



 **ombudsmanNT**



Annual Report 2020/21

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



Annual Report 2020/21

TABLE OF CONTENTS

Ombudsman overview	1
<i>Sustained increase in workload</i>	1
<i>Coronavirus</i>	2
<i>Discretion, standard of proof and review</i>	2
<i>Police approaches</i>	3
<i>Correctional Services</i>	3
<i>Other functions</i>	3
Key Performance Indicators	4
Vision, Mission, Core Values	5
CHAPTER 1 – Matters of Note In 2020/21	7
COVID-19	7
<i>COVID approaches received</i>	7
<i>COVID and reasonable government</i>	8
Judicial Commission	13
Optional Protocol to Convention against Torture and ill-treatment	13
Prison disturbance	14
Victims of crime	15
CHAPTER 2 – What we do and how we do it	19
Independence	20
Impartiality	20
Scope of powers	21
Investigations conducted in private – reporting on outcomes	21
Identifying and prioritising issues	21
Alternative avenues	23
CHAPTER 3 – Approaches – Enquiries and complaints	25
Number of approaches	25
Variations at agency level	26
Sources of approach	26
How approaches are made	27
How approaches are dealt with	27
<i>Dealing with Ombudsman matters</i>	27
<i>Referrals to another complaints entity</i>	28
<i>Outside jurisdiction</i>	28
How quickly approaches are dealt with	29
Issues and examples from specific authorities	30
<i>Utilities complaint handling</i>	30
<i>Jacana Energy</i>	30
<i>Power and Water</i>	34
<i>Housing</i>	36
<i>Other authorities</i>	37

CHAPTER 4 – NT Police	41
Police conduct backlog and PSC resources.....	41
Police Body Worn Video	41
Benefits of a well conducted CRP	43
Duty of care	44
Youth justice issues.....	44
How Police conduct approaches are dealt with	46
<i>Enquirer assistance and preliminary inquiries.....</i>	46
<i>Complaint assessment.....</i>	46
<i>Complaint Resolution Process</i>	47
<i>More serious complaints</i>	47
<i>Investigations</i>	48
<i>Outcomes</i>	48
Police conduct approaches during reporting period.....	50
<i>Approaches received</i>	50
Police conduct outcomes	50
<i>Category 1 and 2 complaint outcomes</i>	51
<i>Internal Investigations outcomes.....</i>	52
Police conduct case studies	53
<i>Use of force</i>	53
<i>Domestic violence.....</i>	62
<i>Police procedures</i>	63
Statutory oversight functions	67
<i>Firearm prohibition orders</i>	67
<i>Surveillance devices.....</i>	68
<i>Telecommunications interception.....</i>	68
<i>Controlled operations.....</i>	69
 CHAPTER 5 – Correctional Services	 71
New prisoner complaints process	71
Engagement on systemic issues	75
<i>Management of prisoner mental health and at-risk procedures.....</i>	75
<i>Routine strip searching of prisoners.....</i>	76
<i>Management of gender diverse prisoners</i>	77
<i>Health related diets.....</i>	77
<i>Removing prisoners from protection for behavioural issues.....</i>	78
<i>Transfer of prisoners with outstanding medical requirements.....</i>	79
Correctional Services approaches	80
<i>Correctional Services case studies.....</i>	81
Women in Prison II	84
 CHAPTER 6 – Quality Improvement and Community Engagement.....	 93
Quality improvement	93
<i>Legislative and policy reform</i>	93
<i>Complaints and review bodies</i>	93
<i>Training and presentations</i>	94
<i>Other involvement with public authorities.....</i>	94
Community and stakeholder engagement.....	95
 CHAPTER 7 – Our Office.....	 97
Corporate Governance, Planning and Performance	97
Our staff.....	97
<i>Public Sector Principles.....</i>	98
<i>Professional Development.....</i>	98

Systems, policies and procedures	98
Work Health and Safety.....	99
Records Management, disclosure and correction.....	99
<i>Information held by the Office</i>	99
<i>Providing access to information</i>	100
APPENDIX A – Police Complaints Agreement	103
APPENDIX B – Financial Statements.....	123
How to contact the Ombudsman	149

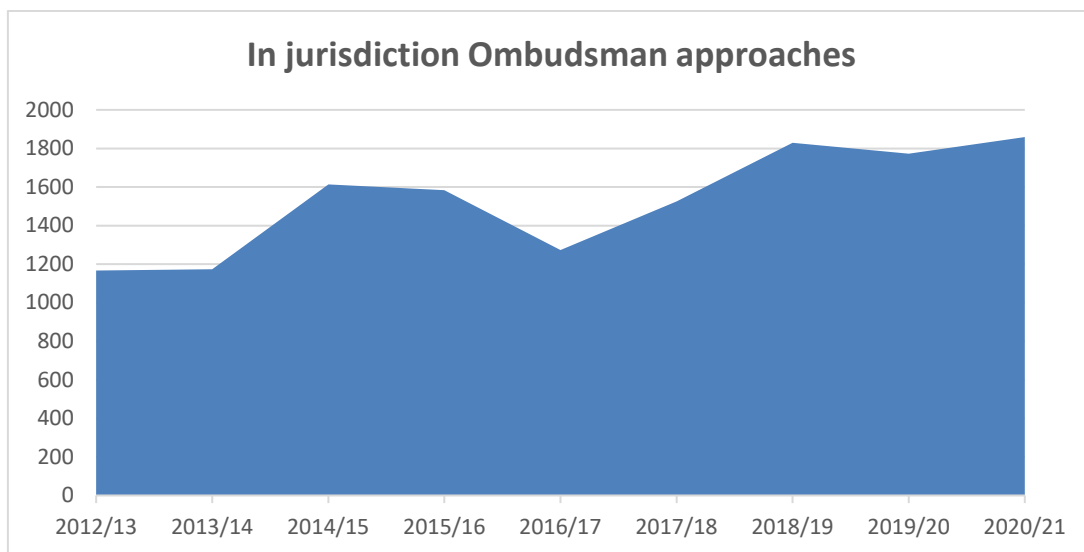
Ombudsman overview

The Ombudsman's 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 increase in workload

This was an extraordinarily busy year for the offices of the Ombudsman and the OIC.

The overall number of approaches to the Ombudsman's Office fell marginally from the previous year but there were record levels both of in-jurisdiction approaches and of the most complex category of complaints.



There were also a record number of complaints and applications to the OIC, which added to a substantial number of matters carried over from the previous year.

The workload was increased by many additional demands, including the need to:

- prepare for the establishment of an office to support the soon to commence Judicial Commission;
- undertake work in preparation for implementation of obligations arising under the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT);
- plan, prepare and implement steps to ensure business continuity for the Office in response to the COVID-19 pandemic; and
- undertake initial work on the conduct of statutory reviews relating to:
 - firearm prohibition orders legislation; and
 - domestic violence information sharing legislation.

These factors, the level of complexity of matters and a growing backlog of police conduct complaints have significantly impacted on the timeliness of finalisation of matters and the number of approaches outstanding at the end of the year. While 90% of approaches were finalised within 90 days, this falls short of performance in previous years.

I discuss the police backlog in Chapter 4. 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. It is essential that NT Police ensure the maintenance of a well-resourced, well-credentialed and stable team to maximise the efficiency of Professional Standards Command operations and address the backlog as quickly as possible. We will continue to work with NT Police to improve timelines for finalisation.

We will also explore alternative measures to effectively deal with non-police matters in reasonable timeframes. However, 2021/22 is already proving an equally challenging year and I anticipate that there will continue to be delays in finalisation of matters.

Coronavirus

The Office planned and prepared to ensure business continuity in the event of a COVID-19 lockdown. I congratulate management and staff of the Office for effectively responding when a lockdown occurred at the very end of the reporting period.

Even so, the demands of responding to COVID-19 put strains on our offices and on the agencies that we oversight. This inevitably led to both complaints regarding delay and delay in handling complaints. The nature of COVID-related complaints received during the period is discussed in Chapter 1.

Discretion, standard of proof and review

An important point to be drawn from COVID-related complaints we have received, but one of broader relevance to public administration, is the need for agencies to provide for the exercise of discretion and to maintain simple, fair and timely mechanisms for review of decisions that impact on the lives of community members.

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

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

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

When dealing with a high volume of matters or matters that require urgent attention, making discretionary decisions, judgement calls on evidence or giving detailed reasons for decision can be problematic. That is why it is important to have a relatively straightforward and timely mechanism for next-level review of decisions, for cases where a concern is raised by the individual. In this way, a more senior officer can review the evidence, consider more carefully the merits of the claim and the particular circumstances of the case, and explain the basis for any adverse decision.

Even where more formal legal avenues of challenge may be open, it is important for agencies to consider options for simple review and the exercise of discretion, particularly in the face of compelling evidence, to act in a way that avoids unfairness to individuals and unwarranted commitment of private and public resources to more formal processes.

Police approaches

NT Police, Fire and Emergency Services remains the agency that gives rise to the greatest number of approaches to our Office, with 687 in total in 2020/21 and 628 of them relating to police conduct. Issues of significance arising in relation to police are discussed in Chapter 4. They include utilisation of body worn video, duty of care to people in custody, youth justice issues and use of force. Examples of allegations dealt with during the period are set out in the case studies in that chapter.

Correctional Services

Correctional Services is the second largest source of approaches, with 517 in 2020/21. These often come directly from prisoners who can phone or write to us from prison. In addition to the introduction of a new prisoner complaints process, issues of note this year include responses to the Paget report into a disturbance at the Darwin Correctional Centre in May 2020 and to our *Women in Prison II* report, and management of prisoner mental health and at risk procedures. Our work with Correctional Services, and the need for comprehensive and ongoing reform in this field, is discussed in Chapters 1 and 5.

Other functions

We continued to deal with and resolve the great majority of approaches informally, finalising 2,342 during the year.

In addition, we undertook a range of community engagement and quality improvement functions, including:

- contributing to NT Government policy development by:
 - providing input on a range of policy and legislative matters for consideration by government;
 - serving on the Northern Territory Law Reform Committee;
- visits to a confined number of 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.

As noted above, this was a very busy year. Our staff faced both personal and professional challenges brought about by the COVID-19 pandemic and the increased demands on our Office. They have negotiated them admirably and continued to provide a high standard of service to the community. I thank them for their positivity in the face of changing circumstances. I particularly thank my Senior Management Group for their unwavering commitment.



PETER SHOYER
OMBUDSMAN
24 September 2021

KEY PERFORMANCE INDICATORS

Key Deliverables	2018/19	2019/20	2020/21
<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>	2,592	2,535	2,458
<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>313 approaches were open at 30 June 2021 compared to 193 at 30 June 2020.</p>	2,605	2,427	2,342
<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>	88%	86%	78%
<p>Other approaches finalised within 28 days</p> <p>Refers to all non-Police approaches, including local government.</p>	96%	92%	82%
<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> <p># A number of recommendations remain under consideration by relevant agencies.</p>	91%	96%	88%#

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 2020/21

COVID-19

The Office planned and prepared for the potential need to work from home over the course of the year. Additional resources were acquired and procedures developed. Officers continued to trial working from home to familiarise themselves with this mode of conducting business as individuals and within a group.

The Office remained physically open during normal business hours for the entire reporting period up to the final three days, when a lockdown was mandated. For those days, we initially provided a limited service with resources available at home but quickly scaled up to provide a sound level of service throughout the short lockdown period.

A review was conducted after the lockdown to establish where improvements in capacity and operation could be made. A number of additional resources were secured and changes in procedures adopted. I thank staff for their flexibility and generosity in responding to these challenging circumstances. I would particularly thank the Assistant Ombudsman and Senior Business Support Officer for their work at this time.

We continue to limit group sizes in meeting and interview rooms within the office and to promote attention to social distancing and personal hygiene measures in line with our COVID plan. We also continue to work through remote meetings where that is achievable.

There were some areas of Office operations that were unavoidably impacted. We visited Katherine and Alice Springs but we limited visits to other regional and remote communities to avoid any potential for causing heightened concern or risk. We will consult with communities about recommencing remote visits in 2021/22. Provision of training by our Office and staff development opportunities for our officers were also somewhat restricted, due to the impact of COVID-19 and the competing demands it has placed on the resources of the Office.

Planning and responding to operational issues raised by COVID-19 has continued to take up a substantial amount of time, which has distracted from other work of the Office. The same has been true for agencies, even more so for NT Police and the Department of Health. These demands have meant timeframes for investigation and preparation of responses to approaches have often had to be extended, leading to delay in resolution of approaches.

I accept that complainants may become frustrated at the time taken to resolve some matters but can only implore them to acknowledge the additional work needed to navigate the COVID pandemic and thank them for their patience.

COVID approaches received

During the period up to 30 June 2021, 49 approaches received had some COVID-19 element. The most common approaches for agencies in-jurisdiction related to Health (23), Correctional Services (7) and NT Police (4). We have continued to receive and respond to COVID-related approaches since the end of the reporting period.

The most common issue raised in the reporting period related to the requirement to pay fees for quarantine, calculation of fees and the potential for reduction or waiver of fees. Other issues included:

- decisions to close borders on short notice;
- the requirement to quarantine twice for travellers arriving in another state from overseas and then travelling to the NT;
- the need or legal authority for quarantine;

- failure to grant quarantine exemption or delay in considering a request for exemption;
- failure to reimburse flight costs when border restrictions were imposed at short notice;
- issue of infringement notices for COVID breaches;
- actions taken to enforce quarantine requirements;
- alleged failure of officers to enforce or adhere to COVID requirements;
- temporary closure of a police station due to the demands of COVID on police resources;
- a claim that injury was sustained at a quarantine facility;
- removal or restriction of free call arrangements for prisoners post lockdown;
- measures adopted in a correctional centre to address COVID risks;
- restrictions on prison visits;
- delay attributed to COVID restrictions;
- the legal authority to record contact details for COVID tracing purposes;
- the potential for waiver of fees charged by government and related bodies to ameliorate the negative impacts of COVID.

It is important to note that the descriptions above relate to issues raised, not sustained issues.

Since it was first established in 2020, our Office has engaged with the mandatory supervised quarantine facility called the Centre for National Resilience (CNR) in Howard Springs. From the outset, we requested that all incoming residents receive details in their 'welcome pack' about options for complaint, both internal and external, including to our Office. Similar information is also provided to new residents at the Alice Springs Quarantine Facility.

During the reporting period, we received briefings on the management of the CNR, including the pre-planning and preparations by the Department of Health for the transfer of responsibilities for Australians repatriated from overseas from the Australian Government to the NT Government.

Mandatory quarantine in a health emergency is a necessarily frustrating, uncomfortable and sometimes distressing experience for incoming residents. We have received numerous complaints about the need to quarantine, exemptions from quarantine and fees charged for quarantine but few in relation to the day to day management of the CNR.

CNR issues have usually arisen within the first day or two of arrival, commonly in relation to the special needs of individual travellers and exacerbated by fluctuating numbers of arrivals caused by border restriction changes made on short notice. When we have received approaches regarding CNR management issues, we have generally found the onsite team to be proactive and responsive to residents' concerns, noting the realities of strict health and safety precautions in a quarantine environment. Where errors or delays were the reason for complaint, CNR staff have openly acknowledged and addressed the problem and apologised to the resident in question.

COVID and reasonable government

The advent of COVID-19 has presented enormous challenges for NT Government, with a need to act urgently and to introduce and enforce many new restrictions and requirements. The Declaration of Public Health Emergency and ensuing Chief Health Officer Directions were determined as essential for preventing and minimising the impact of the Covid-19 pandemic in the Northern Territory.

However, it is important for NTG agencies to recognise, particularly as the COVID response matures, that firm approaches aimed at ensuring protection of the NT community need to be tempered with fairness and continue to recognise that just decisions must be made in light of the circumstances of each case. Proper processes need to be put in place to allow review of decisions that can have an extraordinary personal and financial impact on individuals.

A number of complaints of unfairness or unconscionableness have been made regarding the actions of NT agencies in their strict application of approach to cases that appeared to call for careful consideration of individual circumstances. I will discuss three situations below.

Quarantine fees

Quarantine fees were, and continue to be, imposed for mandatory quarantine at government run facilities in the NT. The fees are substantial, running to several thousands of dollars, although they are stated not to cover the entire cost of quarantine. We received a significant number of complaints about charges imposed for quarantine.

As with any aspect of good administrative decision-making, it is essential that implementation of a fee charging scheme not only include consistent application of policy, but also refrain from inflexible or unfair application of policy in circumstances that justify a different approach: in brief, there is a need for recognition that special cases warrant special measures.

This is particularly so where, as here, the provisions were unprecedented in their scale and application in the public health sphere. The quarantine services being delivered by the Department of Health are not simply a case of standard fee-for-service transactions with respect to which members of the public are routinely accustomed and in a position to make informed decisions to accept or decline on the basis of their own considered judgments. People who have undertaken quarantine have frequently done so under the burden and compulsion of extreme pressures induced by the pandemic both in financial terms and in order to meet urgent family or caring commitments. Often they have been imposed with minimal notice.

Further, the pace at which the COVID-19 situation has developed has created a highly complex and rapidly changing regulatory environment, with frequent changes in the applicable law. This has greatly increased the potential for misstatement by staff or misunderstanding by the members of the public.

Departmental staff and other NTG staff working within the quarantine system have shown extraordinary levels of commitment, compassion and recognition of the challenging circumstances and frustrations experienced by people forced to undertake quarantine. It is important that such compassion, understanding and care be extended to dealing with complaints and requests for review, including complaints about financial issues arising from quarantine.

All these factors point to a clear need for the Department of Health to adopt a flexible approach to the levying and recovery of quarantine charges.

We observed a number of examples of correspondence from the Department to complainants which appeared to suggest that there was no discretion in the imposition of the relevant fee – referring to the fee as a “statutory fee”. Further, these communications suggested that this fee would apply *“despite any other information that may have been given to you”* and that it *“takes precedence over any conflicting or inconsistent information that may have been provided to you”*.

Section 52A(1) of the *Public and Environmental Health Act 2011* (NT) (the Act), grants a discretion to the Chief Health Officer to charge a fee (subject to a prescribed maximum amount determined by Regulation). The Act itself does not prescribe an actual fee, or the circumstances in which it will be charged, waived, or reduced, or the circumstances in which unpaid fees will be recovered. While we were open to receiving and considering any legal advice the Department may have to the contrary, it seemed to us that such decisions are amenable to discretion and general principles of administrative law.

We expressed concern that the statements outlined above to the effect that the fees apply regardless of any other conflicting information that may have been provided were unfair to Territorians, and particularly to those who sought advice from Departmental staff, relied on that advice and took action as a result.

From the communications that we observed regarding complaints or requests for review, some responses appeared to contain little information regarding what enquiries were made, the reasons for the review decision, or what rights of review or complaint were available if the complainant disagreed with the outcome.

A number of the responses appeared to merely rely on the above assertions of an immutable statutory fee that must be paid notwithstanding any other information to the contrary, or a restatement of inflexible or inapplicable eligibility requirements. Given the extraordinary nature of the pandemic situation, we stated that it is important that communications are tailored and fully explain the reasons for decision in a way that acknowledges the circumstances of the individual concerned.

In light of the above, we suggested that the Department review its decision-making structure and practices to facilitate striking an appropriate balance between consistently applying relevant guidance, and giving proper consideration to the circumstances of particular cases.

We suggested matters to be considered in that review might include the manner in which staff approach internal reviews and complaints to ensure that:

- contact is made with the individual as appropriate to ensure that there is a full understanding of their circumstances;
- investigation is conducted into any suggestion of misinformation, and if this is substantiated, consideration is given to an appropriate outcome in the circumstances;
- consideration is given to whether, in the particular circumstances of the case, the decision-maker has adequate discretion to deal effectively with the matter or whether it needs to be escalated;
- a full explanation of the decision is provided to the individual, including information about other rights of review or complaint in the event they disagree with the decision.

In respect of a number of specific complaints, we stated that it is important that there be a degree of flexibility and care in the decision to pursue recovery of charges. In this context, recovery should not be viewed as a routine commercial function, but as an extension of the emergency public health powers that are being exercised to protect the health and wellbeing of individuals, with due care and consideration given to those caught up in these distressing and uncertain times. This should include recognition that considerations of fairness and just administration of the law mean there will be times when miscommunication by NTG officers, genuine misunderstanding of arrangements or other particular circumstances justify a decision not to take rigid recovery action.

We said another factor to consider in any decision to pursue recovery is whether the surrounding circumstances in the particular case would be such as to create uncertainty or doubt in the event proceedings were required to be instituted to recover the unpaid amounts. In such circumstances, the Territory may well incur additional costs in pursuing recovery in proceedings that may or may not prove successful, quite apart from any reputational impact arising from pursuit of marginal cases.

In response, the Department stated:

Mandatory supervised quarantine fee information is publically available on the coronavirus.nt.gov.au website in English and other languages. The website includes information on individual and family quarantine fee amounts, the low income discount threshold requirements, payment plans and Frequently Asked Questions. Further, upon arrival into the Howard Springs and Alice Springs quarantine facilities, clients are provided with a Quarantine Fee Information sheet and a Frequently Asked Questions sheet.

While I note your suggestion that decisions on the imposition of quarantine fees be amenable to discretion and general principles of administrative law, there is no established right of waiver under the Act. The only avenue of appeal against the legislative fee is through court action. Though the legislation does not provide provision for waiving of the fee, the Financial Management Act 1995 does provide the Treasurer with the ability to waive statutory fees in certain circumstances.

Irrespective of this DoH continues to receive and consider significantly high volumes of requests from clients seeking waivers of the fee or refusing to pay. A large portion of these requests are on compassionate grounds. While DoH appreciate and sympathise with the unfortunate situation many individuals finds themselves, DoH continues to maintain a consistent approach to all invoices to ensure the equitable treatment of individuals and application of the legislated fee.

In a limited number of cases, fee waiver requests are sought on the grounds that misleading or conflicting advice provided was relied on to take action. Often, these requests reference verbal interactions across NTG (i.e. border restrictions, Centre for National Resilience, clinicians and police) and with external third parties (i.e. airlines and flight cabin crew).

While DoH thoroughly investigates each case, the complexity and frequency of Hotspot declarations mean that it is difficult to determine the accuracy of verbal advice provided or the substance of the original query. In addition, advice on the requirement to enter quarantine and the application of a quarantine fee is subject to individual travel plans, misinterpretation and misunderstanding of arrangements by individuals and rapidly changing CHO directions.

In the current pandemic there is an additional onus on all travellers to educate themselves on their destination COVID-19 requirements. The decision to travel remains with the individual, which also ultimately carries with it the responsibility for payment of any associated supervised quarantine fee.

Communication:

On receiving a query or a waiver request, DoH undertake a detailed investigation and review prior to providing a response. Investigations can include but are not limited to cross referencing with our internal database that details client notes of previous customer interactions, Border Exemptions review and confirmation for the direction to quarantine, consultation across DoH, the Centre for National Resilience and other Northern Territory Government (NTG) agencies involved in the Territory's COVID-19 response and review and confirmation of days in quarantine and the fee invoice.

In providing a response to a query or waiver request, DoH has sought to consider individual circumstances in determining the correct application of the legislated fee and to explain the basis for decisions. Where a client does not accept a decision but provides new information as part of their request, DoH will consider this new information and conduct a further investigation and review, and a response addressing their particular circumstance will be provided. However, where a client continues to reject a decision, standard responses are provided.

Great care is always taken to ensure communications are tailored and the reasons for decisions fully explained in a way that acknowledges the circumstances of individuals concerned, noting the ever changing environment under COVID-19 has meant border control measures (i.e. hot spot declarations) are often put in place with limited advance notice, in order to continue to protect Territorians. This scenario has been and continues to be the case across the nation.

Accordingly DoH and wider NTG messaging continues to advise individuals to regularly check formal communication channels, in particular the coronavirus.nt.gov.au website, for COVID-19 Hotspot updates and travel restrictions.

In these very uncertain times, it is crucial that people be adequately informed of the basis for an agency's or public officer's decision-making and the statements made regarding individual consideration of cases and tailored communication are noted. Managers are encouraged to ensure that clear reasons are given by staff to individuals, particularly when decisions will impact significantly on their circumstances.

As regards the exercise of discretion, I remain of the view that there is scope to make provision in the fee scheme to enable a more flexible approach when the circumstances of a particular case warrant it, especially when a person has been given and relied on equivocal or misleading advice from the Department.

Agency staff can and will make errors in the advice they give in such a rapidly evolving situation. In reality, this is to be expected and should not necessarily be the subject of undue criticism. However, it is incumbent on agencies to properly investigate claims of this type and make appropriate allowance for their own errors, especially when it comes to pursuit of financial imposts rather than matters that may represent a risk to the health and safety of Territorians.

