business Manager

30 Aug 2018

**OMBUDSMAN'S OFFICE  
COMPREHENSIVE OPERATING STATEMENT**

**For the year ended 30 June 2018**

	Note	2018	2017
		\$000	\$000
<b>INCOME</b>			
Appropriation			
Output		1 932	1 948
Sales of goods and services			23
Goods and services received free of charge	4	359	359
Other income			
<b>TOTAL INCOME</b>		<b>2 291</b>	<b>2 330</b>
<b>EXPENSES</b>			
Employee expenses		1 565	1 712
Administrative expenses			
Purchases of goods and services	5	148	165
Repairs and maintenance			1
Property Management		15	16
Depreciation and amortisation	9	42	46
Other administrative expenses <sup>1</sup>		359	359
<b>TOTAL EXPENSES</b>		<b>2 129</b>	<b>2 296</b>
<b>NET SURPLUS/(DEFICIT)</b>		<b>161</b>	<b>34</b>
<b>COMPREHENSIVE RESULT</b>		<b>161</b>	<b>34</b>

<sup>1</sup> Includes DCIS 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 2018**

	Note	2018 \$000	2017 \$000
<b>ASSETS</b>			
<b>Current assets</b>			
Cash and deposits	7	1 346	1 089
Receivables	8		4
Prepayments		6	5
<b>Total current assets</b>		<b>1 353</b>	<b>1 097</b>
<b>Non-current assets</b>			
Property, plant and equipment	9		42
<b>Total non-current assets</b>			<b>42</b>
<b>TOTAL ASSETS</b>		<b>1 353</b>	<b>1 139</b>
<b>LIABILITIES</b>			
<b>Current liabilities</b>			
Payables	10	15	22
Provisions	11	329	270
<b>Total current liabilities</b>		<b>344</b>	<b>292</b>
<b>TOTAL LIABILITIES</b>		<b>344</b>	<b>292</b>
<b>NET ASSETS</b>		<b>1 008</b>	<b>847</b>
<b>EQUITY</b>			
Capital		346	346
Accumulated funds		662	501
<b>TOTAL EQUITY</b>		<b>1 008</b>	<b>847</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 2018**

	Note	Equity at 1 July \$000	Comprehensive result \$000	Transactions with owners in their capacity as owners \$000	Equity at 30 June \$000
<b>2017-18</b>					
<b>Accumulated funds</b>		501	161		662
<b>Capital – transactions with owners</b>		346			346
<b>Total equity at end of financial year</b>		<b>847</b>	<b>161</b>		<b>1 008</b>
<b>2016-17</b>					
<b>Accumulated funds</b>		467	34		501
<b>Capital – transactions with owners</b>		346			346
<b>Total equity at end of financial year</b>		<b>813</b>	<b>34</b>		<b>847</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 2018**

	Note	2018	2017
		\$000	\$000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Operating receipts</b>			
Appropriation			
Output		1 932	1 948
Receipts from sales of goods and services		11	32
<b>Total operating receipts</b>		<b>1 943</b>	<b>1 980</b>
<b>Operating payments</b>			
Payments to employees		1 504	1 664
Payments for goods and services		181	198
<b>Total operating payments</b>		<b>1 685</b>	<b>1 861</b>
<b>Net cash from/(used in) operating activities</b>	13	<b>258</b>	<b>119</b>
Net increase/(decrease) in cash held		258	119
Cash at beginning of financial year		1 089	969
<b>CASH AT END OF FINANCIAL YEAR</b>	7	<b>1 346</b>	<b>1 089</b>

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

**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2018**

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**1. OBJECTIVES AND FUNDING**

The Ombudsman's role is to receive, investigate and resolve complaints made about administrative action to which the *Ombudsman Act* applies and to foster excellence in public sector services.

The Ombudsman's Office is predominantly funded by, and is 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 two output groups, Ombudsman Operations and Corporate and Governance.

Note 3 provides summary financial information in the form of a Comprehensive Operating Statement by output group. Additional information in relation to the Ombudsman's Office and its principal activities may be found in the Ombudsman's Annual Report.

