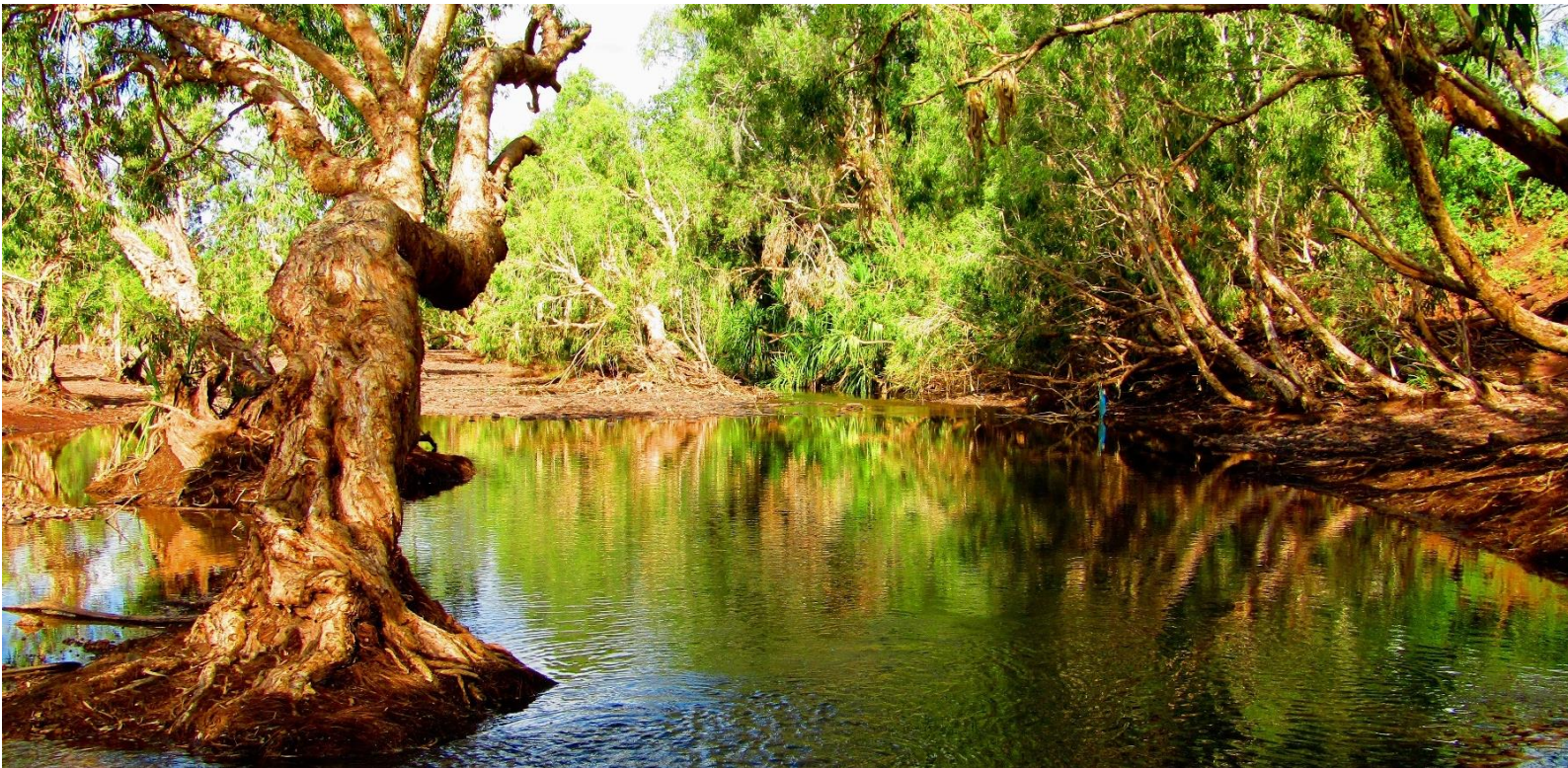




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Annual Report 2019/20

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



Annual Report 2019/20

TABLE OF CONTENTS

Overview of Ombudsman operations	1
<i>Sustained increased complaint numbers</i>	1
<i>Additional functions</i>	2
<i>Coronavirus</i>	2
<i>Other Office functions</i>	2
Key Performance Indicators	4
Vision, Mission, Core Values.....	5
CHAPTER 1 – Matters of Note In 2019/20	7
COVID-19	7
<i>Office preparations and operations</i>	7
<i>Liaison with agencies</i>	8
<i>COVID approaches received</i>	9
Custody Notification Service	10
Police auxiliaries in bottle shops	11
Prison disturbance	12
Crimes Victims Services Unit	12
CHAPTER 2 – What we do and how we do it	17
Independence	18
Impartiality	18
Scope of powers	19
Investigations conducted in private – reporting on outcomes	19
Identifying and prioritising issues.....	19
<i>Alternative avenues</i>	21
CHAPTER 3 – Implementation of recommendations	23
Major investigations	23
<i>Strangers in their own land</i>	23
<i>Women in Prison II</i>	27
Other recommendations	33
<i>Police investigations</i>	33
<i>Treatment in watch houses</i>	34
CHAPTER 4 – Approaches – Enquiries and complaints	37
Number of approaches	37
Variations.....	37
Sources of approach	38
How approaches are made.....	39
How approaches are dealt with.....	39
<i>Dealing with Ombudsman matters</i>	39
<i>Referrals to another complaints entity</i>	40
<i>Outside jurisdiction</i>	40
How quickly approaches are dealt with	41

Outcomes.....	42
Specific agencies.....	44
<i>Correctional Services</i>	44
<i>Jacana Energy</i>	45
<i>Power and Water Corporation</i>	46
<i>Housing</i>	50
CHAPTER 5 – NT Police	53
How Police conduct approaches are dealt with.....	53
<i>Enquirer assistance and preliminary inquiries</i>	53
<i>Complaint assessment</i>	53
<i>Complaint Resolution Process</i>	54
<i>More serious complaints</i>	54
<i>Investigations</i>	55
<i>Outcomes</i>	55
Police conduct approaches during 2019/20.....	57
<i>Approaches received</i>	57
Police conduct outcomes.....	57
<i>Category 1 and 2 complaint outcomes</i>	57
<i>Internal Investigations outcomes</i>	58
Police conduct case studies.....	60
Youth justice recommendations.....	66
Statutory oversight functions.....	73
<i>Firearm prohibition orders</i>	73
<i>Surveillance devices</i>	74
<i>Telecommunications interception</i>	74
<i>Controlled operations</i>	75
CHAPTER 6 – Quality Improvement and Community Engagement	77
Quality improvement.....	77
<i>Legislative and policy reform</i>	77
<i>Complaints and review bodies</i>	77
<i>Training and presentations</i>	78
<i>Other involvement with public authorities</i>	78
Community and stakeholder engagement.....	79
CHAPTER 7 – Our Office	81
Corporate Governance, Planning and Performance.....	81
Our staff.....	81
<i>Public Sector Principles</i>	82
<i>Professional Development</i>	82
Systems, policies and procedures.....	83
Work Health and Safety.....	83
Records Management, disclosure and correction.....	83
<i>Information held by the Office</i>	83
<i>Providing access to information</i>	85
APPENDIX A – Police Complaints Agreement	87
APPENDIX B – Financial Statements	107
How to contact the Ombudsman	130

Overview of Ombudsman operations

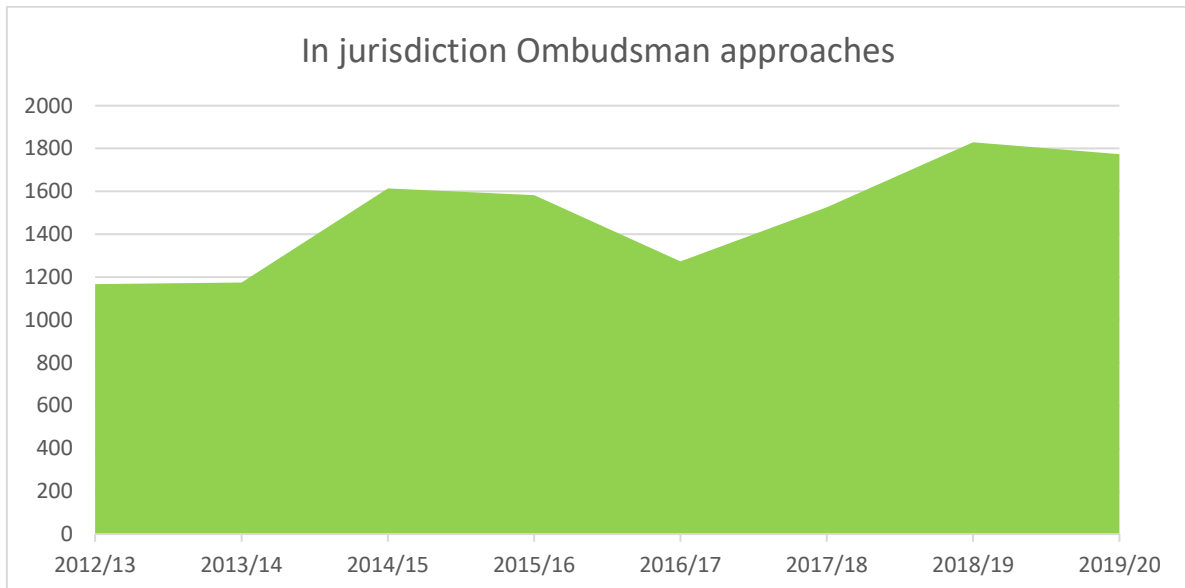
The Ombudsman Office operates jointly with the Office of the Information Commissioner (OIC). The Ombudsman is also the Information Commissioner. There are dedicated staff within the OIC but other staff have roles within both offices, in particular, the Deputy Ombudsman, who is also Deputy Information Commissioner. A separate Annual Report is prepared for the OIC.

Sustained increased complaint numbers

Both the Ombudsman Office and the OIC have experienced substantial increases in complaint/application levels in recent years.

The average total annual approaches to the Ombudsman over the baseline period 2003/04 to 2013/14 was 2,063. In 2018/19, the Office received 2,592 approaches (26% above that baseline average). In 2019/20, that increase was essentially sustained with 2,535 approaches (23% above that baseline average).

The following table shows the increase in 'In Jurisdiction' Ombudsman approaches since 2012/13:



Those increases have been addressed through internal structural changes without additional resources being sought or allocated during my seven years as Ombudsman.

With regard to the OIC, complaints have almost doubled in the space of three years, increasing from 26 in 2016/17 to almost 50 in 2019/20. On its face, these numbers are not large but these complaints usually involve a substantial level of complexity, and there are increasingly frequent referrals to the NT Civil and Administrative Tribunal (NTCAT), which place substantial demands on the OIC.

A more detailed analysis of Ombudsman approaches received, including a number of case examples and case studies is set out in Chapters 4 and 5.

Additional functions

Recently, a number of additional functions have been added to the workload of the offices, without additional resource allocation, e.g.:

- firearm prohibition orders review;
- domestic violence information sharing reviews;
- NTCAT referral function, including numerous appearances before NTCAT;
- law enforcement agencies covert operations monitoring function.

There is a significant prospect that there will be proposals to add further functions in 2020/21.

Coronavirus

This additional workload was further complicated by the advent of COVID-19, which impacted to a significant extent on the operations of the Ombudsman Office and the OIC, as well as on the timeliness with which a variety of public sector agencies could respond to enquiries and complaints from members of the public and our offices.

This inevitably led to both complaints regarding delay and delay in handling complaints. While we only had 80 Ombudsman Office approaches open at 30 June 2019, this had grown to 193 open at 30 June 2020. This must be viewed in the context of 2,427 approaches closed during the year, with 96% of closed cases finalised within 90 days, but it is still a significant increase in cases outstanding at the end of the year.

Even bearing in mind the influence of COVID-19, the increase is also attributable in part to a pre-existing and rising backlog of NT Police conduct complaints and in part to the ongoing increased workload facing the Office.

The impact of COVID-19 on the Office and NTG agencies and the nature of coronavirus-related complaints received in the period are discussed further in Chapter 1.

I must note here my huge thanks to all the staff of our offices. They have so far met the challenges of operating in a COVID-19 environment with flexibility, a positive attitude and a commitment to continuing service to complainants and the community.

Other Office functions

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 2.

In 2019/20, we did not produce for tabling any major investigation reports but did produce a detailed report on justice-related issues, *The Justice Continuum*, as Part 1 of our Annual Report for 2018/19. We continued to monitor implementation of recommendations from two previous major investigation reports: *Strangers in their own land – Use of Aboriginal interpreters by NT public authorities* and *Women in Prison II - Alice Springs Women's Correctional Facility*. Updates on implementation of recommendations arising from those reports and other recommendations we have made are set out in Chapter 3.

Many Office functions were disrupted by the need to invest time and resources into dealing with the pandemic and by physical restrictions on travel and contact. For one, our community engagement program was much reduced during the year, with only a few communities and regional centres visited. Training by our Office and professional development opportunities for our staff were also significantly limited, with numerous events postponed or cancelled, although some did proceed online. A number of corporate projects were also delayed due to the substantial demands that dealing with coronavirus placed on our small Business Services Unit.

Noting those limitations, Chapter 6 describes a number of community engagement and quality improvement initiatives we undertook during the year, including:

- contributing to NT Government policy development by:
 - providing input on invitation or request on a range of policy and legislative matters for consideration by government;
 - serving on the Northern Territory Law Reform Committee;
- visits to a confined number of communities and regional centres;
- undertaking or contributing to training activities and presentations for public sector staff and other stakeholders; and
- serving on the Executive of the Australian and New Zealand Ombudsman Association.

Finally, Chapter 7 discusses corporate aspects of the offices' functions. From a corporate perspective we progressed a number of initiatives, including:

- completing a relatively seamless transfer to new offices as part of a building refurbishment;
- establishing a statement of our *Strategic Priorities 2020-2024*, with input from all staff;
- advancing a records management project aimed at improving our capacity for digital storage and preparing numerous hard copy files for disposal or off-site storage; and
- laying the groundwork for a number of enhancements to our case management system for implementation when time and resources permit.

This was a challenging year for everyone. I close by thanking my Senior Management Group for guiding the offices in uncertain times and repeating my gratitude to all staff for their versatility, persistence and resilience.



PETER SHOYER
OMBUDSMAN
30 September 2020

KEY PERFORMANCE INDICATORS

Key Deliverables	2017/18	2018/19	2019/20
<p>Total approaches received</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>	2,304	2,592	2,535
<p>Total approaches finalised</p> <p>Includes approaches carried over from the previous year and approaches reopened after the end of that year.</p> <p>193 approaches were open at 30 June 2020 compared to 80 at 30 June 2019.</p>	2,293	2,605	2,427
<p>Police approaches finalised within 90 days</p> <p>Includes enquiries and preliminary enquiries undertaken by the Office and matters dealt with by Police under oversight of the Ombudsman.</p>	92%	88%	86%
<p>Other approaches finalised within 28 days</p> <p>Refers to all non-Police approaches, including local government.</p>	92%	96%	92%
<p>Recommendations accepted</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>	88%	91%	96%

VISION, MISSION, CORE VALUES

The Ombudsman NT:

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

Our Vision (our ultimate aim)

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

Our Mission (how we contribute to our vision)

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

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

- **Fairness**
We are independent and impartial. We respond to complaints without bias. We give everyone the chance to have their say. We do not take sides.
- **Integrity**
We take action and make decisions based on our independent assessment of the facts, the law and the public interest.
- **Respect**
We act with courtesy and respect. We recognise and respect diversity. We seek to make our services accessible and relevant to everyone. We consider the impact of our actions on others.
- **Professionalism**
We perform our work with a high degree of expertise and diligence.
- **Accountability**
We are open about how and why we do things. We are responsive and deal with matters in a timely manner. We allocate priorities and undertake our work so that the best use is made of public resources.

CHAPTER 1 – MATTERS OF NOTE IN 2019/20

COVID-19

Office preparations and operations

To date, through a combination of good management and good fortune, the Northern Territory has weathered the coronavirus storm well compared to so many other places. However, many Territorians have suffered considerable loss and dislocation.

We have received a number of complaints from Territorians whose lives have been disrupted by the pandemic (discussed below). We have also exchanged information with colleagues elsewhere in Australia and New Zealand regarding the best ways to ensure business continuity and service provision.

The issues our Office has faced have been limited compared to the struggles of many others. We thank our colleagues for sharing their experiences and innovative approaches. We thank our complainants for their forbearance, understanding and patience in these extraordinary times.

We set out below a brief description of the work we undertook to prepare for the coronavirus and ensure continuity of operations.

The Chief Executive of the Department of the Chief Minister provided advice to all NTPS staff regarding the novel coronavirus on 29 January 2020. From the next day, staff were advised of requirements for self-isolation of travellers returning from Hubei Province in China. After that time, and particularly from early March, the situation developed at an extraordinary pace, with various and fluctuating implications for our offices and our staff.

Over the course of the pandemic to date, we have not found it necessary to physically close the Office. We have sought to restrict or limit the length of physical visits to the Office and encouraged people, where possible, to use alternative means to access our services. We continue to work through remote meetings where that is achievable and to limit the number of people in public areas and meeting rooms to maintain social distancing. We have, however, continued to engage with complainants who attend the office.

Our Senior Management Group undertook business continuity planning from an early stage. This included building on existing remote access resources to ensure that an adequate number of staff had the computers, phones, internet access and system access to enable effective work from home, should that prove necessary. In that regard, we were ably assisted by the Department of Corporate and Information Services in providing additional hardware but the bulk of the work was carried out by our small but very capable Business Support Unit (the BSU).

Preparations involved trialling working from home for all staff for all aspects of the Office's functions (although not all at once). Staff generally adapted well to working from home, although there was again much work undertaken by the BSU, fine-tuning hardware and access arrangements. While working from home has its inherent limitations, this approach was maintained for some time to build familiarity with remote work but gradually reduced, with social distancing and hygiene practices maintained in the workplace and working from home now approved on request for particular purposes.

One area of particular concern for us was maintaining prisoner phone access. Prisoners can write to our Office but mail can take considerable time to reach us. The only other option for them is to call. Arranging a return call is complicated and, particularly with the heightened states of concern being experienced by some prisoners in the early stages of the pandemic, we considered it important for us to maintain the ability to take direct calls, even if we were all required to work remotely. Our Office worked with Corrections to implement a solution whereby a number of our staff would be able to alternate in taking prisoner calls remotely, even if demand increased.

There were some areas of Office operations that were unavoidably impacted. There was no potential for visits to remote communities for an extended period and indeed little prospect of travel to other centres for some time. We were also unable to visit prisons for a time due to access restrictions. Training by our Office and professional development opportunities for our staff were also significantly limited, with numerous events postponed or cancelled. A number of corporate initiatives were also delayed or slowed down due to competing priorities.

Even with the technology that made remote work a feasible option, the staff of the Office have been the key to maintaining business continuity. We have sought to engage, inform and encourage staff throughout by way of regular emails, online meetings, individual discussions and, where 'social distancing' has permitted, face to face group meetings. They have conducted themselves with exceptional flexibility and commitment to public service. As with any group, staff have had varying views on the pandemic and the steps necessary to deal with it. They have supported each other and maintained a cohesive team in the face of the many changes to business practices necessary to prepare for the potential impact of COVID-19. They have done a great job and all should be proud of their efforts.

The work of planning, trialling and implementing different work practices has taken a huge amount of time and effort. There were also staff absences due to the need to comply with self-isolation requirements, whether on return from interstate/overseas or following testing on medical advice. All this has happened in an environment of an already heavy complaint workload and in a situation where responses from agencies have been significantly delayed due to their competing priorities arising from coronavirus. The latter has been particularly true for our two largest sources of approach, NT Police and Corrections.

All these factors have combined to extend timeframes for resolution of many approaches. I can only reiterate our thanks for the understanding and patience of complainants. We will continue to implement necessary precautions in our business operations and be prepared to act on further developments as they arise.

Liaison with agencies

The early days of the pandemic were filled with angst and urgency. An enormous amount of planning and implementation of novel rules and procedures had to be carried out with incredible haste. To add to this, there was a degree of overlap in areas of action between the Commonwealth and Territory governments and between NT agencies. There were also numerous non-government stakeholders with strong interests in particular action being taken or not taken. The level of co-operation was high but there were also extraordinary pressures of time and competing priorities.

In those circumstances, it was important for our Office to consider how best to add value to the operations of agencies within our jurisdiction. We were, of course, continuing to receive and act on complaints, some relating to COVID-19, but we also considered it important to take a proactive stance in promoting fair and reasonable administrative action while not ourselves unreasonably intruding on the vital work being undertaken.

To do this, we identified key NTG agencies as Corrections (and the broader Department of the Attorney-General and Justice), the Department of Health and NT Police. We liaised with each agency, seeking information on steps being undertaken and raising matters they may wish to consider in the implementation of their response to COVID-19. Where necessary, we also established new contacts to facilitate effective handling of complaints to our Office as they arose.

We have maintained considerable ongoing contact with Corrections, receiving regular updates on implementation of COVID-19 measures. We had early identified the prison population as at particular risk in the event of an outbreak and raised for consideration a range of initiatives that might go, at an appropriate juncture, towards mitigating that risk. Unlike many other prison systems across the world, and to the great good fortune of the NT, no outbreak has occurred to date. We have also maintained ongoing liaison with NT Police regarding measures for enforcement of Chief Health Officer Directions and sought detailed information from NT Police in that regard.

At the same time, we have continued to receive and liaise with relevant agencies on individual COVID-related complaints. We are currently considering what aspects of agency responses to the pandemic may bear further investigation and report.

COVID approaches received

During the period up to 30 June 2020, 85 of the approaches we received had some COVID-19 element. The most common approaches for agencies in-jurisdiction related to Corrections (27), the Department of Health (13) and NT Police (8). It is important to note that the descriptions that follow relate to issues raised, not sustained issues.

Many early callers from prisons were clearly concerned at the prospect of COVID-19 finding its way into the prison and rapidly spreading in a confined space. Issues raised related to:

- implementation and communication of hygiene measures
- difficulties with maintaining self-isolation
- the potential for early release
- restrictions on social and professional visits
- the adequacy of isolation facilities
- isolation arrangements for incoming prisoners
- delays in responding to routine requests brought about due to COVID
- potential loss of pay while in isolation
- restrictions on outside work parties.

Many of those cases arose due to uncertainty as to the steps being undertaken by Corrections and concerns were, in a number of cases, allayed by provision of additional information.

The scope of the Department of Health approaches reflected the scope of restrictions imposed due to COVID-19. They raised issues such as:

- restrictions on business operations
- delay in consideration of border exemption applications
- refusal of border exemption applications and avenues for challenge
- the basis for border controls and the cost of mandatory quarantine
- objection to re-opening too soon.