Decisions to revoke approvals to enter the Territory

Our Office has recently received complaints of cases where approval has been granted to enter the Territory and go into quarantine, only to be revoked once a person had arrived and spent some time in quarantine, with the person forced to return to another state on short notice and at considerable expense, on pain of prosecution.

There may well be grounds for revoking an approval based on some misrepresentation or misstatement. However, if approval has already been granted for an application that appears on its face to comply with current requirements and the person has acted on that approval to the extent that they have arrived and entered into quarantine, a revocation should not be based merely on a concern or query that there may be an issue with the application. In such a situation, a person should be given a reasonable opportunity to respond to concerns before action is taken.

Infringement notices

In three recently received approaches, complainants have sought relief from the issue of infringement notices in circumstances where they contended they had complied with the law or essentially had no choice but to act in the way they did due to external circumstances.

Our usual approach in respect of infringement notices would be to refrain from action because it is open to a person to challenge the allegation in court. However, in these cases, we noted the very high level of the penalty amount (around \$5,000 each), the fact that the complainants were from interstate and would have to invest considerable resources to challenge the matters in an NT court, and the strong, and in at least one case, compelling nature of the evidence put forward by the complainants to support their claim that it would be wrong in law or unfair to maintain action against them.

In the circumstances, we raised the cases with NT Police for consideration. I should note that our concerns were not with the initial decisions to issue the notices but with the potential to consider withdrawal prior to a matter proceeding to court. On our understanding, notices are withdrawn by NT Police from time to time on the basis of representations and evidence that establish a clear case for withdrawal. NT Police declined to withdraw the notices in question and we advised the complainants that they would have to pursue other legal avenues to challenge the allegations. Nevertheless, in the face of the evidence available, we considered this response was disappointing.

While there may be concern that conceding position on one infringement notice may encourage others to challenge, it is important to reflect on the role of public sector agencies in promoting fairness in response to what is an enormously challenging situation for all Australians.

While another avenue may be open, it is important for all agencies to consider the exercise of discretion, particularly in the face of compelling evidence, to act in a way that avoids unfairness to individuals and unwarranted commitment of private and public resources to more formal processes.

Acting firmly and decisively is clearly an approach that is broadly accepted as important to address the many challenges of the COVID-19 pandemic. However, it is vital, particularly in the novel and demanding circumstances of the pandemic, that agencies develop simple, fair and timely mechanisms for review of decisions that can have a major impact on the lives of Territorians and other Australians.

JUDICIAL COMMISSION

The *Judicial Commission Act 2020* is anticipated to commence before the end of 2021. It will provide people with a way to complain about the behaviour or the physical or mental capacity of a judicial officer or a member of the Northern Territory Civil and Administrative Tribunal (NTCAT).

The Commission will comprise:

- the Chief Justice of the Supreme Court;
- the Chief Judge of the Local Court;
- the President of NTCAT;
- the President of the Law Society Northern Territory; and
- one or two community members appointed by the Administrator.

The Commission will examine complaints and may:

- if satisfied a complaint is sufficiently serious that, if substantiated, it could justify removal from office or termination of appointment, establish an Investigation Panel comprising two judges or former judges and one community member;
- if satisfied a complaint is not sufficiently serious but is partly or wholly substantiated, refer the complaint to the relevant head of jurisdiction, with recommendations regarding action; or
- if satisfied there is a statutory ground to do so, dismiss the complaint.

The process is not intended as an alternative way to appeal a decision. Nor can a complaint be made in relation to a matter that is within the jurisdiction of the Independent Commissioner Against Corruption (ICAC), unless the ICAC consents or refers the matter to the Commission.

The Ombudsman's Office was allocated ongoing funding in the later part of the reporting period to provide independent administrative and investigative support to the Commission. Significant time was spent during the period preparing for the establishment of an office to support the Commission.

OPTIONAL PROTOCOL TO CONVENTION AGAINST TORTURE AND ILL-TREATMENT

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

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

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

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

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention ..., with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; and

(c) To submit proposals and observations concerning existing or draft legislation.

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

The NT Ombudsman has been nominated as Interim NPM for the NT. Other NPMs may be appointed in relation to specific authorities/functions over time. Draft NT legislation in relation to the role of NPMs is under development by the Department of the Attorney-General and Justice (DAGJ). The question of resourcing for the NT NPM function has not at this time been settled.

The primary focus for the Ombudsman's Office in the short term will be to contribute to development of the draft NPM legislation and liaise with NT stakeholders and Australian and New Zealand counterparts.

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. Many aspects of the incident have since been made public in the course of court proceedings.

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 a separate investigation prior to 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.

As noted in my previous Annual Report, I was briefed on the final Paget report and sought a copy of the report in order to consider its findings and recommendations and whether, and to what extent, there was a need for further investigation or action on the part of our Office.

I have since been provided with a copy of the Paget Report and an accompanying report by Mr Tim Lyons on the basis of an undertaking under section 30 of the *Ombudsman Act 2009* that I will not disclose the reports to anyone else, other than necessary staff of my office, without approval from the DAGJ. I accepted a copy on that basis because it allowed me to consider whether there was a need for further immediate action.

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

The report includes numerous recommendations for improvement. The analysis and recommendations are very much in line with previous commentary by my Office (for example, in *Women in Prison II*, discussed in Chapter 5 of this Annual Report) and others (e.g., the Hamburger report).

They all point to a need for extensive action across a whole range of correctional services functions. They all identify a need for fundamental or paradigm change.

I wrote to the Chief Executive of the DAGJ along the above lines, also stating:

It is clearly important that the NT Government carefully consider and implement, to the extent it considers appropriate, the recommendations in the reports.

Many of the recommendations have resource implications and there is no doubt that implementation will take time.

However, I have previously emphasised the importance of engaging the public and reframing public debate about correctional issues if progress is to be made. With that in mind, I believe the reports, and in particular the Paget report, contain a wealth of analysis and information on the situation and past incidents in the NT and elsewhere, that will prove invaluable in informing public debate and promoting fundamental change.

I therefore look forward to publication in the near future of the reports (or the substance of the reports if editing is considered necessary), including recommendations.

The reports contain many recommendations. In order to ensure the reports prove to be of full value in the administration of government, it is important that there be a structured mechanism for response and implementation of recommendations. This might, for example, take the form of a response and implementation plan that sets out the Government response to each recommendation, along with measures to be taken to implement accepted recommendations and stated or projected timing for progressing and finalising each of the measures.

The implementation of the recommendations will be a matter of continuing interest to this Office. With that in mind, I would be grateful if you could advise whether a structured mechanism for response and implementation (however described) has been or is being developed in relation to the individual recommendations. If so, I would be grateful if you could provide me with a copy of the most recent version. Clearly, there would also be merit in the Government publishing such information to promote public understanding and discussion of these vital issues.

I have since been provided by the DAGJ with a copy of a table of recommendations which responds to individual recommendations in the Paget and Lyons reports. I look forward to publication of the reports (or the substance of the reports if editing is considered necessary), including recommendations and updates on progress.

VICTIMS OF CRIME

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

Most recently, I wrote to DAGJ in May 2021, following up on progress, stating:

... In addition to dealing with numerous complaints regarding delay in finalisation of applications, I made a submission in response to a November 2018 Discussion Paper on Victims of Crime Reform in March 2019.

I commented on these matters in my 2019-20 Annual Report (pages 12-15), noting:

I accept that the CVSU and [DAGJ] 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.

Recent figures provided by the CVSU show that while some headway is being made in reducing the backlog, there remained 609 unfinalised pre-2018 cases. The continuing influx of new applications has meant that there were 1,674 open matters at the end of March 2021.

In order for me to consider the best way to progress incoming complaints and whether there is a need for an 'own motion' investigation into administration of the scheme, I wish to make preliminary enquiries with you in order to establish [answers to 5 queries set out below in bold].

The Acting Chief Executive of DAGJ provided the following information in response in July 2021 in relation to each query:

1. Any additional steps the Department is implementing or proposes to take in order to address the large number of open applications and promote timely and effective resolution of applications

[The A/CE noted approval of] additional ongoing funding of \$1.5 mil. This comprises \$1.25 million for the compensation fund and \$0.25 million for additional FTE to improve processing times for claims for compensation and reduce the current backlog.

It will take some time to create the new positions and potentially restructure the CVSU to ensure best use of the additional funds. However, to ensure measures to reduce the backlog can be implemented immediately, on 21 June 2021, I approved the creation and advertising of 2 temporary positions, likely to commence in July 2021. These are:

- *A06 - Senior Applications Officer - this role manages the files and prepares draft notices for the assessors. This is where the bulk of the bottleneck sits;*
- *A03 - Administration and Enquiries officer - the existing two administration positions are currently overwhelmed with the number of emails and phone calls from legal representatives and applications, and there is a backlog in requests for information such as police and medical reports. The addition of another Senior Applications Officer will only add to their workload and therefore an additional A03 is being recruited to assist.*

With reconsideration of the CVSU organisational structure and finalisation of the 2021/22 Budget, the CVSU will likely be in a position to fund a second A06 position should two suitable candidates be identified in the recruitment process.

2. The stage of progress of the Victims of Crime Reform review

Until now, the focus has been on securing additional resources to assist with clearing the backlog. The submissions received with the review are still being considered.

3. What measures, including any legislative measures, the NT Government is exploring or undertaking to further review or enhance the victims of crime assistance scheme in the NT (in respect of both future applications and the large number of current applications)

In 2018-19 the Department of the Attorney-General and Justice conducted consultation on a review of the Victims of Crime Assistance Act 2006. A report on the consultation was provided to the Attorney-General and Minister for Justice in August 2019. The Government is considering its response to the report and any recommendations for legislative amendment.

4. If measures have not been implemented, the likely or projected timing of implementation

It is anticipated that Government will consider legislative options later in 2021.

Implementation of efficiencies is ongoing, noting year-on-year growth over the last 4 years and anticipated for 2020/21 as well. Over the next six months, the focus will be on restructuring the CVSU, taking into account the existing backlog and increased budget and staffing levels. This will involve a comprehensive process-mapping exercise to identify further efficiencies.

As at 31 March 2021, this backlog stands at 674, down from 991 at the beginning of 2020. As part of this restructure, it is proposed that a more complete and separate backlog project will be developed with a team of at least 3 officers to focus solely on clearing the pre-2018 backlog as soon as possible.

5. Any other measures that may be under consideration aimed at assisting victims of crime

[DAGJ] is also investigating a short-term intensive administrative project to address the outstanding administrative work that is adding to the bottleneck in the processing of applications. This project will undertake work such as: opening/closing/archiving files; following up on requests for information; conducting IJIS searches; and indexing police reports for the applications team.

The CVSU is committed to constant improvement and continues to work with its funded providers to improve services and ensure gaps in services are identified and filled. For example, Victims of Crime NT have recently commenced a pilot project providing support to victims in the Local Court, Darwin. This project will be monitored over the 2021/22 financial year with a view to expanding this pilot beyond Darwin.

The current contract for delivering the Victims Counselling Scheme is due to end mid-2022. CVSU will be releasing an Expression of Interest in late 2021 with improved KPIs and service requirements.

There remains a large amount of work to be done in this area. My Office will continue to deal with complaints, monitor progress in dealing with the backlog and liaise with CVSU and DAGJ in relation to issues around support for victims of crime.

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. The reality is that almost all approaches and complaints are finalised without the need for a separate tabled report, even if there has been a formal investigation. We did not produce any separate major investigation reports for tabling in 2020/21.
- **Approaches – enquiries and complaints** – The bulk of our effort is spent in dealing with approaches to the Office. We received 2,458 approaches in 2020/21 and finalised 2,342 (including a number carried over from the previous year). In dealing with approaches, we emphasise speedy and informal resolution of issues, with agencies as far as possible taking responsibility for resolution of matters involving them.
- **Police conduct complaints** – A total of 628 of the approaches we received in 2020/21 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 matters, more serious matters are subject to comprehensive investigation and reporting. In these cases, investigations are usually carried out by the NT Police Professional Standards Command under Ombudsman supervision.
- **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 4 – 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.

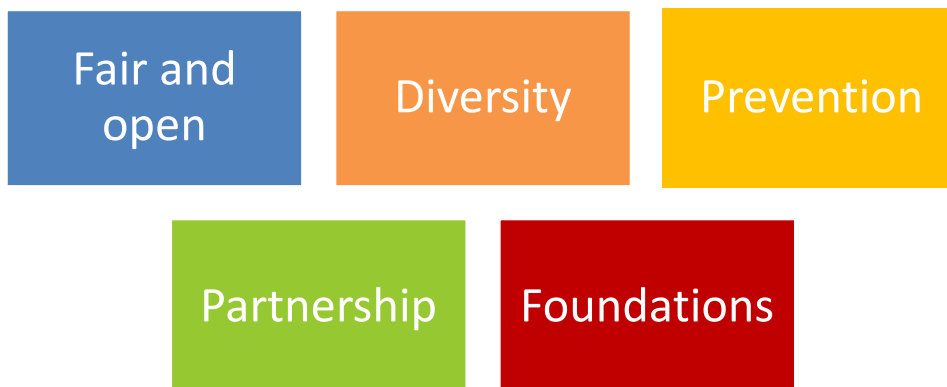
The Office has in place a **Strategic Priorities** document as a guide for our actions from 2020 to 2024: https://www.ombudsman.nt.gov.au/system/files/fileuploads/strategic_priorities_jun20.pdf.

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.

Diversity

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

Prevention

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

Partnership

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

Foundations

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

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

Potential harm involved

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

Other factors

- Extent of potential harm – how much harm
- Number of people impacted or likely to be impacted
- Potential for ongoing future impact – is this a one off issue or will it continue in the future
- Number of similar complaints
- Unreasonable delay or disruption
- Potential corruption / criminal conduct
- Urgency, for example:
 - Statutory time limit for action
 - Potential for harm is imminent
- Serious / systemic issues
- Existence of prior investigations on similar issues – has the issue already been dealt with
- The extent of prior interaction by the complainant with agency – has the agency had a reasonable opportunity to deal with the issue
- Steps already taken by the agency to address the 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 with respect to which we should take action, and to assure ourselves that appropriate investigative steps are being undertaken.

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

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

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

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

CHAPTER 3 – APPROACHES – ENQUIRIES AND COMPLAINTS

NUMBER OF APPROACHES

In 2020/21, there were 2,458 approaches to the Office (compared with 2,535 in 2019/20). 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.

While total approaches declined slightly from the previous year, a record number of in-jurisdiction approaches was recorded in 2020/21, representing a sustained increase in workload for the Office for the past three years.

	2016/17	2017/18	2018/19	2019/20	2020/21
In jurisdiction cases	1,273	1,526	1,829	1,773	1,859

The number and proportion of more complex approaches was similar to the previous year, with numbers of the two most complex categories increasing slightly from 677 to 683 in 2020/21 (28% of all matters). However, the number of the most complex category of matters increased again to 331.

Complexity	2018/19	2019/20	2020/21 [#]
Complex matters	202	303	331
Resolved Expediently	529	374	352
Enquiries	1,861	1,858	1,770

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

The top public sector agencies by number of approaches received in 2020/21 are set out below.

Department / Agency	2018/19	2019/20	2020/21
Police, Fire and Emergency Services	657	637	687
Correctional Services⁽¹⁾	586	575	517
Families, Housing and Communities⁽²⁾	128	99	125
Jacana Energy	181	141	115
Attorney-General and Justice⁽³⁾	66	56	71
Power and Water	46	74	53
Infrastructure, Planning & Logistics⁽⁴⁾	59	35	48
Health	10	18	44
Industry, Tourism and Trade⁽⁵⁾	-	-	36
Education	14	27	29
City of Darwin⁽⁶⁾	19	18	20
Charles Darwin University	17	13	13

Notes

- (1) Correctional Services is part of the Department of the Attorney-General and Justice but reported separately.
- (2) The Department of Local Government, Housing and Community Development combined with Territory Families during the reporting period. Approach numbers for previous years have been combined.
- (3) Includes Crimes Victims Services Unit (11), Fines Recovery Unit (10), Courts and Tribunals (10).
- (4) Includes Motor Vehicles Registry (18).
- (5) Newly created agency combined various functions. No figures for prior years.
- (6) In total, there were 48 approaches in relation to local government councils compared with 41 in 2019/20.

VARIATIONS AT AGENCY LEVEL

Police, Fire & Emergency Services (PFES) approaches increased by 8% over the previous year. Although police conduct approaches also rose by 5%, the number of more serious Category 1 and 2 complaints received remained relatively static and the number of Complaints Resolution Process matters declined by 13%. PFES nevertheless remains the number one subject of approaches to our Office and there is a significant backlog of outstanding police conduct complaints (discussed in Chapter 4).

Correctional Services experienced a 10% decline in approaches. While this is welcome, it is not clear to what extent this is due to positive or negative impacts of the new Prisoner Complaints Process (discussed in Chapter 5).

The newly combined Territory Families, Housing and Communities experienced an increase in approaches over the year, reversing a decline that took place in the previous year to return a relatively similar result to 2018/19. The bulk of these approaches (91 of 125) related to the Housing function.

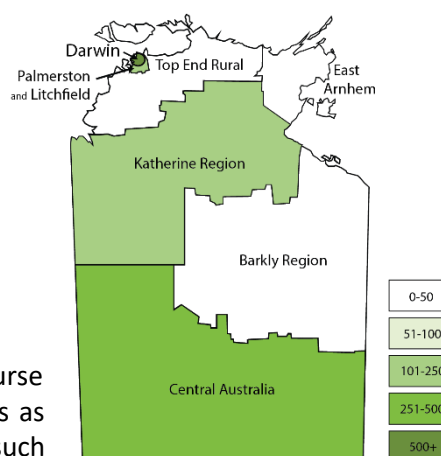
There was a notable decline in utilities approaches, with Jacana Energy approaches falling 18% and Power and Water approaches falling 26% over the previous year. Approaches relating to both utilities are discussed in more detail later in this Chapter.

Increases over 2019/20 approach figures for Attorney-General and Justice and Infrastructure, Planning and Logistics reversed or partly reversed falls from 2018/19, while Health saw a notable increase in approaches, contributed to by complaints relating to COVID-19.

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'.³

Region	%
Darwin	55
Alice Springs/Central	16
Palmerston/Litchfield	15
Katherine	7
Top End Rural	3
Barkly	2
East Arnhem	2



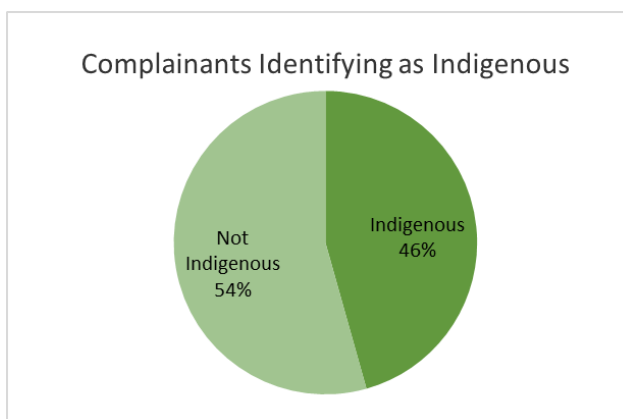
For similar reasons, it can be difficult to establish in the course of dealing with an approach whether an enquirer identifies as Indigenous. Our Office considers it important to obtain such information to help us establish any gaps in service provision and ways to improve our service.

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.

³ 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 2020/21, 20% 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, 46% were Indigenous, a decrease from 48% last year.



HOW APPROACHES ARE MADE

The Office offers a range of options for contact.

In 2020/21, about three out of five enquirers made initial contact with the Office by telephone.

This compared with just under one in four who utilised either e-mail or the Office’s online web form.

Manner of approach	%
Telephone	59
e-mail	17
Referred by police	14
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 4.

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, information sharing, sharing of resources and minimising the risk of duplication.

Outside jurisdiction

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

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

In outside jurisdiction cases, the Office attempts to either provide contact details or put the enquirer in touch with an entity that can assist them. In 2020/21, we dealt with 599 outside jurisdiction approaches. This was a substantial fall from the 762 outside jurisdiction cases in the previous year. The following table lists the most common outside jurisdiction sectors where approaches were referred on to another complaints body or forum.

Sector	2018/19	2019/20	2020/21
Consumer affairs	138	138	96
Commonwealth government	63	63	54
Employment	99	93	52
Financial services	86	64	45
Health services	59	69	33
Telecommunications	27	26	22
Private housing	26	41	18

HOW QUICKLY APPROACHES ARE DEALT WITH

In 2020/21, 2,342 approaches to the Office were finalised, with 90% of finalised matters completed within 90 days. This was a significant fall from the previous year, when 96% of finalised matters were completed within 90 days. The following table sets out elapsed time for finalisation of completed Police and non-Police approaches.

Time taken to finalise approaches - approaches finalised in 2020/21

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	25%	27%	26%	11%	11%	586
Other	52%	29%	12%	4%	2%	1756
Total	1,054	674	372	136	106	2,342

The fall in finalisation timeliness was accompanied by a rise in the number of approaches that remained open at the end of the reporting period, shown in the following table.

Age of open matters - at 30 June 2021

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	8	19	42	28	86	183
Other	16	40	35	21	18	130
Total	24	59	77	49	104	313

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. However, in this year, the figure for open matters at 30 June grew substantially to 313 compared to 193 in the previous year and 80 the year before. While this has subsequently reduced to under 300 open matters, it is still substantially higher than in previous years.

Timeliness issues in relation to police conduct cases is discussed in Chapter 4. With respect to non-police conduct matters, only 82% of matters were finalised within 28 days but 94% were finalised within 90 days. The makeup of non-police open cases by agency largely reflects the distribution of approaches received, with about 40% of open in-jurisdiction non-police matters relating to Correctional Services.⁴ One agency with a higher than usual number of open approaches is the Department of Health, with 17 open matters concerning aspects of management of the COVID-19 pandemic.

A number of relatively complex issues are being pursued in the Correctional Services complaints, while the majority of the Department of Health complaints are relatively recent. There is however, no doubt that the sustained high level of approaches and the effect of COVID-19 on our Office and responding agencies has impacted substantially on timelines for finalisations across the board. We will make every effort to improve timeliness of response to non-police matters during 2021-22.

⁴ As at 10 September 2021.

ISSUES AND EXAMPLES FROM SPECIFIC AUTHORITIES

Discussion and examples of a cross-section of issues and cases we dealt with during the year are set out below. NT Police conduct and Correctional Services approaches are discussed in following chapters.

Utilities complaint handling

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

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

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

It can be difficult for both consumers and oversight bodies to accurately identify which agency is best placed to address the issues at the core of a complaint. On occasion, complainants come to our Office because they feel that they are being unfairly shunted between the two agencies without a resolution of their concerns.

Our Office has discussed with both agencies the need for them to work together on more complex complaints to explore the concerns raised by the consumer and provide a comprehensive response addressing those concerns. Both entities are well aware of the challenges faced by consumers in more complex complaints and it is important that temporary and longer term solutions are effectively implemented.

We consider it is essential for both agencies to make improvements to their information-sharing processes, their management of complex complaints and their publicly available information in order to provide a more streamlined, consumer-focussed experience for their customers. Discussions with both agencies indicate a clear intent to move in this direction. It is important that this be backed with timely action.

Jacana Energy

Early resolution of complaints is the best option in most cases. In individual cases where a consumer contacts our Office before approaching Jacana, they are encouraged to make direct contact with Jacana, with the option to recontact us if they remain dissatisfied with the response. It is pleasing to note that during 2020/21, many approaches about less complex matters have been resolved by Jacana without further contact from the consumer with our Office.

It is also pleasing to report that the total number of approaches relating to Jacana for 2020/21 was 115, a fall from 141 in 2019/20 and from an all-time high of 181 in 2018/19. We are aware that work is being done by Jacana to improve its customer service generally and Jacana management have advised that a more consumer-focussed approach is intended in the future. These current and proposed improvements to organisational culture and service delivery are welcomed.

Many of the approaches regarding Jacana during the year queried the amounts charged for electricity, including the reliability of electricity meters. Others raised issues to do with billing practices, particularly when there were changes in address or living arrangements or in the administration of deceased estates. A substantial number involved issues relating to financial hardship, including credit listing. Some involved issues around connection or foreshadowed or actual disconnection.⁵

The largest number of approaches this year involved some aspect of solar power, including a significant number concerning the transition to the new feed-in tariff rate.

Example – Solar feed-in tariff

One of the statutory functions of the Ombudsman is to consider whether administrative actions of agencies are not only lawful but also reasonable. From that perspective, we have received many complaints about the actions of Jacana following the NT Government's public announcement in April 2020 of changes to the solar feed-in tariff.

Essentially, the feed-in tariff or rebate for solar power fed back into the electricity system, was reduced from the level routinely charged to customers for electricity supply down to a much lower level. The change was expressed to facilitate a new policy direction to promote installation of batteries in order to support stability in electricity supply.