**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* and related Treasurer's Directions. The *Financial Management Act* requires the Ombudsman's Office to prepare financial statements for the year ended 30 June based on the form determined by the Treasurer. The form of agency financial statements should include:

- (i) a certification of the financial statements
- (ii) a comprehensive operating statement
- (iii) a balance sheet
- (iv) a statement of changes in equity
- (v) a cash flow statement and
- (vi) 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.

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**Standards and interpretations effective from 2017-18**

The following new and revised accounting standards and interpretations were effective for the first time in 2017-18:

**AASB 2016-2 Amendments to Australian Accounting Standards – Disclosure Initiative:**

**Amendments to AASB 107**

This standard applies to the not-for-profit sector for the first time in 2017-18. The accounting amendment AASB 2016-2 requires the disclosure of information that enable users of financial statements to evaluate changes in liabilities arising from financing activities.

Several other amending standards and AASB interpretations have been issued that apply to the current reporting periods, but are considered to have no impact on public sector reporting.

**Standards and Interpretations issued but not yet effective**

On the date of authorisation of the financial statements, the following standards and interpretations were in issue but are not yet effective and are expected to have a potential impact on future reporting periods:

**AASB 16 Leases**

AASB 16 Leases is effective for annual reporting periods beginning on or after 1 January 2019 and will be reported in these financial statements for the first time in 2019-20. When the standard is effective it will supersede AASB 117 Leases and requires the majority of leases to be recognised on the balance sheet.

For lessees with operating leases, a right-of-use asset will now be included in the balance sheet together with a lease liability for all leases with a term of 12 months or more, unless the underlying assets are of low value. The comprehensive operating statement will no longer report operating lease rental payments. Instead a depreciation expense will be recognised relating to the right-to-use asset and interest expense relating to the lease liability.

For lessors, the finance and operating lease distinction remains largely unchanged. For finance leases, the lessor recognises a receivable equal to the net investment in the lease. Lease receipts from operating leases are recognised as income either on a straight-line basis or another systematic basis where appropriate.

Several other amending standards and AASB interpretations have been issued that apply to future reporting periods, but are considered to have limited impact on future financial reporting.

**c) Reporting entity**

The Ombudsman's Office ("the Agency") is a Northern Territory Agency established under the *Interpretation Act Administrative Arrangements Order*. The financial statements cover the Agency as an individual reporting entity.

The principal place of business of the Agency is: Level 12 (NT House), 22 Mitchell Street, Darwin.

**d) Agency and Territory items**

The financial statements include income, expenses, assets, liabilities and equity over which the Ombudsman's Office has control (Agency items). Certain items, while managed by the

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agency, are controlled and recorded by the Territory rather than the Agency (Territory items). Territory items are recognised and recorded in the Central Holding Authority as discussed below.

**Central Holding Authority**

The Central Holding Authority is the 'parent body' that represents the Government's ownership interest in Government-controlled entities.

The Central Holding Authority also records all Territory items, such as income, expenses, assets and liabilities controlled by the Government and managed by agencies on behalf of the Government. The main Territory item is Territory income, which includes taxation and royalty revenue, Commonwealth general purpose funding (such as GST revenue), fines, and statutory fees and charges.

The Central Holding Authority also holds certain Territory assets not assigned to agencies as well as certain Territory liabilities that are not practical or effective to assign to individual agencies such as unfunded superannuation and long service leave.

The Central Holding Authority recognises and records all Territory items, and as such, these items are not included in the Agency's financial statements.

**e) Comparatives**

Where necessary, comparative information for the 2016-17 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 2017-18 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**  
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**i) Goods and services tax**

Income, expenses and assets are recognised net of the amount of Goods and Services Tax (GST), except where the amount of GST incurred on a purchase of goods and services is not recoverable from the Australian Tax Office (ATO). In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of the expense.

Receivables and payables are stated with the amount of GST included. The net amount of GST recoverable from, or payable to, the ATO is included as part of receivables or payables in the Balance Sheet.

Cash flows are included in the Cash Flow Statement on a gross basis. The GST components of cash flows arising from investing and financing activities, which are recoverable from, or payable to, the ATO are classified as operating cash flows. Commitments and contingencies are disclosed net of the amount of GST recoverable or payable unless otherwise specified.

**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* and Treasurer's Directions, certain types of contributions and distributions, including those relating to administrative restructures, have been designated as contributions by, and distributions to, Government. These designated contributions and distributions are treated by the Agency as adjustments to equity.

