



 **mbudsmant**NT



Annual Report 2023/24

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

Our Office acknowledges the traditional owners of the Northern Territory and recognises their continuing cultural and spiritual connections to their lands, waters and communities. We pay our respects to all Aboriginal and Torres Strait Islander people and their cultures, their elders past and present, and to future generations.



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OVERVIEW

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

During the year, there were dedicated staff performing OIC, JCO and OPCAT functions, however other staff contributed to the work of all offices. For example, the Business Services Unit supports all functions and the Deputy Ombudsman is also Deputy Information Commissioner and Deputy Principal Officer of the Judicial Commission.

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

Matters of note

Chapter 1 discusses some matters of particular note, including:

- the compelling case for cessation of spit hood use;
- the negative impacts of continued accretion of additional functions on the independence and effectiveness of the Office, without recognition that more functions require more funding;
- the need for adequate ongoing resources for all inspectors to undertake OPCAT functions;
- a detailed investigation report on separate confinement in Darwin Correctional Centre;
- a statutory report on firearm prohibition order powers of NT Police; and
- the importance of Government providing sustained support and resourcing for innovative programs.

Approaches received and finalised

Chapter 2 discusses the varying ways we approach our objectives. Chapter 3 provides detail on Ombudsman approaches received and finalised across the public sector during the year and discussion and examples of the types of issues raised in the context of a number of specific public authorities.

This year saw a decline in the number of new approaches to the Office to 2,010. A large contributor to the lower numbers was the continuation of a reduction in the number of new police-related approaches.

This enabled us to improve timeliness and reduce the number of cases open at the end of the year to within usual parameters, notwithstanding a large number of other demands on us. Of the 2,032 approaches finalised during the year, 95% were finalised within 90 days, while 87 approaches remained open at the end of the period.

Police conduct complaints continue to represent a major part of the Ombudsman function. They are routinely dealt with by the NT Police Professional Standards Command, subject to the oversight of our Office. Chapter 4 discusses some issues of relevance to NT Police, including use of force and escalation, care in custody, youth justice, care and protection of children, published reports on extraordinary restraints and body worn video use, vehicle safety, failure to update systems, protecting sources of information, and use of private security guards. It includes a variety of examples to illustrate the points discussed.

Chapter 5 analyses police conduct approaches and complaints received and finalised during the year, including a description of outcomes and the subject matter of sustained complaints. The Chapter also describes how police complaints are handled and the statutory audit, inspection and review functions undertaken by the Office in relation to law enforcement agencies.

Correctional Services is routinely one of the top two sources of approach to our Office. Chapter 6 discusses Correctional Services matters, including an overview report to the Commissioner, heat stress in prisons, women in prison and the use of police watch houses to detain prisoners. It also analyses Correctional Services approaches received during the year and provides examples of cases dealt with.

Other Ombudsman functions and activities

Chapter 7 discusses some of the other functions and activities we undertook during the year, aimed at promoting better government, including:

- contributing to NT Government policy development by:
 - providing input on a range of policy and legislative matters for consideration by Government;
 - serving on the Northern Territory Law Reform Committee;
- working co-operatively with other NT and interstate integrity and complaint bodies; and
- undertaking or contributing to training activities and presentations for public sector staff and a variety of community and stakeholder engagement.

Chapter 8 provides information about corporate aspects of the Office and our staff.

In preparing my final annual report as Ombudsman, I remain indebted to the staff of the combined offices and in particular, to the Deputy Ombudsman and others in my Senior Management Group.



PETER SHOYER
OMBUDSMAN
27 September 2024

KEY PERFORMANCE INDICATORS

Key Deliverables	2021/22	2022/23	2023/24
<p>Total approaches received</p> <p>Comprises all enquiries and complaints, including matters referred to another body or found to be outside jurisdiction.</p>	2,406	2,155	2,010
<p>Total approaches finalised</p> <p>Includes approaches carried over from the previous year and approaches re-opened after the end of that year.</p> <p>87 approaches were open at 30 June 2024, compared with 109 at 30 June 2023, 153 at 30 June 2022 and 313 at 30 June 2021.</p>	2,566	2,199	2,032
<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>	68%	68%	84%
<p>Other approaches finalised within 28 days</p> <p>Refers to all non-police conduct approaches, including local government.</p>	86%	91%	93%

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

COMPELLING CASE AGAINST SPIT HOODS

In June 2023, I finalised a report on police use of extraordinary restraints, spit hoods and emergency restraint chairs (ERCs).¹ Its primary focus was on their use on children and the investigation was conducted in co-operation with the Office of the Children’s Commissioner (OCC).