The higher feed-in tariff was retained for existing consumers who already had installed and operational systems prior to the announcement. However, the position was much less clearly stated for people who had only recently commenced the process of securing a solar system or were in the process of building a new property.

We engaged with Jacana regarding transitional arrangements initially shortly after the announcement of the change and then in response to complaints received. Our view is essentially set out in the following extract from a letter I sent to the Chief Executive of Jacana:

... I have set out below my understanding of the broad circumstances behind the complaints our Office has received in regard to the change in feed-in tariff.

- The change in tariff was instituted as part of a marked change in policy direction from Government to promote installation of batteries in order to support stability in electricity supply.*
- There was always scope for incremental change in terms of variation of the tariff rate, although it is fair to say that any variation in relation to electricity tariffs has in recent times been subjected to considerable public discussion and debate.*
- The reduction in tariff in this case was not incremental - I would describe it as radical.*
- It was therefore reasonable and appropriate to have some form of transitional and/or grandfathering arrangements in place.*
- This was recognised in the provision for existing consumers to be given the substantial advantage of enjoying the previous rate, at least until such time as there is some change in address, etc.*
- It is a matter for Government to decide on changes in policy and tariff rates. For the future, people who consider installing solar systems can make decisions based on the new tariff level and other incentives.*
- However, a small number of people committed to installation of a solar system on their understanding of the previous arrangements but were not existing consumers at the*

⁵ Jacana advises that there were no disconnections for non-payment in 2020/21 and a high degree of flexibility regarding payment plans, including hardship arrangements as part of its COVID-19 response.

relevant address (I will refer to them as the 'new consumers'). The new consumers made those commitments, perhaps with an expectation that there might be some incremental reduction in tariff over time, and, if they were aware of developments in other states, that there might be a substantial reduction over time. They did not anticipate that the rug would be pulled out from under them before they had a chance to benefit in a meaningful way from the scheme they thought they were entering into.

- [I attached a Schedule] listing the complaints we have received from new consumers to illustrate the circumstances of that small group of people.

The current approach creates a stark distinction between two groups of people who committed to installation at essentially the same time, on their understanding of the then feed-in tariff. On the one hand, we have ongoing Jacana consumers who will enjoy the benefit of a high ongoing tariff and on the other, we have the new consumers (either entirely new or new to a particular address but nevertheless who are now Jacana consumers) who will receive the radically reduced tariff. The difference in approach between those two groups of Jacana consumers who did fundamentally the same thing at the same time is striking.

In the circumstances, it would appear to be entirely reasonable to extend the grandfathering arrangement to this small number of new consumers but in lieu of that approach, it would certainly be reasonable to consider some sort of transitional arrangement in recognition of their position. Examples of transitional arrangements that might be considered could include an agreement to continue the higher tariff for a limited period, say, two years (subject to the other limits that apply to continuation of the higher tariff) or to provide a set value credit for one or two years. The precise nature of such an arrangement would best be considered by Jacana.

I note that one objective in the Government policy change is to fund the new policy objective through savings arising from the reduction in tariff. However, given the very small number of Jacana consumers who fall within the group of 'new consumers', it does not appear that a transitional arrangement favouring them would have any significant impact on that objective. I also acknowledge the position of Jacana that complainants who missed out were not then a party to a relevant retail contract. However, I do not accept that the existence of an extant legal relationship in respect of a particular property at the time necessarily governs what is reasonable in all the circumstances.

In raising the potential for a change in approach to the new consumers, I note the acknowledged lack of clarity with Jacana public messaging regarding the transition process, which contributed to new consumers and their installers undertaking further urgent work to get their applications in by the required date only to be rejected for the grandfathering arrangement. It is crucial for a public corporation providing an essential service to provide clear public messaging on such important issues as pricing alterations.

Given previous communications and my comments above, I recommend that Jacana:

- Take steps to ensure that clearer public messaging is provided in relation to future tariff changes and similar decisions impacting on consumers; and
- Give further consideration to extending the grandfathering arrangement or implementing some other transitional arrangement for the benefit of the 'new consumers' listed ...

Whilst fully acknowledging that it is a matter for Government to decide on changes in policy and tariff rates, agencies should always advertise and implement them in a fair and transparent manner, so as to ensure that the terms and requirements of any changes are clear.

On this occasion, we had many complainants who read the details of the tariff changes on Jacana's website and proceeded with installation at considerable cost on the understanding that they would be eligible for the higher tariff rate. In a number of cases, this was substantially attributable to imprecise public messaging around the changes.

For example, complainants did not know that the higher tariff would only be available for existing customers as there was lack of clarity of this requirement in the public messaging. As a result, many people complained that they only continued with a financial commitment to immediately install solar within the publicised timeframes so that they would receive the higher rate for the feed-in tariff and not a lower rate. To add to the confusion, when complainants were refused the higher rate, they were given varied reasons as to why they did not qualify.

In response, Jacana has commented:

Whilst acknowledging the confusion around the 'existing customer' definition, it is important to note that there were additional contributing factors, including the fact that Power and Water received a year's worth of PV applications in the two weeks grace period. This is indicative of a strong solar installer 'push' for customers to proceed with a PV application to receive the Premium FiT. We are aware of solar installers and other third parties providing incorrect or conflicting information about tariff eligibility to customers during this time, with these statements often not verified with Jacana Energy directly by the customers.

In addition it is worth noting that of the large number of grace period applications approved for connection, 93% went on to receive the premium FiT. All accounts were individually reviewed to determine the correct FiT. At times, where appropriate, the original tariff decision was overturned.

...

We recognised that customers were concerned about these decisions and ensured there was a detailed review process of all solar FiT applications and engagement with customers on the reasons why they were not provided with the Premium FiT.

... we have applied a case-by-case approach for customers, with a largely positive outcome for customers who submitted PV applications in the grace period.

A number of enquirers who have approached our Office remain dissatisfied with Jacana's response to their concerns.

It is crucial for a public corporation providing an essential service, particularly one in a near monopoly position, to publish clear messaging on such important issues as radical pricing alterations. We have recommended that Jacana take steps to ensure that this occurs in relation to future tariff changes and similar decisions impacting on consumers and potential consumers, which Jacana has acknowledged.

Example – Deceased estate

A series of unfortunate events led to Jacana disconnecting the power to a rural residence after the account holder had died but while the property was still occupied by family members. The unexpected disconnection of power caused distress and financial loss to the occupants. It appears that the family of the deceased had spoken to Territory Families to return the deceased's concession card and they had contacted the phone company to have the deceased's phone service disconnected but they had not yet advised Jacana of the situation.

Jacana received advice regarding the customer's passing through Territory Families. It tried contacting the household by telephone but it had been disconnected. It sent a letter to the occupants but the letter was held at the rural post office and was not collected. Jacana sent a second letter which was only collected the day before the disconnection date.

Following contact from our Office, Jacana acknowledged that it could make improvements to its process for dealing with deceased estates. It immediately implemented a temporary policy and process consistent with an interstate jurisdiction.

Jacana also acknowledged the distress caused to the family and waived the disconnection and reconnection fees of over \$300 as well as offering to deduct a further \$250 from the outstanding bill. The complainant was satisfied with Jacana's response.

Our Office recommended that Jacana:

- develop a best practice model for dealing with deceased estates and publish it on their website (Jacana agreed to this recommendation); and
- consider amending their aged pensioners' application forms to include Next of Kin contact details in case of emergency (Jacana agreed to review of its forms to address the concerns raised).

Power and Water

Power and Water approaches also fell, to 53 in 2020/21 compared with 74 in the previous year.

Alleged excessive charges remain a common source of complaint, often associated with claims of faulty meters or unknown water leaks. In some cases, Power and Water has had to estimate usage because its contractors have been unable to access the property. In some cases, the failure of contractors to access a meter was itself a subject of complaint. In rental properties, the owner who pays the bills may not be aware of an access problem and may not have received follow up correspondence delivered to the rental address to advise that there is an access issue.

In complaints we have received, Power and Water acknowledges that this can be an issue and has agreed to review its processes to try to keep the owner informed. For their part, the owner/consumer also has responsibilities, including a responsibility to enable safe and reasonable access to meter readers. If this is not possible, then the occupant can read the meter and provide the reading to Power and Water.

In addition, there were disputes regarding whether a water leak was occurring on the consumer's property or outside and so who should be responsible for the leak. There were also solar-related complaints arising from Power and Water's involvement in approval processes. Further complaints arose around other approvals for infrastructure, power supply fluctuations and alleged damage to property through Power and Water works, power interruptions or water/sewerage supply issues. There were also approaches that had a financial hardship element.

Again, many of these matters were dealt with by referral to Power and Water in the first instance, with the opportunity for the enquirer to return to our Office if they were unhappy with the response.

In a few complaints, Power and Water has been unable to provide historical evidence to support an amount claimed and have relied on estimates that are difficult for anyone but a technician to interpret. On those occasions, Power and Water has acknowledged deficiencies in record keeping and has been willing to reach a settlement for a lesser amount.

Power and Water is commended for its recent initiative in texting consumers when a high water reading has been received and in providing accessible advice to consumers on how to check for a water leak. Its policy, which provides for some allowances for undetected water leaks on residential properties, is available on its website. It also undertook to revise its invoice format to more clearly show if an account is 'read' or 'estimated' - all improvements to customer service which are welcomed.

Example – No records

G had been receiving the premium solar tariff rate (1:1) for more than 12 months until January 2021, when he was advised by Power and Water that a compliance audit could not locate his Solar PV Application; that he was therefore not entitled to receive a solar tariff credit; and that his power bills issued by Jacana would no longer include the solar rebate.

G challenged this finding as he was confident that he had applied to Jacana for the premium solar feed-in tariff in the manner required by Jacana and he had already received \$1,500 in solar credits. Regrettably, he was no longer able to provide the email that his solar installer had sent to Power and Water containing the PV Solar Application form, as the installer had closed the relevant email account. However, G was able to provide a screen shot of the completed application at the time it was submitted.

Our Office asked Power and Water for its evidence. Power and Water was unable to provide anything because it had archived the former email account that would have contained the complainant's solar application (assuming it was lodged) and therefore could not access the information. In those circumstances, Power and Water reviewed its decision and agreed that G should continue to receive a solar feed in tariff at the premium rate. Jacana was advised of this decision and G's bills were revised to reflect that decision.

During investigation, Power and Water confirmed that limitations on record keeping of this nature have impacted on a number of customer records, including some of complainants to our Office. We will monitor this issue over the course of 2021/22.

Example – Big bill

B approached our office to complain about Power and Water charging him for water consumption on the basis of estimated readings for over 2 years and then billing him a further \$8,000 on the basis that their estimates were wrong. B had lived at the relevant property until 2018 but since then it had been leased. B acknowledged that there was an access issue (a locked gate) but when he had lived there, Power and Water would contact him by phone and arrange for the meter reader to access the property.

Since 2018, B's water bills had been six times higher than before, so there was nothing to alert him to the possibility that there may be an under-estimation of water usage occurring. When B received the large bill for an alleged under-estimation of water, he queried its accuracy. Although he was offered a discount by Power and Water on the basis that it had misplaced records and could not justify the full amount claimed, B could not understand the complicated estimates of water consumption provided to him by Power and Water and he complained to our Office.

At our request, Power and Water conducted a detailed review of the file and acknowledged some evidentiary deficiencies, including no mention of a new meter installation at the property in 2018. Power and Water also acknowledged a subsequent delay in updating and reissuing invoices with the correct meter details and consumption at the property.

Power and Water acknowledged that whilst it had followed the normal process in issuing written notices requesting access to the property (which B had never seen), it could have explored alternative methods to contact him, and undertook to review its current processes in similar situations in the future.

A meeting between the parties resulted in a further waiver of fees to take account of the administrative anomalies and as a gesture of goodwill, leaving a considerably reduced balance of \$2,600.00 payable. This was acceptable to the complainant.

Example – Big bang

Z, who lives in the rural area, claimed that faulty Power and Water infrastructure caused a high voltage power surge that allegedly caused damage to several household appliances. Z's electrician provided a report that the damage was caused through no fault of his client but Power and Water declined liability and payment of any compensation. It relied on section 107 of the *Electricity Reform Act 2000*, which excludes it from liability for damage caused by power surges and voltage variation, except where there is negligence or bad faith on its part.

Power and Water reported that it engages in several scheduled programs to check its equipment, including visual inspections of overhead equipment and connection equipment, testing of electrical equipment when engaging compliance or fault activities and analysing of trends to inform investigations or programs of work, however none of its present activities would have identified a neutral live line failure.

Irrespective of any legislative protection against liability, our Office put to Power and Water that it was their equipment that failed, causing Z's loss and this was a circumstance where it might consider an *ex gratia* payment to its customer. Power and Water considered this option but noted that the fault in question was an unforeseen occurrence that it was not responsible for and maintained its reliance on the statutory exclusion of liability.

It did however agree to review its claims processes, templates and website information to improve complaint management for future consumers with a similar problem.

Example – Dial before you dig

A local company (ABC) was subcontracted to install fencing at the boundary of an NTG property in a remote community in 2018. ABC advised that it excavated the site relying on Power and Water's *Dial Before You Dig* location drawings. However, its subsequent excavation caused around \$10,000 damage to Power and Water's water mains.

ABC paid \$2,000 to Power and Water at that time but later heard that it was alleged to owe the balance. For its part, ABC claimed Power and Water's drawings were incorrect as the mains were not located as shown on the drawings that it relied on when excavating, but instead were located where ABC began digging. ABC tried to settle the matter with their main contractor and later with Power and Water, without success. Power and Water maintained the view that the company should have taken further steps before excavation commenced.

Our Office reviewed the available information, noting that the *Dial Before You Dig* disclaimer requires contractors to also rely on their preliminary testing (e.g. exploratory potholing) to identify the placement of pipes, etc. This had not occurred and Power and Water argued that ABC had damaged Power and Water assets at various locations when they should have realised after damage was caused at the first site that the location of the pipes as shown in *Dial Before You Dig* may be inaccurate.

For its part, Power and Water acknowledged that information provided through *Dial Before You Dig* did not on this occasion accurately reflect the location of water pipes and that some pipes had not been laid in accordance with the standard required for water mains when first installed some years earlier.

In these circumstances, Power and Water advised that it would significantly decrease the amount it claimed from ABC and only seek recovery of that reduced amount. Power and Water also acknowledged delays on its part in resolving the recovery of costs issue and its lack of response to ABC's enquiries. Power and Water agreed to raise these matters with the responsible business unit and apologised to ABC for the delay in reaching an outcome. ABC agreed to Power and Water's offer of settlement and was satisfied that the matter was finally resolved.

Housing

The Housing function is now located within the Department of Territory Families, Housing and Communities. Providing safe, habitable housing for public housing tenants across the NT is a constant challenge for Housing with the realities of aged infrastructure, overcrowding and remoteness compounding the obstacles. Housing has faced additional challenges during 2020/21, with COVID-19 restrictions causing delays in remote repair work and placing additional pressures on some public housing facilities, due to increased visitor numbers and anti-social behaviour – particularly in urban areas.

Although much more work needs to be done to increase housing stock and to improve housing conditions in remote communities and urban public housing complexes, Ombudsman staff have found Housing staff to be collaborative and focussed on resolving the individual approaches we receive. In 2020/21, there were 91 approaches relating to the Housing function.

Many approaches related to allocation of public housing. As in many other areas of Australia, there are considerable delays in being able to obtain public housing, leading to long waiting lists. Complaints can arise regarding extended delays in availability of suitable housing or a refusal to place a person on the priority waiting list. Complaints can also arise due to delay when a person seeks a transfer of housing.

Another frequent subject of complaint is action taken or not taken in relation to the conduct of tenants or third parties. This can include the responses of Public Housing Safety Officers to particular incidents.

Other typical tenancy-related complaints may relate to claims of delay in attending to maintenance requests and the conduct of property inspections. A smaller number of complaints relate to termination of a tenancy or transfer to another tenancy required by a change in circumstances.

Most of the public housing approaches made to our Office were handled as ‘facilitated referrals’ where we communicated with Housing staff about the complaint and then gave them an opportunity to resolve the matter with the complainant. In our experience, Housing staff routinely adopt a positive and facilitative approach to complaint resolution. It is an unfortunate reality however, that there are at times limited options available to them to resolve complaints, particularly if the solution requires a tenancy transfer to another suburb or town. Regrettably residents have to sometimes accept long delays before their transfer application can be approved and implemented.

Other authorities

Example – Graduation day

The complainant contacted our Office complaining that their high school was being unfair and unreasonable in not affording them the opportunity to attend the school graduation and celebration dinner. The complainant had missed the deadline for obtaining a ticket as they not been able to attend the school due to health issues. The complainant promptly engaged with local school staff on their return to try and resolve the situation, but had been unsuccessful getting a ticket.

Upon approach to our Office, we assisted with an urgent facilitated referral to the Department of Education Resolution Unit. The Resolution Unit tasked the matter to a regional representative who worked together with the student, their parent, and the school leadership team, and within days had achieved an excellent resolution. While the student was still unable to graduate due to not meeting some substantive eligibility requirements, the Department made arrangements for the student to attend the celebration dinner, as well as ensuring that they had appropriate supports in place during this challenging time.

The Department’s Resolution Unit continues to demonstrate meaningful engagement with complainants, families and schools in order to resolve challenging situations in a sensible manner. It is to be congratulated for the steps taken to resolve this matter.

Example – Remote services

The complainant raised an issue through the North Australian Aboriginal Justice Agency with the Motor Vehicle Registry (MVR) and Northern Territory Police. He explained that individuals in his remote community can attend the local police station to pay for vehicle-related expenses but that the police station does not accept Basics Cards, which makes it difficult for people who have their income managed to pay for these expenses with cash. He noted other MVR outlets such as Darwin, Casuarina and Parap have EFTPOS machines which permit people to pay with their Basics Cards.

The complainant requested that police stations across the Territory have facilities in place to accept alternative methods of payment (in particular the Basics Card) in order to make payment towards licensing and registration.

We raised the matter with the MVR, who advised that Department of Infrastructure, Planning and Logistics (DIPL) staff had recently met with NT Police representatives to explore improvements to MVR payments handling in remote police stations. MVR further advised:

The group agreed to commence a small working group made up of operational staff from both agencies to implement quick, interim administrative changes that will provide efficiencies for both agencies and our customers. A particular consideration of the group is the implementation of EFTPOS machines in select remote Police stations. Once equipped with EFTPOS machines, NT Police may need to sign an agreement with the Australian Government Department of Services Australia to become an approved merchant under the Basics Card scheme in order to accept Basics Cards in the [local] Police Station.

In the meantime, please be advised that the [local] Post Office can process basic licence and registration renewals including Basics Card payment.

We informed the complainant of this response and have continued to seek updates on progress. Most recently, we have been advised:

The Department is aware that a small number of remote Police Stations are equipped with EFTPOS machines, however, these are unable to be used for MVR transactions due to there being no linkage between the transaction (which is a paper based system) and the electronic payment.

A rollout of EFTOS machines has not progressed due to the above issue.

Work is currently underway on a functional brief for an electronic forms project, the project is aimed at the development of electronic forms for MVR transactions which will address the following issues:

- *A banking Payment Card Industry (PCI) compliance, which requires that credit card details are not recorded by third parties i.e. paying over the phone.*
- *The ability to link a payment made in remote Police Stations via electronic means EFTPOS with the relevant transaction via the electronic form enabling processing through the MVR system.*

Timing for this project is estimated at 12 months.

MVR is continuing to roll out services in Australia Post outlets with 30 outlets across the Territory currently able to process a range of MVR transactions including payments via Basics Cards, a full list of outlets and services is available at: <https://nt.gov.au/driving/mvr-services/find-a-motor-vehicle-registry-mvr-office/mvr-transactions-at-your-post-office> .

We look forward to hearing of further progress with these welcome initiatives.

Example – Traffic control

X contacted our Office to complain that a local government council were about to construct a traffic calming island in the middle of the road directly outside his driveway, which would severely restrict him from entering and exiting his property with his large vehicles. He sought assistance with Council to review their decision and consider his problems before construction commenced.

Our Office contacted Council in the hope that discussion between the parties might lead to an early resolution. Council appreciated the opportunity to address this matter informally and arranged to meet the owner onsite to discuss the situation.

After a period of consultation and onsite meetings to consider any potential infrastructure issues, it was resolved that a second driveway and associated works would be built to give X safe access to his property from a side road. This avoided Council having to modify the traffic calming island, which could still go ahead for community safety reasons.

While not always possible, this is a good example of a difficult situation that was resolved quickly through discussion and compromise. The Council is to be commended for its approach.

Example – Dog control

A dog attack occurred through a fence between two rural properties where the aggressor dog was alleged to have dragged the victim dog through the fence. Council rangers attended the following day. The owner of the aggressor dog spoke to Council and showed that he had upgraded the fencing to prevent future attacks. Council decided to finalise the complaint after speaking with the owner of the aggressor dog without taking any further enforcement action.

The owner of the victim dog complained to Council and then to our Office alleging that the investigation was not conducted properly and that Council should have declared the aggressor dog to be a dangerous dog.

We sought information from the Council. We did not find its actions unreasonable in the circumstances but did provide recommendations around investigations to ensure that complainants understand Council decisions and actions, including that:

- enforcement actions be explained to complainants; and
- where appropriate, Council contact parties to a complaint prior to finalising its decisions.

Council advised that is working to fully implement the recommendations through updates to its policies and procedures.

CHAPTER 4 – NT POLICE

POLICE CONDUCT BACKLOG AND PSC RESOURCES

I have previously commented on the significant backlog of police conduct cases being investigated by NT Police under the supervision of our Office. The backlog of open matters increased again in 2020/21 from 141 to 183 at the end of the period. The proportion of finalised cases that took over 90 days to complete also increased to 22%, a far cry from an average of around 3-4% experienced prior to 2017/18. At 10 September 2021, there were 86 police conduct matters over 6 months old, including 40 over one year old.

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

I again acknowledge that police conduct matters are often more complex and having some matters extend for a length of time is not unusual or necessarily concerning. Some matters take time for the NT Police Professional Standards Command (PSC) to investigate thoroughly and there may be delays caused by the unavailability of police or civilian witnesses or an inability to locate witnesses. I also accept that the increase in the number of police conduct matters requiring investigation in recent times has been a contributing factor.

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

There is no doubt that having to respond to the COVID-19 pandemic has had a major impact on NT Police in particular. It has contributed to two negative impacts on the ability of PSC to deal with police conduct issues in a timely and professional manner. Diversion of staff to other priorities has obviously curtailed available resource capacity. However, equally problematically, there has been high rotation of staff, with specialist skills, expertise and procedural knowledge in this specialist area lost and requiring redevelopment on a regular basis as new officers take up positions.

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

POLICE BODY WORN VIDEO

Body worn video camera (BWV) systems are being increasingly adopted across law enforcement agencies around the world. This new form of technology is significantly changing the environment of policing and the relationship between law enforcement and the NT community. Incidents involving NT Police have generated ongoing public conversations about ways to improve NT Police actions, behaviours, accountability, lawfulness, transparency and public respect.

BWV initially commenced in the NT as a 3 month trial beginning in December 2014. The trial involved police officers from a range of frontline areas in both the Darwin and Alice Springs regions. At the time of the trial, NT Police perceived the following benefits of deploying BWV:

- *A reduction in Complaints Against Police (CAP);*
- *Enhanced transparency and officer accountability;*
- *Enhanced Prosecution outcomes;*

- *Provision of an important new type of evidence for criminal and internal administrative investigations, and*
- *Enhanced community confidence in its Police Force.*

BWV provides evidence in the form of audio-visual records of encounters with members of the public whilst officers are exercising police powers. It promotes officer safety, efficiency and performance, and improves evidence collection, accountability and agency transparency.

My office has a strong focus on oversight of NT Police's frontline enforcement role including the conduct of officers whilst using their skills and equipment during operations. BWV plays a significant role in capturing NT Police officers performing their day-to-day duties whilst exercising their police powers. BWV plays a substantial role in policing and improving investigators understanding of events and actions leading up to, during and after an incident.

Implementation of BWV to date has pointed to substantial advantages in establishing the truth of allegations regarding police conduct. Footage has helped to show the nature and circumstances of police actions. It has often been supplemented by further information that establishes the background to action and the rationale of officers in taking particular action or not taking action. BWV has proven an invaluable tool which has as often been exculpatory of officers as it has shown some shortcoming in their conduct.

It has significantly reduced the number of situations in which there is an *Unresolved* finding because of competing versions of events with no independent evidence. It has made the resolution of many complaints more timely and less resource intensive because the BWV will often speak for itself.