Approaches regarding NT Police involved issues such as:

- rudeness at a biosecurity checkpoint
- rudeness when conducting an isolation check
- potential for encroachment on personal liberties and discriminatory practices
- inappropriate or unlawful COVID compliance checks
- the validity of border controls
- closure of a police facility due to COVID.

Approaches involving other agencies related to:

- NT home improvement scheme
- the general impact of border closures on business
- financial hardship in meeting bills issued by agencies.

In 25 cases, the approach involved general expressions of concern or requests for information or related to entities (public or private) outside the jurisdiction of our Office. Examples included:

- enquiries about financial assistance, e.g., Jobseeker and rights to challenge dismissal due to COVID-19
- enquiries about leave entitlements at a private business when in self-isolation
- general enquiries about border controls
- enquiries from tenants evicted from private premises during COVID-19
- a complaint about refusal of early parole
- concerns about restrictions on travel due to Commonwealth-imposed biosecurity limits
- failure to obtain a refund for unused travel and accommodation.

CUSTODY NOTIFICATION SERVICE

During this financial year, our Office has been monitoring the progress of implementation and compliance with the new Custody Notification Service.

The issue of “custody notification services” around the country became topical following a recommendation made as a result of the Royal Commission into Aboriginal Deaths in Custody (1987-1991). The services were recommended as a method of preventing avoidable deaths in custody and improving justice outcomes by allowing a culturally appropriate service to conduct a wellbeing check and provide basic legal advice or information regarding the person’s rights.

For many years, there was no formal or mandated custody notification service in the Northern Territory. There was an informal practice between NT Police and local Aboriginal legal services to utilise a “custody phone” where an Aboriginal person had been arrested and requested to speak with an Aboriginal legal service.

In mid-2019, the Northern Territory Government implemented a Custody Notification Service (CNS). The CNS is delivered by the North Australian Aboriginal Justice Agency (NAAJA) in partnership with NT Police. An MOU was developed between NAAJA and Police with respect to how the scheme would be managed and monitored. The CNS was formally implemented by insertion of a new section 19B of the *Police Administration Regulations 1994*.

A number of concerns have been raised with our Office regarding compliance with the new regulatory requirements in the sense of failures to notify, delays in notification, or the person in custody not actually receiving the benefits expected from a notification (for example, Chapter 5, Case 2).

Our Office has been collating background information, monitoring implementation strategies and compliance statistics in this area, and we have been informed of some improvements. We will continue to monitor this as an area of interest in the coming year.

POLICE AUXILIARIES IN BOTTLE SHOPS

One initiative that has given rise to a number of complaints against Police has been the Point of Sale Intervention, which has involved stationing Police Auxiliary Liquor Inspectors (PALIs) in or near take away alcohol outlets in some centres.

Part 11, Division 1 of the *Liquor Act 2019* provides liquor inspectors and police with extensive powers in relation to people who appear to be intending to purchase, to have purchased or to possess alcohol for consumption away from licensed premises. The powers apply in relation to people on or within 20 metres of licensed premises.

The legislated power to seek information is extensive, including:

- requiring the customer to:
 - state their name and address;
 - state where they intend to consume the liquor;
 - show their ID;
 - answer questions about the information in the ID to confirm that the information is accurate;
 - answer questions about whether they are:
 - subject to a prohibition relating to the banned drinker register; or
 - prohibited from consuming liquor at the place they intend to consume the liquor;
 - state whether they intend to provide any of the liquor to another person.
- if they appear to intend to provide any of the liquor to another person:
 - require them to answer questions about the other person, to find out if the other person is prohibited from consuming liquor;
 - investigate whether they or the other person are subject to a bail condition relating to liquor;
 - investigate whether they or the other person are subject to a prohibition relating to the banned drinker register.

If the inspector or police officer suspects on reasonable grounds that a liquor offence is likely to occur, they may seize alcohol and/or prevent the customer from entering or remaining on licensed premises. Liquor offence is defined to include offences against the *Liquor Act 2019* or *Alcohol Harm Reduction Act 2017* and breaches of liquor-related bail conditions or domestic and family violence court orders.

While they are clearly spelled out in legislation, it is fair to say that they are extraordinary powers which involve considerable discretion and judgement in their implementation. The extent to which people going about their daily business can be questioned regarding their habits and intentions has been confronting to some, causing heightened concern and scrutiny of the conduct and motivations of the PALIs required to carry out this function.

During the reporting period, our Office received 16 complaints relating to the actions or conduct of PALIs. A number of those complaints related to dissatisfaction with the scheme and the power of officers to ask the questions they did and refuse the purchase of alcohol. Others related to the particular way in which officers went about the function, including failure to communicate clearly and alleged rudeness. A small number raised allegations or concerns that the scheme was discriminatory or, in a particular case, appeared to be implemented in a discriminatory way. One matter related to initial approval to purchase and a subsequent refusal (see Chapter 5, Case 5), another to alleged failure to maintain privacy in a discussion in licensed premises and another to inaccurate information on a police system.

Eleven complaints were dealt with under the Complaints Resolution Process (see Chapter 5 for a description of this informal process), with 10 of the CRPs resulting in successful resolution - the other was recorded as unsuccessful because the complainant could not be contacted. Those cases involved the provision of further information or explanation by NT Police, with some complainants being given an apology and one being provided with compensation for seized alcohol. In 3 cases, officers were provided with remedial advice regarding implementation of the provisions. Four complaints were withdrawn or discontinued, while one remains open.

My Office continues to receive complaints relating to actions and conduct of PALIs and will continue to pursue with NT Police the individual issues raised. These provisions grant unusual powers and discretions to PALIs, many of whom are relatively new to the exercise of police powers. NT Police has recognised this and provided a considerable amount of guidance. It is essential that they continue to provide careful guidance, training and oversight for PALIs.

It is clear there remains a level of community uncertainty and disquiet about the scheme and the way it is applied. In those circumstances, it is vital to promote ongoing, broad-based community understanding and acceptance of the scheme. From that perspective, it is important for the NT Government and NT Police to explore what further steps can be taken to positively engage with communities and community members in the catchment areas of the centres where it operates.

PRISON DISTURBANCE

In May 2020, there was a major disturbance at the Darwin Correctional Centre, during which a substantial number of prisoners escaped from their cells. They were confined within the broader prison perimeter and the situation was brought under control on the evening in question. However, there was extensive fire damage to prison infrastructure.

Our Office was given an initial briefing on the incident and advised that independent reports would be commissioned into aspects of the disturbance. We obtained copies of the relevant terms of reference and decided there would be limited value in pursuing any separate investigation prior to the finalisation of the reports. We were given ongoing updates on progress and I met with independent reviewer, Professor John Paget and the Commissioner of Corrections, regarding the review, at which time I provided input from our Office for the purposes of the review.

The Paget review has been finalised and I have been given a briefing on its contents. I have sought a copy of the full review report in order to consider its findings and recommendations and whether, and to what extent, there is need for further investigation or action on the part of our Office.

CRIMES VICTIMS SERVICES UNIT

The Crimes Victims Services Unit (CVSU) - a unit within the Department of the Attorney-General and Justice (AGD) plays a key role in handling applications for financial assistance under the *Victims of Crime Assistance Act 2006*. Over time, a backlog of applications has built up. Our Office has monitored efforts to address this backlog over several years. While some progress is being made, there remains a huge backlog of older cases.

The CVSU has provided the following update:

- *The CVSU continues to work on constantly improving processes and reducing response times and the backlog of applications;*
- *Output of the unit continues to grow with four consecutive years of year on year growth in terms of decisions made under the Act and financial assistance paid to victims (see table).*

Year	Applications received	No of decisions made under Act	Total paid to victims
2016/17	426	213	\$1.134m
2017/18	401	384	\$2.78m
2018/19	428	390	\$3.005m
2019/20	373	476	\$3.588m (preliminary figure)

- *CVSU is now essentially keeping up with the number of applications being received, and 2019/20 has seen the start of a small but steady decline in the overall backlog;*
- *Complaints to the Ombudsman have reduced (with only 3 complaints received in 2019/20 financial year);*
- *Most applications the subject of Ombudsman complaints since 2016 are now finalised. As at 30 June 2020, there had been 31 complaints to the Ombudsman in relation to 48 files since 2016 with all but 3 finalised;*
- *The restructure implemented over 2018/19 is starting to see some results. Further improvements that were ongoing over 2019/20 are as follows:*
 - *Focus for 2019/20 was on addressing the backlog, as much as possible within the very tight budgetary constraints of the unit. The backlog project commenced with an additional two year part-time (0.6) AO5 applications officer commencing in October 2019. This officer is working side by side with a senior applications officer as a small backlog team. This team has focussed on pre-2018 applications and has resulted in reduction in the pre-2018 backlog from around 1110 to 825 over the 2019/20 financial year;*
 - *New administrative procedures identified and commenced in 2018/19 have now been bedded down. The team continues to work on identifying and implementing continual improvements, including reviewing the approach to processing domestic violence applications; streamlining the deferral process and developing a range of fact sheets for stakeholders and applicants to reduce the level of inquiries. The administrative team continues to undertake the role of requesting information and providing follow ups to applicants to allow more senior applications officers to focus on processing applications.*
 - *Triaging project has been finalised. New files are now assessed on a range of factors including vulnerability of the victim; seriousness of the offence; age of the victim etc. An AO5 applications officer is dedicated to triaging and processing immediate applications and less complex applications, with the support of the administrative team;*
 - *The AO4 Applications Officer role has now been cemented into the team. Her role has been focussed on arranging medical appointments. This one point of contact for all such matters has created a more coordinated approach thereby improving the number of appointments being made and the quality of the reports being received.*

- *Unfortunately a large overall backlog still exists of around 1700 outstanding applications. CVSU will continue to focus on the pre-2018 backlog in 2020/21 including focusing on ways to enhance the capacity of larger team to support the small backlog team;*
- *The backlog of outstanding requests for records from the Police information Unit (PIU) has increased significantly over 2019/20 due to a lack of police resources directed to the PIU which appears to be partly due to COVID-19 resource demands. To mitigate the effect of this backlog on CVSU, the unit has developed strategies with Police to identify and triage urgent requests with a 3 category system of requests. This has allowed Police Information Unit to be more responsive to the day-to-day needs of the CVSU and has meant that the Police backlog has had limited impact on the capacity of CVSU to respond to and process applications, including immediate applications.*
- *With greater efficiencies achieved and implemented in the team over 2018/19, CVSU has been able over 2019/20 to focus more on building capacity of legal representatives and other stakeholders to advise and support their clients with victims financial assistance applications. CVSU have commenced an ongoing workshop program with stakeholders including Victims of Crime NT to enable them to more effectively support their clients by giving them a better understanding of the financial assistance scheme and more effective communication channels with CVSU staff;*
- *COVID-19 has had limited impact on the operations of the CVSU:*
 - *It has affected to a degree the ability of some victims to be medically assessed in circumstances where the specialist is required to have face to face contact eg maxilla-facial appointments. On the other hand, it has meant that more clients are open to accessing remote medical assessments, particularly for psychological assessments and where it is possible to use an on-site physiotherapist or health practitioner to take measurements for a remote specialist;*
 - *It is likely that the small decrease in applications numbers in the 2019/20 can be attributed to COVID-19 in the sense that legal representatives were prevented for visiting remote communities for some months.*
 - *Other than that CVSU has been able to adapt to working from home with some vulnerable staff still working from home as at 30 June 2020.*

I noted last year that the CVSU has taken on responsibility for the *NT Redress Coordination Team (NTRCT)* and oversight of the new Charter of Victims Rights. With regard to the former, the CVSU advises:

The NT Redress Coordination Team (NTRCT) continues to be part of the CVSU, since June 2018. This team is responsible for coordinating the NT Government's obligations under the National Redress Scheme for Survivors of Institutional Child Abuse and also for oversight of the policy response. The NTRCT is now regularly receiving and processing Requests for Information on behalf of the NT Government. It has also started to receive and coordinate Counselling and Psychological Care for redress recipients. The Team has rolled out a full suite of training to assist in meeting the NTGs requirements under the IGA to provide support to people exposed to traumatic material due to their involvement in the National Redress Scheme. The suite includes training in vicarious trauma, understanding the impact of child sexual abuse on survivors, trauma informed care and resilience training. Other than a short break, this training has continued under the COVID-19 crisis with changes made to accommodate necessary social distancing requirements and incorporate general well-being to support mental health during the crisis.

Both the NTRCT and victims charter roles are important in terms of providing redress and support for victims. It is essential that they be assigned adequate priority and resources but not to the detriment of other CVSU functions.

I accept that the CVSU and AGD continue to make considerable effort to streamline processes within the existing victims of crime assistance scheme. Their work is achieving significant results but a huge backlog still remains. In my view, it will remain difficult to obtain substantial improvements in victim outcomes without some form of legislative change.

I noted last year that our Office had contributed to a review of the *Victims of Crime Assistance Act*. My understanding is that that review has not yet been finalised. In the circumstances, I will reiterate earlier comments.

It is crucial that structural hurdles that have contributed to the backlog are mitigated in the development of new or amended legislation. The Victims of Crime Charter states that the essence of support for victims of crime should be to provide 'simple, quick, coordinated and respectful' service. Delay and complexity in dealing with matters can do little to assist, particularly when dealing with victims who may be traumatised by violent crime. It is important that timely consideration be given to a legislative solution.

Further, it is crucial to appreciate that, even if processes are improved for future applications, it will remain necessary to address the existing backlog if any new approach is to work effectively.

CHAPTER 2 – 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:

- **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 did not produce any major investigation reports for tabling in 2019/20 but did continue to monitor implementation of recommendations arising from previous reports (see Chapter 3).
- **Approaches – enquiries and complaints** – The bulk of our effort is spent in dealing with approaches to the Office. We received 2,535 approaches in 2019/20 and finalised 2,427 (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 (see Chapter 4).
- **Police conduct complaints** – A total of 600 of the approaches we received in 2019/20 were about Police conduct. Complaints about Police conduct have their own statutory framework set out in the *Ombudsman Act 2009*. 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 (see Chapter 5).
- **Law enforcement auditing and investigation** – In relation to surveillance devices, telecommunications interception and controlled operations powers of law enforcement agencies, we have ongoing statutory obligations to audit/investigate and report on certain functions. Reports on surveillance devices and controlled operations powers are tabled in the Legislative Assembly on a regular basis and are available on our website. In addition, we are required to conduct a ‘one-off’ review of the implementation of new Firearm Prohibition Order powers (see Chapter 5 – Statutory oversight functions).
- **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 (see Chapter 6).
- **Community and stakeholder engagement** – Other issues can be raised, clarified and resolved in the course of, or as a result of, stakeholder meetings, presentations and public discussions or through provision of information and links to information, for example, on the Ombudsman website (see Chapter 6).

INDEPENDENCE

Independence and impartiality are key drivers of the Office. The *Ombudsman Act 2009* 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 plus years since the Office commenced.

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

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

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

IMPARTIALITY

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

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

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

SCOPE OF POWERS

Of course, while independent, the Ombudsman is bound to comply with the law and act within the boundaries set by the *Ombudsman Act 2009*. The powers of the Ombudsman relate to the administrative actions of public authorities and police conduct.

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

INVESTIGATIONS CONDUCTED IN PRIVATE – REPORTING ON OUTCOMES

The Ombudsman is required by the *Ombudsman Act 2009* to conduct investigations in private.¹ There are confidentiality provisions that make the inappropriate disclosure of information relating to inquiries and investigations an offence.²

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

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

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

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

IDENTIFYING AND PRIORITISING ISSUES

We identify issues or potential issues of concern by a range of methods including analysis of complaints received, monitoring parliamentary debates, media reports 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 2009* and other relevant legislation.

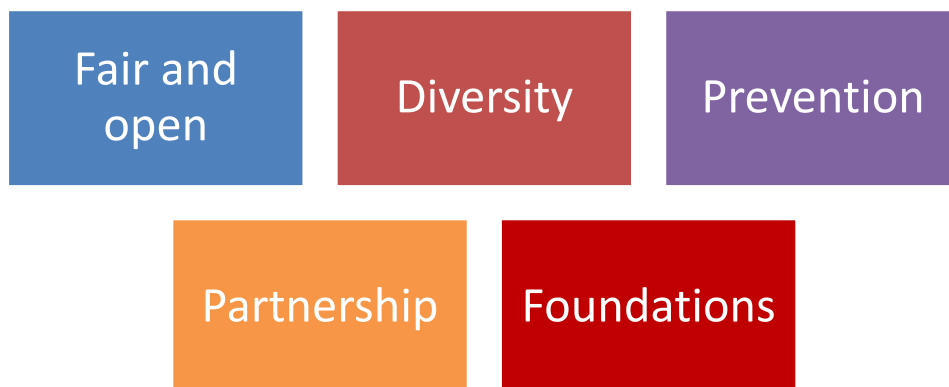
The Office has recently developed a **Strategic Priorities** document as a guide for our actions from 2020 to 2024: https://www.ombudsman.nt.gov.au/system/files/fileuploads/strategic_priorities_jun20.pdf .

¹ *Ombudsman Act*, s.49(1).

² *Ombudsman Act*, s.120.

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

They are identified under five aspirations which are briefly described below.



Fair and Open

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

Foundations

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

Diversity

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

Prevention

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

Partnership

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

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

Potential harm involved

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

Other factors

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

Alternative avenues

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

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

Taking the Coroner as an example, if the circumstances surrounding the death of person relate in some way to NT Police or Corrections officers, my Office may well seek a briefing on the circumstances to gain an understanding of what was involved, whether there were any aspects of the matter in which we should take action, and to assure ourselves that appropriate investigative steps are being undertaken.

We might also liaise with a relevant agency in relation to any general points or immediate actions that the circumstances might present to us. However, following such preliminary investigations, it is likely we would refrain from any substantive investigative action while the coronial process takes its course rather than unnecessarily duplicating or complicating investigative efforts.

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

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

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

CHAPTER 3 – IMPLEMENTATION OF RECOMMENDATIONS

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 series of complaints or may be undertaken on the Ombudsman's own initiative.

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. A major investigation may result in the preparation of a report to the Chief Minister for tabling in Parliament.

There is no particular pattern as to when the need for a major investigation may arise and no target 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 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.

We did not produce any major investigation reports for tabling in 2019/20 but did continue to monitor implementation of recommendations arising from previous reports. Updates on developments relevant to two previous reports are set out below:

- *Strangers in their own land – Use of Aboriginal interpreters by NT public authorities* (August 2018);
- *Women in Prison II – Alice Springs Women's Correctional Facility* (May 2017).

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

Strangers in their own land

Imagine for a moment that you wake to find yourself in your own country, in a system where you do not have the privilege of a shared pervasive language, where the culture is vastly different from your own, and where everyday functions, from the most complex to the simplest, are conducted in a foreign language according to foreign rules.

In the Northern Territory, a substantial proportion of the population finds itself facing this confronting situation on a daily basis in communities they have called home for generations.

For Aboriginal Territorians, the level of English proficiency varies substantially. Many are articulate and confident in their dealings with officials. Many have sufficient English to understand and make themselves understood well enough in routine transactions. But many do not.

There is longstanding general recognition at international, Australian and Territory levels that equitable service delivery can only be effectively undertaken in a language in which the client is proficient.

With Aboriginal Territorians comprising over 30% of the Territory's population, there is a special onus on NTG agencies to be at the forefront in terms of providing information and interaction in Aboriginal languages. With this in mind, the role of Aboriginal interpreters must be a key focus for NTG agencies.

This Ombudsman NT investigation was, in part, a scoping exercise to establish the current state of play for Aboriginal interpreter use by NTG agencies, to point to promising initiatives and to areas where further work is needed.

The report examined international, as well as Australian and Territory whole-of-government frameworks for Indigenous interpreter use. It also considered current practices of a cross-section of NTG agencies which interact regularly with Aboriginal Territorians as well as the work of the Aboriginal Interpreter Service (AIS) which provides interpreter services in numerous Aboriginal languages.

The investigation determined that various agencies are undertaking promising initiatives but there is work that remains to be done at all levels of government. The evidence strongly suggests that, for a variety of reasons, the real level of need for Aboriginal interpreter services is substantially greater than the current level of use.

Key conclusions of the report included:

- the fundamental obligation to ensure effective communication rests with the agency;
- ensuring effective communication may be complicated by a range of cultural and social factors involved in determining English proficiency but these complications are for the agency to recognise and manage;
- it is vital for agency officers to adopt a starting assumption, in the absence of clear knowledge to the contrary, that both they and the client may tend to overestimate the client's English proficiency, and accordingly to take the utmost care when assessing proficiency;
- the more complex the subject matter and the greater the potential to impact on the rights and interests of the individual, the greater the proficiency needed and the more involved the assessment that may be required;
- WHEN IN DOUBT, USE AN INTERPRETER;
- future efforts need to be directed at both increasing the use of interpreters and increasing the capacity of the AIS to provide services as and when required;
- the two objectives, increased demand and consistent high quality supply, must be developed hand in hand;
- there must be long term planning to enhance the attractiveness of interpreting and hence the capacity of the AIS;
- this can only be achieved by long term commitment based on a recognition that there is a need for substantially increased interpreter use across the board;
- this commitment must come from not only the NTG and its agencies but from local government, non-government organisations and the Commonwealth;
- the Department of Local Government, Housing and Community Development (DLGHCD) and the Department of the Chief Minister (DCM) should play key leadership roles in the development of a Territory-specific plan.

The report made eight recommendations for action.

Recommendation 1

NTG pursue with the Australian Government and other jurisdictions the finalisation and implementation of a National Framework for Indigenous interpreters.

Recommendation 2

NTG establish a long term Master Plan for the development of Aboriginal language services that recognises unmet need and provides for a substantial increase in interpreter demand over the next decade.

Recommendation 3

NTG agencies participate in the development of the long term plan and make long term support and financial commitments to raise the level of interpreter use to meet the real needs on Aboriginal Territorians.

Recommendation 4

NTG pursue with the Australian Government and key Commonwealth agencies the potential to participate in the formulation, implementation and support of the long term plan.

Recommendation 5

NTG establish and maintain a high level, broad based forum to facilitate development and implementation of the long term plan and facilitate collaboration and increasing efficiencies across NTG agencies and other stakeholders in relation to communication and engagement with Aboriginal Territorians.

Recommendation 6

NTG review its Whole-of-Government Languages Services Policy, Cabinet templates and other whole of government documentation, with a particular emphasis on provision of Aboriginal languages services.