The statement of changes in equity provides additional information in relation to contributions by, and distributions to, Government.

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**3 COMPREHENSIVE OPERATING STATEMENT BY OUTPUT GROUP**

	Note	Ombudsman Operations		Corporate & Governance		Total	
		2018	2017	2018	2017	2018	2017
		\$000	\$000	\$000	\$000	\$000	\$000
<b>INCOME</b>							
Appropriation							
Output		1 932	1948			1 932	1948
Sales of goods and services			23				23
Goods and services received free of charge	4	359	359			359	359
Other income							
<b>TOTAL INCOME</b>			<b>2 330</b>			<b>2 291</b>	<b>2 330</b>
<b>EXPENSES</b>							
Employee expenses		1 396	1 486	169	226	1 565	1 712
Administrative expenses							
Purchases of goods and services	5	137	146	11	19	148	165
Repairs and maintenance			1				1
Property Management		15	13			15	13
Depreciation and amortisation	9	42	46			42	46
Other administrative expenses <sup>1</sup>		359	359			359	359
<b>TOTAL EXPENSES</b>		<b>1 949</b>	<b>2 050</b>	<b>180</b>	<b>246</b>	<b>2 129</b>	<b>2 296</b>
<b>NET SURPLUS/(DEFICIT)</b>			<b>280</b>	<b>(180)</b>	<b>(246)</b>	<b>161</b>	<b>34</b>
<b>COMPREHENSIVE RESULT</b>			<b>280</b>	<b>(180)</b>	<b>(246)</b>	<b>161</b>	<b>34</b>

<sup>1</sup> Includes DCIS service charges.

*This Comprehensive Operating Statement by output group is to be read in conjunction with the notes to the financial statements.*

**Income**

Income encompasses both revenue and gains.

Income is recognised at the fair value of the consideration received, exclusive of the amount of GST. Exchanges of goods or services of the same nature and value without any cash consideration being exchanged are not recognised as income.

**Appropriation**

Output appropriation is the operating payment to each agency for the outputs they provide and is calculated as the net cost of agency outputs after taking into account funding from agency income. It does not include any allowance for major non-cash costs such as depreciation.

Revenue in respect of appropriations is recognised in the period in which the agency gains control of the funds.

**Sale of Goods**

Revenue from the sale of goods is recognised (net of returns, discounts and allowances) when:

- the significant risks and rewards of ownership of the goods have transferred to the buyer
- the agency retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold
- the amount of revenue can be reliably measured

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- it is probable that the economic benefits associated with the transaction will flow to the agency and
- the costs incurred or to be incurred in respect of the transaction can be measured reliably.

**Rendering of Services**

Revenue from rendering services is recognised by reference to the stage of completion of the contract. The revenue is recognised when:

- the amount of revenue, stage of completion and transaction costs incurred can be reliably measured and
- it is probable that the economic benefits associated with the transaction will flow to the entity.

**Repairs and maintenance expense**

Funding is received for repairs and maintenance works associated with agency assets as part of output appropriation. Costs associated with repairs and maintenance works on agency assets are expensed as incurred.

	2018 \$000	2017 \$000
<b>4. GOODS AND SERVICES RECEIVED FREE OF CHARGE</b>		
Corporate and information services	359	359
	<b>359</b>	<b>359</b>

**5. PURCHASES OF GOODS AND SERVICES**

The net surplus/(deficit) has been arrived at after charging the following expenses:

**Goods and services expenses:**

Consultants <sup>(1)</sup>		1
Advertising <sup>(2)</sup>	2	2
Marketing and promotion <sup>(3)</sup>		12
Document production	1	1
Legal expenses <sup>(4)</sup>		2
Training and study	10	11
Official duty fares	11	8
Travelling allowance	2	2
	<b>26</b>	<b>40</b>

<sup>(1)</sup> Includes marketing, promotion and IT consultants.

<sup>(2)</sup> Does not include recruitment, advertising or marketing and promotion advertising.

<sup>(3)</sup> Includes advertising for marketing and promotion but excludes marketing and promotion consultants' expenses, which are incorporated in the consultants' category.