A further suggested benefit of BWV is that it may act to moderate the conduct of officers subject to scrutiny and members of the community who know their behaviour is being monitored. Academic literature is somewhat equivocal on this outcome and further study is needed.

Without doubt, BWV is subject to its own limitations. There have been cases, for example, where an officer has:

- not turned on their BWV because they did not judge the situation warranted it;
- not turned on their BWV because they had to act as a matter of urgency and did not have time to turn it on;
- not turned on their BWV because they judged it would be prejudicial, eg they were pursuing a person in the dark and did not wish to give away their position (a prominent light normally flashes on the BWV when it is activated);
- attempted but failed to turn on BWV and not noticed until later;
- turned off BWV prematurely;
- forgotten or been unable to bring BWV with them because it is charging or not working;
- had the BWV become dislodged in the course of police action.

While in many cases there have been credible and accepted explanations for failure to record, there have also been a number of cases in which remedial advice has been given or disciplinary action taken for failings in respect of BWV use. For example, in Category 1 and 2 complaints finalised in the past two years, there have been sustained issues surrounding BWV in 29 cases, at times involving more than one officer.

Given the significance of BWV, I determined to commence an 'own motion' investigation to assess the use and effectiveness of BWV utilised by NT Police and what benefits have been seen since its introduction. BWV represents a significant investment of resources from the NTG and NT Police. The investigation is therefore considering the benefits and limitations of BWV from a technical perspective as well as implementation issues. The investigation is well advanced but ongoing.

BENEFITS OF A WELL CONDUCTED CRP

Each year, a substantial number of police conduct approaches are categorised to be dealt with through the Complaints Resolution Process (CRP). In 2020/21, 172 received approaches were categorised as CRPs. Of approaches finalised during the year, approximately 7 out of 10 CRPs were resolved with a Successful outcome.

While CRPs are conducted by NT Police, our Office is also engaged in the process. In some cases, we assist at categorisation stage by contacting the complainant to better understand their concerns and objectives and then relay this to NT Police. We will also identify particular issues that Police should address in the process. My officers will also review CRP documentation and the available evidence, including BWV and CCTV footage, at the conclusion of the process to ensure the CRP has addressed relevant issues and has been conducted to the expected standard.

CRPs provide our office and police with valuable information about the behaviour of officers and about the effectiveness of NT Police policies and procedures. Each officer identified in a CRP is recorded in our system along with the issues complained of. This helps us to identify any patterns of concern and intervene to provide this information to Police to take any necessary steps to address problematic behaviours.

CRPs can, in appropriate cases, offer significant advantages over complex and protracted formal investigations. They allow for direct discussion and relationship building between police, complainants and members of the community. This can promote genuinely open dialogue to explore, refine and explain real issues of concern that may underlay specific complaints. They can also result in considerably more straightforward and timely interaction, leading to more immediate responses in terms of individual cases and policy and procedural responses. They can build mutual understanding and provide a sound basis for broader discussions of areas of community interest.

Not every case is suited to a CRP and many continue to be dealt with as Category 1 or 2 complaints. However, our Office considers the CRP is an important tool for timely resolution, which nevertheless allows us to effectively oversight NT Police implementation of the process; identify officers who may need extra training, a refresher course, or closer supervision/support; and highlight key areas where systems, policies or procedures need updating; as well as promoting better understanding of the role of Police on the part of complainants and communities.

In the majority of cases, CRPs are conducted effectively. However, there are times our Office has detected shortcomings. These include finalisation letters that have not provided sufficient reasons or that have not adequately referenced the evidence/information relied upon to reach a conclusion. There have also been cases where we have gained the impression that a CRP has been conducted without the necessary care to effectively engage the complainant. An open and empathetic approach encourages communication and de-escalates conflict. In our experience, a successful CRP is achieved when these components are used by the Resolution Officer conducting the CRP. Other equally useful strategies include the use of interpreters and a trauma informed approach.

Where a CRP is conducted poorly this often leads to further formal investigation. This can be resource-intensive, time-consuming and lead to further angst for the subject officer and the complainant as they await the outcome of the further investigation. A well conducted CRP can provide speedy resolution of factually complex matters as well as a flexible process.

Given the significance of the CRP process in dealing with police conduct complaints, our Office has decided to undertake an audit of the CRP process. The audit will involve:

- identifying examples of CRPs completed to a high standard;
- identifying examples of CRPs with actual or perceived shortcomings;

- assessing whether relevant lines of inquiry have been pursued;
- considering whether finalisation letters have adequately addressed the initial elements of complaint and explained the reasons for decision reached;
- an analysis of reasons why CRPs were unsuccessful;
- obtaining feedback from participants who were involved in successful and unsuccessful CRPs.

The results of the audit should better inform our Office and NT Police of ways to enhance the CRP process.

DUTY OF CARE

I have previously stressed the importance of NT Police ensuring there are suitable resources and procedures in place to extend protection to people in custody who exhibit unusual behaviours that point to them being at risk or experiencing mental health issues (see 2019/20 Annual Report at pages 34-35 and 2018/19 Annual Report at Chapter 5).

Recommendations relating to these issues have included:

- the need to investigate additional options for clothing / blankets that will minimise the potential for use in attempted self-harm, whether by hanging or choking;
- taking 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;
- stressing 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;
- reviewing/amending relevant guidance materials as required;
- considering the need for varied or additional training.

Matters continue to arise that involve issues of duty of care in watch houses. In addition to dealing with complaints concerning those matters, my Office has conducted inspections at NT Police watch houses in Palmerston and Alice Springs, to assess the availability of appropriate resources and the procedures in place to deal with events of this type. We will conduct further inspections in 2021/22.

YOUTH JUSTICE ISSUES

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.

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

Initiatives Identified in Response to the Royal Commission

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

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 that encapsulates the NTG response to the recommendations. The *Safe, Thriving and Connected: Generational Change for Children and Families, 2020 Generational Change Impact Report* is available at:

https://rmo.nt.gov.au/_data/assets/pdf_file/0010/980326/2020-Generational-Change-Impact-Report.pdf.

Our Office deals with a range of complaints each year relating to police conduct with respect to youths. In 2020/21, 12 of the 82 Category 1 and 2 complaints to the Office were made by or on behalf of youths and a number of Internal Investigations matters also involved conduct relating to youths. Two examples of matters involving youths are set out in Case studies 3 and 9 below.

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 Professional Standards Command (the PSC).

The provisions of the Act are supplemented by a detailed Police Complaints Agreement entered into between the Commissioner of Police and the Ombudsman under section 150 of the Act. The agreement, as in force at 30 June 2021, is set out at Appendix A to this Report.

Enquirer assistance and preliminary inquiries

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

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

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

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

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

Complaint assessment

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

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

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

Complaint Resolution Process

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

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

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

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

More serious complaints

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

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

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

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

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

In practice, we will consider 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 into a matter or to directly investigate any Police complaint if satisfied it:

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

The only formal investigation initiated by 'own motion' during the reporting period relates to the utilisation of body worn video cameras. It remains ongoing (see above in this Chapter).

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

- (a) **Unresolved** - Given differing versions, where the Ombudsman and PSC are unable to come to any conclusion about the allegation. This finding may be used in respect of allegations when the only available evidence is the complainant's version against that of the members or all witnesses provide a differing/inconsistent version;

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

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

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

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

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

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 REPORTING PERIOD

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	2018/19	2019/20	2020/21
Approaches	589	600	628
CRP	143	198	172
Category 2	34	76	78
Category 1	3	3	4

There was an increase in the number of police conduct approaches received in 2020/21 compared to the previous year. However, the total number of Category 1 and 2 complaints remained relatively stable compared with the previous year, while the number of Complaint Resolution Process matters fell somewhat. The number of Category 2 complaints received was, however, substantially higher than in years prior to 2019/20.

Of the 82 new Category 1 and 2 matters received, 12 were made on behalf of youths, the same number as in the previous year.

Breaking down the Category 1 and 2 matters by region of origin, 32 originated from Darwin/Palmerston/Top End Rural, 32 from Central Australia, 14 from the Katherine region and 4 from the Barkly region.

POLICE CONDUCT OUTCOMES

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

The most common issues raised or identified in police conduct approaches received in 2020/21 related to allegations of poor behaviour by police, poor decision-making, excessive use of force, inadequate investigation or action, poor communication and failure to appropriately utilise body worn video cameras.

Outcomes for individual officers included provision of remedial advice, written cautions, good behaviour requirements and additional training. In addition, there were a range of more general recommendations, including:

- updating the Operational Safety and Use of Force Instruction in relation to tactical options, auditing and review;
- updating the Custody and Transport Instruction;
- referring certain issues around recording of Custody Notification Service actions to the Custody Steering Committee for review;
- recirculating Joint Emergency Services Communication Centre enquiries procedural documentation;
- improving handling of incoming information from courts; and
- producing a further broadcast on body worn video camera (BWV) use.

Category 1 and 2 complaint outcomes

Forty-six Category 2 complaints were finalised during 2020/21.

Complaints finalised	2018/19	2019/20	2020/21
Category 1	11	2	0
Category 2	42	32	46
Total	53	34	46

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

How finalised	2018/19	2019/20	2020/21
Category 1 – sustained issue	8	1	0
Category 2 – sustained issue	35	25	31
Deferred in light of disciplinary action / charges	1	2	0
Total	44	28	31

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, 15 complaints finalised in 2020/21 involved sustained findings of failure to appropriately utilise a body worn video camera, while 8 involved findings of record-making or reporting failures. My Office is undertaking an ‘own motion’ investigation into NT Police utilisation of BWV. Progress is discussed above in this Chapter.

The following table lists the number of Category 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 – use of force	7
Behaviour – abuse/rudeness/insensitivity	5
Investigation – failure to undertake / inadequate / delay	4
Arrest – unlawful / inappropriate arrest /detention /fail advise reason	4
Property – damage, improper removal, disposal or care	3
Practice/procedure – failings in searches, accoutrements, knowledge of powers/law	2
Failure to provide adequate care, eg, blankets, aftercare after spray	2
Practice/procedure – effecting rights of detainee, eg, interview, interpreters, notification	2
Supervision	2
Complaints against police – failure to take/adequately investigate complaint, failure to report questionable conduct	1
Victim support - inadequate	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 matters investigated by NT Police Internal Investigations Division culminated in formal disciplinary outcomes for one or more officers. They dealt with issues relating to:

- inadequate response or investigation;
- use of excess force, including use of OC spray;
- speeding in a police vehicle;
- inappropriate access to or use of information;
- inappropriate online activity;
- taking unauthorised employment entitlements;
- failure to adequately deal with a conflict of interest.

Formal disciplinary outcomes in these cases included counsel and caution, formal written caution, fine, good behaviour requirement, 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 or investigation;
- failure to turn on body worn video camera;
- failure to report an accident involving a police vehicle;
- failure to adequately search official records; and
- taking fingerprints without lawful authority.

POLICE CONDUCT CASE STUDIES

Use of force

NT Police are frequently called on to make decisions regarding whether and how to use force in resolving situations. Such decisions often have to be made within a short timeframe and subject to substantial risk and provocation.

The preferred approach is to use judgement, communication and persuasion aimed at de-escalation. However, the reality is that use of a level of force sometimes proves necessary. When use of force is contemplated it is important that it be reasonable, necessary, proportionate and appropriate to the circumstances. The following are examples of problematic situations involving use of force where complaints have been finalised in the reporting period.

Case 1 – Use of force – Taser and pepper spray

The following recount of events is largely adapted from the report of the NT Police Investigating Officer (IO). The Parole Board revoked the parole of the complainant. An alert to that effect was placed on his NT Police PROMIS profile. Further alerts were active on PROMIS advising that he was to be spoken to for other outstanding police investigations, however the parole revocation meant that police were to arrest him and bring him before a local court.

Apparently not aware of this, the complainant and his partner attended a remote community police station to enquire about some outstanding fines. Upon arrival, the complainant was taken into the station's breath analysis/interview room by officers A and B. The officers sat opposite the complainant, who was seated in a corner of the room with a table between them. Officer B explained that the complainant's parole had been revoked and that he was to be arrested and taken into custody and also expressed that he knew it must be confusing.

Upon being advised that he was to be arrested, the complainant calmly requested to see his lawyer. Officer B advised him that he could speak with his lawyer but that he would first need to be arrested and placed into the cells. Officer B explained that once in the cells, they would contact NAAJA and let them know what was happening and that the complainant would be allowed to discuss the matter with NAAJA at that point. Officer B also stated that unfortunately the police did not have any say. The complainant repeated his request for a lawyer and Officer A stated that they (police) had said that they would. At this point, knocking can be heard but it is not clear who was knocking or why.

Officer B produced his handcuffs and explained again what would happen and again stated that he knew that it must be confusing. Officer A asked the complainant if he was going to cause any trouble and the complainant replied "No." Officer A then said, "Are you sure? I'm gonna take your word on that", before the complainant repeated his request for a lawyer. Officer A said, "We will get you a lawyer, don't you worry, we understand." One of the officers then moved towards the complainant with handcuffs and the complainant stood up, and said "Please, don't do that, please, don't do that please". Officer B responded by stating again that they didn't have a choice. The complainant then raised his voice and began calling out to his partner who was outside, who in return responded to him, in language. The complainant's yelling and actions became more pronounced, yelling at the top of his voice.

Officer A stood and drew out a canister of oleoresin capsicum (OC) spray, also known as aerosol subject restraint (ASR). He extended his left arm and issued the complainant with a direction: "I will spray you if you don't cooperate. Turn around and put your hands behind your back". The complainant called out his partner's name and she could be heard responding. Almost immediately after producing the spray, Officer A drew his Taser or electro-muscular control device (ECD) and directed the complainant to turn around and put his hands behind his back.

The complainant's voice became louder and shrill, yelling to his partner that they were trying to kill him. He pointed to his chest with his right hand, and shouted out *"don't do that, my heart – don't f***ing killing me please"*. Officer B, with his hands up, palms out and facing the complainant in a non-threatening manner, asked the complainant to again turn around and put his hands behind his back. The complainant gestured to Officer A to *"put the thing down"* before screaming out loudly.

The complainant continued yelling his partner's name in a loud and distressed voice and the voices of more than one person could be heard through the walls, also sounding distressed. It would be reasonable for a person on the other side of the wall to be concerned, hearing the complainant's cries, screams and pleas to not be killed, and not being able to see what was actually occurring.

The complainant suddenly poked his tongue out and then, with his right fist, struck himself to the right side of his face three times with force. Officer B advised the complainant that he was being recorded and that the Judge could see that he was hitting himself.

Officer A stated *"I've had enough of this"* and approached the complainant with the raised ASR. The complainant ducked and raised his arms over his head. He yelled out again and put his shirt over his face. Officer A deployed the spray just as the complainant ducked and the majority of the spray appeared to hit the back wall, with some on his right arm and back. Officer A attempted a second burst of ASR as the complainant held his shirt over his face and eyes.

The complainant then jumped on top of a desk and began bouncing around. He reached up to the ceiling towards a fire alarm briefly before he was warned by Officer A that he would be tasered. The complainant got down from the desk and cowered in the corner, yelling *"don't do that, don't do that"*. He was again instructed to put his hands behind his back but refused to do so, screaming out his partner's name and continuing to repeat *"please"*.

Officer A deployed the ECD and the complainant fell to the ground, however when the ECD stopped he refused to put his hands behind his back. Officer B attempted to control the complainant but was unable to do so, before Officer A called out *"again"* and the ECD was deployed a second time.

A violent struggle ensued, the three men first on their feet and then on the ground, the complainant resisting the officers' efforts to handcuff him. His strength and agility is evident as he posts his arms against the floor, with the weight of the large build of Officer A on his shoulders. The complainant continued to scream. Several voices and knocking on the walls were heard from outside of the room. Whilst on the floor and struggling, Officer A used the ECD to *"drive stun"* the complainant's thigh a further three times with little effect. The complainant attempted to bite the officers and Officer A's arm can be seen dripping with blood.

Ultimately, the complainant was escorted to a cell. Other issues were raised relating to events following the above incidents but they were either unresolved or the IO determined the police conduct was not unreasonable in the circumstances.

The complainant was initially convicted of four offences but appealed against three convictions for resist and assault police. The Supreme Court overturned the convictions and acquitted the complainant. The Supreme Court decision included the following comments:

[61] I agree with the appellant's contention that, at each step, [Officer A] in particular escalated rather than de-escalated the situation, by producing and then deploying first the pepper spray and then the taser; that there were reasonably available options (continuing to talk when the appellant made meaningful responses; negotiating to put the taser away and talk; giving the appellant the option of checking with his lawyer before handcuffing him and taking him to a cell); and that it is at least reasonably possible that utilizing those options would have avoided the need for the use of force.

[62] *Given the above finding, it is not necessary for me to form a view on the appellant's other contention that use of the taser was unnecessary given that there were two substantially built police officers in the room (one just under and one just over 6 foot tall) weighing 110kg and 130kg, who ought to have been able to subdue the more slightly built appellant and handcuff him. The evidence is that both options carried risks given the appellant's position in the corner behind a desk where only one person could approach him. Although the appellant did not move towards the officers or move to hit them before being tasered, and his demeanour appeared to me to be upset rather than aggressive, police officers who are experienced in assessing such matters said that he had adopted a fighting stance at some point and they were aware of his criminal history.*

[63] *I have a reasonable doubt whether the police officers were acting in the execution of their duty when the appellant did the acts (biting the police officers) the subject of Grounds 2 and 3, and it is a doubt which in my view the trial judge must, not might, have entertained on the evidence. ...*

...

[89] *The officers were attempting to effect a lawful arrest and were faced with a non-compliant individual whose behaviour had quickly escalated and who was not responding to repeated requests to "turn around and put your hands behind your back." He was shouting out loudly in English and Anindilyakwa to someone outside, and pretending that he was being assaulted by police when he was not. There is no challenge on the appeal to the evidence of [Officer A] who deployed the taser that he did so out of a concern that there was a risk of serious harm to police or the appellant himself if a hands on approach had been taken, or his evidence about the particular concerns he had (for example, someone tripping and hitting their face into the table or falling backwards and injuring their elbow or wrist). Nor is there any challenge on the appeal to the evidence of the officers that they perceived the appellant to be adopting a fighting stance and demonstrating "pre-attack indicators". Decisions had to be made in a rapidly developing situation and [Officer A] made a judgment call. It may well have been preferable for the matter to have been handled differently from the outset, but in those circumstances I am not prepared to say that the conduct of the officers was "improper" within the meaning of [the Evidence (National Uniform Legislation) Act 2011, s138].*

In this case, the IO was not prepared to find the use of the spray or Taser unreasonable in the circumstances. The IO did however, note that Officer A and his supervisor had reviewed the footage of the incident to reflect and discuss options that may have improved the management of the incident, and that this has been recorded as remedial advice.

After considerable interaction with my Office over an extended period, the IO accepted as sustained feedback from me that, producing the spray and Taser had the effect of heightening the complainant's emotional state, not reducing it as intended. In this regard it was noted that a senior officer, during his debrief with Officer A expressed the view that by producing the spray "*it escalated the situation dramatically*". Officer A stated that he did not agree with the advice.

The IO also noted the implementation of a recommendation to update the Operational Safety and Use of Force Instruction pertaining to ECD and ASR to provide clearer direction to members when considering their tactical options.

I remain firmly of the view that the production of the OC spray and Taser (as well as the initial discharge of the OC spray) were premature, and had the detrimental effect of heightening the complainant's state of mind.

The complainant was taken by complete surprise when he visited the police station to talk about other matters. Officer A produced the OC spray within 45 seconds of the complainant being told he would be put into handcuffs and within 30 seconds of the complainant saying "*Don't do that please*", for the first time. When the complainant started to yell to people outside and put his shirt over his head, Officer A put the spray away and immediately produced his Taser - within 9 seconds of the spray coming out.

The complainant was crouching in the corner when Officer A's Taser comes into view. Officer A directs the complainant to turn around and put his hands behind his back, the Taser pointed at him, Officer A's arm extended and his finger on the trigger. There is no evidence of an immediate threat of serious harm to either officer at the time. The Taser was being used as a method of compliance.

The shouting by the complainant (partly in language the officers could not understand) and the reactions of the people outside the room (knocking on the door and some yelling) increased the tension in the room and I believe motivated Officer A to act more quickly than he might have done in other circumstances. However, Officer B was in the process of explaining a complex situation to a person who was being told they would have to go into custody.

More time could have been allowed for the complainant to process this and calm down to an extent where he would be more likely to co-operate. He was contained within the room and there was no apparent suggestion that he would be violent or try to escape. The need for careful consideration of options was heightened because of the complainant's many references to him having a heart condition (a relevant factor discussed in the Instruction). There was scope for additional communication, warnings and allowing some further time to reflect.

Subsequently, after a further one minute and 45 seconds, the complainant punched himself in the face three times. Officer A then put away his Taser and took out the OC spray again. Within 15 seconds of this Officer A said he had "*had enough of this*" and sprayed the complainant who was still agitated but not showing signs of aggression. Again, the OC spray was being used as a method of compliance.

The spray had little effect beyond agitating the complainant further. He jumped onto a desk and for a short time shaped into a pose that suggested he may be preparing to fight. When that happened, Officer A took out his Taser again and threatened to use it unless the complainant got down off the desk. The complainant did so and returned to the corner without displaying further signs of aggression. The complainant then regularly yelled words to the effect of "*Don't do that, please*". About 12 seconds after he returned to the corner, he raised his hand, repeating this and pointing to the Taser. Officer A then discharged the Taser.

By the time the Taser was discharged, the situation had been going on for some time. The complainant had been acting in a highly agitated manner without showing obvious signs of aggression to the officers. However, when sprayed, he had jumped onto a desk and briefly shaped up in a fighting stance before acquiescing in the face of the Taser being pointed at him. While the complainant resumed his passive but agitated stance after that, he had shown that aggression was possible. There was also the complication of individuals outside becoming concerned about the situation and potentially involving other community members which could have serious ramifications for a small number of police in a remote community.

While Officer A's actions had not done anything to reduce the tension, his decision to discharge the Taser must be viewed in light of the situation he then faced and the need for him to decide and act within the limited time available.

On balance, I consider that the discharge of the Taser was premature and not in line with the Instruction. Having said that, I accept that the situation was developing and that it may, in any event, have justified intervention with the OC spray or the Taser at some stage. Use of physical force was a possibility but should not necessarily always be considered before recourse to OC spray or Taser. There will be cases where consideration of risk to the subject and to officers or others means they may be a reasonable option prior to use of physical force.

However, in this case, my view is that recourse to the OC spray and the Taser was premature and further communication could and should have been pursued. I note that Officer B was making exemplary efforts in that regard prior to the emergence of the spray. That is not to say that such communication will always succeed but in the absence of an immediate threat of harm, it should be pursued.

Case 2 – Use of force – drawing a firearm

Two officers were investigating a report that a man in a remote community was walking through a community brandishing knives. While driving to the location, a decision was made that one officer would draw their gun and the other their Taser. They located the man who was walking away from them at a distance of about 25 metres. There were other community members in the area.

One officer drew and pointed their gun and instructed the man to drop the knives. The man continued to walk away. A community member told the officer to put the gun down and walked towards the man, which put them between the officer and the man. The officer continued to point the gun at the man for approximately 28 seconds while he continued to walk away. The man threw something to the side of the road as he continued to walk away. Community members became disturbed at the pointing of the gun and yelled at the officer to put the gun down.

The officers returned to the police vehicle and followed the man in the vehicle. After some time spent in further discussion with the man, the officers convinced him to get into the back of the police vehicle and he was transported to a health facility. A community member lodged a complaint against police regarding the incident.

A complaint of excessive use of force was sustained. The IO found that the officer had failed to conduct a risk assessment based on the circumstances that evolved, namely a male, armed with an indeterminate number of knives, walking away from police and community members; the knives were not brandished, but held at his sides and he was not making any threatening actions at the time the officers attended. He posed no immediate risk to any other persons than himself at that time. At the time the officer arrived, the man was 25 metres away and there were people, including the other officer, between the officer pointing the gun and the man. The officer failed to consider the presence of others in front and potentially behind them, when drawing and pointing the gun. The officer did not act in line with police Safety Principles and exceeded the force required to bring the situation to resolution.

The officer maintained that they had acted appropriately. Disciplinary action was undertaken in respect of the officer. An apology was conveyed to the community member for any distress caused.

Case 3 – Use of force – Leg restraint and carry

The 16 year old complainant was apprehended following a complaint of assault. He was pursued on foot for approximately 600 metres before police caught up with him. He was escorted to a waiting police vehicle by two officers, each using a single arm escort hold.

There were a number of officers present as the complainant and the two officers escorting him approached to within 10-15 metres of the waiting police vehicle. The complainant then made a sudden motion which the officers interpreted as him moving to head butt one of them. He was taken to the ground and restrained.