Recommendation 7

NTG agencies develop or produce revised agency languages services policies and protocols aligned with the BPPs, the Indigenous BPPs and NTG whole of government policies. The policies should include specific and detailed reference to Aboriginal languages services (either included in one policy or in a stand-alone policy) and, in that regard, should place emphasis on:

- a. Assigning clear responsibility within the agency for executive oversight and operational functions
- b. Promotion of Aboriginal interpreter use among staff and clients, with a cautionary approach along the lines, 'When in doubt, use an interpreter'.
- c. Collaboration and cooperation with other government and non-government stakeholders to maximise the efficiency of interpreter use
- d. Planning and adequate budgeting for Aboriginal interpreter use for all new programs (including rollout and evaluation) and regular review of existing programs to ensure adequate provision is explicitly made for ongoing needs
- e. Promotion of adequate preparation and support for Aboriginal interpreters
- f. Adequate training and guidance for agency staff in identifying the need for interpreter services and other relevant operational matters
- g. Encouragement for the engagement by the agency of bilingual and multicultural workers
- h. Record keeping that facilitates access to information about client needs and allows agency monitoring and review regarding the extent and consistency of provision of interpreter services
- i. Provision of complaint mechanisms that encourage and facilitate approaches from Territorians who are not fully proficient in English
- j. Extension of obligations to contracted service providers, including mechanisms that allow the agency to monitor and ensure compliance.

Recommendation 8

Aboriginal Interpreter Service review its current procedures and practices in light of the issues raised in this report to establish whether there are aspects of its operations that can be improved.

I have previously reported in some detail on the response of relevant government departments. We have continued to monitor progress over the course of the reporting period. There have been some indicators of ongoing improvement over the year, such as:

- publication of the results of the Aboriginal Interpreter Ward Round Pilot run at the Royal Darwin Hospital (a quasi-experimental interventional study by the Menzies School of Health Research at Charles Darwin University). The study program employed an Aboriginal Interpreter coordinator, trained health care providers in working with interpreters and promoted interpreter use, resulting in an immediate increase in interpreter bookings and a decline in self-discharge numbers.³
- the development of information and resources in Aboriginal languages by the Department of the Chief Minister in relation to the Local Decision Making Framework⁴ and more recently, the Coronavirus pandemic.⁵
- the development of a prisoner induction resource (iTalk videos) in two Aboriginal languages.
- the release and wide promulgation by the NT Electoral Commission of messages in Aboriginal languages promoting enrolment and participation in the August 2020 Territory Election.

I also note that the Department of the Chief Minister has finalised the NTG's, *Everyone Together: Aboriginal Affairs Strategy 2019–2029*. It contains several references to interpreter use, including:

- *Engagement – Ensure that Aboriginal Interpreters are used.*
- *Building a culturally responsive public sector - The NT Government will ensure qualified Aboriginal interpreters are involved in policy engagement, implementation and service delivery.*
- *Connecting to Culture, Connecting to Country, Connecting to Community – this plan sets a direction for the NT Government on the ongoing use and promotion of Aboriginal languages across all aspects of engagement and service delivery with Aboriginal people. It affirms the NT Government's commitment to support the right of all Aboriginal people in the Territory to use, promote, maintain and communicate in their first languages. Access to qualified interpreters is critical to ensuring Aboriginal people are able to make informed decisions, and a robust and sustainable languages service will help Aboriginal people receive fair and equitable services.*
- *Measure 2.5 – increase the number of qualified Aboriginal interpreters employed on a full-time equivalent basis.*
- *Measure 2.6 – number of times agencies have accessed the Aboriginal Interpreter Service per year.*

Even so, complaints data, stakeholder engagement and other sources continue to suggest that NT public authorities still have some way to go to meet best practice standards. In particular, stakeholder engagement has suggested that some of the lowest rates of interpreter use are being encountered in agencies whose interaction base would be expected to contain a very high proportion of Aboriginal people speaking English as a second or later language.

Moving forward, our Strategic Priorities 2020-2024 continue to focus on diversity and communication in the language best suited to each person's full participation in the task at hand. We would anticipate considerable value in conducting a follow-up investigation on Aboriginal interpreter use in the foreseeable future. While emerging technologies and innovative solutions have been and continue to be designed, we will also look to consideration of the manner and extent to which these new solutions are being implemented.

³ https://www.mja.com.au/system/files/issues/213_04/mja250700.pdf.

⁴ <https://ldm.nt.gov.au/video-translations>.

⁵ https://coronavirus.nt.gov.au/community-advice/remote-communities/messages-in-language#/about_coronavirus_covid19.

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.

The report made nine recommendations:

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

- d. employment opportunities;*
- e. health care;*
- f. the basics (clothing, hygiene, food, and recreational activities);*
- g. underlying supports (induction, legal assistance, making complaints and using interpreters); and*
- h. children in prison.*

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

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

Previous Annual Reports contain considerable detail regarding the response of the NTG and Corrections to the recommendations. We are currently receiving six monthly updates from Corrections on the implementation of Recommendation 7. The most recent update is set out below.

To provide context, Corrections advises:

From March 2020, owing the COVID-19 restrictions most prisoner activities were suspended or significantly reduced in line with the NT Government COVID-19 plan and social distancing. This resulted in limited progress on Recommendation 7 of the Ombudsman’s Report Women in Prison II. The restrictions were lifted during June 2020.

It should be noted that while your report was in relation to the ASCC, the NTCS consider both Correctional Centres are the subject of reporting.

Corrections update – Women in Prison II

Sub-recommendation	Comment
Overcrowding	<p>ASCC H Block is currently running at less than 50% capacity. There was an average of 33 prisoners for this period with 2 infants and no pregnant prisoners.</p> <p>Darwin Correctional Centre's (DCC) female bed capacity has been increased from 80 to 92 beds, comprising of 5 mothers and babies beds, 4 separate confinement cells and 83 general purpose cells. The average prisoners for August 2020 was 62.</p>
Housing and facility issues	<p>ASCC H Block infrastructure still remains the same as per previously reported.</p> <p>Works have been completed at DCC installing a general purpose toilet in the high security block within Sector 4, allowing prisoners to access toilets during out of cell time.</p> <p>All DCC Sector 4 cells are unlocked during the day to allow prisoners access to their cells throughout the day, allowing access to toilets, showers and personal items with the exemption of 4 Block, high security prisoners.</p>

<p>Education and rehabilitation programs</p>	<p>Alternative to Custody Rehabilitation Residential program is up and running with 2 prisoners full time in the program, with another 6 prisoners under review for the program. Over this reporting period some initiative programs were placed on hold due to the low participation numbers and COVID-19 restrictions.</p> <p>Current programs operating in ASCC H Block are as follows:</p> <ul style="list-style-type: none"> • Horticulture initiative program; • Post-release Kunga (NAAJA) four week block program; • BIITE Certificate 1 Visual Arts; • QuickSmart; • Bible Studies; • Pre-release preparation program; • Money Matter (Anglicare); • Nice McCoy Trauma & Addiction Counselling; • Safe & Sober Program (Congress); • NAAJA Throughcare Program; • Visiting Elders Program; • Catholic Care NT crime victim counselling; and • Alcohol & Other Drugs Service Centre Australia. <p>The Women of Worth Program (WOW) is delivered by Young Women’s Christian Association (YWCA) Darwin and 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 re-offending. The NTCS Programs, Services and Improvement directorate has been working with the YWCA, the WOW Coordinator and an external consultant to provide empirical data on participants so that analysis may occur. The WOW Program has been incorporated into the NTCS budget.</p> <p>Female prisoners are able to enrol in tertiary education with University Southern Queensland (USQ) at DCC.</p> <p>At DCC, BIITE has delivered courses in Certificate I Visual Arts, Certificate I Foundation Skills, Elevated Work Platform, Forklift and Barista training.</p> <p>A computer has been made available in the female sector library with limited restricted internet access to approximately 10 educational websites. Prisoners also have access to word processing software to work on typing skills such as Resume writing.</p>
<p>Employment opportunities</p>	<p>Over 95% of the ASCC female prisoners are employed as Breakfast Packers, Creative Arts & Ice Packers within the ASCC Industries area, and various other employment throughout H Block area, 3 female prisoners are engaged in paid and volunteer employment around Alice Springs municipality.</p> <p>DCC is operating a female Community Services Work Party crew as required. Internal employment opportunities for female prisoners include shop vending, cleaning, sports and recreation organisation, Qantas headphones packaging contract, seamstress, librarian, tutors, carers and yard workers. There are 4 female prisoners enrolled in Vocational Employment Program: and currently no female prisoners enrolled in the Paid Employment Program.</p>

Health care	<p>A Registered Nurse targets small groups of women and discusses healthy lifestyle choices which includes a referral to the Health and Recreation team for an individualised fitness routine. Sport and Recreation Officers also deliver alternative activities to the female prisoners with a health promotion focus.</p> <p>In ASCC the Preventable Chronic Conditions Nurse (PCCN) continues to conduct consults specifically aimed at health promotion topics. An underlying theme is around self- management strategies.</p> <p>The PCCN also assists with prisoner requests to Prisoner Services and Block Officers regarding requests for Alcohol and Other Drug Services Central Australia (ADSCA) with Risk Management Plan referral, Drug and Alcohol Services Australia (DASA) and Central Australian Aboriginal Alcohol Prevention Unit (CAAAPU).</p> <p>At Reception or when practicable ASCC prisoners are seen by a Registered Nurse prior to being escorted to their housing where they are again assessed by the Senior Correctional Officer (SCO) regarding any children, payback, concerns etc. They are seen by a Doctor within 24 hours or where practicable following Reception. If there is an emergency situation an out of hours contact at the Alice Springs Hospital is called for advice.</p> <p>Payback Mediation is facilitated by staff to ensure the female’s safety as concerns arise. Additionally, cultural issues are managed in conjunction with the Visiting Elder’s Program.</p> <p>In ASCC, Pre and post release supported accommodation programs are facilitated with DASA where the special needs of female prisoners are managed and assessed relative to their suitability for referral to a program.</p> <p>In DCC all primary Health Care staff have allocated portfolios: including chronic disease, women’s health, sexual and reproductive health, immunisation, Alcohol and Other Drugs (AOD), mental health etc.</p> <p>At Reception all DCC prisoners are seen by a Registered Nurse or Aboriginal Health Practitioner prior to being escorted to their housing where they are again assessed by the Senior Correctional Officer (SCO) regarding any children, concerns etc. They are seen by a Doctor within 24 hours or where practicable following Reception. If there is an emergency situation an out of hours the on call after hours Primary Health Care (PHC) registered Health Practitioner is contacted and either attends onsite or activates 000 call for emergency response as per initial telephone triage.</p> <p>In DCC the Primary Health care service includes an allocated 1 day a week Medical Practitioner visits to women’s sector, twice daily medication rounds attended by PHC staff, 4 days a week allocated PHC staff recall and visits to women's sector. Prenatal and post-natal care is provided for all pregnant women. In DCC there are now 4 x midwives on staff and trained women's health registered nurses. A visiting registered child health nurse attends DCC to complete infant and toddlers required assessments.</p>
The basics (clothing, hygiene, food, and recreational activities);	<p>International Women’s Day 2020 was a success at DCC with the launch of Birds Eye View podcast.</p> <p>All female prisoners in ASCC are issued four sets of underwear on arriving into custody and given three sets of clothes and personal wash bag. Washing is conducted 6 days a week in H Block.</p> <p>All ASCC H Block prisoners are afforded sport and recreation activities after work weekdays and between 0930hrs and 1730hrs weekends.</p>

<p>Underlying supports (induction, legal assistance, making complaints and using interpreters)</p>	<p>Female Elders from the Elders Visiting Program continue to regularly visit the DCC and ASCC Women Sector to meet with Aboriginal female prisoners.</p> <p>The Eiders were also be invited to the 2020 International Women’s Day celebrations.</p> <p>The ASCC Female Prisoner Representative Committee meets bi-monthly to discuss, raise and manage concerns. Similarly the DCC Female Community Consultative Committee meets monthly for the same purpose.</p> <p>A review of the ASCC Induction Booklet is in the final draft stages and should be issued to prisoners upon their arrival into custody within the next few months.</p> <p>Flyers have been placed in the Female Sectors of ASCC and DCC outlining the role of the Official Visitors.</p> <p>Following COV1D-19 restrictions being lifted, the Official Visitor have recommenced their monthly visit regime.</p> <p>A prisoner newsletter is available at DCC which communicates relevant information.</p> <p>A prisoner Newsletter is being developed in ASCC.</p> <p>Next to the Prisoner Telephone System (PTS) there is a list which identifies pre-set numbers 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 ASCC.</p>
<p>Children in prison</p>	<p>DCC has a Mothers with Babies Facility which aims to assist the mother to develop and maintain a functional relationship with her child pending the mother’s release, as well as developing pro-social support networks in the community in preparation for release. Continuing the bond between mother and child during imprisonment may reduce the likelihood of reoffending. There is currently one mother and child in custody at DCC.</p> <p>Within DCC Primary Health Care (PHC) provide the required health care for the mothers and babies whilst in the facility. There is a visiting child health nurse that provides the required assessments. PHC also provide all required scheduled immunisations.</p> <p>ASCC does not have a designated Mothers and Babies facility, however babies are accommodated with their mothers in single cell accommodation in the Low Security Unit of the Woman's Sector. A Child Care Plan is developed and reviewed relative to ongoing support and development needs of the mother and baby. Initiatives include the purchase of baby equipment and attendance at formal child care to benefit the baby's development. Grassed areas are available for mothers and babies in the Female Sector.</p>

There remain enormous challenges for the NTG and for Corrections in transforming the correctional system as it applies to women and across the board. We view this transformation as essential for the future of the Northern Territory community and will continue to monitor progress and press for reform in this area.

OTHER RECOMMENDATIONS

In my 2018/19 Annual Report (Part 1, Chapters 4 and 5), I set out recommendations made by me and by NT Police investigators in relation to two cases, the first dealing with the quality and timeliness of police investigations and the second relating to treatment of a female youth in a watch house. NT Police have provided updates on progress in relation to those recommendations.

Police investigations

In Chapter 4, I discussed a case where the complainant was arrested for a serious offence and spent a lengthy period in custody before another suspect was identified through the results of DNA tests, and the charges against the complainant were withdrawn.

In that case, certain concerns with the police investigation were identified at an early stage, with a Commander being tasked to undertake a review within a week of the incident. In his review report, the Commander made eight recommendations, including the need to undertake numerous further avenues of enquiry to advance the investigation. The NT Police Investigating Officer made recommendations relating to training, other personnel-related issues, the dissemination of a broadcast on crime scenes and completion of remaining recommendations in the review report.

In considering the case, I noted that the NT Coroner has previously made adverse comments on the conduct of police investigations of serious crimes. In *Inquest into the death of Sasha Loreen Napaljarri Green* [2018] NTLC 016 (*Green*), the Coroner reviewed an investigation 'of very poor quality', involving a 'preoccupation' with a particular version of events, failure to analyse evidence, a 'lethargy' at all levels of police and substantial delay in declaration of a Major Crime. He found that the 'investigation was undertaken by inexperienced officers in an incompetent fashion.' In *Green*, the Coroner also pointed to two previous cases involving substantial investigative deficiencies. The Coroner recommended, *inter alia*, that the Commissioner of Police do all things necessary to ensure:

- those that investigate major offences have the appropriate skill, experience and resources to undertake investigations to which they are tasked; and
- senior police undertake their roles in facilitating, supervising and providing governance in relation to all major investigations.

To supplement the recommendations of the Investigating Officer, I recommended that NT Police:

- take steps to ensure the robust and effective conduct and governance of major investigations, in line with the findings and recommendations of the Coroner in *Green* and the Investigating Officer in this case;
- circulate a broadcast reminding all investigators of the importance of continuing disclosure to the DPP in a timely manner, in line with the DPP Guidelines, particularly in cases where an accused person is held in custody (this has been completed); and
- review the resources it provides for forensic testing and how it prioritises forensic testing in order to achieve the best practicable outcomes in terms of effectiveness and timeliness, particularly in cases where an accused person is held in custody.

The NT Police has provided the following update in relation to my first and third recommendations:

- *The Major Crime, Major Investigation and Critical Incident Response Plan has been rewritten to include direction on the responsibility for the investigation of major offences, taking into account the recommendations and comments arising from the Green and Rosewarne Inquests.*

The General Order specifies types of declarations that can be made in response to major incidents, and includes the oversight of all investigations falling under this plan by a Joint Management Committee (JMC), chaired by a senior police executive. The JMC maintains responsibility for the continued resourcing of the investigation.

- *The 2020 Forensic Review Report has been completed. This document outlines 41 recommendations including in what way forensic testing is managed to achieve the best practicable outcomes in an effective and timely manner. The NTPF is in the process of addressing these recommendations, including the resources available for forensic testing.*
- *Critical staffing resources have been resolved with all positions filled.*

Treatment in watch houses

In Chapter 5, I referred to a case that involved police dealing with a vulnerable female youth in a watch house, in a highly challenging situation. No findings were made against individual officers but recommendations were made to improve planning, guidance, training and equipment available for officers in the future.

In that case, the NT Police Investigating Officer made recommendations relating to:

- investigating additional options for clothing / blankets that will minimise the potential for use for self-harm; and
- taking additional steps to preserve the modesty and privacy of individuals whose clothing is removed, including limiting visibility of monitoring screens and conduct of cell checks to officers of the same sex as the person, other than in extreme circumstances where no alternative is available.

To supplement and reinforce those recommendations, I made general recommendations that NT Police:

- investigate additional options for clothing / blankets that will minimise the potential for use in attempted self-harm, whether by hanging or choking.
- take all practical steps to promote the privacy of individuals when their clothing is removed. Except to the extent that risks to the individual or others preclude it, this should routinely include:
 - removal of clothing only by, and in the presence of, officers of the same sex as the individual;
 - use of a blanket to cover the person as far as possible during removal;
 - returning their clothing, or if this is not possible, another appropriate form of cover, as soon as possible;
 - ensuring that monitoring is only open to, and undertaken by, officers of the same sex as the individual.
- stress to relevant officers the importance of:
 - obtaining timely medical advice and assistance when dealing with At Risk individuals, particularly when they have attempted self-harm;
 - providing oral and written handover where a person has suffered a significant injury, has attempted self-harm or has been placed At Risk.
- consider the broader implications of these events for custody management in other situations and:
 - review/amend relevant guidance materials as required; and
 - consider the need for varied or additional training.

NT Police has provided the following update on those general recommendations:

- *The Custodial Smock Trial has been tasked to the Palmerston Watch House, after experiencing delays due to the closure of the Darwin Watch House in response to COVID-19. Furthermore, the NTPF reinvigorated the Custody Steering Committee (CSC) which is mandated to oversight the management of Ombudsman findings and recommendations. The Custody Smock Trial will be oversighted by the CSC.*
- *Advice provided that use of an Emergency Restraint Chair (ERC) for persons self-harming should be considered as a primary alternative to the padded cell in the watch house environment.*
- *Amendments made to the Custody and Transport General Order relating to the need for privacy during searches.*
- *Cell Extraction training occurred in late 2019 at the time of opening the Palmerston Watch House and is included in defensive tactics requalification requirements of all operational police officers. 80% of sworn staff have undertaken training to address recommendations from the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory with focus on the impact of cognitive and intellectual disabilities including the effects of trauma. A review is currently underway into the Operational Safety Training and Tactics package, including custody matters.*
- *Risk register maintained by the Deputy Commissioners for risks with potential to impact all areas of the NTPF. The primary risk is the "Inability to meet duty of care requirements to the public in the management of custody practices". Treatment plans are active and demonstrate the internal commitment to improving care of persons in our custody.*
- *Reinvigoration of an annual mandatory Custody Training Course covering use of the ERC and highlighting requirements relating to persons showing emotional or physical distress to be examined. Includes aspects to be strictly adhered to for persons requiring the use of a padded cell with focus on preserving the person's privacy and dignity and to be held no longer than is absolutely necessary for reasons of prevention of self-harm, including medical and/or mental assessment as required. All police officers are required to complete this training annually.*

Fulfilling duty of care for youths and adults in custody is an ongoing focus area for the Office and we will continue to monitor the implementation of these recommendations.

CHAPTER 4 – APPROACHES – ENQUIRIES AND COMPLAINTS

NUMBER OF APPROACHES

In 2019/20, there were 2,535 approaches to the Office (compared with 2,592 in 2018/19, 2,304 in 2017/18 and 2,036 in 2016/17). 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 number of approaches received in 2019/20 are set out below.

Department / Agency	2017/18	2018/19	2019/20
Police, Fire and Emergency Services	609	657	637
Correctional Services⁽¹⁾	401	586	575
Jacana Energy	134	181	141
Local Government, Housing & Community Development	66	103	80
Power Water	46	46	74
Attorney-General and Justice⁽²⁾	67	66	56
Infrastructure, Planning & Logistics⁽³⁾	33	59	35
Education	23	14	27
Territory Families	20	25	19
City of Darwin⁽⁴⁾	25	19	18
Health	21	10	18
Trade, Business and Innovation	7	4	14
Charles Darwin University	22	17	13

Notes

(1) Numbers for Correctional Services continue to be reported separately although it is now part of the Department of the Attorney-General and Justice.

(2) Includes Licensing (11), Fines Recovery Unit (7), NT Worksafe (6).

(3) Includes Motor Vehicles Registry (18).

(4) In total, there were 41 approaches in relation to local government councils compared with 39 in 2018/19.

VARIATIONS

There were variations in approach numbers across the course of the year. The final quarter was busier in a number of respects with approaches rising overall by 8% over the average for the rest of the year and Police conduct approaches rising by 22% over the average for the rest of the year.

We reported last year on a major increase in approach numbers. This increase was essentially sustained in 2019/20. This continuation of high approach numbers maintains a challenging workload for staff of the Office.

Both NT Police, Fire & Emergency Services and Correctional Services experienced slight declines in numbers from the substantial highs of the previous year.

Jacana Energy numbers declined to near the level of approaches in 2017/18, while Power Water approaches increased substantially from 46 to 74. Approaches relating to both these utilities are discussed in more detail later in this Chapter.

There will always be variations in approach numbers from year to year. This year they included:

- Local Government, Housing and Community Development approach numbers, which had increased in 2018/19 reduced from 103 to 80;
- Attorney-General and Justice approaches fell by 10, with approaches to the Fines Recovery Unit falling from 18 to 7;
- approaches to Infrastructure, Planning and Logistics dropped from 59 to 35, with Motor Vehicle Registry approaches falling from 33 to 18;
- a rise in approaches to the Department of Trade, Business and Innovation was chiefly driven by enquiries and complaints regarding financial assistance and grants: 10 of 14 approaches were received in the last quarter of the year, during the coronavirus pandemic.