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

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

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

I also pointed out that the practical efficacy of spit hood use must be considered in light of comments around the ineffectiveness of alternatives such as Personal Protective Equipment (PPE) worn by officers in a physical struggle. Having considered the incidents scrutinised in the investigation, along with many years’ experience of reviewing police conduct complaints, it is clear that spitting most often takes place before any thought is given to use of a spit hood or PPE, and in situations where it is not physically possible to apply a spit hood or mask to an individual. It is not a practical option to apply a spit hood while an officer is physically struggling to apprehend someone or control them in a watch house.

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

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

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

¹ <https://ombudsman.nt.gov.au/news-and-publications/2023/extraordinary-restraint-spit-hood-and-emergency-restraint-chair-use-on-children-in-police-custody> .

SPIT HOOD SNAPSHOT

Spit hoods and children

- Spitting on anyone is abhorrent behaviour. It gives rise to a justifiable sense of revulsion and can disrupt the lives of police who need to take precautionary measures. Police deserve to be adequately protected.
- Genuine concerns of police officers about the risks of contracting communicable disease from being spat on are not supported by evidence.
- There are serious physical and psychological risks to children who are subjected to spit hood use.
- There were significant problems with the situations and ways in which police used and reviewed spit hood use on children in 2020 and 2021.
- The incidence of spitting can be reduced by improved understanding of, and communication with, children.
- There are viable alternative measures and protective equipment available to adequately protect police against spitting.
- Cessation of use of spit hoods on children should be maintained.

Spit hoods and adults

- The same factors are present for use of spit hoods on adults, although psychological risk factors may differ in degree for adults over 25.
- Those factors have supported cessation of use in all but one other police facility in Australia.
- NT Police should cease spit hood use entirely.

NT Police support

- It is essential for NT Police to support, educate and equip its officers to achieve the above ends.
- It is important for NT Police to work with stakeholders, including the NTPA, in planning and implementing change.

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

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

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

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

I also made a number of recommendations for action by NT Police for so long as any use of these restraints is continued. These are discussed further in Chapter 4.

The NT Government has expressed an intention to reverse the cessation of spit hood use on children. I note that NT Police now use an alternate hood described as a 'spit guard' (see photo right). This device was discussed in my report. However described (and I regard 'spit hood' as accurate), while it may reflect an improvement on the prior equipment, the fundamental issues with use remain the same.



I can understand a desire to support police officers and express disgust at the act of spitting on officers who are merely carrying out their duties. However, the available evidence simply does not support use of spit hoods as a viable ongoing option on children or adults. That is reinforced by a total cessation of use in relation to children and in all but one other Australian jurisdiction in relation to adults. The grounds for entirely ceasing spit hood use, and relying instead on alternatives, are compelling.

ACCRETION AND DILUTION

In my 2022/23 Annual Report, I drew attention to the importance of investing in change, noting:

... the growing reality is that many agencies working within budgetary restraints are finding it harder and harder to carry out their basic daily tasks, let alone innovate and explore approaches that will provide long term improvements. The need to find savings is a regular mantra but, after decades of efficiency dividends and in the absence of fundamental change, this simply equates to reducing service levels.

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

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

This is equally true for independent offices with responsibility to provide accountability and transparency to make sure government is working well and works better in the future.