<sup>(4)</sup> Includes legal fees, claim and settlement costs.

**6. WRITE-OFFS, POSTPONEMENTS, WAIVERS, GIFTS AND EX GRATIA PAYMENTS**

The Ombudsman's Office had no write-offs, postponements, waivers, gifts or ex gratia payments in 2017-18 and 2016-17.

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	2018	2017
	\$000	\$000
<b>7. CASH AND DEPOSITS</b>		
Cash on hand		
Cash at bank	1 346	1 088
	<b>1 346</b>	<b>1 089</b>

For the purposes of the Balance Sheet and the Cash Flow Statement, cash includes cash on hand, cash at bank and cash equivalents. Cash equivalents are highly liquid short-term investments that are readily convertible to cash.

**8. RECEIVABLES**

**Current**

Accounts receivable		1
Less: allowance for impairment losses		

GST receivables		3

**Non-current**

Other receivables		

<b>Total receivables</b>		<b>4</b>
		-

Receivables include accounts receivable and other receivables and are recognised at fair value less any allowance for impairment losses.

The allowance for impairment losses represents the amount of receivables the agency estimates are likely to be uncollectible and are considered doubtful.

Accounts receivable are generally settled within 30 days.

**Prepayments**

Prepayments represent payments in advance of receipt of goods and services or that part of expenditure made in one accounting period covering a term extending beyond that period.

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	2018	2017
	\$000	\$000
<b>9. PROPERTY, PLANT AND EQUIPMENT</b>		
<b>Plant and equipment</b>		
At fair value	66	66
Less: accumulated depreciation	(66)	(66)
<b>Computer Software</b>		
At cost	400	400
Less: accumulated depreciation	(400)	(358)
	-	42
<b>Total Property, Plant and Equipment</b>	<b>-</b>	<b>42</b>

**2018 Property, plant and equipment reconciliations**

A reconciliation of the carrying amount of property, plant and equipment at the beginning and end of 2017-18 is set out below:

	Plant and Equipment	Computer Software	Total
	\$000	\$000	\$000
Carrying Amount as at 1 July 2017		42	42
Additions			
Disposals			
Depreciation		(42)	(42)
Other movements			
<b>Carrying Amount as at 30 June 2018</b>	<b>-</b>	<b>-</b>	<b>-</b>

**2017 Property, Plant and Equipment Reconciliations**

A reconciliation of the carrying amount of property, plant and equipment at the beginning and end of 2016-17 is set out below:

	Plant and Equipment	Computer Software	Total
	\$000	\$000	\$000
Carrying Amount as at 1 July 2016		87	87
Additions			
Disposals			
Depreciation		(46)	(46)
Other movements			
<b>Carrying Amount as at 30 June 2017</b>	<b>42</b>	<b>42</b>	<b>42</b>

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**Acquisitions**

All items of property, plant and equipment with a cost, or other value, equal to or greater than \$10 000 are recognised in the year of acquisition and depreciated as outlined below. Items of property, plant and equipment below the \$10 000 threshold are expensed in the year of acquisition.

The construction cost of property, plant and equipment includes the cost of materials and direct labour, and an appropriate proportion of fixed and variable overheads.

**Complex assets**

Major items of plant and equipment comprising a number of components that have different useful lives, are accounted for as separate assets. The components may be replaced during the useful life of the complex asset.

**Subsequent Additional Costs**

Costs incurred on property, plant and equipment subsequent to initial acquisition are capitalised when it is probable that future economic benefits in excess of the originally assessed performance of the asset will flow to the agency in future years. Where these costs represent separate components of a complex asset, they are accounted for as separate assets and are separately depreciated over their expected useful lives.

**Construction (work in progress)**

As part of the financial management framework, the Department of Infrastructure is responsible for managing general government capital works projects on a whole of government basis. Therefore appropriation for capital works is provided directly to the Department of Infrastructure, Planning and Logistics and the cost of construction work in progress is recognised as an asset of that department. Once completed, capital works assets are transferred to the agency.

**Revaluations and impairment**

**Revaluation of assets**

Subsequent to initial recognition, assets belonging to the following classes of non-current assets are revalued with sufficient regularity to ensure that the carrying amount of these assets does not differ materially from their fair value at reporting date:

- land
- buildings
- infrastructure assets
- heritage and cultural assets
- biological assets and
- intangibles.