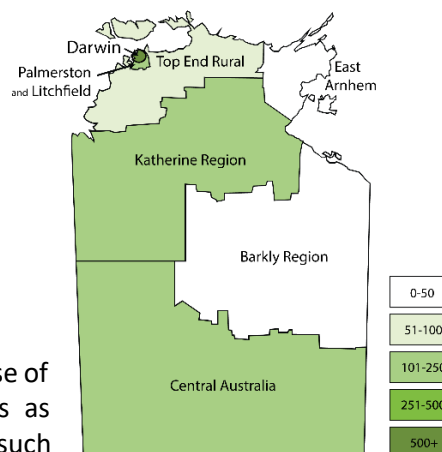
The number of more complex approaches fell slightly compared with the previous year, with numbers of the two most complex categories reducing from 731 to 677 in 2019/20 (27% of all matters). However, the number of the most complex category of matters increased from 202 to 303.

Complexity	2017/18	2018/19	2019/20
Complex matters	263	202	303
Resolved Expediently	354	529	374
Enquiries	1,687	1,861	1,858

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'.⁶

Region	%
Darwin	53
Palmerston/Litchfield	16
Alice Springs/Central	15
Katherine	8
Top End Rural	4
Barkly	3
East Arnhem	2



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

We therefore use a demographic information script for our staff to explain to enquirers why obtaining information of this type is important and ask questions about region, Indigenous status and how they found out about the Office. The script and questions have also been incorporated into our complaints form.

⁶ The figures also exclude prisoners at correctional centres.

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

In 2019/20, 18% of enquirers identified or were identifiable as Indigenous. However, over half of enquirers did not identify a background at all, so these statistics are at best broadly instructive rather than definitive. Of enquirers whose background was identifiable, 48% were Indigenous, a decrease from 53% last year.



HOW APPROACHES ARE MADE

The Office offers a range of options for contact.

In 2019/20, almost 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	13
Referred by police	12
Online form	6
In person	3
Letter	1

HOW APPROACHES ARE DEALT WITH

The Ombudsman 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 5.

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.

There are other cases where we share jurisdiction with another complaints or review body that deals with specific types of issue. Our Office may, in consultation with that body, refer a matter to it if we consider it is better placed to deal with the case.

Dealing with Ombudsman matters

The focus of our Office is on achieving informal and timely resolution of approaches.

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, unless a case involves an element of urgency or particular sensitivity, enquirers who come to our office without first addressing their concerns with the relevant agency will usually be assisted by our staff to make contact with the agency.

In cases where we think an enquirer may need additional assistance, our staff will contact the agency with an outline of the concerns and ask it to respond directly to the enquirer. We may ask the agency to advise us of the outcome depending on the nature of the matter. The enquirer is advised that they can contact us again if they are unsatisfied with the response of the agency.

In other cases, 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.

If necessary, we have the power to commence a formal investigation into a complaint or to launch an investigation on our own initiative.

We may decline to deal with a complaint for a variety of reasons, including that it is trivial, frivolous, vexatious or not made in good faith, that the complainant does not have a sufficient interest, that investigation is unnecessary or unjustified, or that the action complained of has been or will be investigated by another complaints entity.

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 may refer inquiries of this kind to another entity either informally or formally under section 32 of the *Ombudsman Act*.

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

- Independent Commissioner Against Corruption;
- 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 may enter into a memorandum 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 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 2019/20, we dealt with 762 outside jurisdiction approaches (compared with 763 in 2018/19). The following table lists the most common outside jurisdiction sectors where approaches were referred on to another complaints body or forum.

Sector	2017/18	2018/19	2019/20
Consumer affairs	94	138	138
Employment	99	99	93
Health services	38	59	69
Financial services	70	86	64
Commonwealth government	50	63	63
Private housing	41	26	41
Telecommunications	53	27	26

HOW QUICKLY APPROACHES ARE DEALT WITH

In 2019/20, 2,427 approaches to the Office were finalised, with 96% of finalised matters completed within 90 days. Even so, the year saw a notable decline in terms of timely resolution.

Time taken to finalise approaches - approaches finalised in 2019/20

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	30%	32%	24%	8%	7%	515
Other	72%	20%	7%	1%	<1%	1912
Total	1,536	540	253	62	36	2,427

There will always be some matters open at the end of a financial year. Some may have been recently received while other, more complex, matters remain under consideration. This year, the figure for open matters at 30 June grew substantially from 80 in the previous year to 193. Most of those open matters (73%) involved police conduct complaints.

Age of open matters - at 30 June 2020

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	11	21	49	28	32	141
Other	6	7	15	9	15	52
Total	17	28	64	37	47	193

Three factors can be identified as materially contributing to the decline in timeliness compared with the previous year:

- the competing demands and changed practices in agencies and in our Office necessitated by the COVID-19 pandemic (discussed in Chapter 1);
- additional demands on our Office in dealing with an ongoing increase in approaches;
- an increasing backlog within NT Police in the investigation of police conduct complaints.

The figures for time taken to finalise non-Police matters have increased to some extent in the 8 to 28 and 29 to 90 day ranges. The need for agencies to respond to the COVID-19 pandemic has contributed to increased timelines but disruptions in these agencies have not had the same level of impact on timeliness of resolution as for Police conduct approaches.

Last year, I noted that the proportion of finalised Police conduct matters taking more than 90 days to close had risen from an average of around 3-4% each year to 8% in 2017/18 and almost 12% in 2018/19. This year, the figure rose again to 14%.

At the time, I noted that Police conduct matters are often more complex and having some matters extend for a length of time is not unusual or necessarily concerning. I acknowledged that some matters take time for the NT Police Standards Command to investigate thoroughly and that there may be delays caused by the absence of police or civilian witnesses or the inability to locate witnesses. I also noted that the increase in the number of police conduct matters requiring investigation in recent times had been a contributing factor.

In 2019/20, there is no doubt that the many competing demands placed on NT Police in responding to the COVID-19 pandemic have been a contributing factor to further delay. The extended finalisation timeframes will continue in 2020/21 as the large number of matters that were outstanding at 30 June 2020 are addressed. However, the build-up of the backlog preceded COVID-19 and is not solely attributable to it.

For Police conduct review and discipline to be effective from the perspective of complainants, officers and the community, it is vital that investigation of complaints be fair and timely. We will continue to monitor the progress of complaints in 2020/21 and do all we can to promote the fair and speedy resolution of outstanding complaints.

OUTCOMES

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

- A better explanation of 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 pages that follow.

Example – Driver licence

The complainant attended an MVR office to seek a copy of his driver licence as his wallet had been stolen. He was advised that he would need to provide a copy of his Birth Certificate as his middle name had an initial only and not the complete name. This decision was based on an MVR *Evidence of Identity (EOI) and Residency (EOR) for an Individual Policy*, of which section 9.1 – Interstate Licence stated, “*If an interstate licence only shows the customer’s middle name as an initial or just one of their middle names, the customer must provide full EOI showing their middle name(s) in full. Supervisors can use their discretion where the middle name can be established by other means (i.e. the customer is a previous NT resident).*”

However, the complainant had obtained an NT driver licence before that policy came into force. At our request, MVR reviewed its decision and, on the basis of the available information, decided to issue the complainant with a true copy of his driver licence.

MVR noted that there was some confusion on the administrative requirements for issuing a copy of a current driver licence when an initial is listed within a name and advised that a review of the Policy had been referred to the Driver Licensing team to minimise confusion and clearly articulate the requirements in these instances.

Example – Dog management

The complainant was issued with an infringement notice, a warning letter, and a formal notice to properly contain their dog by Council after an investigation into allegations of a dog attack and dogs on the complainant's property menacing members of the public. The complainant raised a number of issues with our Office about the investigative, enforcement and review processes undertaken by Council.

Our Office undertook preliminary inquiries and entered into discussions with both the complainant and Council officers. The parties reached a mediated agreement in relation to the complaint. Council agreed to withdraw the infringement notice and the complainant agreed to implement measures to keep their dogs away from the fence.

Council also agreed to review its investigative, enforcement and review policies and procedures in order to improve the natural justice afforded to respondents, in line with informal recommendations made by our Office, and to ensure there are clear pathways for review in circumstances of disagreement.

Example – Barking dog

Council conducted an investigation into a nuisance barking allegation regarding the complainant's dog. Council utilised a noise monitoring device and contracted with a private company to provide an analysis of the data. Council made a determination that the dog was engaging in nuisance barking. The complainant raised issues regarding deficiencies in the investigation, their privacy, and inaccurate information being provided regarding review rights.

Our Office engaged with Council regarding its policies and procedures for utilising the noise monitoring technology, general principles of administrative law and communicating appeal rights to affected parties. Council undertook further investigations and ultimately withdrew its finding regarding nuisance barking. Council also indicated that it would review its policies and procedures in light of feedback provided by our Office. It also expressed willingness to participate in administrative law training which our Office proposed to undertake for Council Rangers. (Unfortunately the training has been delayed due to COVID-19.)

SPECIFIC AGENCIES

Correctional Services

Corrections approaches totalled 575 in 2019/20, a marginal decline from 587 in 2018/19 but still much higher than the 401 approaches in 2017/18.

There were 403 approaches relating to the Darwin Correctional Centre compared with 153 relating to Alice Springs Correctional Centre.

A list of the most common issues raised by approaches in 2019/20 is set out in the following table. Some approaches raised more than one issue. The table lists issues raised, not issues sustained.

Issue	Notes	No.
Classification / Housing	Includes issues about the classification of a prisoner, eg, high, medium, low security, as well as accommodation arrangements such as which area or block they are placed in and cell type, and management plans	116
External contact	Includes issues with phones, mail and visits	108
Officer conduct	Includes rudeness, insensitivity, harassment, poor communication, inappropriate treatment of a vulnerable person	94
Health / welfare	Issues regarding health services are referred on to the Health & Community Services Complaints Commission but we deal with issues regarding how correctional officers implement health and medical advice	89
Complaint processes	Includes problems accessing Request to Attend Superintendent's Parade (RASP) forms and access to Superintendent	86
Money / buys	Any issues dealing with prisoner accounts and purchases	52
Recreation / Amenities	Matters relating to recreational activities and everyday aspects of living, eg access to publications, smoking, access to television, sporting and craft equipment	36
Work	Employment inside or outside prison	34
Food	Issues relating to quality or service of food. Includes issues relating to special dietary requirements	28
Condition of facilities		22
Misconduct proceedings		22
Time spent outside		18
Information	Includes request for information and documents, complaints that information not provided	17
Educational programs		14
Prisoner property		14
Personal safety/security	Assault, fight, threat by prisoner – Assault, excessive force, threat by prison officer – Housing prisoners together in a way that puts one or more at risk – Other concerns about safety	12

Compared with the previous period, there were increases of 10 or more in the number of approaches relating to Health/Welfare, External contact, Officer conduct, Recreation/Amenities and Work; and reductions of 10 or more in Classification/Housing, Food and Condition of facilities.

Example

The complainant contacted us and advised that, due to particular medication they were taking, they needed to have ready access to a toilet at all times. Their current accommodation arrangements did not permit this and they stated that requests to facilitate this had been denied. They also complained that prison officers had openly discussed the issue in the presence of other inmates, which had caused them embarrassment.

Our Office contacted Corrections regarding the issue. Corrections responded the next day, advising that the complainant's accommodation had been changed on the basis of a medical chit to facilitate toilet access and that officers had been reminded to take care and be mindful of who is around when discussing personal issues, and use an interview room if necessary.

Example

The complainant was one of seven inmates suspected of being under the influence of a prohibited substance. The complainant was taken to the prison medical service (Medical) with the other inmates and was observed for a period of four hours. His classification was changed, he was downgraded in his housing, his visits with family were changed from contact to non-contact, and his employment within the prison was ceased.

Medical had advised Corrections that the complainant's observations were within normal limits and he was cleared. Corrections understood this to mean that the complainant had initially been under the influence of a substance and advised him in writing that his visits were to remain non-contact as Medical had verified that. The complainant disputed this and spoke with Medical which he said confirmed that he had been cleared by them of the suspicion of being under the influence.

Corrections initially maintained the position that the complainant had been determined to be under the influence and provided our Office with correspondence between it and Medical, which included emails from two separate managers at Medical, as support for their conclusion.

Ultimately, after further representations from our Office, Corrections advised that the complainant's misconduct breach for the incident had been overturned, that the complainant had been re-employed in his previous role, that his contact visits had been reinstated, that his Buys spending limit had been returned to the standard amount, that his accommodation had been changed and that his security rating would be reviewed in the near future.

Jacana Energy

Jacana Energy is responsible for retail power in the great bulk of the NT urban market. The Power and Water Corporation (PWC) is responsible for power distribution, including meters and meter reading. Broadly speaking, PWC's electricity responsibilities involve many aspects of the consumer experience, right up to the electricity meter. A consumer may simply not be in a position to know whether a problem with power supply or an excess bill should be addressed by Jacana or PWC.

There are frequent occasions on which a consumer must rely on both government entities to work together to resolve a problem. For example, Jacana may rely on PWC to check that a meter is working properly to confirm a high consumption reading. Or there may be a complaint that a Jacana bill is unfair because of delay or faulty work on the part of PWC. It can be difficult in the first instance to accurately identify which agency is best placed to address the issues at the core of a complaint. Indeed, an energy-related complaint may raise issues with aspects of the operations of both Jacana and PWC both of which may be explored by our Office. Discussion of approaches relating to energy issues should be read with this in mind.

The total number of approaches relating to Jacana Energy for 2019/20 was 141, a fall from 181 in 2018/19, although slightly higher than the 134 approaches in 2017/18.

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

The top issues raised in relation to Jacana in 2019/20 are set out in the table below. The figures that follow are based on issues raised, not sustained issues.

Jacana Energy – Most commonly raised issues - 2019/20

Issue	Notes	No.
Billing	For example, bill not received, two bills received at same time, sent to wrong address, delay in sending	38
Excessive charges	Includes issues arising from estimation process	30
Credit listing	Seeking to remove listing with a credit agency	22
Solar	Includes delay in paperwork for new systems, high estimates not taking solar installation into account, issues relating to solar rebate calculation, change in rate	21
Financial hardship		12
Changed circumstances	Includes problems arising due to change in address or living arrangements, administration of estates	11
Disconnection		10
Connection		5

Example

The complainant contacted our Office when a billing system error meant that there was a considerable delay of nearly 18 months before he received a power bill for his property. Following consultation with our Office, Jacana acknowledged the long delay and offered a reduction in the amount charged. This offer was accepted by the complainant.

Example

The complainant advised our Office that Jacana had failed to connect his power on time despite advising him by phone that they would do so. The delay caused him a financial loss. After reviewing the matter and noting the 'poor customer experience', Jacana apologised to the complainant, waived his connection fee (\$122.29) and credited 'a goodwill gesture' (\$150.00) to his account. The complainant was satisfied with Jacana's response.

Power and Water Corporation

As discussed above, electricity issues often involve some overlap between Jacana Energy and PWC. This means that we receive a number of approaches relating to PWC in its capacity as an urban energy distributor, in addition to its role in the supply of water and sewerage services. The figures below relate to all of its functions.

The total number of approaches relating to PWC increased substantially from 46 (in 2017/18 and 2018/19) to 74 in this reporting period. The top issues raised in relation to PWC in 2019/20 are set out in the following table. The figures are based on issues raised, not sustained issues.

Power and Water – Most commonly raised issues - 2019/20

Issue	Notes	No.
Excessive charges	Includes complaints of inaccurate estimates, faulty meters, unjustified additional charges	26
Solar	Includes delay in paperwork for new systems, high estimates not taking solar installation into account, issues relating to solar rebate calculation, change in rate	12
Billing	Includes delay in billing or refund	7
Infrastructure	Includes safety issues, failure to provide, cost of provision or connection, inaccurate information	7
Action taken for non-payment	Includes restriction of water and disconnection of power	5
Damage or loss due to supply interruption	Includes intentional or inadvertent interruption	4
Delay	Includes delay in communication and meter reads	4
Damage or loss due to fault	Includes faulty infrastructure or equipment	4
Financial hardship		3
Advice	Living Water Smart tune ups	2

Alleged excessive charges are the most common source of complaint. Complainants may say there must be a faulty meter. They may have been away for a time and not understand how their bill could be so high. In the case of water supply, a common cause of higher water charges is a leak that has gone undetected since the meter was last read.

As is commonly the case, a number of complaints during the year related to problems arising from the stated inability of PWC contractors to access properties in order to read meters, and the ensuing need for PWC to base calculations of usage on estimates.

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. We do receive some complaints that contractors should have been able to access a property, e.g. a gate was closed but not locked. We pursue complaints of this nature with PWC although it can be problematic to definitively establish what the situation was at the relevant time.

Even so, there are frequent times when a meter read is not practicable and billing is based on an estimated read. 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 finally carried out, again giving rise to complaints.

Solar installation is an ongoing source of approaches for both Jacana and PWC. Concerns often relate to delay in the time between completion of installation and the solar rebate being included in the billing process. Recently, there have also been approaches regarding the process of transition from a comparatively high rebate to a lower rebate for new installations.

A considerable amount of time was spent by our Office during the reporting period in investigating complainants' concerns with some pleasing results. The examples set out below illustrate investigations where our recommendations for change have not only delivered a positive outcome for the complainants but will significantly improve the experience future customers will have when dealing with similar issues.

Examples

An approach was made to our Office by Complainant A asserting that PWC:

- failed to issue any water bills to her for 18 months and then advised her via email that she owed nearly \$6,000;
- at no time over the 18 month period informed her of meter access issues which required them to estimate her water usage rather than take a meter reading, thus denying her the opportunity to explore the reason (e.g. a leak) for high water consumption over that period;
- provided a confusing and unsatisfactory explanation to her when she asked how it had calculated water consumption (both estimates and reads) for the back-billed periods; and
- while acknowledging there was no legal requirement for notice, did not notify her of a meter change that occurred during the back-billed period.

Complainant A sought a reduction in the amount back-billed based on her previous period's water consumption. She also wanted to understand what happened and why, and be shown evidence of how PWC calculated the back-billed amount. After attempts at early resolution were unsuccessful, we investigated further and formed the view that PWC's:

- action in advising a customer via email of a large back-dated bill after an 18 month delay was not in accordance with reasonable standards of customer service; and
- explanation of its calculations was unnecessarily technical and confusing;

We also noted that, in all jurisdictions except the NT and NSW, there are policies governing limits on recovery of undercharged amounts. Limitations on undercharging also apply to instances where no bill has been issued. All jurisdictions, except for NSW and the NT, limit recovery of undercharging to 12 months prior to informing the customer, and back-billing is limited to 9 months in the energy market. We formed the view that this seemed an appropriate case for the application of such a policy.

A similar approach was made to our Office by Complainant B, who had received a very high water and sewerage bill for a 3 month period in 2019. PWC advised her that she had consumed 1,300,000 litres of water over that 3 month period. Complainant B claimed the property was vacant at the time of the high reading, no suspicious activity was noted by her landscaping firm and water consumption for previous and subsequent periods was low. When she queried the bill, Complainant B was advised that her meter had slowed down and stopped recording in late 2019 and was replaced without informing her.

Complainant B wanted the bill reduced, believing that amount of water could not possibly have been consumed when the property was untenanted and a leak detector had found no major leaks. Once again, attempts at early resolution were unsuccessful. On investigation, there appeared to be no internal report or explanation as to what could have caused the sudden spike in consumption for the 3 month period - noting in particular that no major leaks were found.

Following our investigations, we made several recommendations, all of which PWC accepted. It agreed to:

- provide a further discount to both Complainant A and B as a gesture of goodwill;
- introduce a back-billing procedure, updates to their Customer Charter, Customer Contract and communication templates that will notify customers who are impacted by a billing or operational error about how it will affect their bills, and when they can expect the error to be resolved;
- implement an *Unaccounted Water Assistance Policy and/or an Undetected Water Leak Assistance Policy* consistent with the information obtained from interstate jurisdictions; and

- undertake a review of its Complaints Management Framework with anticipated changes to include improved reporting, more detailed work instructions and clearer responsibilities for all roles involved in handling complaints.

We are confident that the changes to policies and contractual terms agreed to by PWC will have a significant impact on its ability to resolve complaints about unexplained water use and past under-estimations. It will also provide more clarity to customers about their rights and expectations when trying to resolve complaints.

Example

Complainant C came to our Office with concerns about a very large back-bill he had received on behalf of his body corporate for a period of high water consumption the previous year. It appears that more recent bills had been estimated because PWC could not gain access to the water meter.

The more recent estimates were not a true reflection of the high water usage at the units. Complainant C disputed that access by PWC to read the meter was obstructed and contended that actual water readings should have been taken. This would have alerted him sooner to the high water usage, so that he could have identified the problem (a leak) sooner.

As part of our investigation of this matter we noted that:

- PWC records did not accurately describe the correct location of the water meter and how to access it. This would have prevented PWC contractors from reading the meter;
- it was unlikely that Complainant C could have detected the leak by visual inspection;
- while the Body Corporate remains legally responsible for the water that entered the property through the meter, the Complainant considered that earlier readings of the meter by PWC contractors could have brought the problem to light much sooner;
- it is industry practice in most other jurisdictions to implement a policy that provides for an allowance or reduction of bills where a customer has an undetected leak or unexplained high usage;
- it is industry practice that water utilities are legally responsible to take all reasonable steps to read a water meter but standards differ from jurisdiction to jurisdiction.

In response to concerns raised, PWC made a goodwill gesture to Complainant C of a further reduction in the amount owed. It also accepted a number of our recommendations for change to assist customers as follows:

- Notifying customers of an estimated read - In circumstances where a meter cannot be accessed (e.g., a locked gate), PWC will send an electronic message to the responsible person(s) in addition to a physical card notification;
- Development of a water leak policy/unaccounted water assistance policy - As indicated above, PWC will update its Customer Contract and, noting interstate models, will establish a policy that is consistent and fair for its customers;
- Improving visibility of estimated bills - PWC will review its billing systems, which will provide an opportunity for a full billing invoice redesign to better clarify key information for customers, such as indicating estimated reads more prominently.

Our office will monitor the development and implementation of these proposed changes with interest.

Housing

There were 80 approaches to the Office relating to the Department of Local Government, Housing and Community Development in 2019/20 (compared to 103 in 2018/19).

Almost all of these related to Housing issues. Some issues raised by enquirers are set out in the table below. The table records issues raised, not sustained issues.