Handcuffs were put on his arms and also onto his ankles. He was lifted to his feet by two officers applying holds to his arms. Another officer then took hold of the handcuffs around his ankles, lifting him by them and assisting the other two officers to carry him to the police vehicle by holding the handcuffs around the ankles.

Allegations about the complainant's initial apprehension were unresolved. Allegations of offensive and threatening comments were sustained against one officer who received remedial advice. The IO concluded that the conduct of the officers in the take down of the complainant was not found to be unreasonable in the circumstances.

The action of applying handcuffs to the ankles of the complainant was not found by the IO to be unreasonable in the circumstances. The IO found that the complainant had attempted to head butt an officer and so demonstrated a willingness and intent to assault police. While on the ground he was described as tensing up his entire body and kicking out his legs. The officer who applied the handcuffs stated that they were applied with the intention to stop the complainant kicking officers or running away. He said that the intention was to reduce the number of officers needed to restrain the complainant on the ground, reducing the risk of positional asphyxia or other injuries. He stated that he applied handcuffs with larger loops to the complainant's legs and noted that after application of the handcuffs officers were able to get up from applying pressure to the complainant.

The IO described the complainant as a large sized male youth who had just attempted to assault police. She noted that the handcuffs remained on his ankles until the police vehicle was securely at the watch house, a period of about 10 minutes. She considered that, although the handcuffing of ankles was unusual, it was not unreasonable or disproportionate in the circumstances.

As with any use of force or restraint, it is important that the force used be the minimum necessary in the circumstances. I cannot recall in the matters with which I have dealt, the use of leg restraints in the course of the apprehension of anyone, let alone a youth. There were a number of officers present to assist with controlling the complainant. My view is that this is a step that should be considered only with substantial caution.

The IO sustained an allegation in relation to carrying the complainant to the vehicle by the handcuffs. While the complainant was being supported by two officers holding his arms, another officer picked up his legs by the handcuffs around the ankles. The IO found that it was clear the officer was supporting a substantial amount of weight while carrying the complainant. Notwithstanding a number of points raised by the officer, the IO concluded that there was no reason why the complainant could not have been carried by his legs. The IO noted there were a number of other officers available and ample time to formulate a plan to move him to the police vehicle. She noted that, although the complainant did not continue to thrash his legs about after they were cuffed, he sustained soft tissue injury to both ankles, which was likely caused by the carry. The IO recommended the officer receive remedial advice in relation to the importance of carefully considering prisoner carry techniques that minimise the risk of injury to both police and the prisoner.

Officers also received remedial advice in relation to failure to utilise body worn video, failure to record a complaint against police and failure to generate a Custody Illness Injury Report (CIIR). Recommendations were also made to improve the Custody and Transport Instruction to clarify who is responsible for generation of a CIIR and to remind custody sergeants of the importance of actively engaging in the oversight of Custody Health Assessment questioning.

Case 4 – Use of force – Spit hood

The complainant had a history of some violent interactions with police. On this occasion, force was used to apprehend him, including use of a Taser. The IO found that various allegations of excessive use of force were either not sustained or unresolved. The IO also dismissed concerns regarding the care provided to the complainant.

The IO found that a complaint regarding use of a spit hood was sustained. The complainant sustained a cut to his head in the course of apprehension and was bleeding from it. The complainant had no known history of spitting. The application of the spit hood appeared to be in response to concern from officers that they may be contaminated by transfer of blood from the complainant. The IO noted that contamination could have been avoided by dressing the injury and that the officer who applied the spit hood had acknowledged its use in the circumstances was unwarranted. The IO recommended that two officers receive remedial advice about the circumstances in which spit hoods may be applied.

Case 5 – Use of force – Physical restraint

Two officers performing general duties observed a group of at least seven people sitting at a concrete table and believed they saw alcohol on the table. They engaged with the group who denied having alcohol. Officer A accused the complainant of having alcohol in her pocket and the complainant made an offensive comment.

Further conversation took place as the complainant sat on top of the table with her feet on the seat. Officer A moved towards the complainant, walking behind Officer B and said to him, *“Lock her up, lock her up”*.

Officer A took her handcuffs and without informing the complainant she was under arrest, attempted to place them on her right wrist. The complainant yelled, *“Don’t touch my f***n...”* as she pulled her arm away. The officers stated that the complainant kicked out at this time but that is not visible on BWV footage. Officer B then dragged the complainant off the table to the ground by her left arm, causing her to start screaming.

The officers tried to apply handcuffs but the complainant was uncooperative. Other female members of the group became distressed and screamed *“what are you doing, don’t do that to her, you’re hurting her”*. Several members of the group approached and became increasingly angry towards both officers. Officer A called for back-up over the police radio whilst still trying to handcuff the complainant. Both officers gave clear directions for the group to back away, which were ignored. Officer A produced her police issued OC spray, which she pointed at the group whilst directing them to move away. Members of the group continued to speak to the officers with the officers directing them to move away.

Approximately 2½ minutes after first attempting to handcuff the complainant, Officer A informed her she was under arrest. Other officers arrived soon after and the complainant was escorted to the cage of a Police vehicle. At the cage, the officers released their grip on the complainant while she stood on the cage step. As she stepped inside the cage, Officer B pushed her into the cage. The complainant landed face down on the floor of the cage with her head in the top left hand corner and her lower legs resting against the right cage seat. She screamed as she landed on the floor of the cage and continued to cry as the cage door was secured.

The IO determined that the arrest was unlawful. The complainant did not display a substantial breach of decorum nor ill-mannered conduct which annoyed or insulted any person in the vicinity, the grounds for disorderly behaviour. An alleged kick by the complainant was not visible on BWV footage. Given the finding that the arrest was unlawful, the IO found that a complaint about the subsequent detention of the complainant at a watch house for over 5 hours was also sustained.

The IO also concluded that excessive force was used in relation to the complainant when she was dragged from the table and when she was pushed into the back of the police vehicle. In addition, a complaint against Officer A was sustained for using offensive language on two occasions.

Officers A and B were subject to disciplinary action and an apology was given to the complainant. Another officer was provided with remedial advice in relation to non-activation of BWV.

The IO noted that during the investigation it became apparent that there was no guidance or policy requirement regarding what evidence should be considered by a supervisor who is reviewing a use of force case note entry. It was also noted that on many occasions, supervisors are involved with and not independent of the use of force incident. The IO recommended that the Operational Safety and Use of Force Instruction and any other relevant material be amended to include that, when auditing a use of force, supervisors are to review all available evidence, including BWV; and to clarify that a Senior Sergeant must review each use of force case note entry.

Case 6 – Use of force – Physical restraint

The complainant was taken into custody by police under the *Mental Health and Related Services Act 1998* and conveyed to hospital. Whilst being treated at the hospital, the complainant was handcuffed. He was highly agitated. He spat on an officer and used force, including striking out and kicking, to try to get out of the hospital bed. He was restrained in the bed by police and hospital staff (up to four at a time).

There is no suggestion that restraint was unnecessary. The complainant struck out or kicked at police and medical staff on a number of occasions. He was physically restrained for a very long time but this appears to have been necessary because the drugs he was given were proving ineffective and the health staff were not in a position to give a higher dose.

The complainant's head was initially held down to one side to stop him from spitting on people. My Office did not take issue with this initial action. However, his head was held down to the same side for an extended period. Footage shows an officer holding the complainant's head down to the side for at least 16 minutes, apart from two short breaks when a nurse held it while the officer washed his eyes and put on gloves. The complainant's head may have been held in this position for longer but that is all that can be seen on the body worn video footage.

My Office queried whether holding the complainant's head to one side in an awkward position for such a long time could be painful and possibly present a risk to the complainant. The officer stated he was not exerting great downwards pressure and the footage does not appear to show a large amount of pressure but we indicated that we did not have a clear sense of the risks that might be presented by exerting even a moderate level of pressure of that kind for a lengthy period.

The complainant protested loudly on numerous occasions but his breathing does not appear to have been compromised. His body shakes noticeably in what appears to be a fit on at least one occasion but the nurse stated he was not fitting. We did not conclude that there was a heightened risk but considered the potential for any risk should be further explored.

We acknowledged there were medical staff present at the time but noted they were occupied with the immediate care of the complainant and their own safety and were not necessarily taking careful note of the actions of the officer. We considered it would be prudent for NT Police to engage an appropriate health professional who was not involved in the incident to comment on any risks that holding a person's head in that position for a lengthy period might raise, particularly bearing in mind any complications that might flow from a current health or other condition.

We considered this sensible from the perspective of assessing the actions of the officer but more significantly important from the perspective of providing any necessary guidance regarding risks and alternative solutions for officers in the future. We suggested that, if a risk was identified, it may be appropriate to consider alternatives for the future, such as varying the position of the hold, and to generally inform officers of risks and available options.

We suggested it was important that NT Police officers are provided with clear guidance regarding risks that may arise from specific holds, and in particular holds around the head and neck. We suggested that the question of whether there was a risk in terms of potential for constriction of the airways or otherwise is a matter for expert opinion and that it is in the interests of NT Police and officers generally that NT Police obtain such expert opinion, either in the course of the complaint investigation or following a recommendation arising out of the investigation.

I ultimately wrote along those lines to the Commissioner of Police, who responded declining to seek an expert medical view, relevantly stating:

... As highlighted in your letter, while being treated at the hospital [the complainant] was highly agitated, spat numerous times on an officer and used force including striking and kicking to try and get out of bed. Multiple persons had to restrain [the complainant]. The action of holding the head of [the complainant] was to stop him from further spitting and assaulting others and for the purposes of biohazard mitigation. As highlighted by your office there is no suggestion that the restraint was unnecessary.

[The PSC Commander] advised that the need for an independent medical assessment is not necessary nor warranted. He reported that during the incident, trained medical staff were present. The force used was considered reasonable and necessary to the occasion and [the complainant] was not injured during the process. The hold used by the officer was a hold used by a trained and qualified medical staff member who was present during the incident and took over the hold from the officer, and maintained that same hold.

It is considered that there is no legal basis for obtaining an independent medical opinion. There is no justification to obtain such opinion and the agency does have the authority to compel a medical practitioner to provide such opinion. All that can occur is for a request for an opinion to be provided on a fee for service arrangement. This would be at a financial cost to the agency and has no specific relevance to the findings against the complaint allegations. There is also the aspect of timeframes with this investigation now in excess of two years. The process of obtaining an independent opinion will further delay finalisation of this matter with no resolution to [the complainant] or the police officers involved.

The concerns raised in your letter were referred to the College Command for review of current Defensive Tactics training packages.

While your concerns are appreciated, on review it is determined that the NT Police Force declines obtaining an independent opinion on the hold used by the officers.

I replied as follows:

In my letter, I indicated my view that it is important that NT Police officers are provided with clear guidance regarding risks that may arise from specific holds, and in particular holds around the head and neck. This was particularly pertinent in this case given the extended duration of the hold.

I said that the question of whether there was a risk in terms of potential for constriction of the airways or otherwise is a matter for expert opinion.

I strongly suggested that it is in the interests of NT Police and officers generally that NT Police obtain such expert opinion, either in the course of the complaint investigation or following a recommendation arising out of the investigation.

I explained why I considered it would be prudent for NT Police to obtain a separate medical assessment even though there were medical professionals present at the time.

I am unclear as to the relevance of the statement in your letter that there is no legal basis for obtaining a medical opinion. I am not aware of any legal barrier to obtaining an opinion. The letter also states that there is no justification for doing so. I have already indicated in my letter why I consider it would be prudent for NT Police to do so in the interests of its officers and people who are subjected to use of force. I consider it important that NT Police adopt a precautionary and expert-informed approach to such challenges.

There might well be a financial cost to NT Police in seeking an expert opinion. Any such cost would be minimal in terms of the resources of the NT Police and I do not see this as a valid basis for not fully investigating a complaint or ensuring that officers are equipped with the best information relevant to use of force in what are frequently highly challenging situations.

Nor do I consider that the prospect of further delay can be advanced as a substantive reason for NT Police failing to take this action, particularly given that over nine months have passed since this issue was raised and its resolution is the primary reason for delay in the matter since that time.

I note that my letter has been referred to the College Command for review. I can only reiterate that issues of this nature are matters best informed by expert medical opinion.

I maintain the view that it would be prudent for NT Police to obtain expert opinion, either in the course of the complaint investigation or following a recommendation arising out of the investigation.

Nevertheless, having raised the issue for your consideration, the finalisation of the report and response to the complainant are matters for NT Police.

The delay in finalisation of the matter was highly regrettable but I reiterate that it was a not a valid ground for declining to seek expert medical opinion. This could have been undertaken, or indeed rejected, at any time during the period of over 9 months between the time it was first raised by my Office and the Commissioner's letter to me. The references to delay and the comparatively small financial cost that might be incurred were both irrelevant and concerning in the consideration of whether obtaining expert opinion would be beneficial for the disposition of the case or in the broader interests of operational police.

I would simply restate the importance of any organisation that takes people into custody and is responsible for their care to obtain appropriate expert medical advice, particularly in circumstances where they are using force to control them. It is not unusual for NT Police to rely on expert opinion in the disposition of prosecutions. This was clearly a case where independent opinion from a health professional would have been valuable in resolving the issues in question and informing future use of force.

Domestic violence

We noted a relatively confined number of police complaints during the year that alleged failings in the way police responded to allegations of domestic violence, breach of Domestic Violence Orders (DVOs) and sexual assaults. Some of these were ongoing at 30 June 2021.

Allegations of this type often require a carefully crafted approach to initial response and investigation. They require particular sensitivity when interacting with and providing support to victims. Two case studies are set out below. Our Office will continue to closely monitor cases of this type.

Case 7 – Quality of investigation/prosecution

A relatively junior police officer obtained a complaint statement from the complainant which alleged seven breaches of a DVO. A prosecution file was completed by the officer and submitted to her supervisor for checking, alleging 6 breaches of DVO.

The subject of the DVO was served with a notice to appear in relation to the alleged breaches. A Judicial Operations Section (JOS) Sergeant observed the court date listed by the officer and put the file aside for a formal complaint (or charge) to be laid closer to that date.

When the JOS Sergeant went to formally lay the charges as alleged on the file, they observed the six month time limit had lapsed for several of the alleged offences. Further, it was determined that insufficient evidence existed to support a complaint for other allegations. A charge was laid for one alleged breach but the Director of Public Prosecutions (DPP) later authorised the withdrawal of the charge given the lack of evidence of a clear breach. The complainant was clearly aggrieved at the inaction.

The IO found that the officer obtained insufficient detail from the complainant throughout the preparation of the statement of complaint. This resulted in there being insufficient evidence to lay a complaint for some of the alleged offences. It was further recognised the prosecution file was not completed correctly, or in a timely manner and that the officer's supervisor had failed to identify the deficiencies. Upon receipt of the file at JOS for the laying of charges, the JOS Sergeant failed to address those particular charges and did not lay the relevant charges.

Remedial advice was recommended with respect to ensuring;

- detailed, precise statements are obtained from complainants;
- prosecution files include a comprehensive statement of facts with sufficient and accurate evidence to support a prosecution;
- timely submission of prosecution files and advice surrounding statute of limitations issues;
- updates to the alleged victim are made on a regular basis and recorded.

The IO also confirmed that no opinion file had been submitted to the DPP for assessment. Rather, a notice to appear was served and a prosecution file submitted. The IO concluded that a supervisor should have identified the above referred deficiencies at the time it was submitted. The IO recommended that, in addition to remedial advice being provided to the officer, remedial advice be provided to her supervisor to ensure prosecution files are thoroughly checked and contain sufficient evidence to establish a reasonable prospect of a successful conviction.

Further, the IO recommended that remedial advice be given to the JOS Sergeant to ensure that if an alleged charge was not supported by sufficient evidence, enquiries should be made with the investigating officer as to whether further evidence is available or able to be sourced.

NT Police apologised to the complainant in relation to the deficiencies.

Case 8 – National DVO scheme

The complainant contacted our Office concerned that her ex-partner was not being prosecuted for a breach of a DVO. The DVO was a new National Scheme DVO, which meant that it would be enforceable throughout the country. The ex-partner was interstate but had allegedly made threats to the complainant over the telephone.

The complaint was dealt with under the Complaints Resolution Process (CRP). An NT Police Resolution Officer investigated and found that there had been a delay in actioning the required paperwork to refer it to interstate police to consider. The Resolution Officer undertook those steps as a priority and offered an apology to the complainant for the delay in actioning the matter. The CRP was successful.

As part of reviewing the complaint, this Office also made enquiries regarding the training and procedural changes that had been rolled out across NT Police when the National Scheme was introduced, how DV audits are conducted, and how members explain the respective roles of interstate police in such matters. The complaint was important in highlighting how these aspects of NT Police operations have changed and been managed since the new scheme was introduced.

Police procedures

Allegations regarding procedural irregularities are frequently a subject of complaint. They include complaints that police have failed to adhere to particular legal requirements aimed at promoting and protecting the rights of individuals, as illustrated in the first two case studies below relating to interviewing, access to legal advice and other aspects of implementation of the Custody Notification Service.

They also include cases involving delay in updating records systems and failure to adequately check records systems, illustrated by case studies 11 and 12.

Case 9 – Questioning a young boy

Police were investigating a number of alleged property offences that had occurred overnight. At about 6:00 am, three officers attended the home of a 12 old boy who it was believed had been or may have been in the company of individuals who committed offences at some stage that evening. One officer attended the side door of the house and utilised his torch to knock on a wooden door. Another attended the front door of the residence and used his torch to knock on the metal of the screen door. Other residents were woken and attended the door. One was told to wake the boy. The officers indicated that they did not attend in order to establish the involvement of the boy but to see what information he might have to assist them to identify offenders. No action has been taken against the boy.

The boy attended at the door with his father present. An officer informed the father that he was investigating a number of offences that had occurred during the night and told him they may or may not have involved the boy. The officer asked permission from the father to ask the boy questions in his presence. The father consented. He or the boy's mother remained relatively near to the boy throughout his interactions with Police.

The boy was first asked to identify others who had been present with him and what they were wearing. However, Police later went on to press a number of questions about his involvement in events, e.g., were you involved in any of that stuff, questions about trying to get into cars, whether they caused any damage, trying to break into a club. No caution was given.

The first issue of complaint contended that it was inappropriate to interview the boy when he had speech difficulties. This was not sustained given there was nothing to that effect on police records and the boy did not exhibit any difficulties in answering the questions put to him.

The IO sustained a complaint about the interview of the boy and compliance with the *Youth Justice Act 2005* and NT Police General Orders. There is a requirement for an interview to take place in the presence of a responsible adult. While his father was in attendance, the hour was very early and his father had just woken and was visibly rubbing his eyes while the conversation was taking place. The father consented to the conversation but the officers did not clarify what his role as a support person would be. His father would have been better placed to make the decision on whether or not the boy would participate in the conversation with the officers if he had been fully informed of what the investigation was about, what elements concerned the boy and what his role as a support person entailed.

As noted, the officer maintained that his interaction with the boy was a conversation held for the purpose of gathering information, not a formal interview that would engage the *Youth Justice Act*. While it was accepted that this may have been the original intent, there was a definitive transition in the course of the discussion from general questioning regarding the movements of the boy and identifying the people he was with, to specific questioning regarding offending possibly involving him, thus making him a suspect.

The officer began asking questions of the boy regarding an offence that if committed by an adult would be punishable by 12 months or longer and that questioning should have been conducted in line with the *Youth Justice Act* and the NT Police General Order relating to questioning and investigations, so that the boy and his father were informed about the ability to seek legal advice and were appropriately cautioned.

The officer and his supervisor at the scene both maintained the position that the discussion did not reach that point. The IO recommended that the officer and his supervisor receive remedial advice on the *Youth Justice Act 2005*, with specific reference to s18 - Interview of youth and on General Order Q1 – Questioning and Investigations, with particular reference to s3 - Caution to Be Administered.

The IO rejected a complaint that the actions of police amounted to unlawful restraint of the boy's liberty. While the very presence of police may exert some force of influence, the boy was standing in the doorway of his home and his father had consented to the discussion. He was not physically restrained in any way.

Case 10 – CNS, interview and bail

The complainant was an Aboriginal person arrested and brought to a watch house. Initial steps were undertaken to inform the Custody Notification Service (CNS) but the complainant was not given an opportunity to speak to a CNS lawyer, apparently due to competing demands on the officer involved. A notation was made that the CNS had been completed and other officers relied on that notation in the course of dealing with the complainant without separate verification.

The IO found unresolved an allegation that the complainant had asked police to speak to a lawyer prior to interview.

The IO sustained a complaint that police had interviewed the complainant without giving him the opportunity to receive legal advice. The officers who made the notation and the officers who interviewed the complainant without confirming the CNS had been completed and he had been offered and received legal advice were given remedial advice.

The IO also sustained a complaint that police had conducted the interview without an interpreter, noting the Anunga guideline to use an interpreter unless the suspect is as fluent in English as "the average white man of English descent". The interviewing officers were provided with remedial advice.

The IO further sustained a complaint that the complainant was not afforded the opportunity to speak with a lawyer prior to speaking directly with a Local Court judge in relation to an application for Bail. The officer was given remedial advice. The IO also recommended that officers receive remedial advice in relation to other implementation and recording aspects of the CNS.

Case 11 – Records and record checks

The conditions on a Domestic Violence Order (DVO) in respect of the complainant were varied in court to remove a non-intoxication condition. The variation was entered onto the Integrated Justice Information System (IJIS) and an email sent to police for entry onto the Police Real-time Information System (PROMIS) but this email was overlooked.

About one week later, officers attended an incident involving the complainant. One attending officer did not have his iPad, so made enquiries with the Joint Emergency Services Communication Centre (JESCC). The JESCC checked PROMIS and advised the non-intoxication condition was still in place. IJIS was not checked at that time. The complainant was breath tested and returned a positive result for alcohol. He was then taken into custody. In the course of the same day, the removal of the non-intoxication condition was discovered and the complainant was released on court bail, with charges subsequently being withdrawn.

An officer was given remedial advice to ensure that both PROMIS and IJIS checks are undertaken to ensure accurate and up to date information is obtained.

More generally, the IO recommended that:

- certain JESCC procedure documents be re-disseminated to all current JESCC auxiliary officers performing Dispatcher duty, particularly surrounding incidents relating to Breach DVOs;

- the relevant Investigation Section adopt a structured system to ensure confirmed and varied DVOs forwarded via email are processed in a timely manner to ensure police systems accurately reflect orders of the court;
- a designated person be clearly identified as responsible for processing and actioning emails each day, and, if that person is not present, the most senior member on duty is to ensure the emails are processed and actioned.

Case 11 – Records and record checks – Cross-border

There is reciprocal legislation in the NT, South Australia and Western Australia that provides for courts in one jurisdiction to deal with matters that have arisen in a border region of another jurisdiction. When the complainant was arrested in SA in relation to another matter, it was noted that there was an outstanding NT warrant. In due course, the SA court dealt with the charges associated with the NT warrant but did not record a recall of the warrant.

Subsequently, NT Police attended a report of a domestic disturbance and transported the complainant to a health facility for medical treatment. While doing so, they conducted a check on PROMIS which indicated there was an outstanding warrant. Further checks on IJIS confirmed the warrant was recorded as active. On discharge from the health facility, the complainant was arrested. While being processed into custody, the complainant advised an officer on more than one occasion that the matter had been dealt with in SA.

The complainant was taken to court and remanded into the custody of Correctional Services to appear the next day. On that day, his legal representatives advised the court of the situation and, following inquiries by the prosecutor, he was released from custody after approximately 32 hours.

The IO concluded that reasonable enquiries had been undertaken by the arresting officers at the time of arrest. However, the IO concluded that the advice provided by the complainant during processing was sufficient for the officer to at least further question him and attempt to find more details but that no further checks were undertaken. The IO found that if the case on IJIS had been checked in more detail, it would have revealed that the warrant matter had been concluded.

The IO recommended that the officer be provided with remedial advice on the requirement to consider all circumstances when there is a claim that an outstanding warrant has already been dealt with.

The IO also recommended that there be an internal broadcast to all officers reminding them of this obligation and that NT Police write to the Department of the Attorney-General and Justice, raising this as an example of an issue in relation to the administration of the cross-border scheme and requesting it review protocols and procedures with appropriate interstate authorities to minimise the prospect of the issue recurring.

Other recommendations

Examples of other targeted recommendations made in relation to complaints finalised during the year include that:

- a Taser should not be considered or activated for the purpose of illumination unless a proportionate threat exists;
- an officer be advised to consider the cultural implications of requesting a mother in law to take action in relation to a son in law; and
- watch house staff ensure the provision of replacement prisoner clothing and disposal of soiled clothing, whether by return to the prisoner at conclusion of a custody episode or disposal, is documented.