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 and intangible 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

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agency determines the asset's recoverable amount. The asset's recoverable amount is determined as the higher of the asset's depreciated replacement cost and fair value less costs to sell. Any amount by which the asset's carrying amount exceeds the recoverable amount is recorded as an impairment loss. No assets were assessed as being impaired 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 or amortised using the straight-line method over their estimated useful lives.

Amortisation applies in relation to intangible non-current assets with limited useful lives and is calculated and accounted for in a similar manner to depreciation.

The estimated useful lives for each class of asset are in accordance with the Treasurer's Directions and are determined as follows:

	2018	2017
Plant and equipment	10 years	10 years
Computer Software	6 years	6 years

Assets are depreciated or amortised from the date of acquisition or from the time an asset is completed and held ready for use.

**Leased assets**

Leases under which the agency assumes substantially all the risks and rewards of ownership of an asset, are classified as finance leases. Other leases are classified as operating leases.

**Finance leases**

Finance leases are capitalised. A lease asset and lease liability equal to the lower of the fair value of the leased property and present value of the minimum lease payments, each determined at the inception of the lease, are recognised.

Lease payments are allocated between the principal component of the lease liability and the interest expense.

**Operating leases**

Operating lease payments made at regular intervals throughout the term are expensed when the payments are due, except where an alternative basis is more representative of the pattern of benefits to be derived from the leased property. Lease incentives under an operating lease of a building or office space is recognised as an integral part of the consideration for the use of the leased asset. Lease incentives should be recognised as a deduction of the lease expenses over the term of the lease.

	2018	2017
	\$000	\$000
<b>10. PAYABLES</b>		
Accounts payable	4	13
Accrued expenses	12	9
<b>Total payables</b>	<b>15</b>	<b>22</b>

Liabilities for accounts payable and other amounts payable are carried at cost, which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the agency. Accounts payable are normally settled within 30 days.

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	2018 \$000	2017 \$000
<b>11. PROVISIONS</b>		
<b>Current</b>		
<i>Employee benefits</i>		
Recreation leave	267	217
Leave loading	18	17
Other employee benefits		1
 <i>Other current provisions</i>		
Other provisions	44	34
	329	270
<b>Total Provisions</b>	<b>329</b>	<b>270</b>

The Agency employed 13 employees as at 30 June 2018 (11 employees as at 30 June 2017).

**Employee benefits**

Provision is made for employee benefits accumulated as a result of employees rendering services up to the reporting date. These benefits include wages and salaries and recreation leave. Liabilities arising in respect of wages and salaries, recreation leave and other employee benefit liabilities and are measured at amounts expected to be paid.

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, sick leave and other leave entitlements and
- 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 Ombudsman's Office and as such no long service leave liability is recognised in agency financial statements.

**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 as such are not recognised in agency financial statements.

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**12. COMMITMENTS**

Disclosures in relation to capital and other commitments, including lease commitments. Commitments are those contracted as at 30 June where the amount of the future commitment can be reliably measured.

	2018		2017	
	Internal <sup>(a)</sup>	External <sup>(a)</sup>	Internal	External
	\$000	\$000	\$000	\$000
<b>(i) Other expenditure commitments</b>				
Other non-cancellable expenditure commitments not recognised as liabilities are payable as follows:				
Within one year	3		3	
Later than one year and not later than five years	5		8	
	<b>8</b>		<b>11</b>	

*(a) Internal commitments are to entities controlled by the NTG (entities listed in TAFR 16-17 Note 43: Details of controlled entities at reporting date), whereas external commitments are to third parties external to the NTG.*

	2018	2017
	\$000	\$000

**13. NOTES TO THE CASH FLOW STATEMENT**

**a) Reconciliation of cash**

The total of Agency 'Cash and deposits' of \$1,346,000 recorded in the balance sheet is consistent with that recorded as 'Cash' in the cash flow statement.