Issue	Notes	No.
Conduct of tenants and third parties	Includes complaints about tenants, theft or damage to tenant property and anti-social behaviour	23
Repairs & Maintenance	Includes accommodating special needs	19
Financial issues	Includes rental amounts, debts, deductions and rebates	11
Transfer of tenancy	Includes refusal to transfer and delay	9
Officer conduct	Includes rude and inconsiderate behaviour	9
Allocation of housing	Includes priority housing	6
Property loss or damage	Caused by Housing or contractor	2
Termination/banning	Includes termination of tenancy and banning from premises	1
Availability of housing	Includes calls for additional housing and issues relating to building new houses and refurbishment	1
Complaint handling		1

Providing safe, habitable housing for public housing tenants across the NT is a constant challenge for Territory Housing with the realities of aged infrastructure, overcrowding and remoteness compounding the obstacles. Housing has faced additional challenges during 2020, with COVID-19 restrictions causing delays in remote repair work and placing additional pressures in some public housing facilities, from increased visitor numbers and anti-social behaviour – particularly in urban areas.

Although much more work needs to be done to improve housing conditions in many remote communities and urban public housing complexes, our Office has found Housing staff and managers to be collaborative and focussed on resolving the complaints we receive. It is also commendable that Housing is trying to support and prevent those tenants with challenging behaviours or circumstances from falling into a cycle of homelessness.

Examples of the more common types of cases we received during 2019/20 are set out below.

Conduct of tenants and third parties: Complaints are received relatively frequently about problems that tenants or their neighbours are experiencing as a result of antisocial behaviour. The complainant may express concerns that they feel unsafe or that Housing is not responding sufficiently to safety issues. Where the behaviour occurs on public housing grounds, Housing works with our Office to address the complainant's concerns. Where the antisocial behaviour occurs in the neighbourhood or streets around a public housing development, addressing the issues can become more complex and may involve consultation with Police and other services.

Examples

- A tenant was concerned about occasions of damage to her vehicle. Consultation with our Office resulted in the tenant being given permission to install camera surveillance in her unit which gave coverage of the carpark bay where she parked her vehicle. Our advice took into account the privacy needs of others in a common area like a carpark.

- Tenancy staff worked with our Office to address various issues, including safety concerns of a tenant. Alternative accommodation arrangements offered to the tenant appeared to be working well and the tenant's remaining concerns about his previous tenancy were reported to the relevant authorities.
- A tenant with health issues was concerned that Housing was trying to limit his decision-making options, including his ability to move interstate. Our investigation disclosed that this was not the case and in fact we considered that Housing had been very sensitive to the tenant's needs and had kept his accommodation for him during periods when he was not residing there because they did not want him to lapse into homelessness.

Repairs and Maintenance: Complaints often involve repairs and maintenance issues and the tenants concerns that Housing is not responding promptly.

Examples

- A complaint was received from a tenant that a newly erected boundary fence was too high off the ground and their dog was able to escape. Consultation with Housing and the tenant resulted in agreement by Housing to install heavy pine logs under the fence line with the work to be completed within a short time frame. The tenant was satisfied with this result.
- A tenant was concerned that previous attempts by Housing to improve the slippery surface of their driveway by application of non-slip paint had been unsatisfactory and that safety concerns remained. Housing commendably explored other available avenues to improve the driveway surface and ultimately decided to grind back the existing surface and apply a fibre grit sealant to create a non-slip surface. A scope of works was developed and a procurement process commenced with works expected to be awarded within weeks. The tenant was satisfied with Housing's response.
- During one of our outreach visits, a community member approached us in relation to concerns that they had been trying for years to get Housing to install a lockable pantry in their kitchen. They said the existing open-style pantry was insufficient for food security. As no complaint had been made previously to Housing (although there had been numerous requests), we declined to take the complaint, but we assisted the complainant by referring the issue to Housing on their behalf. Within a matter of weeks, Housing had approved the installation of a lockable pantry.

Other issues, including delay: Other common areas of complaint involve financial issues and the allocation of housing, including tenancy transfer. These are not infrequently tied up with complaints of delay. Long waitlists for public housing are common and our Office works with Housing to ensure that a complainant understands the process and is dealt with fairly through any allocation process.

Example

A complaint was received from a public housing tenant whose power bill had decreased by 40% after a new thermostat was installed. This made them query whether they had paid too much for past power usage. A positive outcome was achieved when Housing refunded an amount equivalent to the estimated past overpayment.

CHAPTER 5 – NT POLICE

HOW POLICE CONDUCT APPROACHES ARE DEALT WITH

Complaints about police conduct are addressed in detailed provisions of the *Ombudsman Act 2009*. Conduct of a police officer is defined as any decision or act, or a failure to make any decision or do any act, by the police officer for, in relation to or incidental to, the exercise of a power or performance of a function of a police officer. The focus is therefore on conduct relating to the exercise of police functions or other official functions rather than private conduct.

The Act requires the Commissioner of Police and the Ombudsman to notify each other, upon receipt of a complaint, and to provide details of the complaint. It provides a framework for the investigation of complaints against police and defines the role of the NT Police 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 2020, is set out at Appendix A to this Report.

Enquirer assistance and preliminary inquiries

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

In other cases, NT Police can deal with minor matters as customer service inquiries that do not require classification as complaints.

In addition, there are matters where the Office will conduct preliminary inquiries with Police and determine that there is no basis on which to further pursue an enquiry or complaint.

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

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

Complaint assessment

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

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

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

Complaint Resolution Process

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

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

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

More serious complaints

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

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

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

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

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

In practice, we will consider this option on application by NT Police. In order to adopt this approach, we need to be satisfied that the proceedings will encompass all the substantive issues raised by the particular complaint. If satisfied that is the case, we may then defer further investigation until completion of the proceedings.

On completion of the criminal or disciplinary proceedings, NT Police advise our Office of the outcomes and we consider whether any further action is necessary.

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

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

No investigations of this type were initiated during the reporting period.

Investigations

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

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

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

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

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

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

Outcomes

For the less formal CRP process, the outcome may be recorded as Successful if the complainant advises they are satisfied or Unsuccessful if they do not. If a CRP is Unsuccessful, the complainant is advised that they can contact our Office to pursue any outstanding issues.

For more serious complaints, the following broad categories of potential findings are set out in the Police Complaints Agreement:

- (a) **Unresolved** - Given differing versions, where the Ombudsman and PSC are unable to come to any conclusion about the allegation. This finding may be used in respect of allegations when the only available evidence is the complainant's version against that of the members or all witnesses provide a differing/inconsistent version;
- (b) **No evidence to support the allegation** - Based on the material, there is no evidence to support the allegation. This finding may apply to an allegation of minor assault (e.g. push/slap) and there is no medical evidence to support the allegation, there are no witnesses to the incident, there is no video evidence or other members present, to positively support the fact that it did or did not occur;

- (c) **Insufficient evidence to sustain the allegation** - Based on the material there is some evidence to support the complainant, but it is insufficient to sustain the allegation. This may apply where there is some evidence to support the allegation but the quality of the evidence is unreliable, or taking into account other evidence (e.g. the medical evidence or the evidence of the police), the evidence as a whole is insufficient to sustain the allegation;
- (d) **Action / conduct was not found to be unreasonable given the circumstances** - This finding may be used in cases where a member may have done something unusual or *prima facie* questionable, but the surrounding circumstances are such that it is inappropriate to make an adverse finding against the member;
- (e) **Police action / decision was reasonable** - This is a positive finding to the effect that the Ombudsman / PSC supports the action / decision by the police;
- (f) **Allegation sustained** - Where there is sufficient evidence to sustain the allegation on the balance of probability; and
- (g) **Allegation is found to be wilfully false** - Where an investigation into a complaint against Police reveals that the allegation was wilfully false, that finding will be brought to the attention of the Ombudsman to consider a prosecution under the Act. Any criminal charges arising from a wilfully false allegation will be referred to the Commander, PSC for action.

In addition to issues identified by complainants, our Office or PSC investigating officers may identify ancillary matters in the course of an investigation. Often these involve failure to undertake a particular procedure or adequately complete relevant records but they may nevertheless be serious issues.

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

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

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

If a matter is deferred pending the outcome of criminal or disciplinary proceedings, our Office is advised of outcomes and any other action taken by NT Police in due course. We review the circumstances and the outcomes to ensure all relevant issues have been adequately addressed and consider whether there is a need to continue investigations.

Depending on its categorisation, either our Office or NT Police will advise the complainant of outcomes of the complaint. Our Office is limited in the information that we can disclose to a complainant regarding the outcomes of disciplinary proceedings (see *Ombudsman Act 2009*, section 106(3)).

POLICE CONDUCT APPROACHES DURING 2019/20

Approaches received

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

Received	2017/18	2018/19	2019/20
Approaches	545	589	600
CRP	210	143	198
Category 2	47	34	76
Category 1	10	3	3

There was a marginal increase in the number of police conduct approaches received in 2019/20 compared to the previous year (2%). While the number of complaints assessed as the most serious Category 1 matters remained the same, there was an appreciable increase in complaints received during the year that were assessed as Category 2 matters. Many of those matters have not yet been finalised. My Office will analyse the outcome of those cases to establish whether any trends can be identified that warrant further action.

Of the 79 new Category 1 and 2 matters, 12 were made on behalf of youths, compared with 17 and 25 in the two previous years.

Twenty-four Category 1 and 2 matters originated in Darwin/Palmerston/Top End Rural, 21 in Central Australia, 21 in the Katherine region, 7 in the East Arnhem region and 6 in the Barkly region.

POLICE CONDUCT 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. Frequently, more than one issue is raised in relation to a particular complaint.

The most common issues raised or identified in police conduct approaches received in 2019/20 related to allegations of poor behaviour by police, excessive use of force, poor decision-making, inadequate investigation, and poor communication.

Category 1 and 2 complaint outcomes

Two Category 1 and 32 Category 2 complaints were finalised during 2019/20.

Complaints finalised	2017/18	2018/19	2019/20
Category 1	4	11	2
Category 2	31	42	32
Total	35	53	34

Twenty-eight of those complaints involved a finding that at least one issue was sustained.

How finalised	2017/18	2018/19	2019/20
Category 1 – sustained issue	2	8	1
Category 2 – sustained issue	17	35	25
Deferred in light of disciplinary action / charges	2	1	2
Total	21	44	28

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

On that point, 14 complaints finalised in 2019/20 involved sustained findings of failure to utilise body worn video equipment (BWV), while 13 involved findings of record-making or reporting failures. As BWV has been in use by NT Police for some time, my Office will pursue an ‘own motion’ investigation in 2020/21 in relation to aspects of its utilisation by NT Police.

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

Sustained Issue Type	Cases
Arrest/custody – unreasonable force	6
Arrest – unlawful / inappropriate arrest /detention /fail advise reason	4
Behaviour – abuse/rudeness/insensitivity	4
Practice/procedure – failings in searches, accoutrements, knowledge of powers/law	3
Custodial – failure to provide adequate care, eg, blankets, aftercare after spray	2
Investigation – failure to undertake / inadequate / delay	2
Practice/procedure – effecting rights of detainee, eg, interview, interpreters, notification	2
Behaviour – threatening/intimidating language or behaviour	1
Custodial – personal safety / wellbeing – failure to monitor /safeguard	1

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

Internal Investigations outcomes

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

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

In a number of these cases that fall within our jurisdiction, our Office defers action prior to categorisation, once we are satisfied that criminal or disciplinary action is being pursued. We then review outcomes at the conclusion of that action to decide whether any further action is necessary (see section 107 of the Act discussed above).

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

- inadequate response in domestic violence situations;
- excessive use of force;
- failure to appropriately utilise body worn video camera;
- failure to adequately deal with a conflict of interest;
- failure to properly process a payment;
- failure to comply with the requirements of a Good Behaviour Bond;
- inappropriate acquittal of a travel requisition;
- unauthorised use of a police vehicle; and
- inappropriate online messaging.

Formal disciplinary outcomes in these cases included counsel and caution, formal written caution, reduction in rank, reduction in salary increment, transfer and dismissal.

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

- inadequate response in domestic violence situation;
- failure to turn on body worn video camera;
- inadequate search of a person in custody;
- failure to notice a discrepancy in an identification process; and
- failure to provide adequate care to a person in custody.

POLICE CONDUCT CASE STUDIES

Case 1 – The wrong man

The complainant was walking with two friends, one of whom had a bicycle. Police were searching for another person who was believed to be in breach of bail conditions (Person A). Police formed the view that the complainant was Person A. As Police approached, the group separated and the complainant got on the bike and rode off.

A number of police then pursued the complainant through streets in a built up area. On three occasions, a police vehicle was pulled into driveways trying to block the complainant. While the complainant was close to coming into contact with the police vehicle, he managed to evade the vehicle and continue on. Ultimately, he rode into a vacant lot pursued by the vehicle. The complainant claims that he was then struck by the vehicle, causing injury to his knee. He then ran off within the vacant lot where he was apprehended by police. He complained about use of force by police in arresting him.

The NT Police Investigating Officer (the IO) examined video footage of the pursuit and noted that, on each occasion, the police vehicle drove onto driveways ahead of the complainant. He concluded that the officer was not driving at great speed and that there was no evidence that the vehicle came into contact with the complainant on those occasions. Even so, he concluded that the driver had failed to identify inherent dangers in using the vehicle to try to stop the complainant. He concluded that, while the officer may have been driving within his ability to control the vehicle, he could not control the actions of the complainant and the risks that might bring. He noted the need for continued risk assessment and queried the repetition of the same failed tactic. The complaint regarding the use of the police vehicle in this manner was sustained.

There was no video of the pursuit once the vehicle entered the vacant lot and the officer denied the vehicle struck the complainant. It was noted that the complainant had a pre-existing injury to his knee which was already bandaged at the time. Allegations of excessive use of force in the arrest of the complainant were also denied by the police involved. Given the conflicting versions of events and the lack of other evidence, both allegations remained unresolved.

Another significant issue involved the misidentification of the complainant as Person A. The IO noted that, in addition, to breach of bail, the other person was a person of interest in relation to property offences and subject to electronic monitoring. The IO concluded that it may have been appropriate to pursue the person if the officer was reasonably satisfied that this was Person A. He also noted that the complainant was, once his actual identity was established, arrested on outstanding bail warrants.

However, the IO concluded that there were insufficient grounds to establish a reasonable belief that the person was Person A. He concluded that this aspect of the complaint was sustained and recommended that officers receive remedial advice, including advice on the differentiation between reasonable grounds to suspect and reasonable grounds to believe, and further that simply because a person flees does not give justification to chase, without reasonable grounds to believe the person has committed or is about to commit an offence.

In addition, the IO found sustained issues in relation to failure to turn on body worn video (BWV). This would clearly have aided in the investigation of the complaint.

Officers involved received remedial advice on a range of matters relating to the sustained complaints and procedural matters.

Case 2 – Custody Notification Service

The Custody Notification Service (CNS) is a recent initiative delivered by the North Australian Aboriginal Justice Agency (NAAJA) in partnership with NT Police. The CNS is formally implemented under section 19B of the *Police Administration Regulations 1994*. Section 19B provides that the officer in charge of a police station or watch house must immediately ask a person received in custody if they are Aboriginal. If the person indicates they are, the officer must advise the person that they will notify the CNS, and then, as soon as practicable, notify the CNS.

A 13 year old was arrested at 1:45 on a Friday afternoon in relation to allegations that they and other youths had caused a disturbance and threatened staff at the residence where they were in care. They arrived at the watch house at around 2:15pm. Police state that they were not in a position to interview the complainant until well after midnight that night and that they determined to allow them to rest until the morning.

Police first attempted to make a CNS call to NAAJA at 8:19 the next morning but were not able to contact NAAJA until 10:35, 20 hours after the complainant arrived at the watch house. A responsible adult was identified and the complainant was offered an interview at 10:53, but declined. They were charged at 4:44pm and remanded in custody by a Judge at 6:03pm.

The complainant took issue with the time taken to make the CNS notification and the time spent in custody, noting the requirement to bring a person before a court as soon as practicable (section 137 of the *Police Administration Act 1978* – the PAA).

The IO identified that the operations of the watch house had been severely disrupted for most of the time the complainant was in custody by a breakdown in electronic systems caused by a power outage. The officer in charge of the watch house advised that he wanted to hold off on contacting the CNS until all relevant information was available. The IO concluded that the officer in charge had not complied with his obligations to immediately ask the complainant if they were an Aboriginal person, inform them that he would notify the CNS, and notify the CNS as soon as practicable.

The IO found the allegation sustained but noted that it became evident through the complaint investigation that there was some confusion as to who was responsible for making the CNS notification, even though the Regulations are clear. She recommended a broadcast to all operational members reminding them of the legal requirements of the CNS.

With regard to the overall time in custody, the IO noted that a substantial amount of work was entailed preparatory to charging the complainant, in relation to several counts and with other alleged offenders involved. She noted the following steps were required:

- Interviewing witnesses and obtaining statements;
- The need to assess relevant material in preparation to interview a person (whether or not they decline to be interviewed, police are required to be prepared);
- To allow the person time to rest (overnight);
- The time taken to communicate with a legal advisor, friend or relative;
- The time taken for the above to attend at the police station.

The IO concluded that the action was not unreasonable in the circumstances but recommended that a broadcast be promulgated to members reminding them of the requirements of section 137(1) of the PAA and the requirement that the time in custody, prior to being charged or brought before a Court of competent jurisdiction be minimised in all circumstances; and that exigent circumstances causing delays should be recorded on the WebEOC Offender Journal. A broadcast was duly circulated.

I have made comments regarding the CNS in Chapter 1. I also note that this matter arose prior to recent amendments to the PAA which have introduced stricter requirements relating to the continued custody of youths (see section 27 and the discussion under *Youth justice recommendations* below).

Case 3 – Handcuffs

From time to time, complainants express concern about the tight application of handcuffs and failure of police to adjust them on request. There is the potential for handcuffs, even when appropriately applied, to cause pain or discomfort, particularly if a person is struggling while in them. However, it is always important for police to consider the situation of a person in handcuffs and take whatever steps they reasonably can to avoid pain or discomfort.

Following a recommendation made in one case, NT Police issued an Internal Broadcast to members reminding them of the need to be alert to concerns expressed by people being escorted in custody regarding pain or discomfort from handcuff use. It noted the importance of police officers considering how to effectively minimise the potential for harm or discomfort while still carrying out their functions effectively. It stated that, in those circumstances, consideration should be given to loosening or readjusting handcuffs where it is safe and practicable to do so.

There will always be a need for police to balance the effective control of a person in custody against the potential for some discomfort. Handcuffs which are too loose present a number of risks in terms of control and safety. The capacity to adjust or loosen handcuffs in a particular case will often be a matter of judgement for the officers concerned.

Case 4 – Custody Health Assessment

A complaint of excessive use of force by roughly handling the complainant during apprehension was unresolved due to conflicting versions of events and lack of BWV footage. An officer received remedial guidance in relation to failure to switch on a BWV camera.

The complainant was taken to a watch house where a Custody Health Assessment (CHA) was conducted. The complainant refused to answer any questions relating to the CHA. The officer who conducted the CHA failed to record an injury on the face of the complainant. The officer was given remedial guidance on the necessity to conduct a thorough visual assessment for injuries during a CHA.

The CHA is an important element of taking a person into custody, both from the point of view of ensuring adequate care is given and responding to later allegations about injuries that may have occurred in the course of apprehension. Police should take time and care to note and record any obvious injuries, in addition to the information provided by the person in custody.

Case 5 – PALI

This matter was dealt with by way of the Complaint Resolution Process. The complainant was questioned by a Police Auxiliary Liquor Inspector (PALI) regarding a proposed purchase of alcohol. The complainant advised the amount of alcohol he was proposing to buy and where he was intending to drink it and the PALI indicated there was no issue.

The complainant ended up purchasing two additional bottles of spirits and the PALI decided to seize and destroy the alcohol on 'suspicion of secondary supply'. Police met with the complainant and acknowledged that, on objective consideration, the decision to seize the alcohol was unfair and lacked procedural fairness. The PALI was given remedial advice in relation to the evidential threshold required for alcohol seizure and NT Police apologised and reimbursed the complainant. The complainant accepted the outcome.

Case 6 – Use of force

The complainant was taken into protective custody and placed in handcuffs. The complainant became abusive to officers at the watch house, moved towards one officer and spat at him. An officer put his arm around the complainant and took the complainant to the ground. A three point hold was applied and a spit hood was placed on her head. The complainant was then lifted to her feet and moved to the charge counter.

The IO concluded that the decisions to take the complainant into protective custody and apply handcuffs were reasonable. They were found highly intoxicated in a public place. There was no one at their residence. They did not provide the name of a person who was willing and able to care for them and the Sobering Up Shelter was closed. There were no female officers present to search her on apprehension and use of handcuffs for persons taken into custody (including protective custody) is in line with NT Police policy. Further, there was insufficient evidence to sustain the complaint that the handcuffs were applied too tightly.

The IO found that the actions of police in taking the complainant to the ground and applying a spit hood after she spat at an officer were not unreasonable in the circumstances. The IO concluded that the takedown was effected in a controlled manner. An arm was placed around the complainant's neck for a brief moment and the knee of an officer was inadvertently placed onto the head of the complainant for a brief period (two seconds) while moving into the three point hold. The spit hood remained in place for approximately four minutes. The IO concluded that its use was justified and in compliance with NT Police General Orders.

The IO concluded that complaints about the way the complainant was then lifted from the ground and placed with her head on the charge counter were sustained. One officer lifted the complainant with one hand on the handcuffs and the other under her left upper arm. This officer lifted the complainant without advising two other officers, who consequently provided only minimal assistance in lifting her. As she was lifted, the complainant's arms were extended up behind her back, with her weight largely supported by her arms. She was clearly in pain as she was lifted. She was then moved directly to the watch house counter bent at the waist, with her hands still raised behind her back. She continued to cry out in pain.

Once she was resting on the counter her arms were lowered. While the officer indicated that he did not intend to cause pain to the complainant, the IO concluded that there were alternative methods available for lifting the complainant from the floor and moving her to the counter with less force and discomfort. The officer was given remedial advice in relation to his use of force. Other allegations of excessive use of force and rudeness were not sustained.

Police are often faced with the need to act rapidly and apply significant force to control situations in order to ensure their safety and the safety of colleagues, people in custody and members of the community. This is often not an easy matter but it is important for police to make every effort to continually reassess whether and what force is needed to effectively progress a situation.

Case 7 – Alcohol seizure

This matter was dealt with by way of the Complaint Resolution Process. The complainant was taken into protective custody with a backpack containing alcohol. The alcohol was destroyed by an officer who mistakenly believed he had authority to do so. The officer was given remedial advice in relation to the application of the law and NT Police provided an apology to the complainant and agreed to compensate him for the loss of his property. NT Police were unable to contact the complainant but our Office managed to contact him and advise him of the outcome and where to obtain the compensation. He was satisfied with this result.