Taking my Office as an example, over the course of my time as Ombudsman, numerous functions have been added to the Ombudsman's Office, including:

- the Office of the Information Commissioner (with funding transferred);
- the Judicial Commission Office (with additional funding allocated);
- Interim National Preventive Mechanism under OPCAT (temporary funding, now ceased);
- ongoing statutory review of police covert operations provisions (unfunded);
- statutory review of police firearm prohibition order provisions (unfunded);
- statutory review of police hand-held scanner provisions (unfunded);
- statutory review of police public disorder declaration provisions (unfunded);
- two statutory reviews of domestic violence information sharing provisions (unfunded).

In addition, it is anticipated that further functions conferred by legislation yet to commence will include:

- OPCAT Chief NPM Inspector (as yet unfunded);
- Official Visitor Program for adult correctional facilities (as yet unfunded).

The size and scope of functions of the NT public sector to which the Office provides oversight have also expanded significantly over the years, adding to workload.

The above are all perfectly valid and important functions for the Ombudsman's Office to perform. They enhance accountability and transparency of government.

However, the ongoing accretion of functions, the majority unfunded, and assigned at the instigation of line agencies that do not recognise a need to pursue funding to promote effective accountability and oversight, places a significant strain on any office that is already dealing with a growing and more complex public sector.

A key element of the role of an independent office is to monitor and pursue lines of enquiry and major investigations which the independent officer considers warrant attention. The continuing accretion of additional, unfunded statutory or other functions inevitably places pressure on the capacity of such an office to select and pursue such investigations. This is particularly true when the costs of doing business escalate each year with inflation. It is further exacerbated in a jurisdiction like the NT, when the size of independent offices is very limited, as is the capacity to absorb extra workloads.

It is essential for government to recognise and guard against dilution of the capacity and independence of independent offices by ensuring that adequate resourcing is a prerequisite for any proposal that calls for significant involvement of such an office. In my view, it would be timely to consider undertaking an independent review of the adequacy of funding provided to this Office to undertake its many functions. It may be that such a review could extend to funding and funding mechanisms for other independent bodies. It is vital that oversight bodies are able to remain proactive, strong and capable of identifying and addressing problems affecting government administration and officer conduct.

IMPROVING TREATMENT AND CONDITIONS OF PEOPLE IN DETENTION

Australia is a party to OPCAT², a United Nations treaty developed to improve the treatment and conditions of people deprived of their liberty.³

OPCAT requires Australia to set up a National Preventive Mechanism (**NPM**).

The NPM is a new function established to regularly examine the treatment of people in detention, make recommendations to improve their treatment and conditions, and submit proposals and observations concerning existing or draft legislation.⁴

The NPM will be made up of various national, state and territory bodies. In the NT, the Ombudsman, Children's Commissioner and Principal Community Visitor (the **NT NPMs**), are likely to be part of the NPM. The Ombudsman is currently the Interim NT NPM.

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

Ongoing funding for NPMs is essential

Implementation of the Australian NPM to date has been limited, with no agreement between the Commonwealth, states and territories on a funding model. Short term funding was provided by the NT Government to the NT Ombudsman as Interim NT NPM but there is no ongoing funding.

None of the NT NPMs can effectively implement NPM roles without adequate funding for OPCAT functions that are very distinct from their existing obligations.

Australia signed OPCAT 15 years ago but it is still not fully operational. OPCAT establishes a basic mechanism for preventing ill-treatment in detention. It is vital that all Australian jurisdictions reach agreement on implementation and adequate resourcing of OPCAT obligations.

OPCAT activities

During 2023/24, the NT NPMs undertook functions preparatory or complementary to the NPM role. For the Ombudsman, this included:

- actively participating in the Australian National Preventive Mechanism Network;
- contributing to various joint statements and submissions with Network members;

² *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.*

³ Places of detention include, but are not limited to, prisons, youth detention centres, police watch houses, court cells and closed environments in mental health, disability and aged care facilities.

⁴ 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.*

- attending information sessions on the role of NPMs and topics of specific interest; and
- consulting with a range of stakeholders.

Ombudsman officers also undertook *ad hoc* visits to adult correctional facilities to speak with prisoners about conditions and their experiences in those facilities.