**Reconciliation of net surplus/deficit to net cash from operating activities**

<b>Net surplus/deficit</b>	161	34
<i>Non-cash items:</i>		
Depreciation and amortisation	42	46
<i>Changes in assets and liabilities:</i>		
Decrease/increase in receivables	3	(1)
Decrease/increase in prepayments	(1)	(1)
Decrease/increase in payables	(7)	(4)
Decrease/increase in provision for employee benefits	50	39
Decrease/increase in other provisions	9	6
<b>Net cash from operating activities</b>	<b>258</b>	<b>119</b>

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**14. 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 instruments held by the Ombudsman's Office include cash and deposits, receivables and payables. The Agency has limited exposure to financial risks as discussed below.

**a) Credit risk**

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.

**Receivables**

Receivable balances are monitored on an ongoing basis to ensure that exposure to bad debts is not significant. A reconciliation and aging analysis of receivables is presented below.

<b>Internal receivables<sup>(a)</sup></b>	Aging of receivables \$000	Aging of impaired receivables \$000	Net receivables \$000
<b>2017-18</b>			
Not overdue			
Overdue for less than 30 days			
Overdue for 30 to 60 days			
Overdue for more than 60 days			
<b>Total</b>	-		-
<b>2016-17</b>			
Not overdue			
Overdue for less than 30 days			
Overdue for 30 to 60 days			
Overdue for more than 60 days	1		1
<b>Total</b>	1		1

*(a) Internal receivables are from entities controlled by the NTG (entities listed in TAFR 2016-17 Note 43: Details of controlled entities at reporting date), whereas external receivables are from third parties external to the NTG.*

**b) Liquidity risk**

Liquidity risk is the risk that 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 that it will always have sufficient liquidity to meet its liabilities when they fall due.

**c) Market risk**

Market risk is the risk that 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. The primary market risk that an agency is likely to be exposed to is interest rate risk.

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**(i) Interest rate risk**

The Agency is not exposed to interest rate risk as financial assets and financial liabilities, are non-interest bearing.

**(ii) Price Risk**

The Ombudsman's Office is not exposed to price risk as the agency does not hold units in unit trusts.

**(iii) Currency Risk**

The Ombudsman's Office is not exposed to currency risk as the agency does not hold borrowings denominated in foreign currencies or transactional currency exposures arising from purchases in a foreign currency.

**15. RELATED PARTIES**

**i) Related Parties**

The Agency is a government entity 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; and
- spouses, children and dependants who are close family members of the portfolio minister or KMP; and
- all public sector entities that are controlled and consolidated into the whole of government financial statements; and
- any entities controlled or jointly controlled by KMP's or the portfolio minister or controlled or jointly controlled by their close family members.

**ii) Key Management Personnel (KMP)**

Key management personnel of the Agency are those persons having authority and responsibility for planning, directing and controlling the activities of the Agency. This includes the Chief Minister and the Chief Executive Officer.

**iii) Remuneration of Key Management Personnel**

The details below excludes the salaries and other benefits of the Minister, and long service leave expense and liability of KMP as these are recognized in the ledger of the responsible Departments.

The aggregate compensation of key management personnel of the Agency is set out below:

	2017-18	2016-17
	\$000	\$000
Short-term benefits	280	261
Long-term benefits	25	34
Termination benefits		
Total	<b>305</b>	<b>295</b>

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**iv) Related party transactions:**

**Transactions with Northern Territory Government controlled entities**

The Agency's primary ongoing source of funding is received from the Central Holding Authority in the form of output and capital appropriation.

The Agency also has significant transactions with the Department of Corporate and Information Services for delivery of Goods and Services and the Department of Treasury and Finance with regards to Payroll Tax.

The Agency's transactions with other government entities are not individually significant.

**Other related party transactions are as follows:**

Given the breadth and depth of Territory Government activities, related parties will transact with the Territory Public sector in a manner consistent with other members of the public including paying stamp duty and other government fees and charges and therefore these transactions have not been disclosed. No related party transactions in excess of \$10,000 or otherwise considered significant occurred during the reporting period.

**16. CONTINGENT LIABILITIES AND CONTINGENT ASSETS**

The Agency had no contingent liabilities or contingent assets as at 30 June 2018 or 30 June 2017.