Case 8 – Pursuit over minor matter

The complainant was a 17 year old who was riding a bike with a friend in a public area. Police patrolling on bikes approached them because they were not wearing helmets. The complainant separated from the friend and rode away. An officer pursued and caught up with the complainant. The officer ordered the complainant to get off the bike but the complainant did not immediately do so. The officer forcibly removed the complainant from the bike, then ground stabilised and handcuffed them. The complainant was issued with an infringement notice for riding without a helmet and a loitering notice restricting them from entering the area for a period.

The IO concluded that the procedural concern relating to arrest was sustained. The IO accepted that the officer believed the complainant was an adult and could be dealt with as such. However, the offence of riding without a helmet was minor and is often dealt with by way of caution. CCTV footage showed a number of unidentified persons riding around at the time without helmets, in respect of whom no action was taken. The IO recommended that the officer be given remedial advice on this point, including the need for officers to be mindful that the simple fact that a person flees does not provide justification for pursuing them.

The IO concluded that the pursuit of the complainant through pedestrians on the footpath and through traffic was potentially dangerous and excessive, particularly given the nature of the offence. The officer contended that pursuit was necessary to stop the dangerous and erratic riding of the complainant but the IO noted any problematic riding by the complainant was likely the outcome of being pursued.

The IO concluded that once the complainant stopped, there was no evidence of them displaying indicators of violence or further evasion, and that consequently the use of force to remove them from the bike, take them to the ground and handcuff them was not proportionate to the circumstances. The IO noted that the absence of BWV footage (which had not been turned on) meant there was nothing to support stated concerns of the officer regarding violence from the complainant.

The IO also concluded there was no basis for the issue of a loitering notice as the complainant was not loitering. The IO recommended the officer be given remedial advice regarding the above matters and that the complainant be given a written apology.

Case 9 – Accuracy of record systems

A 15 year old was arrested for breach of suspended sentence conditions, in particular a curfew. The complainant protested that those orders were no longer in force and that they were free to come to town. The complainant was arrested at 10:30pm and held in custody overnight for just under 12 hours before being bailed by a Judge in the morning. They complained that the arrest and detention were unlawful and failed to comply with the *Youth Justice Act 2005*.

Both the Police PROMIS system and the Court IJIS system showed the conditions as current at the time of arrest. The arresting officers checked PROMIS but did not check IJIS. IJIS is regarded as the 'source of truth' for police with regard to court outcomes. The officers received remedial advice in relation to that failure but the IO concluded it would not have made a difference in this case.

The complainant had been involved in a number of court matters. It appears that the relevant conditions had previously been recorded as revoked in relation to some matters but not in respect of one matter. Police therefore acted in line with the information available on the relevant systems.

Police conducted a breath test on the complainant. The officers who conducted the test were not authorised to do so under the *Youth Justice Act 2005*. They were given remedial advice with regard to this matter and the inadequate utilisation of body worn video cameras.

Issues relating to alleged delays or discrepancies in recording of court outcomes on IJIS arise from time to time. While NT Police may rely on IJIS as the 'source of truth' in that regard, the impact that any inaccuracy may have on the work of police and on the liberty of individual citizens can be substantial. It is therefore crucial that NT Police liaise with court administrators to ensure that all reasonable steps are taken to maintain the currency and accuracy of court recording systems.

In that regard, the IO made a further recommendation that NT Police consult with the Department of the Attorney-General and Justice or relevant courts in relation to these issues.

However, police responsibilities should also extend further, in cases where there is credible information that IJIS may not be up to date or reflective of the intended court outcome, to take such claims into account and to make additional reasonable enquiries to establish the facts of the matter.

Case 10 – Safety and duty of care

This complaint was made by a third party. The IO concluded that the action of police in physically restraining a person (Person A) in a remote community was not found to be unreasonable in the circumstances. This included discharge of a Taser in circumstances where Person A had committed an offence justifying arrest, was actively resisting arrest and was striking an officer.

However, the IO noted that, had the officers taken the option of handcuffing Person A earlier, this could have limited the potential for escalation and the need for use of greater force. The IO recommended that the officers review the footage with their supervisors to discuss what different tactical options were available, and particularly the importance of handcuffing. One officer was also subject to disciplinary action with respect to BWV usage.

Person A was suffering from a chronic illness and collapsed not long after his struggle with officers and being tasered. Police took Person A to the community clinic for assessment. Staff of the clinic conducted a test on Person A and monitored him for a time while he remained in the caged area of the police vehicle. An officer also monitored Person A during this time. There was clearly some concern about moving him from the caged area of the vehicle due to his recent aggression.

Person A was then transferred in the cage of the police vehicle to another clinic at a centre approximately 30 minutes away for further assessment. Person A appeared to be semi-conscious at best for much of the time between his collapse and his arrival at the second clinic. The transfer was undertaken by a single officer who was obviously limited in his ability to both drive and monitor the condition of Person A or to take action in the event his condition deteriorated.

Following discussions with my Office, the IO recommended that a broadcast be disseminated that noted it is best practice for people who are injured, ill or suffering from mental health conditions to be conveyed by ambulance but that where officers need to convey such persons, they should consider having a second person to assist and monitor the person. A broadcast was circulated.

The complaint highlights the types of issue that can be faced by police operating in remote communities which, by their nature, frequently entail a small number of officers conducting a wide variety of functions in highly charged circumstances.

YOUTH JUSTICE RECOMMENDATIONS

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. Recommendations of particular relevance to NT Police, include:

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	<p>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.</p> <p>This work includes a review of General Orders to ensure police practice aligns with the Royal Commission recommendations.</p>	25.02 25.03 25.06	Phase 2
Custody Notification	<p>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.</p> <p>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.</p>	25.04 25.33	Phase 1
Police Diversion	<p>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.</p> <p>The proposed outcomes of the Action Plan are:</p> <ol style="list-style-type: none"> 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. <p>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.</p>	25.08 25.10 25.12	Phase 1
Youth Policing	<p>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.</p> <p>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.</p> <p>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.</p>	25.01 25.07 25.18 25.20	Phase 1 Phase 2

A number of the Royal Commission recommendations require involvement from multiple agencies and overall implementation is managed by the whole-of-government Reform Management Office (the RMO). The RMO produces an Annual Report which encapsulates the NTG response to the recommendations: <https://rmo.nt.gov.au/home> .

The *Safe, Thriving and Connected: Generational Change for Children and Families, 2018-19 Annual Report* notes two key achievements of particular relevance to police operations:

- *Establishing the Police Youth Division within Northern Territory Police Fire and Emergency Services to refocus Police's engagement with young people.*
- *Commencing the Custody Notification Service to promote the wellbeing of Aboriginal children and young people who are in custody.*

...

Police Youth Division

On 1 January 2019, the Police Youth Division was established within Northern Territory Police, Fire and Emergency Services to refocus Police's engagement with young people. The Division includes school based policing, youth diversion, youth engagement and Neighbourhood Watch and supports a proactive and responsive approach to working with children and young people.

School based policing is an important strategy in building positive relationships between police and young people. The refreshed school-based police program was introduced in 10 government schools across the Territory in October 2018. A review of the program undertaken earlier this year found positive relationships have grown between the school-based officers, students, staff and families. Schools have reported higher student engagement and the development of positive relationships between students and police officers.

Northern Territory Police are undertaking a broad review of policy and procedures related to youth and are developing a youth engagement strategy that will focus on and support police working in partnership with communities to deliver improved outcomes for at risk young people and their families and to ensure safe and resilient communities.

Northern Territory Police have developed an education and training package in relation to dealing with youth and vulnerable youth. The initial face to face training program has been rolled out to 600 officers. The program has now been developed into an online training program which is available to all police officers across the Northern Territory.

The youth engagement superintendent travelled to New Zealand at the end of April 2019 to closely examine youth engagement, youth diversion programs, including locally managed indigenous youth programs whose focus on was on diverting youth from the criminal justice system. The visit also provided the opportunity to explore the New Zealand Police Youth Officers and their specialist training program. The learnings from this visit are being used in the work currently underway to enhance the existing Police Youth Diversion Scheme and inform Northern Territory Police Youth Policy.

...

Custody Notification Scheme

On 11 June 2019, the Custody Notification Service, operated by North Australian Aboriginal Justice Agency, commenced. The Custody Notification Service promotes the wellbeing of Aboriginal children and adults who are in custody by referring them to health services, interpreters and legal assistance that are culturally secure.

The service aims to reduce the recidivism rate of young people by working with Aboriginal children, young people and adults who have been arrested to help them deal with their issues.

Twelve staff are employed in the Service; six Aboriginal staff who make first contact with the client and support ongoing engagement and six legal professionals to provide any required legal advice. The Service operates 24 hours day and through all police stations throughout the Northern Territory.

The Northern Territory is one of only four Australian states or territories (Western Australia, New South Wales, Australian Capital Territory) to introduce a scheme. As a commitment following the Royal Commission into Aboriginal Deaths in Custody, the Commonwealth Government provided initial funding for the service for three years. The Northern Territory Government is committed to providing ongoing funding after the initial three years, if the model is feasible for the Northern Territory.

Implementation of the Custody Notification Scheme is discussed in Chapter 1 of this report.

Legislation responding to a number of Royal Commission recommendations came into force in March 2020. The *Youth Justice and Related Legislation Amendment Act 2019* made numerous changes to justice-related legislation. The following are examples of amendments or new provisions of particular relevance to Police operations:

- Amendments to the *Bail Act* and Regulations:
 - provisions concerning the presumption in favour of bail for youths;
 - additional criteria to be considered in bail applications for youths;
 - new factors for consideration when fixing bail conditions for youths;
 - exclusion of youths from the offence of breach of bail conditions;
- Amendments to the *Police Administration Act*:
 - new provisions requiring:
 - review of ongoing custody of a youth by a Senior Sergeant or higher every four hours up to 24 hours;
 - thereafter requiring application to a Local Court Judge for every further four hours in custody;
- Amendments to the *Youth Justice Act* and Regulations:
 - when providing an explanation to a youth under section 15, if the youth appears to have insufficient English language skills to understand the explanation, police must take reasonable efforts to obtain a qualified interpreter for the explanation;
 - prior to interviewing a youth or causing the youth to do anything in connection with an investigation, police must:
 - inform the youth of their right to access legal advice and representation;
 - provide that access in a place and manner that allows the youth privacy;
 - inform the youth of their ability to contact a friend, relative, a responsible adult or other support person who must be present while police interview the youth or the youth does the act;
 - if a youth exercises the right to silence, including exercising the right through legal representation, police must not interview the youth in respect of the offence;
 - if a youth is charged with an offence and is not released from custody, the youth must be brought before the Court as soon as practicable and within 24 hours after the charge; or on the next business day after the charge;
 - new provisions on youth diversion;
 - new provisions on closure of the Court and restricting publication of proceedings.

My Office deals with a range of complaints made on behalf of youths each year relating to police conduct. We deal with those complaints and make recommendations specific to the complaint as well as recommendations that are more general in nature. For one example, see the discussion of *Treatment in watch houses* in Chapter 3 of this report and *Case 3 – Apprehension and treatment of youths* (in Part 1, Chapter 7 of my 2018/19 Annual Report), where I reiterated a previous recommendation 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.

NT Police has provided our Office with an update on actions taken to address recommendations made by the Royal Commission and our Office in relation to youths, which points to the following initiatives:

- Development and implementation of new policy and procedures relating to youth including:
 - *Children as Victims or In Need of Care Instruction* (March 2020);
 - *Youth Bail Instruction* (March 2020);
 - *Youth Diversion Instruction* (March 2020);
 - *Youth Powers and Obligations Instruction* (March 2020);
- Development of an online training package for all NT Police officers in relation to adolescent brain development, cognitive and intellectual disabilities, foetal alcohol spectrum order and the effect of trauma;
- Implementation of mandatory training in relation to legislative changes, and responsibilities;
- Reinforcement through training of the principle of ‘arrest as a last resort’;
- Managed oversight of the period of time youth offenders are detained, in compliance with legislative amendments to the *Police Administration Act 1978*;
- Amendments to current policy are being implemented in relation to the use of Electro-muscular Control Devices and Aerosol Subject Restraints on youths.

My Office will continue to monitor implementation of police-related recommendations concerning youths.

STATUTORY OVERSIGHT FUNCTIONS

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

Firearm prohibition orders

Amendments to the *Firearms Act 1997* (commenced 2 March 2020) grant the Commissioner of Police a broad discretion to issue Firearm Prohibition Orders.

The effect of a Firearm Prohibition Order is to prohibit a person from:

- (a) *acquiring a firearm or firearm related item; and*
- (b) *possessing or using any firearm or firearm related item; and*
- (c) *being in the company of a person who acquires, possesses or is using a firearm or firearm related item.*⁷

The issue of an order is made without warrant and engages extraordinary powers of search. Similar powers already exist in other jurisdictions but concerns have been raised about the breadth of the powers and the potential for arbitrary or unreasonable use.

In relation to the corresponding scheme in NSW, the NSW Ombudsman has stated:⁸

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

The breadth of the new search powers raised concerns that police may use them arbitrarily or unreasonably. The NSW Parliament required the NSW Ombudsman to keep under scrutiny the exercise of the new FPO search powers for the first two years of their operation. At the end of that review, the Ombudsman is required to prepare a report on the way police have exercised their FPO search powers, and make recommendations for any changes that he considers necessary.

Similarly, the *Firearms Act 1997* (NT) provides that the NT Ombudsman must review, during the first 2 years after commencement:

- (a) the exercise of powers conferred on police officers under Part 8A – Firearm prohibition orders; and
- (b) the financial effect of the result of the commission of offences against this Part.⁹

The Ombudsman must give a copy of the report of the review to the Minister as soon as practicable after the expiry of the 2 year period.¹⁰

No resources have been provided to my Office to conduct the review. This will circumscribe the manner in which the review can be conducted.

⁷ *Firearms Act 1997*, s.49E.

⁸ *Review of police use of the firearms prohibition order search powers - Section 74A of the Firearms Act 1996* (August 2016), p. iii.

⁹ *Firearms Act 1997*, s.49ZB(1).

¹⁰ *Firearms Act 1997*, s.49ZB(2).

My Office has consulted with NT Police on a number of occasions regarding the recording and provision of information that will be necessary to inform the review. We have experienced considerable co-operation from NT Police to date. We are receiving ongoing updates on the progress of NT Police implementation of the provisions.

We will continue to liaise with NT Police and formulate a realistic investigation plan in due course.

Surveillance devices

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

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

Section 63(1) of the SDA requires the Ombudsman to inspect the records of each law enforcement agency to determine the extent of compliance with the SDA by the agency and its law enforcement officers.

The Ombudsman is required, under section 64(1) of the SDA, to report to the Minister at six monthly intervals on the results of each inspection. Section 64(2) of the SDA provides that the Minister must, within 7 sitting days after receiving a report, table a copy of it in the Legislative Assembly.

In accordance with the SDA, our Office undertook two inspections during the reporting period and required reports were provided to the Minister. Tabled reports are available on the Ombudsman website.

Telecommunications interception

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

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

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

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

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

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

Controlled operations

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

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

The Ombudsman must report on compliance each year to the relevant minister. The required reports were provided to the Minister during the reporting period. Reports are tabled in the Legislative Assembly in due course. Tabled reports are available on the Ombudsman website.

CHAPTER 6 – QUALITY IMPROVEMENT AND COMMUNITY ENGAGEMENT

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 us in our pursuit of that second object, it 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.

Legislative and policy reform

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

During the year, the Ombudsman served on a sub-committee dealing with the law relating to tree-related disputes and contributed to the NTLRC’s consideration of a reference on mandatory sentencing and community-based sentencing options.

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

- the draft Aboriginal Justice Agreement;
- creation of a Judicial Commission;
- implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);
- youth justice legislation amendments;
- various aspects of information sharing between NTPS agencies;
- Firearm Prohibition Orders;
- consideration of the need for uniform companion animal management legislation; and
- a proposed NTG Program Evaluation Framework.

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.

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

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

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

In 2019/20, our involvement at this level included:

- membership of the International Ombudsman Institute (IOI), a global organisation for the cooperation of around 200 independent Ombudsman institutions from more than 100 countries worldwide - 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 ;
- serving on the ANZOA Executive Committee;
- remote attendance at the following meetings:
 - ANZOA AGM and Members meeting;
 - Australasian parliamentary ombudsman meeting; and
 - Deputy parliamentary ombudsman meeting.

Training and presentations

In 2019/20, our Office delivered training and presentations to public sector officers, for example:

- *External Accountability*, to OCPE Foundations of Public Sector Governance courses; and
- *How can the Ombudsman help victims of crime*, to DPP Witness Assistance Officers.

Other involvement with public authorities

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

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

COMMUNITY AND STAKEHOLDER ENGAGEMENT

During 2019/20, Ombudsman visits to communities and regional centres were limited due to staff absences in the first part of the year and the impact of the coronavirus pandemic in the second half of the year. For example, a visit to Alice Springs and a number of other communities in Central Australia that was scheduled for mid-March 2020 had to be cancelled due to coronavirus. Ultimately, we were able to conduct visits to the following communities and centres during the year:

- Tennant Creek
- Barkly Work Camp
- Katherine
- Kulaluk / Minmarama Park
- Bagot Community.

Visits have continued to be constrained to date in 2020/21 but we will focus on expanding engagement in the second half of the year.

We also undertook community engagement through presentations such as:

- *Effective communication in a health setting*, Indigenous Languages and Health Communication Symposium, Menzies School of Health Research;
- *Complying with FOI & Privacy Legislation* – Law Society Northern Territory CPD;
- *NT Ombudsman Processes*, to North Australian Aboriginal Justice Agency.

We provide access to a broad range of publications and resources through our website: www.ombudsman.nt.gov.au/. Available resources include:

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

CHAPTER 7 – OUR OFFICE

CORPORATE GOVERNANCE, PLANNING AND PERFORMANCE

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

This means that under the *Financial Management Act 1995*, the Ombudsman is the Accountable Officer for the Ombudsman's Office, and has responsibility for the efficient, effective and economic conduct of the Office. It also means that the Ombudsman has responsibilities as a Chief Executive Officer under the *Public Sector Employment and Management Act 1993* (PSEMA).

The Statement of Accountable Officer is on the first page of the Financial Statements for 2019/20, which are set out at Appendix B.

The Ombudsman/OIC Strategic Priorities provides guidance and a general framework for strategic operations and annual business planning. A copy of the current Strategic Priorities is available online at: <http://www.ombudsman.nt.gov.au/about-us/our-policies/>.

Within the constraints of available resources and in alignment with the strategic and business plans, financial planning is undertaken and an annual budget prepared at the start of each financial year.

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

OUR STAFF

The Ombudsman Office operates jointly with the OIC. There are dedicated staff within the OIC but other staff have roles within both offices, in particular, the Deputy Ombudsman, who is also Deputy Information Commissioner. Actual staffing for the combined offices at 30 June 2020 was as follows. Precise staffing varies throughout the year depending on the needs of the Office, flexible working arrangements and staff acting in other positions.

Position Title	Level	FTE	Status
Ombudsman	ECO5	1	Statutory appointment
Deputy Ombudsman	ECO2	1	Executive Contract
Assistant Ombudsman	SAO2	1	Ongoing
Business Manager	SAO1	1	Ongoing
Senior Policy and Investigation Officer (OIC)	SAO1	1	Ongoing on HDA
Senior Investigation Officer	AO7	4	3 Ongoing, 1 Fixed period
Information Officer (OIC)	AO6	0.6	Ongoing
Policy and Investigation Officer (OIC)	AO6	1	Fixed period
Investigation Officer	AO5	1	Ongoing
Resolution Officer	AO4	2.5	1.5 Ongoing, 1 Fixed period
Business Support Officer	AO4	1.6	0.6 Ongoing, 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 2019/20 included:

- Certificate IV in Government Investigations (x 3)
- Online dispute resolution: a human-centred design approach - ANZOA
- NT Governance Forum
- Transgender and Gender Diverse People (x 14)
- Emotional intelligence
- How to write plain English
- Email etiquette
- Legal responsibilities when communicating with ESL clients
- Challenging unconscious bias
- Refugee Week, Refugee panel information sharing session (x 8)
- Internal development sessions by various staff, including:
 - Dealing with new approaches
 - Ombudsman jurisdiction and referrals
 - Independent Commissioner Against Corruption
 - Office security
 - Strategic planning
 - Personnel policies (including Conflicts of Interest).

As indicated above, the Office conducts internal development presentation sessions. 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, various chapters of the Manual were reviewed to ensure consistency with new or varied Treasurer's Directions.

The day to day work of resolution and investigative officers is also guided by the Office's *Operations Manual*. Two major Chapters of the *Operations Manual* were reviewed during the year.

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. A number of enhancements to Resolve planned for 2019/20 were delayed due to the competing demands of the coronavirus.

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 developing or 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 2011* and *Employment Instruction 11 – Occupational Health and Safety Standards and Programs*.

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

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

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

- information relating to the Ombudsman's management of the office, including personnel, contracting and financial records and information about asset management.

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

Administrative and policy files

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

There are records on a wide range of policy and general questions concerning the Ombudsman's functions and powers, the operation of the Office and the approach taken by the Ombudsman to particular classes of complaints.

Files may relate to the Ombudsman's jurisdiction over a particular body or over particular classes of action, or they may represent the recording and consolidation of information on subjects or issues that have arisen in the course of investigations.

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

Complaint files

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

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

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

Legal opinions

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

Annual reports

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

Policies, manuals and guidelines

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

Service Standards

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

Providing access to information

Publicly available documents

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

Administrative arrangements for access to information

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

Access under Part 3 of the Information Act

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

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

While some information held by the 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 2019/20, 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 or email or hand delivered.

In 2019/20, the Ombudsman received no personal information correction requests under the *Information Act*.