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.*⁶

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:⁷

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.⁸

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.⁹

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

⁶ *Firearms Act 1997*, s.49E.

⁷ *Review of police use of the firearms prohibition order search powers - Section 74A of the Firearms Act 1996* (August 2016), p. iii.

⁸ *Firearms Act 1997*, s.49ZB(1).

⁹ *Firearms Act 1997*, s.49ZB(2).

My Office continues to consult with NT Police 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.

Surveillance devices

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

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

Section 63(1) of the SDA requires the Ombudsman to inspect the records of each law enforcement agency 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. Reports are tabled in the Legislative Assembly in due course. Tabled reports are available on the Ombudsman website.

CHAPTER 5 – CORRECTIONAL SERVICES

NEW PRISONER COMPLAINTS PROCESS

Prisoners have a right to make complaints about any aspect of their treatment or conditions in custody to prison authorities and to independent bodies. Our Office has worked with Correctional Services for some time to address issues with its longstanding internal complaints process, the Request to Attend Superintendent’s Parade (RASP) process. Correctional Services introduced a new Prisoner Complaints Process on 1 December 2020 to replace the RASP process.

In order to keep track of issues expressed to arise from implementation of the new process, we commenced preliminary inquiries into the process not long after it was implemented. In doing so, we acknowledge that implementation of the new process was and continues to be a work in progress. We have made inquiries and liaised closely with Correctional Services to address issues as soon as we become aware of them. Set out below is a brief outline of implementation of the scheme and our inquiries to date.

The starting premises for our inquiries included:

- effective complaints procedures promote and help ensure prisoners’ rights are upheld and respected and act as a fundamental safeguard against ill-treatment in prisons;
- complaint mechanisms should be accessible, efficient, fair and confidential to ensure that just and reasonable outcomes and processes are achieved;
- prisoners should be informed of the procedures for making complaints within the prison and through external grievance resolution authorities and be able to complain any time;
- complaints should be handled promptly and fairly in accordance with the guiding principles for corrections in Australia;¹⁰
- every effort should be made to resolve complaints internally in the first instance, except in urgent or otherwise exceptional cases;
- prisoner complaints that are not resolved within the prison should be capable of being submitted by the prisoner to an authority external to the prison for an independent assessment and determination, which includes an avenue to the Ombudsman’s Office;
- prisoners should be informed about these external processes in the prisoner’s own language where practicable, and provided with the means to make external complaints in a confidential manner.

To evaluate and review the new process we:

- compared the former RASP complaints process with the newly implemented process;
- conducted a review of the current Ombudsman system, taking into account complaints received from prisoners as indicators of perceived or actual shortcomings;
- conducted prison visits to Darwin Correctional Centre and Alice Springs Correctional Centre;
- analysed and reviewed data collated and obtained from Prisoner Working Group Meetings, which included various representatives from Correctional Services; and
- obtained information from Correctional Services’ staff about the implementation process.

¹⁰ Guiding Principles for Corrections in Australia (2018), at 1.3.

From the outset, we were confident that prisoners would continue to be able to have direct contact with our Office through existing means. These involve direct, free of charge, confidential contact through the Prisoner Telephone System (PTS) and protected mail. In 2020-21, our Office recorded 517 approaches relating to Correctional Services, the great majority of which were directly from prisoners.

An issue of immediate concern with the new process was the discontinuation of prisoner copies of complaint forms. The previous triplicate RASP form process (implemented at our prompting) had provided an easy way for prisoners to show they had already made an internal complaint (and what the complaint was about) thus avoiding time spent confirming that the prisoner had already utilised the internal complaints process about an issue. It also provided prisoners with a level of confidence that their complaints would be appropriately handled (that is, not disposed of or lost). To deal with access and recording issues without relying on triplicate forms, our Office and Correctional Services agreed that:

- locked complaint boxes would be installed in areas where CCTV coverage exists;
- complaint forms would be made freely accessible for prisoners;
- complaint boxes would be emptied by non-operational staff from outside the blocks and delivered to a complaints clerk;
- all complaints would be logged and tracked through a spreadsheet, which would be accessible to our Office, in order to quickly verify whether a prisoner had attempted to use the internal process.

Our inquiries then extended to other matters including:

1. Stakeholder engagement and consultation prior to implementation including with:
 - a. prisoners and prisoner representatives;
 - b. Correctional Services' staff; and
 - c. our Office;
2. Correctional Services' staff communication, guidance and training provided prior to and during implementation;
3. Documentation, such as policies and procedures supporting the new process;
4. Prisoner communication and strategies throughout process, particularly steps taken to communicate effectively with Indigenous prisoners and prisoners with literacy barriers;
5. Current challenges, gaps, barriers faced by prisoners;
6. Common complaint themes and case studies.

Our Office recorded 309 approaches about Correctional Services during the implementation of the new complaints handling process from 1 December 2020 to 30 June 2021. During that period, we identified 112 complaint issues about the complaint handling process across Darwin and Alice Springs correctional centres. It is clear that a number of concerns have been expressed about the new process.

A broad summary of concerns raised is set out below.

Accessibility

1. Prisoners did not appear to be consistently aware of, or understand the new complaints process.
2. Prisoners across centres did not appear to have a consistent level of access to the process, with a number of barriers identified, including literacy, communication and cultural barriers.

3. A form based process does not provide equal access to prisoners with language or other barriers.
4. The different processes and forms for raising and lodging grievances and complaints are complex and confusing for Correctional Services' staff and prisoners.

Efficiency

5. Correctional Services' staff across the centres do not appear to consistently understand the new process — this impacts on accessibility and efficiency of the process and the ability of staff to attempt resolution of grievances at a lower level.
6. There appears to have been limited consultation with key stakeholders during the pre-implementation and development phase of the new process.
7. There is a lack of consistency between the centres in the implementation and procedures for the process.
8. Implementation had been hampered by a lack of a good information technology and recording systems.

Fairness

9. Some Correctional Services' staff appeared to have limited confidence in the new process as being efficient and effective.
10. Some prisoners appeared to have little confidence in raising and attempting resolution of complaints at a local level across the centres.
11. Implemented mechanisms of the new process were suggested to be resource intensive for staff and senior management, compromising the operational and frontline responsibilities of officers.

In conjunction with our formal inquiries, we regularly participated in meetings of the Prisoner Complaints Working Group, which was convened by the Deputy Commissioner, and attended by the Director and Manager of the Professional Standards Unit, and the General Managers of the two key correctional facilities. At these meetings we raised for discussion issues that we were experiencing, or that were being reported to our Office by prisoners using the process. For instance:

- Inconsistencies between the correctional facilities in relation to the manner in which the complaint process was operating – such as response timeframes, accessibility of forms and use of envelopes;
- The need for guidelines to assist prison staff and prisoners to understand what sorts of issues are appropriate to submit through the confidential complaint process;
- Measures that might be taken to properly consider allegations that complaints boxes are not being emptied as expected;
- Developing a proper mutual understanding of the guidance being delivered by our staff to prisoners when encouraging them to participate in the internal complaints process; and
- Understanding what process was in place to triage the urgency of complaints, and how we could best communicate with the facilities in relation to urgent complaints.

We also utilised the Working Group to identify other areas where we can work more effectively with Correctional Services in order to deal with complaints in a timely manner. For instance, we discussed:

- Strategies for quick and easy exchange of information between our offices;
- Collaborative processes to more efficiently deal with the influx of complaints that we often receive when there is a bulk transfer of prisoners between facilities;

- Keeping abreast of, and providing comment on, significant operational policy changes, such as a draft strategy for managing challenging behaviours, and a new procedure adopted in Alice Springs to deal with a high volume of PTS breaches;
- The various ways in which our staff can make contact with complainants within the prison based upon urgency and confidentiality needs;
- The roll out of Body Worn Video for use by Correctional Officers within the prison, including developing an understanding of the expectations of use and preservation timeframes to assist with the investigation of complaints by our Office.

We are currently in the process of considering strategies that might be recommended to improve implementation. These may include:

1. Develop better communication and educative strategies for new and current prisoners about the process in a manner that is able to be understood by the NT prison demographic.
 - a. Develop a prisoner handbook specific for prisoner complaints and grievance to:
 - i. Explain the process and avenues of complaint and phases;
 - ii. Provide definitions, examples and frequently asked questions;
 - iii. Provide information about where to obtain help in raising a complaint.
 - b. Develop improved information sheets and flowcharts in ways that are appropriate to both culture and literacy levels of prisoners, ideally in consultation with prisoners, prison cultural engagement coordinators and Elders Program members and with consideration to the NTG Language Policy.
 - c. Develop a training or communication video to be used during prisoner induction and reception.
2. Prisoners be provided with appropriate mechanisms for lodging and raising complaints where the existing process is unsuitable or not appropriate because of cultural, literacy and language barriers.
 - a. Develop an NT Correctional Services Support Line to provide a means of receiving, recording and resolving telephone queries and prisoner complaints for NT Prisoners.
 - b. Establish a formal process where assistance can be requested by a prisoner and provided at any time.
3. Implement consistent approaches and processes across correctional centres due to the transient nature of the prison population in the NT.
 - a. Ensure that forms are freely accessible to prisoners throughout each prison and not simply by request.
4. Develop better education, training and practices with Correctional Services' staff in understanding the process and resolving complaints at a lower level where appropriate.
 - a. Develop and provide regular training sessions.
 - b. Develop a manual on how to manoeuvre the process.
5. Improve current processes to assist in the resolution of minor complaints at a lower level where appropriate.
 - a. Allow options for prisoners to raise written complaints with Sector Chief Correctional Officers;
 - b. Develop a formalised triage process for types of complaints.

As noted above, implementation is an ongoing process. My Office will continue with its inquiries and refine recommendations in consultation with Correctional Services.

ENGAGEMENT ON SYSTEMIC ISSUES

During the reporting period, we engaged with Correctional Services on a number of issues which we considered had a more systemic impact on prisoner wellbeing. A great deal of this work involved our Office undertaking inquiries, considering existing policies and procedures, and whether these were fair, reasonable and appropriate in the circumstances. This aspect of our work will become increasingly important as the Territory moves towards full implementation of the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (discussed in Chapter 1).

Some examples of the systemic issues we engaged with Correctional Services about to explore and express concern are outlined below.

Management of prisoner mental health and at-risk procedures

During the reporting period, we continued working on a complex matter in relation to a complainant in a correctional facility who stated that they were experiencing a re-emergence of PTSD symptoms and were struggling to access appropriate mental health supports within the prison. The complainant went on a hunger strike and ended up involved in an incident with Correctional Services officers following an at-risk review. The complaint raised a number of significant themes, including:

- Access to mental health services;
- At risk procedures;
- Incident management, including security classification and accommodation changes; and
- Management of bullying and harassment between prisoners.

We conducted preliminary inquiries about the matter which included a detailed document review. We developed 15 draft recommendations and undertook extensive consultation with Correctional Services in relation to them, in order to better understand how they could operate within existing frameworks.

The matter was finalised with eight final recommendations that touched upon the following operational aspects:

- Improved engagement with, and complaints handling for, prisoners in relation to changing security classifications;
- Additional training for correctional officers, particularly in relation to unconscious bias, the impact of trauma and other mental health issues on behaviour, and strategies for dealing with difficult behaviours. The training to be undertaken with a view to more proactive management of prisoner needs and a reduction in the likelihood of any incidents;
- Enhanced systems for exchange of information between the Department of Health and Correctional Services to improve the ability of Correctional Services to meet any particular needs of prisoners arising out of health issues;
- Improved behaviour management strategies. In particular, strategies or procedures to ensure that any medical or mental health factors which may be contributing to behaviours are recognised and dealt with appropriately, such as by assisting with diagnosis and supports, rather than needing to use punitive measures. It is hoped that improved strategies of this nature will result in better health and reintegration outcomes for prisoners;
- Adjustments to at-risk procedures to ensure that only the minimum level of restriction necessary is imposed, and to improve communication and implementation of changes to the management of at-risk prisoners as the particular at-risk episode progresses. In particular, there should always be an ability to contact legal representatives and complaints bodies such as our Office unless there are exceptional circumstances involved;

- Improvements to the misconduct process and corresponding security reviews. This would include introducing an estimated timeframe within which misconduct proceedings should be commenced, and notifying the prisoner and Sentence Management Team if a decision is made not to proceed with misconduct proceedings. We also suggested that consideration be given to downgrading prisoners security classification (if appropriate) at that point, rather than waiting to the next scheduled classification review;
- Development of formal procedures for the management of bullying and harassment.

We are awaiting a response to some of the recommendations and will follow up on implementation in the coming year. In addition, we have identified mental health within the correctional system as an area of particular interest and will carefully monitor complaints that arise with a view to exploring further opportunities for improvement.

Routine strip searching of prisoners

During the reporting period, we received a number of complaints in relation to the approach taken by Correctional Services towards routine strip searching of prisoners.

In considering these complaints, we reviewed developments in other jurisdictions regarding strip searching practices. In several jurisdictions, Ombudsman offices, custodial inspectorates and courts are expressing reservations regarding the validity and efficacy of some forms of routine strip searching practices. There is discussion and consideration of a need to connect the search with an empirically valid purpose, and to consider whether there are any alternative, less invasive options for achieving that purpose.

Although we did not pursue formal investigations into particular complaints during the reporting period, we highlighted these interstate developments with Correctional Services in order to assist with their ongoing consideration of strip search procedures in NT Correctional facilities.

In response, Correctional Services advised that it had reviewed its Directive regarding strip searching of prisoners in May 2021. It highlighted that the revised policy placed a stronger emphasis on:

- Preserving dignity, self-respect and privacy of prisoners;
- Avoiding unnecessary and unreasonable humiliation and embarrassment; and
- Ensuring the prisoner involved is aware of how the search will be conducted and their rights and obligations in relation to the search.

Correctional Services also outlined that it had replaced the full unclothed search with a top/bottom search. It noted that prisoners would only be subjected to full unclothed searches where contraband was found in the top/bottom search, or if there was a specific direction or operating procedure to that effect by the General Manager of the facility.

Correctional Services expressed a commitment to utilising the least intrusive option possible to minimise the negative impact on prisoners, without compromising search integrity. It noted that where equipment exists to undertake a low-dose x-ray body scan, such a scan may be substituted for an unclothed search in appropriate circumstances. Correctional Services were hopeful that these changes to the Directive would alleviate the complaints being received in this area, and expressed a commitment to continual improvement of its search methodologies.

This is an area of continuing interest for the Office, and we will monitor incoming complaints for developments.

Management of gender diverse prisoners

From time to time this Office receives complaints regarding the challenges that arise during the incarceration of a gender diverse prisoner. The incarceration of gender diverse prisoners within the existing custodial facilities in the NT raises complicated issues. Correctional Services has previously made significant efforts to develop strategies for dealing with these complexities.

During the reporting period, a number of issues were raised with us, touching on challenges such as:

- Personal safety and wellbeing, including effective management of physical and mental health;
- Comments and behaviours that caused offense;
- Inequality of opportunity; and
- Non-compliance with policies and procedures.

The complaints highlighted some potential opportunities for further improvement. We suggested to the General Manager of the Darwin Correctional Centre that it may be timely to conduct a review of policies and procedures, with the benefit of understanding the complaints raised with our Office as well as our feedback on a number of issues that can generally arise in the management of gender diverse prisoners. We suggested that the review particularly focus on:

- Further consideration of the policy regarding the continuation of hormone treatment;
- The need for proactive management of mental health or other supports or special needs that may arise for gender diverse prisoners, and for such management to involve strong collaboration with the medical clinic;
- Ensuring that policies and procedures do not operate in a discriminatory manner, and that staff making decisions are aware of the need to make sensible discretionary decisions where a policy or procedure does not cater for unique needs of a gender diverse prisoner;
- The possibility of training for prison officers and prisoners regarding gender diversity issues, and the implementation and enforcement of standards of behaviour in such situations;
- The need for proactive complaints management for gender diverse prisoners in order to understand any challenges that may arise in a timely fashion; and
- Audit and compliance reviews for instances of gender diverse incarceration.

Correctional Services welcomed our comments as an opportunity to consider learnings arising out of the points raised. We took further steps to review the situation at the end of the reporting period, at which time, Correctional Services advised that it had reviewed its *Management of Transgender, Gender Diverse and Intersex Offenders* policy, according to a previous commitment by the Minister to have it reviewed. We have not at this time been directed to changes made to the Commissioner's Directive, or to local Standard Operating Procedures in particular response to the suggestions made.

In the event complaints of this nature continue to be made in the future, we will consider further scrutiny of the issues raised and making formal recommendations for improvement.

Health related diets

During the year, we received a complaint that highlighted the challenges that can sometimes occur with the management of prisoner diets. A complainant contacted us stating that they had been trying since being received into a facility to be placed onto a vegan diet, which they required for health reasons. The complainant explained that they suffered from a medical condition that was worsened by the consumption of meat and dairy, creating uncomfortable physical symptoms. The complainant told us that they had not been receiving appropriate food for about a month, despite many efforts, and this meant that they needed to try and stockpile appropriate food and often went hungry, eating only the tiniest part of their meals.

Our Office liaised with the complainant's partner who assisted with obtaining and providing to the prison external medical verification of the medical condition and related dietary needs. The complainant was placed onto a vegan diet the next day. As the issue was resolved, there was no need for us to proceed with a formal investigation. However, we did take the opportunity to suggest to Correctional Services and the Department of Health that they conduct a joint review of their intake procedures to ensure that there are appropriate measures in place to identify, verify and implement special dietary requirements of prisoners in the most efficient manner possible. In particular, we suggested that strong procedures would involve:

- Taking preventative measures (where medically appropriate) to comply with a disclosed medical condition pending confirmation of the condition;
- Obtaining verification of any medical conditions, if required; and
- Ensuring that necessary medical chits are issued and implemented in a timely manner.

We also queried whether present procedures may draw a distinction between food allergies and food intolerances, and expressed a view that appropriate procedures should be in place so that prisoners are not subjected to unnecessary discomfort caused by dietary issues, where there is a viable alternative.

Both Correctional Services and the Department of Health indicated agreement that the medical diet procedures would be reviewed and improved, with a view to ensuring unnecessary discomfort is avoided. We were advised that a joint review will be scheduled in the near future.

We intend to continue our engagement with Correctional Services and the Department of Health on this issue in order to understand what changes are implemented following the scheduled review.

Removing prisoners from protection for behavioural issues

During the reporting period we received a number of approaches from complainants who had been involved in incidents within the prison being told that their protection status may be revoked as a result of their behaviour.

These complaints caused us to conduct inquiries and analysis of the framework for prisoner protection within Correctional Services. We ascertained that the Commissioners Directive regarding protection involves an application, an assessment of the validity and seriousness of the relevant threat to the prisoner's safety, and ongoing reviews of the threat. The relevant procedure also requires prisoners to sign a Code of Conduct, which provides that they may have their protection status revoked if they engage in a breach of the Code (as well as other consequences).

We established that protection status is not specifically regulated in the *Correctional Services Act 2014* or the *Correctional Services Regulations 2014* beyond the general power to separate a prisoner from other prisoners as the General Manager considers appropriate (with the prisoner's safety being under threat provided as an example). There is also nothing specific in the *Nelson Mandela Rules* on this point. However, the *Guiding Principles for Corrections in Australia (2018 ed.)* provide that prisoners are kept safe from bullying, intimidation and victimisation (including verbal, mental, or physical abuse, damage or property theft).

While we understood a functional need for there to be appropriate behaviour, reciprocity and mutual respect in the protection unit, we held concerns that the current approach may inappropriately confuse or link the idea of protection with behaviour management, and overlook the importance of the duty of care to prisoners. Our view was that poor behaviour can, and should, as far as possible, be dealt with through other available means.

We wrote to Correctional Services highlighting our concerns, noting that we would monitor whether the issue continued to arise in future complaints and would re-consider whether to take further action if it did.

In a complaint dealt with later in the reporting period, the General Manager responded to our concerns noting that:

When prisoners enjoy the benefits of protection status there is an explicit requirement for each and every prisoner to behave in a manner which permits the ongoing application of the status and the status for all around them. From time to time there are prisoners who choose not to behave properly whilst being subject to protection, instead behaving in ways which then undermine the same protective measures they enjoy afforded to others. This is not acceptable.

The removal of protection status is never an initial consideration, there are other methods of moderating behaviour applied first. However, NTCS takes it's duty of care very seriously and in extreme cases where a prisoner's behaviour is of such concern over a protracted period protection status may be withdrawn.

This further information was helpful in understanding the approach of Correctional Services to the management of protection prisoners. In response, we noted that if we are required to deal with a complaint of this nature in future, we are likely to consider:

- What the behaviours were;
- The history of similar or other relevant behaviours;
- What other methods were previously used to moderate the behaviour;
- What other methods remain available but were not used, and why; and
- If the prisoner is to be removed from protection status, what consideration has been given to strategies for preserving their health and safety within the mainstream prison.

Transfer of prisoners with outstanding medical requirements

A complaint was raised with our office in relation to a complainant who had been involuntarily transferred between correctional facilities and, as a result, had been delayed (and would continue to be delayed) in receiving elective surgery that would significantly improve their quality of life. The complainant may have experienced delays in accessing the elective surgery in any event due to limitations arising from Covid-19, however, not to the same extent that they would have experienced in the new facility.

The complainant was also experiencing issues in relation to accessing appropriate personal items within the prison.

We undertook a preliminary inquiry into what had occurred, and consulted with Correctional Services in relation to the complainant's situation. After discussions with our Office, Correctional Services agreed to assist the complainant to obtain the required personal items, and to transfer the complainant back to the original correctional facility in order to ensure better access to health services and elective surgery.

We recommended that Correctional Services develop procedural documents to establish a framework for voluntary and involuntary intra-territory transfers of prisoners. We also reiterated and expanded on previous recommendations to Correctional Services in relation to the need for improvements to the system of collaboration and information sharing between Correctional Services and the Department of Health in order to appropriately manage the health needs of prisoners.

Correctional Services advised that it is currently in the process of developing Commissioner's Directives regarding intra-territory transfers and information sharing with the Department of Health. We will monitor the implementation of these improvements in the coming year.

CORRECTIONAL SERVICES APPROACHES

Corrections approaches totalled 517 in 2020/21, a reduction from 575 in 2019/20 and 587 in 2018/19 but still higher than the 401 approaches in 2017/18.

There were 349 approaches relating to the Darwin Correctional Centre and 146 relating to the Alice Springs Correctional Centre.

A list of the most common issues raised by approaches in 2020/21 is set out in the following table. Many approaches raised more than one issue. The table lists issues raised, not issues sustained.

Issue	Notes	No.
Complaint processes	Includes problems relating to implementation of a new prisoner complaints process	163
External contact	Includes issues with phones (68), visits (49) and mail (21)	138
Officer conduct	Includes rudeness, insensitivity, harassment, poor communication, inappropriate treatment of a vulnerable person	130
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
Health / welfare	Issues regarding health services are referred on to the Health & Community Services Complaints Commission but we deal with issues regarding how correctional officers implement health and medical advice	96
Work	Employment inside or outside prison	51
Money / buys	Any issues dealing with prisoner accounts and purchases	49
Recreation / Amenities	Matters relating to recreational activities and everyday aspects of living, eg, access to publications, smoking, access to television, sporting and craft equipment	43
Educational programs		35
Food	Issues relating to quality or service of food. Includes issues relating to special dietary requirements	33
Time spent outside	Restrictions on time spent outside	24
Information	Includes request for information and documents, complaints that information not provided	24
Condition of facilities		15
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	15
Misconduct proceedings		13
Prisoner property		8

Compared with the previous period, there were increases of 10 or more in the number of issues relating to Complaint processes, Officer conduct, External contact, Educational programs and Work.

The significant increase in the number of issues regarding Complaint processes is likely to be largely attributable to the implementation of the new prisoner complaints process during the period.

Correctional Services case studies

Examples of our approach to some specific complaints are set out below.

Case 1 – Improvements to misconduct process

We were approached by a complainant who had been involved in a drug use incident within the prison. The complainant had been placed on administrative restrictions, including non-contact visits, pending a misconduct hearing. Due to delays in the misconduct process, the hearing did not take place for almost 5 months.

When the misconduct hearing took place, the complainant received a penalty of 3 months non-contact visits, 7 days separate confinement, and 21 days loss of privileges. The decision maker refused to take into account the almost 5 month period that the complainant had already been subjected to non-contact visit restrictions.

We undertook inquiries and consultation with Correctional Services. It was agreed that Correctional Services would update its Misconduct Manual to set out sentencing considerations to assist the decision maker with their task, such as taking into account guilty pleas and administrative measures already imposed. Correctional Services also undertook to refer the issue of misconduct delays generally to its Manager of Security and Regional Operations to identify options to ensure that certain categories of misconduct are prioritised for hearing to avoid any unduly harsh consequences.