**17. 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.

**18. BUDGETARY INFORMATION**

<b>Comprehensive Operating Statement</b>	2017-18 Actual	2017-18 Original budget	Variance	Note
	\$000	\$000	\$000	
<b>INCOME</b>				
Appropriation				
Output	1 932	1 932		
Sales of goods and services				
Goods and services received free of charge	359	353	6	
Other income				
<b>TOTAL INCOME</b>	<b>2 291</b>	<b>2 285</b>	<b>6</b>	
<b>EXPENSES</b>				
Employee expenses	1 565	1 710	-145	1
Administrative expenses				
Purchases of goods and services	163	218	-55	2
Repairs and maintenance		4	-4	
Depreciation and amortisation	42	39	3	
Other administrative expenses	359	353	6	
<b>TOTAL EXPENSES</b>	<b>2 129</b>	<b>2 324</b>	<b>- 195</b>	
<b>NET SURPLUS/(DEFICIT)</b>	<b>161</b>	<b>-39</b>	<b>200</b>	
<b>COMPREHENSIVE RESULT</b>	<b>161</b>	<b>-39</b>	<b>200</b>	

**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2018**

**Notes:**

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

1. Personnel savings due to delay in ongoing appointments pending anticipated transfer of Office of the Information Commissioner.
2. Operational savings due to reduced FTE relating to note 1 and related reduced capacity.

<b>Balance Sheet</b>	2017-18 Actual	2017-18 Original budget	Variance	Note
	\$000	\$000	\$000	
<b>ASSETS</b>				
<b>Current assets</b>				
Cash and deposits	1 346	969	377	1
Receivables		2	-2	
Prepayments	6	4	2	
Other assets				
<b>Total current assets</b>	<b>1 353</b>	<b>975</b>	<b>378</b>	
<b>Non-current assets</b>				
Property, plant and equipment	-	9	-9	
<b>Total non-current assets</b>	<b>-</b>	<b>9</b>	<b>-9</b>	
<b>TOTAL ASSETS</b>	<b>1353</b>	<b>984</b>	<b>369</b>	
<b>LIABILITIES</b>				
<b>Current liabilities</b>				
Payables	15	25	-10	
Provisions	329	224	105	2
Other liabilities				
<b>Total current liabilities</b>	<b>344</b>	<b>249</b>	<b>95</b>	
<b>TOTAL LIABILITIES</b>	<b>344</b>	<b>249</b>	<b>95</b>	
<b>NET ASSETS</b>	<b>1 008</b>	<b>735</b>	<b>273</b>	
<b>EQUITY</b>				
Capital	346	346		
Accumulated funds	662	389	273	
<b>TOTAL EQUITY</b>	<b>1 008</b>	<b>735</b>	<b>273</b>	

**Notes:**

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

1. Variance due to greater cash holdings from operational savings in both current and prior reporting periods.
2. Increased provisions largely due to new staff member transferring in with a large volume of accrued entitlements.

**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2018**

<b>Cash Flow Statement</b>	2017-18 Actual	2017-18 Original budget	Variance	Note
	\$000	\$000	\$000	
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Operating receipts</b>				
Appropriation				
Output	1 932	1 932		
Commonwealth				
Sales of goods and services	11		11	
<b>Total operating receipts</b>	<b>1 943</b>	<b>1 932</b>	<b>11</b>	
<b>Operating payments</b>				
Payments to employees	1 504	1 710	-206	1
Payments for goods and services	181	222	-41	1
Interest paid				
<b>Total operating payments</b>	<b>1 685</b>	<b>1 932</b>	<b>-247</b>	
<b>Net cash from/(used in) operating activities</b>	<b>258</b>	<b>-</b>	<b>258</b>	
Net increase/(decrease) in cash held	258		258	
Cash at beginning of financial year	1 089	969	120	
<b>CASH AT END OF FINANCIAL YEAR</b>	<b>1 346</b>	<b>969</b>	<b>377</b>	

**Notes:**

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

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

## HOW TO CONTACT THE OMBUDSMAN

### IN PERSON

12th Floor  
22 Mitchell Street  
Darwin, NT



### BY E-MAIL

[nt.ombudsman@nt.gov.au](mailto:nt.ombudsman@nt.gov.au)



### BY TELEPHONE

(08) 8999 1818  
or  
1800 806 380  
(Toll Free)



### BY MAIL

GPO Box 1344  
DARWIN, NT 0801



### ONLINE

[www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au)



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