APPENDIX A – POLICE COMPLAINTS AGREEMENT

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

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

Table of Contents

1. **Scope of Terms**
2. **Introduction**
3. **Purpose and Intent of the Agreement**
4. **Obligations of Professional Standards Command**
5. **Obligations of Police Officer**
6. **Notification on the Making of A Complaint**
7. **Assessing and Determining Whether to Deal With a Complaint**
 - 7.1 Complaints Made Out of Time
 - 7.2 Preliminary Inquiries
 - 7.3 Declining a Complaint
8. **Classification of Complaints**
9. **Re-Classification of Complaint**
10. **Conciliation [Part 7, Division 3]**
 - 10.1 Representation at Conciliation
11. **Complaint Resolution Process (CRP) Procedures [Part 7, Div 4, Sub Div 1]**
 - 11.1 Ombudsman's Oversight
 - 11.2 Categories of CRP Conduct
 - 11.3 CRP Process
 - 11.4 Successfully Completed CRP
 - 11.5 Unsuccessful CRP
 - 11.6 Police Officer Dissatisfied
 - 11.7 Police Officer's Rights
 - 11.8 Enquiries Reveal a Matter is More Serious
 - 11.9 Withdrawal of Complaint
 - 11.10 CRP Action Requirements
12. **Professional Standards Command Investigation**
 - 12.1 Preliminary Inquiry
 - 12.2 Category 2 PSC Investigation
 - 12.3 Category 1 PSC Investigation
13. **Ombudsman Investigation [Part 7, Division 5, Sub Div 2]**
 - 13.1 Finalisation Process
 - 13.2 Complaint Findings
14. **Reviews by Ombudsman**
15. **Confidentiality & Immunity**
16. **Suspected Criminal Conduct**
17. **Procedural Fairness**
18. **Other**
 - 18.1 Non-Disclosure of Information
 - 18.2 Restricted Use of Information
 - 18.3 Register of Police Complaints
19. **Scope of This Agreement**
20. **Review of This Agreement**

1. Scope of Terms

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

2. Introduction

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

Specifically, the Agreement provides for the following matters:

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

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

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

3. Purpose and Intent of the Agreement

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

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

The Parties mutually agree to:

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

4. Obligations of Professional Standards Command

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

5. Obligations of Police Officer

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

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

6. Notification on the Making of a Complaint

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

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

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

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

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

7. Assessing and Determining Whether to Deal With a Complaint

7.1 Complaints Made Out of Time

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

7.2 Preliminary Inquiries

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

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

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

7.3 Declining a Complaint

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

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

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

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

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

As a general rule:

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

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

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

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

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

8. Classification of Complaints

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

Complaints fall into one of the following classifications:

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

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

Careful consideration is to be given to:

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

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

9. Re-Classification of Complaint

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

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

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

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

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

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

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

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

10. Conciliation [Part 7, Division 3]

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

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

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

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

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

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

10.1 Representation at Conciliation

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

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

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

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

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

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

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

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

11.1 Ombudsman's Oversight

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

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

11.2 Categories of CRP Conduct

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

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

11.3 CRP Process

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

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

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

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

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

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

11.4 Successfully Completed CRP

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

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

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

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

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

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

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

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

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

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

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

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

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

11.5 Unsuccessful CRP

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

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

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

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

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

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

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

11.6 Police Officer Dissatisfied

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

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

11.7 Police Officer's Rights

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

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

11.8 Enquiries Reveal a Matter is More Serious

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

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

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

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

11.9 Withdrawal of Complaint

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

11.10 CRP Action Requirements

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

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

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

12. Professional Standards Command Investigation

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

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

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

12.1 Preliminary Inquiry

Authorised Conduct of Preliminary Inquiry

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

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

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

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

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

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

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

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

12.2 Category 2 PSC Investigation

Authorised Conduct of Category 2 Complaint

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

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

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

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

Assignment of complaint to Investigating Officer

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

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

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

Functions of Investigating Officer

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

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

Responsibilities of Investigating Officer

The IO is to:

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

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

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

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

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

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

A copy of the completed complaint file, including the report, a draft letter endorsing the report to the Ombudsman and a draft letter of response to the complainant is to be forwarded to the relevant Assistant Commissioner.

The draft letter to the complainant is to advise of their right to ask the Ombudsman to have the complaint investigated by the Ombudsman under Part 7, Division 5, Subdivision 2 of the Act. The letter will include the following paragraph:

- a) *'If you are dissatisfied with any aspect of the investigation you may request the Ombudsman to consider reinvestigating your matter. In that event, it is necessary for you to set out detailed reasons as to how the investigation was inadequate, however please note, the Ombudsman must refuse this request if satisfied the issues raised in your complaint have been dealt with in the investigation.'*

Re-classification of Complaint

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

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

The Ombudsman is to notify the complainant how the complaint is to be investigated.

Where a complainant makes a statement requesting the CAP to be withdrawn, the PSC will seek authorisation from the Ombudsman to discontinue the investigation. Should the Ombudsman agree that the CAP is to be discontinued, the CAP file is to be returned to the PSC for case finalisation.

Ombudsman Review

In the event the complainant exercises their rights and asks the Ombudsman to re-investigate the complaint, the Ombudsman must consider the request. The Ombudsman must refuse the request if satisfied the complaint has been adequately dealt with.

Requirements when Serious Breach of Discipline Identified

Should a serious breach of discipline be identified during the investigation, the IO is to suspend the enquiries and forward all the documents to the Commander, PSC.

Commissioner Notification to the Ombudsman

Should disciplinary proceedings or criminal charges be brought against the subject member during the investigation of the Complaint, the Commissioner is to notify the Ombudsman within **five (5) days** of:

- (a) the commencement of proceedings or laying of the charges; and
- (b) the final outcome.

Deferral of Investigation

An investigation may be deferred or discontinued by the Ombudsman at any time if:

- (a) proceedings against the subject member in relation to the conduct have been, or are about to be, commenced in a court or tribunal; or
- (b) disciplinary procedures have been, or are about to be, started against the subject member.

An investigation may be deferred pending the finalisation of court proceedings or disciplinary procedures.

12.3 Category 1 PSC Investigation

Authorised Conduct of Category 1 Complaint

Category 1 complaints relate to serious police misconduct. Allegations of Police misconduct will result in a Category 1 complaint if the conduct:

- (a) involved alleged criminal behaviour;
- (b) involved a breach of some other Act;
- (c) was, or appeared to be, deliberate;
- (d) resulted in the use of a firearm or other weapon;
- (e) involved a threat or harassment of a serious nature;
- (f) was recklessly indifferent to the negative outcome of the specific conduct;
- (g) resulted in death or injury, major property damage or financial loss to the claimant or some other person;
- (h) constitutes an issue which is in the public interest; or
- (i) is likely to identify significant questions of police practice or procedure.

Category one (1) complaints, when sustained, may result in one or more of the following outcomes pursuant to Part IV of the *Police Administration Act*:

- (a) counselling;
- (b) formal caution in writing;
- (c) good behaviour Bond (GBB);
- (d) fine;
- (e) pay compensation/restitution;
- (f) transfer;
- (g) reduce rate of salary;
- (h) suspension — paid/unpaid;
- (i) demotion; or
- (j) dismissal.

A Category 1 complaint will receive Ombudsman oversight and will be reviewed and reported on by the Ombudsman.

Complaints may be classified as a Category 1 complaint because of:

- (a) the serious nature of the alleged police misconduct; or
- (b) the complaint has been re-classified:
 - i) because evidence established the police misconduct was more serious than first considered; or
 - ii) at the request of the complainant to the Ombudsman.

Assignment of Complaint to Investigating Officer

Allegations, which if true, would involve substantial breaches of the criminal law, are to be assigned in consultation with the Commander, PSC to PSC investigators, Crime Division members, Commissioned Officers or an experienced criminal investigator.

Functions of Investigating Officer

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

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

Responsibilities of Investigating Officer

The IO is to:

- (a) immediately declare any conflict of interest when a conflict, or perceived conflict, arises;
- (b) conduct the investigation impartially and in a timely manner in accordance with the timeline requirements for category one (1) Investigations in the General Order;
- (c) conduct the investigation in a manner that preserves the subject member's common law rights to natural justice;
- (d) maintain confidentiality in accordance with Instructions and Procedures: *Internal and Sensitive Investigations Security* and in accordance with part two of the General Order;
- (e) comply with any instructions from the Ombudsman, Commissioner or Commander, PSC;
- (f) regularly consult with the complainant about the conduct of the investigation; and
- (g) if practicable and where it will not compromise the investigation, regularly advise members involved of the status of the investigation.

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

It is essential the IO takes all reasonable steps to obtain or secure the evidentiary material, if not already completed.

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

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

- vi) an Act, practice, procedure or policy on which a decision, act or omission was based be amended.

Findings in relation to the complaint allegations are to be provided as outlined within Part Ten of the General Order.

Any ancillary issues identified during the investigation are to be included in the report.

13. Ombudsman Investigation [Part 7, Division 5, Subdivision 2]

The Ombudsman may decide to investigate a CAP:

- (a) on the Ombudsman's own initiative under section 14 of the Act;
- (b) where the Ombudsman considers the complaint should be investigated by the Ombudsman under section 86 of the Act; or
- (c) where parliamentary reference is made for the investigation of police conduct under section 87(1)(b) of the Act.

The Ombudsman may, or may not, notify the Commissioner of the investigation.

If the Ombudsman's draft report contains an adverse finding about police conduct, the Ombudsman is to provide the member and the Commissioner with reasonable details about the adverse comments and allow the member the opportunity of making any submissions. Any submissions are to be dealt with in the report.

13.1 Finalisation Process

Following completion of the investigation, the Ombudsman is to provide the Commissioner with a copy of a draft report of the investigation. The report is to contain an assessment and recommendations.

The Commissioner will notify the Ombudsman whether the Commissioner:

- (a) agrees with the Ombudsman's assessment and recommendations; or
- (b) does not agree with the Ombudsman's assessment and recommendations.

If the Commissioner supports the Ombudsman's assessment and recommendations, the Ombudsman will notify the complainant and PSC will notify the subject member of the outcome of the Complaint and of any action to be taken.

If the Commissioner does not support the Ombudsman's assessment and recommendations, the Ombudsman may:

- (a) confirm or vary the assessment or recommendation; or
- (b) substitute a new assessment or recommendation.

The Commissioner will notify the Ombudsman of the steps taken to give effect of the Ombudsman's recommendation as agreed, or as substituted or varied. Written notice to the Ombudsman is to be made within **five (5) days** of the taking of the action.

Where the Commissioner does not implement the Ombudsman's recommendations:

- (a) the Commissioner is to provide written notice as to the Commissioner's reasons for not taking the steps;
- (b) the Ombudsman may provide the Police Minister with a copy of the Ombudsman's report along with the Commissioner's written notice; and
- (c) the Ombudsman may also provide the Police Minister with a copy of a final report for tabling in the Legislative Assembly.

13.2 Complaint Findings

In the interests of complainants and the subject member, agreement is made with the Ombudsman to adopt a consistent approach to respective findings on a complaint. The broad categories agreed below are intended to operate in a flexible manner:

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

In order to facilitate a prompt finalisation of the complaint, a complaint finding is to include the recommended action(s) to be taken against the subject officer, if any.

14. Reviews by Ombudsman

The Ombudsman may review files relating to investigations into complaints against Police howsoever made or reported. Where a request for a review is made by the Ombudsman, PSC will provide all records and materials relating to the particular matter and ensure that the Ombudsman has access to Police investigators with knowledge of the investigation. Requests for access to investigation files for review purposes should be in writing so as to provide an audit trail for all relevant documents.

Where, as a result of a review, the Ombudsman requires further action on a complaint, that request will be made to the Commander, PSC in the first instance.

15. Confidentiality & Immunity

Sections 114, 120, 122, 159 and 160 of the Act impose strict confidentiality and secrecy requirements and provide legal protections on persons involved in the Ombudsman complaint process.

The use of information obtained in the course of, or for the purposes of making preliminary inquiries, conducting conciliation, undertaking a CRP or conducting an investigation, is restricted. Persons administering the Act cannot be compelled to give evidence or produce documents relating to the Ombudsman's statutory duties. This protection extends to inquiries or investigations being conducted by PSC pursuant to this Agreement.

16. Suspected Criminal Conduct

Where a CAP discloses grounds to suspect that a Police Officer may have committed a criminal offence, the matter will immediately be referred to the Ombudsman to determine what further action is required in relation to the complaint. If the matter proceeds to criminal investigation by the Police the Commissioner will ensure the Ombudsman is provided with regular briefings (at least every six (6) weeks) on the progress of the investigation. Any criminal investigation arising from a police complaint should be investigated concurrently with the police complaint unless the Ombudsman directs otherwise.

17. Procedural Fairness

Any person with responsibility for investigating a CAP is to ensure that all parties are afforded procedural fairness and courtesy during the process. The complainant will be given a fair opportunity to express their complaint and reasons for complaint and receive an explanation for the police action complained about.

Police officers subject of a complaint under investigation will be advised of the particulars of complaint as soon as reasonably practicable without jeopardy to the investigation process and be given a fair opportunity to answer the complaint and provide their explanation. All information provided by the parties should be taken into account and given careful and impartial consideration when determining the outcome of a complaint.

Before assessing the PSC report, the Ombudsman may seek comment from a complainant or the complainant's legal advisor. To enable meaningful comment the relevant parts of section 95 reports may be provided. If PSC provides to the Ombudsman grounds for not disclosing the report or content in the report to the complainant or another person, the Ombudsman will consider those grounds before deciding whether to disclose all, or part, of the report.

Additionally to ensure that complainants from non-English speaking backgrounds are treated fairly, the 'tenor and spirit' of the 'Anunga' Guidelines, as described by Police Practice and Procedure: *Anunga Guidelines*, are to be applied by investigating officers during any interview process. This is particularly relevant when considering the use of interpreters generally, and any request by an Indigenous complainant to have a legal representative present at interview.

18. Other

18.1 Non-Disclosure of Information

The Commissioner may request the Ombudsman not to disclose certain information to a party to a police complaint. The Ombudsman will consider the request and if the Ombudsman does not agree to the request, is to advise the Commissioner of the decision and the reasons for refusal.

The parties acknowledge that a report prepared by PSC under section 95 of the Act (section 95 Report) may fall within a class of document for which a claim against disclosure on the basis of public interest immunity may be made. The parties agree to notify each other if any application for disclosure of a section 95 Report or part of the section 95 Report is made, including:

- (a) by a complainant or to any third party in a court or tribunal; or
- (b) by a complainant or third party to the other party;

in order to provide each other an opportunity to make submissions in relation to application for disclosure of the section 95 Report.

18.2 Restricted Use of Information

Anything said or admitted during the conciliation process or the CRP process and any documents prepared for conciliation cannot be used for any other purpose unless:

- (a) the person responsible or to whom the document relates consents; or
- (b) for the prosecution of a person who has committed an offence against the Act.

18.3 Register of Police Complaints

The Ombudsman will keep a register of all police complaints and for each complaint it will contain at least the following information:

- (a) the particulars of the decision on how the complaint was dealt with or declined;
- (b) the particulars of the decision made by the Ombudsman when a CRP or PSC investigation was referred back to the Commissioner for further investigation or to deal with in another way; and
- (c) the particulars of the conduct of the CRP or investigation.

The information contained in the Ombudsman's complaints management system will be used for this purpose.

Any party to a complaint can request an extract of the particulars mentioned above and the Ombudsman will agree to the request if satisfied it is appropriate to do so. The applicant is to be informed by the Ombudsman of the reasons for any refusal.

19. Scope of This Agreement

Nothing in this Agreement is intended to limit the powers of the Commissioner or the Ombudsman under the Act or the *Police Administration Act*.

20. Review of This Agreement

This Agreement is to be reviewed within two years of being signed but will remain in force until either party gives written notice of termination.

October 2014

APPENDIX B – FINANCIAL STATEMENTS

OMBUDSMAN'S OFFICE Financial statement overview For the year ended 30 June 2020

The Ombudsman's Office has two primary work units, the Ombudsman Operations and the Information Commissioner. This reporting period was the first full year incorporating the combined functions.

The Ombudsman's role is to give people a timely, effective, efficient, independent, fair and free way of investigating, and dealing with complaints, about administrative actions of public authorities and the conduct of police officers, and to improve the quality of decision-making and administrative practices in public authorities.

The Information Commissioner provides advice and promotes knowledge about Freedom of Information (FOI) and privacy rights and resolves and investigates complaints about FOI and privacy matters, and related applications.

The net result for the Office during 2019-20 was a surplus of \$105,000. Some savings were made because of delayed recruitment due to initial FTE Cap not fully reflecting position numbers in the combined Ombudsman and Information Commissioner offices. Further savings resulted from postponement or cancellation of a range of activities including regional outreach, meeting and conference attendance, staff development initiatives and formal hearings due to COVID-19.

Operating expenses for the period totaled \$2,730,000 comprising \$2,158,000 for employee expenses and \$572,000 for administrative expenses (which included \$197,000 for the purchase of goods and services, \$353,000 for services received free of charge and \$22,000 for property management).

Certification of the financial statements

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

We further state that the information set out in the comprehensive operating statement, balance sheet, statement of changes in equity, cash flow statement, and notes to and forming part of the financial statements, presents fairly the financial performance and cash flows for the year ended 30 June 2020 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
28th August 2020

SARAH SCHULTZ
Business Manager
28th August 2020

OMBUDSMAN'S OFFICE

Comprehensive operating statement

For the year ended 30 June 2020

	Note	2020	2019
		\$000	\$000
INCOME			
Appropriation			
Output	4	2 482	2 480
Goods and services received free of charge	5	353	353
TOTAL INCOME		2 835	2 833
EXPENSES			
Employee expenses		2 158	2 086
Administrative expenses			
Property management		22	21
Purchases of goods and services	6	197	227
Repairs and maintenance		0	1
Other administrative expenses ¹		353	353
TOTAL EXPENSES		2 730	2 688
NET SURPLUS/(DEFICIT)		105	145
		105	145

COMPREHENSIVE RESULT

¹ Includes DCIS service charges and DIPL repairs and maintenance service charges.

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

Balance sheet

As at 30 June 2020

	Note	2020	2019
		\$000	\$000
ASSETS			
Current assets			
Cash and deposits	8	1 641	1 456
Receivables	10	4	3
Prepayments		8	4
Total current assets		1 652	1 463
TOTAL ASSETS		1 652	1 463
LIABILITIES			
Current liabilities			
Payables	13	40	37
Provisions	14	406	324
Total current liabilities		446	361
TOTAL LIABILITIES		446	361
NET ASSETS		1 206	1 101
EQUITY			
Capital		295	295
Accumulated funds		912	807
TOTAL EQUITY		1 206	1 101

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 2020

	Note	Equity at 1 July \$000	Comprehensive result \$000	Transactions with owners in their capacity as owners \$000	Equity at 30 June \$000
2019-20					
Accumulated funds		807	105		912
Capital – transactions with owners					
Equity injections		398			398
<i>Capital appropriation</i>		573			573
<i>Equity transfers in</i>		(346)			(346)
<i>Other equity injections</i>		171			171
Equity withdrawals		(104)			(104)
<i>Capital withdrawals</i>		(104)			(104)
		295			295
Total equity at end of financial year		1 101	105		1 206
2018-19					
Accumulated funds		662	145		807
Capital – transactions with owners					
Equity injections		398			398
<i>Capital appropriation</i>		573			573
<i>Equity transfers in</i>		(346)			(346)
<i>Other equity injections</i>		171			171
Equity withdrawals		(52)		(52)	(104)
<i>Capital withdrawals</i>		(52)		(52)	(104)
		346		(52)	295
Total equity at end of financial year		1 008	145	(52)	1 101

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 2020

	Note	2020	2019
		\$000	\$000
CASH FLOWS FROM OPERATING ACTIVITIES			
Operating receipts			
Appropriation			
Output		2 482	2 480
Receipts from sales of goods and services		13	11
Total operating receipts		2 495	2 491
Operating payments			
Payments to employees		2 065	2 089
Payments for goods and services		244	242
Total operating payments		2 309	2 330
Net cash from/(used in) operating activities		185	161
CASH FLOWS FROM FINANCING ACTIVITIES			
Financing payments			
Equity withdrawals			52
Total financing payments			52
Net cash from/(used in) financing activities		185	109
Net increase/(decrease) in cash held		185	109
Cash at beginning of financial year		1 456	1 346
CASH AT END OF FINANCIAL YEAR	8	1 641	1 456

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

OMBUDSMAN'S OFFICE

Index of notes to the financial statements

Note

1. Objectives and funding
2. Statement of significant accounting policies
3. Comprehensive operating statement by output group

Income

4. Appropriation
5. Goods and services received free of charge

Expenses

6. Purchases of goods and services
7. Write-offs, postponements, waivers, gifts and ex gratia Payments

Assets

8. Cash and deposits
9. Cash flow reconciliation
10. Receivables
11. Property, plant and equipment
12. Agency as a lessee

Liabilities

13. Payables
14. Provisions
15. Other liabilities

Other disclosures

16. Fair value measurement
17. Financial instruments
18. Related parties
19. Contingent liabilities and contingent assets
20. Events subsequent to balance date
21. Budgetary information

OMBUDSMAN'S OFFICE

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 Information Commissioner has responsibility for promoting knowledge about freedom of information (FOI) and privacy rights, and investigating and resolving complaints about FOI and Privacy Matters.

The Ombudsman's Office is predominantly funded by, and is therefore dependent on, the receipt of parliamentary appropriations. The financial statements encompass all funds through which the agency controls resources to carry on its functions and deliver outputs. For reporting purposes, outputs delivered by the agency are summarised into three output groups, Ombudsman Operations, Information Commissioner and Corporate and Governance.

Note 3 provides summarised financial information in the form of a comprehensive operating statement by the output group. Additional information in relation to principal activities of the Ombudsman's Office and Information Commissioner may be found in their respective Annual Reports.

2. Statement of significant accounting policies

a) Statement of compliance

The financial statements have been prepared in accordance with the requirements of the *Financial Management Act 1995* and related Treasurer's Directions. The *Financial Management Act 1995* requires the 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.

OMBUDSMAN'S OFFICE

Standards and interpretations effective from 2019-20

AASB 16 Leases

AASB 16 Leases (AASB 16) supersedes AASB 117 Leases and applies for the first time in the 2019-20 financial statements. This new leases standard removes the distinction between operating and finance leases however has no significant impact on the Agency's financial statements as existing lease arrangements are with other NT government agencies making them exempt from the recognition criteria.

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 agency financial reporting.

Standards and interpretations issued but not yet effective

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

c) Reporting entity

The financial statements cover the agency as an individual reporting entity.

The *Ombudsman's Office* ("the Agency") is a Northern Territory agency established under the *Interpretation Act 1978, Administrative Arrangements Order*.

The principal place of business of the agency is: NT House, 22 Mitchell Street, Darwin.

d) Agency and Territory items

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

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

Central Holding Authority

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

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

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

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

e) Comparatives

Where necessary, comparative information for the 2018-19 financial year has been reclassified to provide consistency with current year disclosures.

OMBUDSMAN'S OFFICE

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 2019-20 as a result of management decisions. Changes in policies relating to COVID-19 are disclosed in k) below.

h) Accounting judgments and estimates

The preparation of the financial report requires the making of judgments and estimates that affect the recognised amounts of assets, liabilities, revenues and expenses and the disclosure of contingent liabilities. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

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

i) Goods and services tax

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

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

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

j) Contributions by and distributions to government

The agency may receive contributions from government where the government is acting as owner of the agency. Conversely, the agency may make distributions to government. In accordance with the *Financial Management Act 1995* and Treasurer's Directions, certain types of contributions and distributions, including those relating to administrative restructures, have been designated as contributions by, and distributions to, government.