This included visits to a number of police facilities that are being utilised by NT Correctional Services as short-term holding facilities for prisoners (see Chapter 6 for more on those visits). We also took the opportunity to speak with prison staff and leadership about prisoner management, emerging or systemic issues of concern and the role of the Ombudsman under OPCAT.

During the period, we finalised a detailed report for the Commissioner of Corrections which covers various themes arising from visits and complaints. This formed a basis for ongoing discussion with the Commissioner and Correctional Services around the treatment and care of prisoners.

In addition, we finalised an own initiative investigation into separate confinement practices in Darwin Correctional Centre under the *Ombudsman Act 2009* (see below).

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

For further information on OPCAT, see our [website](#) and the Commonwealth Ombudsman's website: <https://www.ombudsman.gov.au/industry-and-agency-oversight/monitoring-places-of-detention-opcat> .

SEPARATE CONFINEMENT

As explained above, Australia is a party to OPCAT, an international human rights protocol aimed at preventing torture and ill-treatment of people in detention. As NT Interim NPM under OPCAT, we consulted stakeholders and decided to proceed with a thematic review on one detention issue, in this case separate confinement in a prison.

Separate confinement is where a prisoner is locked away from contact with others and from participating in the normal prison routine. They are kept in a cell on their own. Access to basic and personal items can be very limited. They may be let out for an hour or two each day but that will often be only into a small, caged area adjoining their cell.

We focussed on two types of confinement:

- administrative separation, which could last up to 14 days; and
- Intensive Management Plans (IMPs), which usually involve a staged plan, with some stages involving separate confinement.

Extended separate confinement poses serious risks to the health and wellbeing of the prisoner. The risk of harm increases the longer the period of separation. The risks inherent in being kept confined without access to support or meaningful activities are readily apparent but this is backed by a wealth of research which we discussed in the report.

Prisoners said to us - "I see a lot of mates come back broken from it" and "IMPs make you worse – it makes you f**d in the head".

We looked at 36 cases over a 6 month period, where people were separately confined at Darwin Correctional Centre for over 3 days. This was not for punishment. This involved administrative decisions to lock someone in a cell on their own, for extended periods, in the name of management of the prison. This was a small number compared to total prison population but was still significant for the people who were kept isolated.

We accepted there are times when separating a prisoner for a 'cooling off' period may be necessary but considered keeping someone locked away should be a last resort and for the shortest time possible.

We faced problems because the records we were given were sparse. What we did get suggested substantial concerns in the approach to separate confinement. Records were very limited overall. For IMPs, it was frequently unclear just how much time a person had spent in separate confinement.

Our main findings were:

- separate confinement was used too often;
- it frequently lasted too long;
- people were frequently left alone in their cells with minimal human contact or purposeful activities for very long periods;
- there was a lack of guidance and support to help the prisoner return to the normal prison routine; and
- there were often repeated instances of separate confinement for the same person within a short space of time.

In essence, prisoners were largely left to reflect on and improve their behaviour in a sterile environment, usually without significant support. We could not see how this was helpful from the point of view of the prisoner or management of the prison.

We considered that, if a person has to be put into separate confinement, the key should be for the detaining authorities to do everything they can to set goals and give support to the prisoner to get them back into the prison community as soon as possible.

We made numerous recommendations for improvement. Some related to decision-making regarding placing people in separate confinement. Others related to treatment of people once in separate confinement. With regard to the latter, we identified the following positive elements that should be included in any instance of separate confinement:

- inclusive and individual planning;
- minimum restrictions needed in the particular case, adjusted in a timely manner as progress is made;
- clear and comprehensible goal setting to enable the prisoner to understand what is needed for progress;
- access to stimulating activities while in confinement;
- access to regular and meaningful human engagement;
- reasonable and daily time out of cell;
- access to effective behavioural rehabilitation options and health services;
- frequent and considered review of the need for separate confinement and plans.

We welcome the Commissioner's commitment to addressing the issues raised in the report, which he has recently restated. We will continue to work with Correctional Services to facilitate improvements.