Case 2 – Prisoner employment and incident management

The complainant had their participation in the paid employment program cancelled and their general leave permit revoked following an allegation that they were engaging in activities that had not been appropriately authorised by the facility. The complaint raised a number of important issues regarding best practice in government administration, such as:

- Incident management, including investigation principles, and interim changes pending investigation;
- Appropriate use of discretion in administrative decision making;
- Internal and external consistency of policy and procedural documents; and
- Best practice administrative record keeping.

Following extensive inquiries, we developed six proposed recommendations that were refined to four final recommendations, following consultation with Correctional Services. The recommendations were in relation to:

- Conducting a review of the policy framework governing external employment to ensure there is consistency between procedural documents, requirements for scoping employment prior to commencement, and better communication with prisoners regarding their conditions of employment and leave, and the delegation level required for any variations;
- The exercise of discretionary decision making powers and the proper documentation of use of these powers, including reasons for decision;
- Record keeping, including in relation to employment site visits;
- Investigation procedures and incident management, particularly around the timing of classification changes while an investigation is pending.

We are awaiting a response to some of the recommendations and will follow up on their implementation in the coming year.

Case 3 – Applicability of Australian Consumer Law to buys

A complainant advised they had purchased a prison approved iPod during their time in custody. After about 6 weeks, the iPod stopped working and was sent away for repairs. The iPod had not been returned, nor had the complainant received a refund for their iPod, after over a year. We made enquiries with Correctional Services to understand what had occurred and to try to have the iPod returned as quickly as possible.

The complaint caused us to consider whether the prison buys scheme may attract the rights and obligations of the Australian Consumer Law (ACL). Over a number of previous years, issues have been raised by prisoners with respect to buys and vending that, were they to be encountered outside of a correctional facility, would undoubtedly involve consumer law rights – for example, delays in receiving goods paid for, or expired / spoiled food.

Correctional Services obtained legal advice on the point and declined to take further action in the particular circumstances of the case. Considering the content of the legal advice and the particular circumstances, we concluded we were not in a position to assist the particular complainant further.

However, we did express the view that the application of the ACL to prisoner buys appeared to be an arguable point even though it had not yet been tested in legal proceedings. In any event, we were of the view that considerations of fairness to prisoners who have little choice but to utilise the prisoner buys system, weigh in favour of extending a corresponding right to that enjoyed by everyday consumers. We recommended that Correctional Services express a commitment to aligning its operations in providing buys / vending services with the principles in the ACL and to responding to prisoner complaints in this area accordingly.

We are awaiting a response to this recommendation.

Case 4 – Involuntary transfer of prisoner with particular medical and social needs

We were contacted for assistance by a complainant who had been involuntarily transferred between correctional facilities, with the consequence that they would be unable to meet their new baby who was due to be born very soon. It also emerged following the complainant's transfer that the new correctional facility was not able to safely accommodate the use of a particular medical aid that the complainant required to manage a medical condition.

We engaged with Correctional Services to understand the circumstances of the transfer, and whether and when it may be possible for the complainant to be returned to the original facility. While an immediate return transfer was not possible due to the respective capacities of the facilities, the complainant was returned to the original facility within a reasonably short timeframe, where they were then able to have access to family and proper use of their medical aid.

Case 5 – Incident response involving use of force

We received complaints in relation to the manner in which Correctional Services officers responded to an incident where three prisoners refused to return to their cells upon direction. After an initial period of engagement with the prisoners, one prisoner became agitated and began behaving in a hostile manner towards the officers present. He grabbed a wooden chess board, moved toward the officer's post with it raised above his head and threw it against the officer's post. He then retrieved the wooden chess board and intermittently pointed and gestured with the board as if preparing to throw or strike out at an officer with it. The other two prisoners remained at dining tables, but non-compliant at that stage.

The hostile prisoner with the chess board was ground stabilised by a number of Correctional Services officers, and handcuffed to the rear to resolve the incident. In the course of being secured in this manner, the prisoner suffered reasonably significant injuries. The other two prisoners were directed

to lay on the ground and did so in a compliant manner. They were secured with handcuffs to the rear and escorted to a confinement cell where they were strip searched. As a result of the restraint of one of these prisoners, a pre-existing injury was exacerbated.

Our Office conducted a review of the incident and the response by Correctional Services officers. In particular, we considered whether:

- the use of force on each prisoner was reasonable and necessary in the circumstances;
- the strip searches conducted were necessary;
- the subsequent designation of, and time spent by, one prisoner as at-risk was appropriate;
- medical treatment was provided in a sufficiently timely manner;
- the placement of a prisoner on an intensive management plan following the incident was a reasonable decision in the circumstances.

We were unable to come to conclusions in relation to a number of alleged uses of excessive force due to conflicting versions of events and lack of CCTV coverage in certain areas. However, we did conclude that officers used more than reasonable force in some instances.

In finalising the matter, we made a number of suggestions for improvement to Correctional Services, including:

- consideration of options to have a Forensic Mental Health Service employee available or on call over the weekend in order to conduct at-risk assessments arising during that period;
- conducting a review of the incident with relevant staff members around the degree of force used in order to explore alternative actions for the future;
- consideration of a training review to improve the techniques used by officers with a focus on the importance of de-escalation tactics as part of a continuum of force model, involving constant reassessment of the need for force to achieve the most appropriate response in the situation;
- improving record keeping to ensure that accurate times are recorded for key events during incidents, including when prisoners are provided with medical assistance following an incident.

We indicated that we would continue to monitor Correctional Services complaints to establish emerging trends in relation to systemic issues of this type.

Case 6 – Failure to conduct prisoner induction

A complainant contacted us expressing concerns that they had been transferred from an interstate prison and had not been able to contact their family, including their 18 year old child and their father, who recently underwent surgery.

We contacted Correctional Services and ascertained that the complainant had not been properly inducted into the facility and as a result was unaware of the proper way to sort these issues out. The facility made immediate arrangements for the complainant to receive a one-on-one induction, and organised for the complainant to make a welfare call to their family.

Case 7 – Making the misconduct process more accessible for prisoners

A prisoner was involved in a disturbance at the Alice Springs Correctional Facility, and as a result, went through misconduct proceedings. The prisoner complained to our Office that they believed they were denied natural justice in the misconduct process, because Correctional Services:

- did not provide them with an interpreter or a prisoner’s friend;
- asked leading questions during the hearing;
- did not ensure they had a full understanding of what happened during the proceedings;
- did not provide them with an appropriate opportunity to respond to the case; and
- did not show all available evidence to them.

Our Office undertook preliminary inquiries into the matter. Following our inquiries, we determined that, while there were aspects of the process that could have been improved, largely speaking, natural justice was afforded.

It appeared as though time was taken to explain and discuss each charge, the complainant requested and was granted an opportunity to look through photographic evidence, and the complainant was given an opportunity to speak freely at the conclusion of the hearing. The complainant did not offer any additional information in the complaint to our Office which they would have put forward in the misconduct process that would have been likely to alter the outcome of the proceedings.

Although we determined that no further investigation was warranted following preliminary inquiries, we did make a number of suggestions for improvement of the misconduct process to Correctional Services, particularly aimed at making the process more accessible for prisoners who experience difficulties with literacy and/or prisoners who speak English as a second (or later) language. In particular, we suggested:

- a review of the misconduct templates to identify opportunities to use more plain English;
- developing in-language resources and visual aids that explain how the misconduct and review process works; and
- improvements to the misconduct manual consistent with our 2018 *Strangers in their Own Land* report, such as:
 - checking a prisoner’s first/preferred language prior to hearing;
 - offering an interpreter;
 - utilising the NT Government Guidelines (developed by the Aboriginal Interpreter Service) for assessing the need for interpreter use; and
 - guidance for decision makers in relation to effective communication, including appropriate ways to check understanding, avoiding leading questions, allowing adequate silence, and strategies to encourage a free narrative version of events (while still respecting the prisoner’s right to silence).

We are awaiting a response from Correctional Services in relation to the suggested improvements.

WOMEN IN PRISON II

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

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

- Chronic overcrowding (growing numbers in a limited space, inside a male prison)
- Housing and facility issues (wear and tear, not enough amenities)

- Limits on education and rehabilitation programs
- Limits on employment opportunities
- Issues with health care of prisoners, including 'At Risk' prisoners
- Problems with the basics (clothing, hygiene, food and recreational activities)
- Cultural issues for the predominantly Indigenous population
- Language and communication issues for the predominantly Indigenous population
- Inadequate arrangements for housing children with their mothers.

The report concluded 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.*

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

We continue to receive six monthly updates from Correctional Services on the implementation of Recommendation 7. The most recent update is set out below. Corrections advises that, while our report was in relation to the ASCC, it considers both correctional centres are the subject of reporting.

Corrections update – Women in Prison II

Sub-recommendation	Comment
Overcrowding	<p>Alice Springs Correctional Centre (ASCC) H Block operational capacity is 50. During July 2021 the average female prisoner population is 46 with one infant and no pregnant prisoners.</p> <p>Darwin Correctional Centre's (DCC) Sector 4 operational capacity is 92 comprised of five Mothers and Babies beds, four separate confinement cells and 83 general purpose cells. The average female prisoner population for July 2021 was 86.</p>
Housing and Facility issues	<p>ASCC H Block infrastructure still remains the same as per previous reported. Any building issues are reported to our Industries staff, and repairs are prioritised. In December 2020, \$75 000 was allocated under the Minor New Work program to improve amenities within the H Block i.e. refurbishing of showers, toilets and low security demountable building to alleviate overcrowding. This action as at July 2021 still remains the status quo.</p> <p>All DCC Sector 4 cells, rooms, corridors and block entry doors are unlocked during the day to allow prisoners access to their cells/rooms, toilets, showers and personal items.</p> <p>The only exception is within Sector 4H (high security prisoners), as the main block entry door is left secured. However, Sector 4H prisoners do have access to all facilities within their unit in a controlled way.</p>
Education and rehabilitation programs	<p>The Alternative to Custody Life Skills Camp in Alice Springs is now operational with six female prisoners referred from ASCC and accepted. One of the female prisoners meets the criteria and housed at the facility, and the other four prisoners are being bailed from the Courts to the program.</p> <p>NAAJA Kunga program at ASCC has completed a four-week block course and are currently running their weekly counselling sessions with the course participants.</p> <p>Current programs operating in ASCC H Block are as follows:</p> <ul style="list-style-type: none"> • Horticulture initiative program • Post-release Kunga (NAAJA) four week block program • BIITE Certificate I Visual Arts • BIITE Certificate II Business • QuickSmart • Bible studies • Pre-release preparation program

	<ul style="list-style-type: none"> • Money Matter (Anglicare) • Nikki McCoy Counselling & Creative Arts Therapy • Safe & Sober Program • NAAJA Throughcare Program • Catholic Care crime victim counselling • Alcohol & Other Drugs Service • Family Violence Program <p>The Women of Worth Program (WOW) is no longer funded which ceased on 31 July 2021.</p> <p>At DCC, female prisoners are able to enrol in tertiary education with University of Southern Queensland (USQ). BIITE has delivered courses in Certificate I Visual Arts, Certificate I Business, Certificate I Foundation Skills, Certificate I Foundation Skills Training Package, Certificate II in Visual Arts, Elevated Work Platform, Forklift and Barista training.</p> <p>Two computers (PCs) are now available in the female sector library with appropriate restrictions in place. Software upgrades are being applied to ensure the prisoners have access to the approved educational sites.</p> <p>Through these PCs prisoners also have access to word processing software to work on typing skills and resume writing.</p>
Employment opportunities	<p>Over 95 per cent of the ASCC female prisoners are employed as breakfast packers, laundry workers, ground maintenance, librarian and ice packers within the H Block Industries area. In addition, female prisoners undertake volunteer and paid employment around Alice Springs municipality.</p> <p>DCC female prisoners are able to take advantage of the voluntary and paid employment programs.</p> <p>At DCC there are no female prisoners participating in the external Volunteer Employment Program (VEP) and three participating in the Paid Employment Program (PEP) at the Acacia Hills Mango Farm.</p> <p>Internal sector employment opportunities for female prisoners include shop vending, cleaning, sports and recreation organiser, seamstress, librarian, tutors, carers, accommodation cleaners, laundry workers, administrative stock and cleaning workers, yard workers and Peer Educator & Listener Scheme (PELS).</p> <p>48 internal positions within sector have been created and consistently occupied. There are 17 Positions within the Industries sector and one PELS person employed in Sector 4.</p>
Health care	<p>A Registered Nurse works with small groups of women and discusses healthy lifestyle choices, which can include a referral to the Health and Recreation team for an individualised fitness routine. Sport and Recreation Officers also deliver alternative activities to the female prisoners with a health promotion focus.</p> <p>In ASCC the Preventable Chronic Conditions Nurse (PCCN) continues to conduct consults specifically aimed at health promotion topics. An underlying theme is self-management strategies.</p> <p>The PCCN also assists with prisoner requests to Prisoner Services and Block Officers for services from Alcohol and Other Drug Services Central Australia (ADSCA) and with Risk Management Plan referrals to Drug and Alcohol Services Australia (DASA) and Central Australian Aboriginal Alcohol</p>

	<p>Prevention Unit (CAAAPU). The PCCN also supports prisoners accessing external treatment programs.</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.</p> <p>They are seen by a doctor within 24 hours, or where practicable following Reception. If there is an emergency situation an out of hours contact at the Alice Springs Hospital is called for advice.</p> <p>Payback Mediation is facilitated by staff to ensure the females' safety as concerns arise.</p> <p>In ASCC, Pre and post release supported accommodation programs are facilitated with Drug and Alcohol Service Australia (DASA) where the special needs of female prisoners are managed and assessed relative to their suitability for referral to a program.</p> <p>The Primary Health Care (PHC) is service provider for the prison population in both the Top End and Central Australia. The PHC Medical team consists of nurses, doctors, Aboriginal health practitioner, nurse practitioner and visiting allied services. Forensic Mental Health Unit and Prison In Reach Alcohol and Other Drug services work closely with the PHC. The PHC main focus is providing targeted and opportunistic cares for the prison health with strong focus on chronic disease management, acute and complex health conditions, drug and alcohol withdrawals and management of mental health issues faced by the prison population.</p> <p>Further to this, PHC provide a full complement of health services such as primary health nurses, doctors, aboriginal health practitioners and psychologist. Allied health services also provide visiting services such as dental, physiotherapist, radiologist, optometrist and audiologist. PHC team also provide emergency and acute care and on-call services for after hour cares.</p> <p>There is a strong focus on the needs of women in prison with provision of daily clinic and health delivery onsite in the women's section. There is strong emphasis on health issues relating to mental health, sexual health and chronic condition. The PHC team has highly skilled clinicians and women's health focused clinician including midwife in the team. Health promotion strategies have been ongoing feature of the wellbeing of women's health and education, focusing on empowering women in prison.</p>
<p>The basics (clothing, hygiene, food, and recreational activities)</p>	<p>The 'Birds Eye View' podcast, created by Story Projects, tells the personal stories of women prisoners at DCC. After debuting at the Darwin Festival in 2019, the podcast gained considerable local and national attention and was nominated for the Australian Podcast Awards. The podcast was awarded the <i>Australian Podcast of the Year</i> - an incredible achievement by all of the women who participated in the project.</p> <p>The women are able to utilise the library and program rooms for activities such as board games and DVD workouts broadcasted on the big TV.</p> <p>At DCC due to infrastructure damage following the May 2020 prisoner disturbance and security concerns regarding females entering a male sector to access the sports and recreation area, there has been limited access to these activities, women do have access to health and recreation activities within the Sector 4 with marked walking areas, and a basketball court.</p>

	<p>The Sector Manager has implemented internal gardens with vegetables and flowers being grown outside of each accommodation block. This is working well and has boosted the morale amongst the women.</p> <p>At DCC bras and briefs are a consumable item and are issued upon request - but will not exceed 4 x bras and 6 x briefs in total for each individual. It is expected that all women maintain their issued bras and briefs to a high standard of hygiene. Female prisoners discharged from custody are permitted to retain all issued pairs of briefs and bras. Under no circumstances will there be a one for one swap for bras and or briefs. Prisoners dispose of the used item in an acceptable manner i.e. place in a garbage bag and place in bin. All women are issued a new set of bras and or brief/s on a reasonable wear and tear basis. There is no time limit as each individual is different to the next.</p> <p>Prisoners can request issue of hygiene items from Sector 4 Officers at the officer station e.g. toilet rolls, soap and sanitary products at any time during business hours. Toothpaste, toothbrushes, hair ties, combs/hairbrush, prison issued shorts, shirts, pyjamas, prisoner request forms, any other approved form (with the exception of Medical forms) are actioned at 4pm daily.</p> <p>All women are provided three meals a day in accordance with the dietitian's directives. They also have the option to purchase other food goods from the Centre's Canteen and vending machine.</p> <p>All female prisoners in ASCC are issued four sets of underwear on arriving into custody and are given three sets of clothes and a personal wash bag. Washing is conducted 6 days a week in H Block.</p> <p>All ASCC H Block prisoners are offered sport and recreational activities after work weekdays and between 9.30 am to 5.30 pm on weekends.</p> <p>Special meals are supplied through the ASCC Kitchen for female prisoners with particular dietary needs.</p>
<p>Underlying supports (induction, legal assistance, making complaints and using interpreters)</p>	<p>In mid-December 2020 at a meeting of all ASCC female prisoners, they were informed that the Superintendent's Parade forms were replaced by the new Prisoner Complaint System. Laminated information sheets were placed around H Block. To date ASCC have not had any complaints through the new system, as staff are encouraged to interact with the prisoners, and to deal with any issues when they rise. The prisoners also know that they can speak to the area Chief Correctional Officer, if staff are unable to assist them with any concerns.</p> <p>Next to the Prisoner Telephone System (PTS), there is a list of pre-set numbers for organisations to assist with prisoner complaints. These include legal, Health and Community Services Complaints Commission, NT Ombudsman's Office etc.</p> <p>Additionally at ASCC, legal handbooks are given to prisoners on reception, which give an overview of advocacy and associated matters.</p> <p>Every female prisoner attends an induction session with the Prisoner Support Officer which outlines the guidelines, procedures and services available within ASCC.</p> <p>Female Elders from the Elders Visiting Program continue to regularly visit DCC Female Sector to meet with Aboriginal female prisoners. The DCC Sector 4 female prisoner Community Consultative Committee (Triple C) meeting had ceased for several months however have been resumed commencing on 19 August 2020 then every second Wednesday to discuss Sector activities, updated Policies & Procedures, information sharing, living</p>

	<p>entitlements and needs, recreation activities and related equipment etc. Further to this, two female prisoners are also members of the DCC Prisoner Representative Committee that meets bi-monthly with male prisoners and the Senior Management team to discuss, raise and manage concerns from prisoners across the facility including those items mentioned above similar to the Triple C. There is one female member of the DCC Lifers Committee which sits monthly.</p> <p>The DCC female Induction Booklet is current and issued to prisoners upon their arrival into custody within Sector 4 by the Prisoner Support Officer within a two or three day period and outlines the guidelines, procedures and services available within DCC.</p> <p>Flyers have been placed in the Female Sector of DCC outlining the role of the Official Visitors and all prisoners are given the opportunity to place their name on the Official Visitor list for the scheduled monthly visit. If for some reason a prisoner missed an appointment with the Official Visitor they will be offered another appointment for the upcoming month.</p> <p>Next to the PTS, there is a list of pre-set numbers for organisations to assist with prisoner complaints. These include legal, Health and Community Services Complaints Commission, NT Ombudsman's Office, Disability Royal Commission "Your story" etc.</p> <p>In November 2020 a new version (No.4) of NT Correctional Services Directive 2.1.12 "Prisoner Complaints" process was put in place to ensure an effective system with a clear set of procedures. DCC have responded to 12 complaints under the new system from female prisoners and there are five matters outstanding to date (July 2021). ASCC received no complaints from female prisoners.</p>
Children in prison	<p>ASCC does not have a designated Mothers and Babies facility, however babies are accommodated with their mothers in single cell accommodation on the Low Security Unit of the Female Sector. A Child Care Plan is developed and reviewed relative to ongoing support and development needs of the mother and baby. Initiatives include the purchase of baby equipment and attendance at formal child care to benefit the baby's development. Grassed areas are available for mothers and babies in the Female Sector. ASCC currently has one infant and no pregnant mothers.</p> <p>DCC has a Mothers with Babies Facility which aims to assist the mother to develop and maintain a functional relationship with her child pending the mother's release, as well as developing pro-social support networks in the community in preparation for release. Continuing the bond between mother and child during imprisonment may reduce the likelihood of reoffending.</p> <p>There are no children currently in DCC, with the last mother and child discharged on Friday 15 January 2021.</p> <p>Within DCC PHC provide the required health care for the mothers and babies whilst in the facility. There is a visiting child health nurse that provides the required assessments. PHC also provide all required scheduled immunisations. A Child Care Plan is developed and reviewed relative to ongoing support and development needs of the mother and baby. Initiatives include the purchase of baby equipment and attendance at formal child care to benefit the baby's development. Grassed areas are available for mothers and babies in the Female Sector.</p>

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 contributed to the NTLRC’s consideration of two references on recognition of local aboriginal laws in sentencing and bail; and 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:

- establishment of the Judicial Commission;
- implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*;
- ensuring the accessibility of NT police body worn video for civil proceedings and investigative purposes;
- access to archival materials;
- managing challenging behaviours;
- complaints management practices and procedures;
- responding to water leaks;
- various aspects of information sharing between agencies.

Complaints and review bodies

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

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

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

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

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

In 2020/21, 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 meetings.

Training and presentations

In 2020/21, our Office delivered training and presentations to public sector officers, for example:

- *External Accountability*, to OCPE Foundations of Public Sector Governance courses;
- NT Police Recruit training;
- Prison Officer Training;
- NT Legal Aid;
- Top End Regional Organisation of Councils Animal Management Committee.

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 Professional Standards Command; and

- regular meetings with the Commissioner of Correctional Services and other Corrections staff;
- meetings between operational staff of our Office and other agencies to discuss general complaint handling approaches and issues.

COMMUNITY AND STAKEHOLDER ENGAGEMENT

During 2020/21, Ombudsman visits to communities and regional centres were again impacted by the coronavirus pandemic. Visits were made to a variety of organisations in Alice Springs and Katherine.

Presentations or visits were made to various stakeholders during the year, including CAAFLU, CAWLS, Catholic Care, COTA, NAAJA, NAAFLS, Anglicare, KWILS, the Salvation Army, Katherine Women's Crisis Centre and Sunrise Health.

We also participated in a Yarning Circle conducted at the Financial Counselling Australia Annual Conference.

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 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 2020/21, 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 2021 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	.8	Ongoing
Business Manager	SAO1	1	Ongoing
Senior Policy & Investigation Officer (OIC)	SAO1	1	Ongoing
Principal Investigation Officer	SAO1	1	Fixed period HDA
Senior Investigation Officer	AO7	3	2 Ongoing, 1 Fixed period
Administrative Policy & Complaints Officer (OIC)	AO6	1	Fixed period
Senior Business Support Officer	AO6	1	Fixed period
Investigation Officer	AO5	1	Ongoing
Resolution Officer	AO4	2.5	Ongoing
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

Opportunities for staff professional development conducted or supported by the Office during 2020/21 included:

- Certificate IV in Government Investigations;
- Certificate IV in Business Administration;
- Applied Suicide Intervention Skills Training;
- Alert Domestic and Family Violence Response Training;
- Merit Selection and Special Measures;
- Decisions through an ethical Lens;
- How Ombudsman offices can get better at creating narratives through data presentation.

SYSTEMS, POLICIES AND PROCEDURES

The operations of the Office are supported by a range of systems, policies and procedures. The *Accounting and Property Manual* deals with a wide range of issues, including financial and procurement matters, corporate systems, Information and Communications Technology, Risk Management and Audit. During the reporting period, the Manual was reviewed and revised 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 and revised 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 were implemented during 2020/21.

Numerous other independent offices in the Northern Territory have taken up the Resolve system. We 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 Work Safe 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 2002 – Records and Archives Management*.

Information held by the Office

The Ombudsman holds information in the following categories:

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

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

Administrative and policy files

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

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

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

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

Complaint files

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

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

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

Legal opinions

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

Annual reports

Copies of the current Annual Report and some previous Annual Reports are available for downloading on the Ombudsman'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 2002* is to extend, as far as possible, the right of a person to access government and personal information held by government.

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

While some information held by the 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 2009*; or
- obtained or created under that Act in the course of or for making preliminary enquiries, or the conduct of conciliation, mediation, the police complaints resolution process or an investigation.

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

In 2020/21, the Ombudsman received no information access requests under the *Information Act 2002*.

Procedures for Correcting Information

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

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

In 2020/21, the Ombudsman received no personal information correction requests under the *Information Act 2002*.