OMBUDSMAN'S OFFICE

These designated contributions and distributions are treated by the agency as adjustments to equity.

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

k) Impact of COVID-19

Management made a number of decisions as a result of COVID-19 which has impacted the 2019-20 financial statements. This includes the cancellation of outreach activities and other travel, as well as face to face training and meetings in the later part of the year.

The Office also implemented modified working conditions allowing staff to work from home where possible during the height of the pandemic situation and procured additional sanitation supplies and equipment to ensure the safety of those remaining working in the office.

The exceptional expenses incurred relating to purchases of Goods and Services in response to COVID-19 totaled \$4,000 for the full reporting period. These costs have been rolled into the Corporate and Governance expenses for the purposes of the Comprehensive operating statement by output group.

3. Comprehensive operating statement by output group

	Note	Ombudsman Operations		Information Commissioner		Corporate & Governance		Total	
		2020	2019	2020	2019	2020 ²	2019	2020	2019
		\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000
INCOME									
Appropriation									
Output	4	2 482	2 480					2 482	2 480
Goods and services received free of charge	5		353			353		353	353
TOTAL INCOME		2 482	2 833			353		2 835	2 833
EXPENSES									
Employee expenses		1 472	1 577	427	251	259	258	2 158	2 086
Administrative expenses									
Purchases of goods and services	6	121	138	39	50	37	38	197	227
Repairs and maintenance			1						1
Property Management		9	10	3	4	10	7	22	21
Other administrative expenses ¹			353			353		353	353
TOTAL EXPENSES		1 602	2 079	469	305	659	303	2 730	2 688
NET SURPLUS/(DEFICIT)		880	753	(469)	(305)	(306)	(303)	105	145
COMPREHENSIVE RESULT		880	753	(469)	(305)	(306)	(303)	105	145

¹ Includes DCIS service charges, moved to Corporate and Governance in 2020.

² Includes exceptional expenses incurred relating to COVID-19.

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.

OMBUDSMAN'S OFFICE

4. Appropriation

	2020		2019	
	\$000	\$000	\$000	\$000
	Revenue from contracts with customers	Other	Total	
Output			2 482	2 480
Total appropriation			2 482	2 480

Output appropriation is the operating payment to each agency for the outputs they provide as specified in the *Appropriation Act*. It does not include any allowance for major non-cash costs such as depreciation. The treatment of output appropriations remains the same after adopting AASB 15 and AASB 1058, because they do not have sufficiently specific performance obligations.

5. Goods and services received free of charge

	2020	2019
	\$000	\$000
Corporate and information services	352	353
Repairs and maintenance	1	
	353	353

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature. From 1 July 2019, repairs and maintenance expenses and associated employee costs were centralised under the Department of Infrastructure, Planning and Logistics as part of a machinery of government change and now forms part of goods and services free of charge of the agency.

6. Purchases of goods and services

	2020	2019
	\$000	\$000
The net surplus has been arrived at after charging the following expenses:		
Goods and services expenses:		
Accommodation	1	7
Advertising ¹	-	3
Communications	25	22
Consultants ²	16	3
Document production	1	2
Information technology charges	92	95
Insurance Premiums	8	17
Legal expenses ³	1	6
Marketing and promotion ⁴	-	11
Memberships and Subscriptions	5	6
Motor vehicle expenses	3	12
Official duty fares	3	17
Recruitment ⁵	12	-
Training and study	7	9
Travelling allowance	1	5
Other	22	12
	197	227

OMBUDSMAN'S OFFICE

¹ Does not include recruitment advertising or marketing and promotion advertising.

² Includes marketing, promotion and IT consultants.

³ Includes legal fees, claim and settlement costs.

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

⁵ Includes recruitment-related advertising costs.

Purchases of goods and services generally represent the day-to-day running costs incurred in normal operations, including supplies and service costs recognised in the reporting period in which they are incurred.

Repairs and maintenance expense

From 1 July 2019, repairs and maintenance expenses were centralised under the Department of Infrastructure, Planning and Logistics (DIPL) as part of machinery of government changes. The agency now recognises a notional repairs and maintenance expense under services received free of charge in Note 5.

7. Write-offs, postponements, waiver, gifts and ex gratia payments

The Ombudsman's Office had no write-offs, postponements, waivers, gifts or ex gratia payments in 2019-20 and 2018-19.

8. Cash and deposits

	2020	2019
	\$000	\$000
Cash on hand		
Cash at bank	1 641	1 456
	1 641	1 456

For the purposes of the balance sheet and the cash flow statement, cash includes cash on hand, cash at bank and cash equivalents. Cash equivalents are highly liquid short-term investments that are readily convertible to cash.

9. Cash flow reconciliation

The total of agency 'Cash and deposits' of \$1 641 recorded in the balance sheet is consistent with that recorded as 'Cash' in the cash flow statement.

10. Receivables

	2020	2019
	\$000	\$000
Current		
GST receivables	4	3
Total receivables	4	3

Receivables are initially recognised when the agency becomes a party to the contractual provisions of the instrument and are measured at fair value less any directly attributable transaction costs. Receivables include contract receivables, accounts receivable, accrued contract revenue and other receivables.

Accounts receivable and contract receivables are generally settled within 30 days.

Accrued contract revenue

Accrued contract revenue arise from contracts with customers where the agency's right to consideration in exchange for goods transferred to customers or works completed have

OMBUDSMAN'S OFFICE

arisen but have not been billed at the reporting date. Once the agency's rights to payment becomes unconditional, usually on issue of an invoice, accrued contract revenue balances are reclassified as contract receivables. Accrued revenue that does not arise from contracts with customers are reported as part of other receivables.

Credit risk exposure of receivables

Receivables are monitored on an ongoing basis to ensure exposure to bad debts is not significant. The agency has limited credit risk exposure (risk of default). In respect of any dealings with organisations external to Government, the agency has adopted a policy of only dealing with credit worthy organisations and obtaining sufficient collateral or other security where appropriate, as a means of mitigating the risk of financial loss from defaults.

Prepayments

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

11. Property, plant and equipment

	2020	2019
	\$000	\$000
Plant and equipment		
At fair value	66	66
Less: accumulated depreciation	(66)	(66)
Total Property, Plant and Equipment	-	-

Property, plant and equipment reconciliations

There was no movement in the carrying amount of property, plant and equipment during 2018-19 or 2019-20 as all property, plant and equipment was fully depreciated at the end of 2017-18 and there were no new acquisitions.

Acquisitions

Property, plant and equipment are initially recognised at cost and subsequently revalued at fair value less accumulated depreciation and impairment. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other accounting standards.

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

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

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.

OMBUDSMAN'S OFFICE

Subsequent additional costs

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

Construction (work in progress)

As part of the financial management framework, the Department of Infrastructure, Planning and Logistics is responsible for managing general government capital works projects on a whole of government basis. Therefore appropriation for any 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 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
- 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 agency determines the asset's recoverable amount. The asset's recoverable amount is determined as the higher of the asset's current replacement cost and fair value less costs to sell. Any amount by which the asset's carrying amount exceeds the recoverable amount is recorded as an impairment loss.

No impairment adjustments were required within the reporting period.

Depreciation and amortisation expense

Items of property, plant and equipment, including buildings but excluding land, have limited useful lives and are depreciated or amortised using the straight-line method over their estimated useful lives.

OMBUDSMAN'S OFFICE

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:

	2020	2019
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.

12. Agency as a lessee

Recognition and measurement (under AASB 16 from 1 July 2019)

The Ombudsman's Office only holds leases with other government entities. The agency applies the inter-governmental leases recognition exemption as per the Treasurer's Direction – Leases and recognises these as an expense on a straight-line basis over the lease term. These largely relate to the lease of motor vehicles from NT Fleet.

Leases of commercial properties for office accommodation are centralised with the Department of Corporate and Information Services (DCIS). Consequently all lease liabilities and right-of-use assets relating to these arrangements are recognised by DCIS and not disclosed within these financial statements.

The agency recognised \$15,000 relating to intergovernmental leases in the Statement of comprehensive income for the year ending 30 June 2020.

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

	2020		2019 ^(b)	
	Internal ^(a) \$000	External ^(a) \$000	Internal \$000	External \$000
Within one year	8	-	8	-
Later than one year and not later than five years	25	-	2	-
	33	-	10	-

^(a) Internal commitments are to entities controlled by the NTG (entities listed in TAFR 18-19 Note 42: details of controlled entities at reporting date), whereas external commitments are to third parties external to the NTG.

^(b) 2019 disclosures have been revised to provide consistency with the current year disclosures to include commitments relating to motor vehicle leases.

Recognition and measurement (under AASB 117 until 30 June 2019)

Operating lease payments were recognised as an operating expense in the Comprehensive operating statement on a straight-line basis over the lease term.

OMBUDSMAN'S OFFICE

13. Payables

	2020	2019
	\$000	\$000
Accounts payable	13	23
Accrued expenses	26	14
Total payables	40	37

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.

14. Provisions

	2020	2019
	\$000	\$000
Current		
<i>Employee benefits</i>		
Recreation leave	325	256
Leave loading	28	26
Other employee benefits	2	2
<i>Other current provisions¹</i>	51	40
	406	324
Total provisions	406	324

¹ Other current provisions include provisions for FBT, Payroll Tax, and Superannuation.

The Agency employed 17 employees as at 30 June 2020 (16 employees as at 30 June 2019).

Employee benefits

Provision is made for employee benefits accumulated as a result of employees rendering services up to the reporting date. These benefits include wages and salaries and recreation leave. Liabilities arising in respect of wages and salaries, recreation leave and other employee benefit liabilities that fall due within twelve months of reporting date are classified as current liabilities and are measured at amounts expected to be paid. Non-current employee benefit liabilities that fall due after twelve months of the reporting date are measured at present value, calculated using the government long-term bond rate.

No provision is made for sick leave, which is non-vesting, as the anticipated pattern of future sick leave to be taken is less than the entitlement accruing in each reporting period.

Employee benefit expenses are recognised on a net basis in respect of the following categories:

- wages and salaries, non-monetary benefits, recreation leave and other leave entitlements
- other types of employee benefits.

As part of the financial management framework, the Central Holding Authority assumes the long service leave liabilities of government agencies, including the Ombudsman's Office and therefore no long service leave liability is recognised in agency financial statements.

OMBUDSMAN'S OFFICE

15. Other liabilities

Superannuation

Employees' superannuation entitlements are provided through the:

- Northern Territory Government and Public Authorities Superannuation Scheme (NTGPASS)
- Commonwealth Superannuation Scheme (CSS)
- or non-government employee nominated schemes for those employees commencing on or after 10 August 1999.

The agency makes superannuation contributions on behalf of its employees to the Central Holding Authority or non-government employee-nominated schemes.

Superannuation liabilities related to government superannuation schemes are held by the Central Holding Authority and therefore not recognised in agency financial statements.

16. Fair value measurement

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.

Fair value measurement of a non-financial asset takes into account a market participant's ability to generate economic benefits by using the asset in its highest and best use or by selling it to another market participant that would use the asset in its highest and best use. The highest and best use takes into account the use of the asset that is physically possible, legally permissible and financially feasible.

When measuring fair value, the valuation techniques used maximise the use of relevant observable inputs and minimise the use of unobservable inputs. Unobservable inputs are used to the extent that sufficient relevant and reliable observable inputs are not available for similar assets/liabilities.

Observable inputs are publicly available data relevant to the characteristics of the assets/liabilities being valued. Observable inputs used by the agency include, but are not limited to, published sales data for land and general office buildings.

Unobservable inputs are data, assumptions and judgments not available publicly but relevant to the characteristics of the assets/liabilities being valued. Such inputs include internal agency adjustments to observable data to take account of particular and potentially unique characteristics/functionality of assets/liabilities and assessments of physical condition and remaining useful life.

The agency does not recognise any financial assets or liabilities at fair value as these are recognised at amortised cost. The carrying amounts of these financial assets and liabilities approximates their fair value.

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

17. 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.

OMBUDSMAN'S OFFICE

Financial assets and liabilities are recognised on the balance sheet when the agency becomes a party to the contractual provisions of the financial instrument. The agency's financial instruments include cash and deposits; receivables; advances paid; investment in shares; payables; advances received; borrowings and derivatives.

Due to the nature of operating activities, certain financial assets and financial liabilities arise under statutory obligations rather than a contract. Such financial assets and liabilities do not meet the definition of financial instruments as per AASB 132 Financial Instruments: Presentation. These include statutory receivables arising from taxes including GST and penalties.

The *Ombudsman's Office* has limited exposure to financial risks as discussed below.

Exposure to interest rate risk, foreign exchange risk, credit risk, price risk and liquidity risk arise in the normal course of activities. The Territory Government's investments, loans and placements, and borrowings are predominantly managed through the NTTC adopting strategies to minimise the risk. Derivative financial arrangements are also utilised to manage financial risks inherent in the management of these financial instruments. These arrangements include swaps, forward interest rate agreements and other hedging instruments to manage fluctuations in interest or exchange rates.

a) Categories of financial instruments

The carrying amounts of the agency's financial assets and liabilities by category are disclosed in the table below.

	Fair value through profit or loss			Fair value through other comprehensive income	Total
	Mandatorily at fair value	Designated at fair value	Amortised cost		
	\$000	\$000	\$000	\$000	\$000
2019-20					
Cash and deposits	1 641				1 641
Receivables ¹					
Total financial assets	1 641				1 641
					1 641
Payables ¹			13		13
Total financial liabilities			13		13
2018-19					
Cash and deposits	1 456				1 456
Receivables ¹					
Total financial assets	1 456				1 456
Payables ¹			23		23
Total financial liabilities			23		23

¹.Total amounts disclosed here exclude statutory amounts and accrued contract revenue

Categories of financial instruments

The agency's financial instruments are classified in accordance with AASB 9.

Financial assets are classified under the following categories:

- amortised cost

OMBUDSMAN'S OFFICE

- FVOCI
- FVTPL.

Financial liabilities are classified under the following categories:

- amortised cost
- FVTPL.

These classification are based on the agency's business model for managing the financial assets and the contractual terms of the cash flows. Where assets are measured at fair value, gains and losses will either be recorded in profit or loss, or other comprehensive income.

Financial instruments are reclassified when and only when the agency's business model for managing those assets changes.

Financial assets with embedded derivatives are considered in their entirety when determining whether their cash flows are solely payment of principal and interest.

Financial assets at amortised cost

Financial assets are classified at amortised cost when they are held by the agency to collect the contractual cash flows and the contractual cash flows are solely payments of principal and interest.

These assets are initially recognised at fair value and subsequently measured at amortised cost using the effective interest method, less impairment. The agency did not hold any financial assets in this category during the current or prior reporting periods.

Financial assets at fair value through other comprehensive income

Financial assets are classified at fair value through other comprehensive income when they are held by the agency to both collect contractual cash flows and sell the financial assets, and the contractual cash flows are solely payments of principal and interest.

These assets are initially and subsequently recognised at fair value. Changes in the fair value are recognised in other comprehensive income, except for the recognition of impairment gains or losses and interest income which are recognised in the operating result in the comprehensive operating statement. When financial assets are derecognised, the cumulative gain or loss previously recognised in other comprehensive income is reclassified from equity to the comprehensive operating statement.

For equity instruments elected to be categorised at FVOCI, changes in fair value recognised in other comprehensive income are not reclassified to profit or loss on derecognition of the asset. Dividends from such instruments continue to be recognised in the comprehensive operating statement as other income when the agency's right to receive payments is established.

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

Financial assets at fair value through profit or loss

Financial assets are classified at FVTPL where they do not meet the criteria for amortised cost or FVOCI. These assets are initially and subsequently recognised at fair value with gains or losses recognised in the net result for the year.

The agency's financial assets categorised at FVTPL include investments in managed unit trusts and certain debt instruments. Unrealised gains in relation to these investments are recognised in other economic flows in the comprehensive operating statement, however realised gains are recognised in the net result.

Financial liabilities at amortised cost

Financial liabilities at amortised cost are measured at amortised cost using the effective interest rate method. The agency's financial liabilities categorised at amortised cost include all accounts payable, deposits held, advances received and borrowings.

OMBUDSMAN'S OFFICE

Financial liabilities at fair value through profit or loss

Financial liabilities are classified at FVTPL when the liabilities are either held for trading or designated as FVTPL. Financial liabilities classified at FVTPL are initially and subsequently measured at fair value with gains or losses recognised in the net result for the year.

For financial liabilities designated at FVTPL, changes in the fair value of the liability attributable to changes in the agency's credit risk are recognised in other comprehensive income, while remaining changes in the fair value are recognised in the net result.

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

Derivatives

The agency may enter into a variety of derivative financial instruments to manage its exposure to interest rate risk. The agency does not speculate on trading of derivatives.

Netting of swap transactions

The agency, from time to time, may facilitate certain structured finance arrangements, where a legally recognised right to set-off financial assets and liabilities exists, and the Territory intends to settle on a net basis. Where these arrangements occur, the revenues and expenses are offset and the net amount is recognised in the comprehensive operating statement.

b) Credit risk

The agency has limited credit risk exposure (risk of default). In respect of any dealings with organisations external to government, the agency has adopted a policy of only dealing with credit-worthy organisations and obtaining sufficient collateral or other security where appropriate, as a means of mitigating the risk of financial loss from defaults.

The carrying amount of financial assets recorded in the financial statements, net of any allowances for losses, represents the agency's maximum exposure to credit risk without taking account of the value of any collateral or other security obtained.

c) Liquidity risk

Liquidity risk is the risk the agency will not be able to meet its financial obligations as they fall due. The agency's approach to managing liquidity is to ensure it will always have sufficient funds to meet its liabilities when they fall due. This is achieved by ensuring minimum levels of cash are held in the agency bank account to meet various current employee and supplier liabilities. The agency's exposure to liquidity risk is minimal. Cash injections are available from the Central Holding Authority in the event of one-off extraordinary expenditure items arise that deplete cash to levels that compromise the agency's ability to meet its financial obligations.

d) Market risk

Market risk is the risk the fair value of future cash flows of a financial instrument will fluctuate because of changes in market prices. It comprises interest rate risk, price risk and currency risk.

(i) Interest rate risk

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

(ii) Price risk

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

OMBUDSMAN'S OFFICE

(iii) Currency risk

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

18. Related parties

i) Related parties

The Ombudsman's Office is a government administrative entity and is wholly owned and controlled by the Territory Government. Related parties of the department include:

- the portfolio minister and key management personnel (KMP) because they have authority and responsibility for planning, directing and controlling the activities of the department directly
- close family members of the portfolio minister or KMP including spouses, children and dependants
- all public sector entities that are controlled and consolidated into the whole of government financial statements
- any entities controlled or jointly controlled by KMP's or the portfolio minister, or controlled or jointly controlled by their close family members.

ii) Key management personnel (KMP)

Key management personnel of the Ombudsman's Office are those persons having authority and responsibility for planning, directing and controlling the activities of the Agency. These include the Chief Minister and the Chief Executive Officer.

iii) Remuneration of key management personnel

The details below excludes the salaries and other benefits of the Minister as the minister's remunerations and allowances are payable by the Department of the Legislative Assembly and consequently disclosed within the Treasurer's annual financial statements. The aggregate compensation of key management personnel of the Agency is set out below:

	2019-20	2018-19
	\$000	\$000
Short-term benefits	288	285
Post-employment benefits		
Long-term benefits	25	25
Termination benefits		
Total	313	310

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 the delivery of goods and services and the Department of Treasury and Finance with regards to Payroll Tax. The Agency's transactions with other government entities are not individually significant.

OMBUDSMAN'S OFFICE

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.

19. Contingent liabilities and contingent assets

The Ombudsman's Office had no contingent liabilities or contingent assets as at 30 June 2020 or 30 June 2019.

20. 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.

21. Budgetary information

Comprehensive operating statement	2019-20 Actual	2019-20 Original budget	Variance	Note
	\$000	\$000	\$000	
INCOME				
Appropriation				
Output	2 482	2 486	-4	
Goods and services received free of charge	353	392	-39	1
TOTAL INCOME	2 835	2 878	-43	
EXPENSES				
Employee expenses	2 158	2 154	4	
Administrative expenses				
Property Management	22	9	13	
Purchases of goods and services	197	319	-122	2
Repairs and Maintenance		4	-4	
Other administrative expenses	353	392	-39	1
TOTAL EXPENSES	2 730	2 878	-148	
NET SURPLUS/(DEFICIT)	105	-	105	
COMPREHENSIVE RESULT	105	-	105	

Notes:

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

1. Reduction in revenue/expenses for DCIS services FOC.
2. Savings partially due to postponement or cancellation of a range of activities including regional outreach, meeting and conference attendance, staff development initiatives and formal hearings due to COVID-19. Some additional savings intended to offset Employee costs however delayed recruitment due to issues with FTE Cap resulted in this not being required.

OMBUDSMAN'S OFFICE

Balance Sheet	2019-20 Actual	2019-20 Original budget	Variance	Note
	\$000	\$000	\$000	
ASSETS				
Current assets				
Cash and deposits	1 641	1 346	295	1
Receivables	4		4	
Prepayments	8	6	2	
Total current assets	1 652	1 352	300	
TOTAL ASSETS	1 652	1 352	300	
LIABILITIES				
Current liabilities				
Payables	40	16	24	2
Provisions	406	328	78	3
Total current liabilities	446	344	102	
TOTAL LIABILITIES	446	344	102	
NET ASSETS	1 206	1 008	198	
EQUITY				
Capital	295	346	-51	
Accumulated funds	912	662	250	
TOTAL EQUITY	1 206	1 008	198	

Notes:

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

1. Greater cash holdings due to operational savings.
2. Increased payables due to timing delays in receipt of invoices at end of financial year.
3. Greater provisions due to less leave being taken in later half of the reporting period due to COVID-19 pandemic situation.

OMBUDSMAN'S OFFICE

Cash flow statement	2019-20 Actual	2019-20 Original budget	Variance	Note
	\$000	\$000	\$000	
CASH FLOWS FROM OPERATING ACTIVITIES				
Operating receipts				
Appropriation				
Output	2 482	2 486	-4	
Receipts from sales of goods and services	13		13	
Total operating receipts	2 495	2 486	9	
Operating payments				
Payments to employees	2 065	2 154	-89	1
Payments for goods and services	244	332	-88	1
Total operating payments	2 309	2 486	-177	
Net cash from operating activities	185		185	
Net increase/(decrease) in cash held	185		185	
Cash at beginning of financial year	1 456	1 346	110	
CASH AT END OF FINANCIAL YEAR	1 641	1 346	295	

Notes:

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

1. Variances as outlined in notes to Comprehensive operating statement.

HOW TO CONTACT THE OMBUDSMAN

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