FIREARM PROHIBITION ORDERS

The *Firearms Act 1997* was amended in 2020 to grant the NT Police Commissioner the authority to issue and enforce firearm prohibition orders (**FPOs**). These orders, issued under Part 8A of the *Firearms Act*, empower NT Police to proactively manage individuals deemed to be a risk to the community. A FPO prohibits an individual from possessing firearms, associating with individuals in possession of firearms, and from entering or remaining at specific locations and premises.

FPOs are enforced through various offence provisions outlined in Part 8A, as well as through the introduction of new and extensive search powers granted to police. These powers enable police officers to conduct searches on individuals subject to a FPO without a warrant or consent, if they believe a search is reasonably required to assess an individual's compliance with a FPO. Additionally, in limited circumstances, police may conduct warrantless searches on other people who are not subject to an order.

FPOs are intended to reduce the level of violence and prevalence of firearm-related crime in the NT by making it more difficult for violent offenders and individuals with a history of firearm offending or links to Outlaw Motorcycle Gangs or organised crime to obtain or facilitate the use of firearms.

Parliament acknowledged that these amendments constitute a substantial broadening of police authority, and that they encroach on a number of recognised human rights. In recognition of this, the Ombudsman was tasked with reviewing and reporting on the exercise of the powers in Part 8A.

A report on the review was given to the Minister for Police during the reporting period. It was not required to be tabled. A brief summary of the report follows.

The restrictions and police powers a FPO imposes go far beyond historical powers relating to the issue or refusal of firearm licences and the like. They impinge substantially on the freedom of people to go about their lives and pursue their livelihoods. They can restrict or hinder a person from carrying out basic daily activities such as visiting friends and family or picking up a child from a nearby property. They can narrow greatly the potential for an individual to earn a living. They last in most cases for ten years. They can be particularly problematic in rural or remote communities where gun ownership is common. Judicial officers have noted their prejudicial impact on fundamental rights to personal liberty, freedom of movement and privacy.

It is therefore important to consider the effectiveness and impact of the FPO scheme carefully and ask whether it is practically worth the intrusion into individual rights.

Within the initial two year review period only four FPOs were served. NT Police reported no FPO-related enforcement powers were used and no FPO-related charges were laid. We reviewed relevant materials and considered the decisions to issue FPOs were supported by cogent material capable of addressing the relevant factors under section 49F of the Act. The limited utilisation of Part 8A powers to date did not raise material concerns that the extent or nature of NT Police reliance on them exceeds the expectations of Parliament.

Early in the review, we identified a technical concern with the Commissioner's delegations. This was addressed in due course.

We identified potential improvements with regard to providing reasons for decision for issuing a FPO. The Act provides a discretion for the Commissioner to exclude reasons for decision concerning criminal intelligence reports or other criminal information. We noted that such information does not cover all the potential grounds for decision and considered the standard FPO form should be amended to provide space for written reasons where information is not covered by the exclusion.

Further, we emphasised that this is a discretion to exclude and that it is in the interests of justice for decision-makers to include in a FPO as much information about reasons for decision as is reasonably practicable, with information withheld only to the extent necessary to protect essential public interests. It is likely that there is much truly sensitive criminal intelligence information that will still be withheld but we considered that decision-makers should approach the task from the perspective that information, or at least a summary of information, should be provided to inform as far as practicable the subject of the exercise of such draconian powers.

Also on the topic of reasons for decision, we noted a possible issue raised by the treatment of classified information asserted by NT Police to be criminal intelligence, in NTCAT review proceedings, and the potential for disclosure to a subject person's legal representatives in such proceedings. We queried whether the potential for disclosure in the course of proceedings might be seen by some police as a constraining factor on the utilisation of Part 8A. We recommended that this potential and the possibility of different approaches to providing information on reasons for decision be considered by the NT Government and NT Police.