APPENDIX A – POLICE COMPLAINTS AGREEMENT

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

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

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 2021

The Ombudsman's Office has three primary work units, Ombudsman Operations, Information Commissioner, and a new Judicial Commission function, which is in the process of being established.

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 new Judicial Commission function will receive complaints relating to the behavior or capacity of judicial officers and NTCAT members, and provide support to the independent Judicial Commission.

The net result for the Office during 2020-21 was a surplus of \$219,000. Savings were mainly due to additional funding for the establishment of the new Judicial Commission function received towards the end of the financial year. Further savings resulted from postponement or cancellation of a range of activities including regional outreach, meeting and conference attendance and staff development initiatives due to COVID-19.

Operating expenses for the period totaled \$2,951,000 comprising \$2,427,000 for employee expenses, and \$524,000 for administrative expenses (which included \$207,000 for the purchase of goods and services, \$302,000 for services received free of charge and \$15,000 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 2021 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
27th August 2021

DIMITRI PETRELIS
Acting Business Manager
27th August 2021

Comprehensive operating statement

For the year ended 30 June 2021

	Note	2021	2020
		\$000	\$000
INCOME			
Appropriation	4a		
Output		2 866	2 482
Goods and services received free of charge ¹	5	302	353
Other income ²	4b	2	0
TOTAL INCOME	3	3 170	2 835
EXPENSES			
Employee expenses		2 427	2 158
Administrative expenses			
Property management		15	22
Purchases of goods and services	0	207	197
Other administrative expenses ¹		302	353
TOTAL EXPENSES	3	2 951	2 730
NET SURPLUS/(DEFICIT)		219	105
		219	105

COMPREHENSIVE RESULT

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

² Includes input tax credits for the employee novated lease payments.

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

Balance sheet

As at 30 June 2021

	Note	2021	2020
		\$000	\$000
ASSETS			
Current assets			
Cash and deposits	8	1 943	1 641
Receivables	10	12	11
Total current assets		1 955	1 652
TOTAL ASSETS		1 955	1 652
LIABILITIES			
Current liabilities			
Payables	0	53	40
Provisions	14	476	406
Total current liabilities		529	446
TOTAL LIABILITIES		529	446
NET ASSETS		1 426	1 206
EQUITY			
Capital		295	295
Accumulated funds		1 131	912
TOTAL EQUITY		1 426	1 206

The Balance sheet is to be read in conjunction with the notes to the financial statements.

Statement of changes in equity
For the year ended 30 June 2021

	Note	Equity at 1 July	Comprehensive result	Transactions with owners in their capacity as owners	Equity at 30 June
		\$000	\$000	\$000	\$000
2020-21					
Accumulated funds		912	219		1 131
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 withdrawal^(e)</i>		(104)			(104)
		295			295
Total equity at end of financial year		1 206	219		1 426
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 withdrawal^(e)</i>		(104)			(104)
Total equity at end of financial year		1 101	105		1 206

The Statement of changes in equity is to be read in conjunction with the notes to the financial statements.

Cash flow statement
For the year ended 30 June 2021

	Note	2021	2020
		\$000	\$000
CASH FLOWS FROM OPERATING ACTIVITIES			
Operating receipts			
Appropriation			
Output		2 866	2 482
Receipts from sales of goods and services		14	13
Total operating receipts		2 880	2 495
Operating payments			
Payments to employees		2 342	2 065
Payments for goods and services		236	244
Total operating payments		2 578	2 309
Net cash from/(used in) operating activities	9	302	185
Net increase/(decrease) in cash held		302	185
Cash at beginning of financial year		1 641	1 456
CASH AT END OF FINANCIAL YEAR	8	1 943	1 641

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

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**
- 4a. Appropriation
 - 4b. Other income
 5. Goods and services received free of charge
- Expenses**
0. 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 lessee
- Liabilities**
0. Payables
 14. Provisions
 15. Other liabilities
 16. Commitments
- Other disclosures**
0. Fair value measurement
 18. Financial instruments
 19. Related parties
 220. Contingent liabilities and contingent assets
 21. Events subsequent to balance date
 22. Budgetary information

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 Judicial Commission role is to receive complaints relating to the behavior or capacity of judicial officers and NTCAT members, and provide support to the independent Judicial Commission.

The Ombudsman's Office is predominantly funded and therefore dependent, on the receipt of parliamentary appropriations. The financial statements encompass all funds through which the agency controls resources to carry on its functions and deliver outputs. For reporting purposes, outputs delivered by the agency are summarised into four output groups, Ombudsman's Office, Information Commissioner, Judicial Commission and Corporate and Shared Services. Note 3 provides summarised financial information in the form of a comprehensive operating statement by output group.

Additional information in relation to principal activities of the Ombudsman's Office and the 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 Ombudsman's Office to prepare financial statements for the year ended 30 June based on the form determined by the Treasurer. The form of agency financial statements should include:

- 1) a certification of the financial statements
- 2) a comprehensive operating statement
- 3) a balance sheet
- 4) a statement of changes in equity
- 5) a cash flow statement and
- 6) applicable explanatory notes to the financial statements.

b) Basis of accounting

The financial statements have been prepared using the accrual basis of accounting, which recognises the effect of financial transactions and events when they occur, rather than when cash is paid out or received. As part of the preparation of the financial statements, all intra-agency transactions and balances have been eliminated.

Except where stated, the financial statements have also been prepared in accordance with the historical cost convention.

The form of the agency financial statements is also consistent with the requirements of Australian accounting standards. The effects of all relevant new and revised standards and interpretations

issued by the Australian Accounting Standards Board (AASB) that are effective for the current annual reporting period have been evaluated.

Standards and interpretations effective from 2020-21

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

Standards and interpretations issued but not yet effective

No Australian accounting standards have been early adopted for 2020-21.

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

c) Reporting entity

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

The Ombudsman's Office is a Northern Territory agency established under the *Interpretation Act 1978 and Administrative Arrangements Order*.

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

d) Agency and Territory items

The financial statements of Ombudsman's Office include income, expenses, assets, liabilities and equity over which the Ombudsman's Office has control (agency items). 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 2019-20 financial year has been reclassified to provide consistency with current year disclosures.

f) Presentation and rounding of amounts

Amounts in the financial statements and notes to the financial statements are presented in Australian dollars and have been rounded to the nearest thousand dollars, with amounts of \$500 or less being rounded down to zero. Figures in the financial statements and notes may not equate due to rounding.

g) Changes in accounting policies

There have been no changes to accounting policies adopted in 2020-21 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. 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 2020-21 financial statements. This includes the limitation of outreach activities and other travel, as well as face to face training and meetings.

The Office also implemented modified working conditions arranging for staff to work from home on occasion in response to the pandemic and procured additional hygiene supplies and equipment to ensure the safety of those working in the office.

The exceptional expenses incurred relating to purchases of Goods and Services in response to COVID-19 totaled \$2,000 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's Office		Information Commissioner		Judicial Commission		Corporate and shared services ²		Total	
		2021	2020	2021	2020	2021	2020	2021	2020	2021	2020
		\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000
INCOME											
Appropriation	4b										
Output		2 866	2 482							2 866	2 482
Goods and services received free of charge	5							302	353	302	353
Other income ³	4d	2								2	
TOTAL INCOME		2 868	2 482					302	353	3 170	2 835
EXPENSES											
Employee expenses		1 569	1 472	400	427	14		444	259	2 427	2 158
Administrative expenses											
Property management		7	9	4	3			4	10	15	22
Purchases of goods and services	0	124	121	30	39	12		41	37	207	197
Other administrative expenses ¹								302	353	302	353
TOTAL EXPENSES		1 700	1 602	434	469	26		791	659	2 951	2 730
NET SURPLUS/(DEFICIT)		1 168	880	(434)	(469)	(26)		(489)	(306)	219	105
COMPREHENSIVE RESULT		1 168	880	(434)	(469)	(26)		(489)	(306)	219	105

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

² Include exceptional expenses incurred relating to COVID-19.

³ Includes input tax credits for the employee novated lease payments.

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.

4. Revenue

a) Appropriation

	2021			2020		
	\$000	\$000	\$000	\$000	\$000	\$000
	Revenue from contracts with customers	Other	Total	Revenue from contracts with customers	Other	Total
Output		2 866	2 866		2 482	2 482
Total appropriation		2 866	2 866		2 482	2 482

Output appropriation is the operating payment to each agency for the outputs they provide as specified in the *Appropriation Act*. It does not include any allowance for major non-cash costs such as depreciation. Output appropriations do not have sufficiently specific performance obligations and are recognised on receipt of funds.

b) Other income

	2021			2020		
	\$000	\$000	\$000	\$000	\$000	\$000
	Revenue from contracts with customers	Other	Total	Revenue from contracts with customers	Other	Total
Other income ¹		2	2		0	0
Total other income		2	2		0	0

¹ Includes input tax credits for the employee novated lease payments.

5. Goods and services received free of charge

	2021	2020
	\$000	\$000
Corporate and information services	301	352
Repairs and maintenance	1	1
	302	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.

Repairs and maintenance expenses and associated employee costs are centralised under the Department of Infrastructure, Planning and Logistics and form part of goods and services free of charge of the agency.

In addition, corporate services staff and functions are centralised and provided by Department of Corporate and Digital Development and forms part of goods and services free of charge of the agency.

6. Purchases of goods and services

	2021	2020
	\$000	\$000
Accommodation	-	1
Consultants ¹	18	16
Advertising ²	-	-
Marketing and promotion ³	2	-
Document production	1	1
Legal expenses ⁴	-	1
Recruitment ⁵	-	12
Training and study	9	7
Official duty fares	3	3
Travelling allowance	1	1
Information technology charges and communications	126	117
Insurance Premiums	8	8
Membership and subscriptions	5	5
Motor vehicle expenses	4	3
Regulatory and advisory boards and committees expenses	4	-
Other	26	22
	207	197

¹ Includes marketing, promotion and IT consultants.

² Does not include recruitment related advertising or advertising for marketing and promotion.

³ Includes advertising for marketing and promotion but excludes marketing and promotion consultants' expenses, which are incorporated in the consultants' category.

⁴ Includes legal fees, claim and settlement costs.

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.

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 2020-21 or 2019-20.

8. Cash and deposits

	2021	2020
	\$000	\$000
Cash on hand		
Cash at bank	1 942	1 641
	1 943	1 641

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 \$1 943 recorded in the balance sheet is consistent with that recorded as 'Cash' in the cash flow statement.

10. Receivables

	2021	2020
	\$000	\$000
Current		
GST receivables	4	4
Prepayments	8	8
Total receivables	12	12

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

Receivables are subsequently measured at amortised cost using the effective interest method, less any impairments.

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

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 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

Total property, plant and equipment

	2021	2020
	\$000	\$000
Plant and equipment		
At fair value	66	66
Less: accumulated depreciation	(66)	(66)
	-	-
Computer Software		
At fair value	400	400
Less: accumulated depreciation	(400)	(400)
	-	-
Total Property, Plant and Equipment	-	-

There was no movement in the carrying amount of property, plant and equipment during 2020-21 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.

Subsequent additional costs

Costs incurred on property, plant and equipment subsequent to initial acquisition are capitalised when it is probable that future economic benefits in excess of the originally

assessed performance of the asset will flow to the agency in future years. Where these costs represent separate components of a complex asset, they are accounted for as separate assets and separately depreciated over their expected useful lives.

Construction (work in progress)

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

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.

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:

	2021	2020
Plant and equipment	10 years	10 years
Intangibles	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

Inter-governmental leases

The Ombudsman's Office only holds leases with other government entities. The Ombudsman's Office applies the inter-governmental leases recognition exemption as per the Treasurer's Direction – Leases and recognise 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 Digital Development (DCDD). Consequently all lease liabilities and right-of-use assets relating to these arrangements are recognised by DCDD and not disclosed within these financial statements.

The following amounts were recognised in the statement of comprehensive income for the year in respect of leases where the agency is the lessee:

	2021	2020
	\$000	\$000
Intergovernmental leases	16	15
Total amount recognised in the comprehensive operating statement	16	15

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

	2021 ^(a)		2020 ^(a)	
	Internal ^(b)	External ^(b)	Internal ^(b)	External ^(b)
	\$000	\$000	\$000	\$000
Within one year	17	-	8	-
Later than one year and not later than five years	37	-	25	-
	54	-	33	-

^(a) Lease commitments not recorded as liability, which meet the lease exemptions detailed in Treasurer's Direction – Leases paragraph 6 including short term leases, low value lease assets, leases of other intangible assets and intergovernmental leases (paid as real charge).

^(b) Internal commitments reflect commitments with entities controlled by the NTG only where these are real charges and not notional charges (entities listed in TAFR 19-20 Note 45: details of controlled entities at reporting date), whereas external commitments reflect those to third parties external to the NTG.

13. Payables

	2021	2020
	\$000	\$000
Accounts payable	14	13
Accrued expenses	39	26
Total payables	53	40

Liabilities for accounts payable and other amounts payable are carried at cost, which is the fair value of the consideration to be paid in the future for goods and services received, whether or not billed to the agency. Accounts payable are normally settled within 20 days from receipt of valid invoices under \$1 million or 30 days for invoices over \$1 million.

14. Provisions

	2021	2020
	\$000	\$000
Current		
<i>Employee benefits</i>		
Recreation leave	382	325
Leave loading	29	28
Other employee benefits	2	2
<i>Other current provisions</i>	63	51
Total provisions	476	406

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.

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. Commitments

Commitments are those contracted as at 30 June 2021 where the amount of the future commitment can be reliably measured.

Disclosures in relation to other commitments are detailed below

	2021		2020	
	Internal ^(a)	External ^(a)	Internal ^(a)	External
	\$000	\$000	\$000	\$000
Other expenditure commitments				
Other non-cancellable expenditure commitments not recognised as liabilities are payable as follows:				
Within one year	-	22	-	-
	-	22	-	-

^(a) Internal commitments reflect commitments with entities controlled by the NTG (entities listed in TAFR 19-20 Note 45: details of controlled entities at reporting date), whereas external commitments reflect those to third parties external to the NTG.

17. 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.

18. Financial instruments

A financial instrument is a contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity.

Financial assets and liabilities are recognised on the balance sheet when the agency becomes a party to the contractual provisions of the financial instrument. The agency's financial instruments include cash and deposits; receivables; advances paid; investment in shares; payables; advances received; borrowings and derivatives.

Due to the nature of operating activities, certain financial assets and financial liabilities arise under statutory obligations rather than a contract. Such financial assets and liabilities do not meet the definition of financial instruments as per AASB 132 Financial Instruments: Presentation. These include statutory receivables arising from taxes including GST and penalties.

The Ombudsman's Office has limited exposure to financial risks as discussed below.

Exposure to interest rate risk, foreign exchange risk, credit risk, price risk and liquidity risk arise in the normal course of activities. The Territory Government's

investments, loans and placements, and borrowings are predominantly managed through the NTTC adopting strategies to minimise the risk. Derivative financial arrangements are also utilised to manage financial risks inherent in the management of these financial instruments. These arrangements include swaps, forward interest rate agreements and other hedging instruments to manage fluctuations in interest or exchange rates.

a) Categories of financial instruments

The carrying amounts of the agency's financial assets and liabilities by category are disclosed in the table below.

	Fair value through profit or loss			Fair value through other comprehensive income	Total
	Mandatorily at fair value	Designated at fair value	Amortised cost		
	\$000	\$000	\$000	\$000	\$000
2020-21					
Cash and deposits			1 943		1 943
Receivables ¹					
Total financial assets			1 943		1 943
Payables ¹			14		14
Total financial liabilities			14		14
2019-20					
Cash and deposits			1 641		1 641
Receivables ¹					
Total financial assets			1 641		1 641
Payables ¹			13		13
Total financial liabilities			13		13

¹Total amounts disclosed here exclude statutory amounts, prepaid expenses 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

fair value through other comprehensive income (FVOCI)

fair value through profit and loss (FVTPL).

Financial liabilities are classified under the following categories:

amortised cost

fair value through profit and loss (FVTPL).

These classification are based on the agency's business model for managing the financial assets and the contractual terms of the cash flows. Where assets are

measured at fair value, gains and losses will either be recorded in profit or loss, or other comprehensive income.

Financial instruments are reclassified when and only when the agency's business model for managing those assets changes.

Financial assets with embedded derivatives are considered in their entirety when determining whether their cash flows are solely payment of principal and interest.

Financial assets at amortised cost

Financial assets are classified at amortised cost when they are held by the agency to collect the contractual cash flows and the contractual cash flows are solely payments of principal and interest.

These assets are initially recognised at fair value and subsequently measured at amortised cost using the effective interest method, less impairment. The agency did not hold any financial assets in this category during the current or prior reporting periods.

Financial assets at fair value through other comprehensive income

Financial assets are classified at fair value through other comprehensive income when they are held by the agency to both collect contractual cash flows and sell the financial assets, and the contractual cash flows are solely payments of principal and interest.

These assets are initially and subsequently recognised at fair value. Changes in the fair value are recognised in other comprehensive income, except for the recognition of impairment gains or losses and interest income which are recognised in the operating result in the comprehensive operating statement. When financial assets are derecognised, the cumulative gain or loss previously recognised in other comprehensive income is reclassified from equity to the comprehensive operating statement.

For equity instruments elected to be categorised at FVOCI, changes in fair value recognised in other comprehensive income are not reclassified to profit or loss on derecognition of the asset. Dividends from such instruments continue to be recognised in the comprehensive operating statement as other income when the agency's right to receive payments is established.

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

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 initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost

using the effective interest rate method. The agency's financial liabilities categorised at amortised cost include all accounts payable.

Financial liabilities at fair value through profit or loss

Financial liabilities are classified at FVTPL when the liabilities are either held for trading or designated as FVTPL. Financial liabilities classified at FVTPL are initially and subsequently measured at fair value with gains or losses recognised in the net result for the year.

For financial liabilities designated at FVTPL, changes in the fair value of the liability attributable to changes in the agency's credit risk are recognised in other comprehensive income, while remaining changes in the fair value are recognised in the net result.

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

Derivatives

The agency may enter into a variety of derivative financial instruments to manage its exposure to interest rate risk. The agency does not speculate on trading of derivatives.

Netting of swap transactions

The agency, from time to time, may facilitate certain structured finance arrangements, where a legally recognised right to set-off financial assets and liabilities exists, and the Territory intends to settle on a net basis. Where these arrangements occur, the revenues and expenses are offset and the net amount is recognised in the comprehensive operating statement.

b) Credit risk

Credit risk is the risk that one party to a financial instrument will cause financial loss for the other party by failing to discharge an obligation

The agency has limited credit risk exposure (risk of default). In respect of any dealings with organisations external to government, the agency has adopted a policy of only dealing with credit-worthy organisations and obtaining sufficient collateral or other security where appropriate, as a means of mitigating the risk of financial loss from defaults.

The carrying amount of financial assets recorded in the financial statements, net of any allowances for losses, represents the agency's maximum exposure to credit risk without taking account of the value of any collateral or other security obtained.

c) Liquidity risk

Liquidity risk is the risk the agency will not be able to meet its financial obligations as they fall due. The agency's approach to managing liquidity is to ensure it will always have sufficient funds to meet its liabilities when they fall due. This is achieved by ensuring minimum levels of cash are held in the agency bank account to meet various current employee and supplier liabilities. The agency's exposure to liquidity risk is minimal. Cash injections are available from the Central Holding Authority in the event of one-off extraordinary expenditure items arise that deplete cash to levels that compromise the agency's ability to meet its financial obligations.

d) Market risk

Market risk is the risk the fair value of future cash flows of a financial instrument will fluctuate because of changes in market prices. It comprises interest rate risk, price risk and currency risk.

(i) Interest rate risk

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

(ii) Price risk

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

(iii) Currency risk

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

19. Related parties

i) Related parties

The Ombudsman's Office is a government administrative entity and is wholly owned and controlled by the Territory Government. Related parties of the agency include:

- the portfolio minister and key management personnel (KMP) because they have authority and responsibility for planning, directing and controlling the activities of the agency directly
- close family members of the portfolio minister or KMP including spouses, children and dependants
- all public sector entities that are controlled and consolidated into the whole of government financial statements
- any entities controlled or jointly controlled by KMP's or the portfolio minister, or controlled or jointly controlled by their close family members.

ii) Key management personnel (KMP)

Key management personnel of the Ombudsman's Office are those persons having authority and responsibility for planning, directing and controlling the activities of the agency. These include the Chief Minister and the Chief Executive Officer.

iii) Remuneration of key management personnel

The details below excludes the salaries and other benefits of the Chief Minister as the Chief Minister's remunerations and allowances are payable by the Department of the Legislative Assembly and consequently disclosed within the Treasurer's annual financial statements.

The aggregate compensation of key management personnel of Ombudsman’s Office is set out below:

	2021	2020
	\$000	\$000
Short-term benefits	296	288
Post-employment benefits	26	25
Total	322	313

iv) Related party transactions:

Transactions with Northern Territory Government-controlled entities

The agency’s primary ongoing source of funding is received from the Central Holding Authority in the form of output and capital appropriation. The agency also has significant transactions with the Department of Corporate and Digital Development for the delivery of goods and services and the Department of Treasury and Finance with regards to Payroll Tax. The agency’s transactions with other government entities are not individually significant.

Other related party transactions are as follows:

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

20. Contingent liabilities and contingent assets

The Ombudsman’s Office had no contingent liabilities or contingent assets as at 30 June 2021 or 30 June 2020.

21. 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.

The Treasurer has approved a carry over of \$219 000 in unspent 2020-21 funds as additional expenditure capacity in 2021-22.

22. Budgetary information

Comprehensive operating statement	2020-21 Actual	2020-21 Original budget	Variance	Note
	\$000	\$000	\$000	
INCOME				
Appropriation				
Output	2 866	2 516	350	1
Goods and services received free of charge	302	397	-95	2
Other income	2	0	2	
TOTAL INCOME	3 170	2 913	-257	
EXPENSES				
Employee expenses	2 427	2 235	192	3
Administrative expenses				
Property management	15	14	1	
Purchases of goods and services	207	267	-60	4
Other administrative expenses	302	397	-95	2
TOTAL EXPENSES	2 951	2 913	38	
NET SURPLUS/(DEFICIT)	219	-	219	
COMPREHENSIVE RESULT	219	-	219	

Notes:

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

1. Additional \$350 000 output appropriation received late in the financial year for the establishment of the new Judicial Commission.
2. Reduction in revenue/expenses for DCDD and DIPL goods and services received free of charge.
3. Increase in employee expenses for employment of temporary staff to backfill business support positions, and cater for increased workload associated with new and existing functions.
4. Savings partially due to postponement or cancellation of a range of activities including regional outreach, meeting and conference attendance and staff development initiatives due to COVID-19, offset by increase in expenditure relating to some establishment costs for new Judicial Commission function.

Balance Sheet	2020-21 Actual	2020-21 Original budget	Variance	Note
	\$000	\$000	\$000	
ASSETS				
Current assets				
Cash and deposits	1 943	1 641	302	1
Receivables	4	3	1	
Prepayments	8	7	1	
Total current assets	1 955	1 651	304	
TOTAL ASSETS	1 955	1 651	304	
LIABILITIES				
Current liabilities				
Payables	53	38	15	2
Provisions	476	406	70	3
Total current liabilities	529	444	85	
TOTAL LIABILITIES	529	444	85	
NET ASSETS	1 426	1 207	219	
EQUITY				
Capital	295	295	-	
Accumulated funds	1 131	912	219	
TOTAL EQUITY	1 426	1 207	219	

Notes:

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

1. Greater cash holdings due to operational savings, mainly due to additional output appropriation for establishment of the new Judicial Commission function received late in 2020-21.
2. Increased payables due to timing delays in receipt of invoices at end of financial year.
3. Greater provisions due to increased leave entitlements as a result of less leave taken in the reporting period because of COVID-19 travel restrictions affecting take up of leave, and taking up of new employees' existing leave provisions transferring in from other NT Government departments.

Cash flow statement	2020-21 Actual	2020-21 Original budget	Variance	Note
	\$000	\$000	\$000	
CASH FLOWS FROM OPERATING ACTIVITIES				
Operating receipts				
Appropriation				
Output	2 866	2 516	350	1
Receipts from sales of goods and services	14		14	
Total operating receipts	2 880	2 516	364	
Operating payments				
Payments to employees	2 342	2 235	107	1
Payments for goods and services	236	281	-45	1
Total operating payments	2 578	2 516	62	
Net cash from/(used in) operating activities	302	-	302	
Net increase/(decrease) in cash held	302		302	
Cash at beginning of financial year	1 641	1 641	-	
CASH AT END OF FINANCIAL YEAR	1 943	1641	302	

Notes:

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

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

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