We also discussed a number of factors that warrant a further independent review of Part 8A in the future, namely:

- The small number of FPOs issued during the review period and lack of enforcement action give rise to a question of whether there may be, as yet unidentified, obstacles to the effective implementation of the scheme;
- The potential grounds for issue of a FPO under section 49F of the *Firearms Act* are very broad. While it has been applied in limited and justifiable circumstances to date, the provision invites far broader application in the future;
- The lack of reported enforcement activity meant a lack of opportunity for my office to scrutinise police implementation of FPO search powers. FPO search powers are arguably the most far-reaching aspect of the powers afforded to police under Part 8A, and in the wider Australian context have been the powers most scrutinised for potential misuse;
- The precise scope of the 'reasonably required' test that enlivens police exercise of enforcement powers remains open to question. Its meaning and operability may be clarified in the future, affording an opportunity to better consider the justification for the lower threshold at that time;
- The current paucity of evidence as to the effectiveness of the scheme, with the potential for better evidence to come to light over time as more FPOs are issued and enforcement powers are utilised.

Recommendations were made aimed at addressing identified issues, including a recommendation for a further independent review at an appropriate time in the future.

INNOVATION AND SUSTAINED SUPPORT

In *Women in Prison II* (2017)⁵, I made comments about the need for government to give steadfast and sustained support for innovation, persisting in the face of developmental challenges and setbacks, in order to achieve effective change.

I feel it is an opportune time to reiterate those comments, which I consider are broadly applicable across government programs:

28. *The NT Government must be at the forefront of community debate around criminal justice issues, explaining why change is necessary and supporting innovative and effective approaches to crime reduction, including rehabilitation.*
29. *Government must be steadfast in its support of new approaches, recognising the realities discussed in the following table — realities that are often overlooked in the turmoil of spontaneous reaction to newsworthy events.*

Program reality checks

<i>No program solves every problem.</i>	<i>Anyone can point to a theoretical gap or snag.</i>	<i>'Better' is a big step forward. Don't expect a panacea.</i>
<i>No program gets it right from the start.</i>	<i>No battle plan survives contact with the enemy.</i>	<i>Improving a program over time due to experience is a positive step, not a concession of failure.</i>
<i>We all make mistakes, prisoners and staff.</i>	<i>Individual failings may make a juicy story but they don't mean a program is failing.</i>	<i>Expect the best programs to be challenging and expect people to falter from time to time.</i>
<i>No program works overnight.</i>	<i>Monitor and evaluate but don't dismiss a program until it has had time to work.</i>	<i>Don't expect results today.</i>

⁵ <https://ombudsman.nt.gov.au/news-and-publications/2017/women-in-prison-ii-vol-1>

CHAPTER 2 – MANY STRATEGIES FOR BETTER GOVERNMENT

THE WAY WE WORK

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

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

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

- **Approaches – enquiries and complaints** – The bulk of our effort is spent in dealing with approaches to the office. 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. We focus on achieving fair treatment and outcomes for complainants. We do not represent or give legal advice to complainants. Approaches are discussed in Chapter 3.
- **Police conduct complaints** – Complaints about police conduct have their own statutory framework set out in the Act. While the emphasis remains on speedy and informal resolution of matters, more serious matters are subject to comprehensive investigation and reporting. In these cases, investigations are usually carried out by the NT Police Professional Standards Command (**PSC**) under Ombudsman oversight. Information on police conduct cases is set out in Chapters 4 and 5.
- **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.
- **Law enforcement auditing and investigation** – We have ongoing statutory obligations to audit/investigate and report on law enforcement use of surveillance devices, controlled operations powers and telecommunications interception powers. 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 completed a 'one-off' statutory review of the implementation of new Firearm Prohibition Order 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 7).
- **Community and stakeholder engagement** – Other issues can be raised, clarified and resolved through stakeholder meetings, presentations and public discussions or through provision of information and links to information, e.g., on the Ombudsman website (see Chapter 7).

For further information on our strategies see *What we do and how we do it*, at:

<https://ombudsman.nt.gov.au/about-us/what-we-do-and-how-we-do-it>.

OUR APPROACH

Key drivers that guide how we operate include:

- **Independence.** We have a statutory requirement to act independently. That independence has been strongly maintained in the 46 years since the Office commenced. It is reinforced by special provisions around appointment and termination of the Ombudsman and by annual appearances before a parliamentary committee.
- **Impartiality.** We make 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. We assess and investigate complaints without taking the side of government or complainants.
- **Legislative scope.** While independent, we are bound to comply with the law and act within the limits set by the Act. Our powers relate to administrative actions of public authorities and police conduct. There are some areas of government we are excluded from investigating, e.g., decisions of courts and ministers. If we can't help, we try to suggest alternatives.
- **Individual and systemic approaches.** Our initial focus is on resolving individual complaints in a timely manner. However, individual complaints, or a group of them, may point to systemic issues that should be addressed to facilitate better government for the future. In such cases, we try to resolve the immediate issue but may continue to investigate the systemic issues.
- **Recommendation only.** We make recommendations. While our recommendations are generally considered carefully by public authorities, we don't provide an enforceable outcome. This may influence whether we are the best forum for a complainant who is seeking a particular outcome, e.g., an order for monetary compensation.
- **Best forum.** We consider whether there is a better forum for a complainant, depending on our powers and what they are seeking to achieve. Other complaint/review bodies include the ICAC, the Children's Commissioner, courts and tribunals. We try to avoid unnecessary duplication of investigations and may refer a complaint or suggest a better alternative.
- **Investigations in private.** While we keep complainants and agencies updated on the progress of investigations, the Act requires us to investigate in private. We publish the outcome of a cross-section of complaints and investigations in tabled reports (either separate investigation reports or in our Annual Report).
- **Priority.** We have to act within available resources and accordingly make decisions on whether and how complaints should be dealt with based on our assessment of what best serves the public interest, bearing in mind the objects and provisions of the Act and other relevant legislation.

OUR PRIORITIES

The Office has in place a **Strategic Priorities** document as a guide for our actions from 2020 to 2024: [Our policies | Ombudsman \(nt.gov.au\)](#).

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.

Our strategic priorities guide how we operate and how we determine our priorities in dealing with public authorities. They are identified under the five aspirations 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.

For further information on our approach to our functions, see *What we do and how we do it*, at: <https://ombudsman.nt.gov.au/about-us/what-we-do-and-how-we-do-it>.

CHAPTER 3 – APPROACHES AND COMPLAINTS

NUMBER OF APPROACHES

In 2023/24, there were 2,010 new approaches to the Office (compared with 2,155 in 2022/23). These approaches were varied and included matters outside our jurisdiction (which we refer on where possible), quick queries, matters requiring more work on our part and complaints requiring significant investigation.

The 1,532 in-jurisdiction approaches in 2023/24 fell just under the figure for the previous year and also slightly under the 10 year average (1,601).

	2020/21	2021/22	2022/23	2023/24
In-jurisdiction cases	1,859	1,827	1,554	1,532

The number of more complex approaches declined from the previous year in line with the overall reduction in approaches received.

Complexity	2020/21	2021/22	2022/23	2023/24
Complex matters	331	267	224	204
Resolved expeditiously	352	386	426	302
Enquiries	1,770	1,751	1,504	1,495

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

The top 12 public authorities⁶ by number of approaches we received in 2023/24 are listed below.

Department / Agency	2020/21	2021/22	2022/23	2023/24
Police⁽¹⁾	687	653	492	510
Correctional Services⁽²⁾	517	530	497	453
Jacana Energy	115	86	131	118
Families, Housing and Communities	125	103	102	118
Power and Water	53	43	56	51
Attorney-General and Justice⁽³⁾	71	48	63	50
Infrastructure, Planning & Logistics⁽⁴⁾	48	36	47	48
Charles Darwin University	13	3	23	25
Education	29	16	18	23
Industry, Tourism and Trade	36	20	11	18
Health	44	190	23	15
City of Darwin	20	16	11	10

Notes

(1) NT Police recently separated from the Fire and Rescue and Emergency Services. Police figures for each year may contain a handful of approaches relevant to those functions.

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

(3) Includes Fines Recovery Unit (12), Public Guardian and Trustee (12), NT Work Safe (7), Crimes Victims Services Unit (5).

(4) Includes Motor Vehicle Registry (15), Building Advisory Services (10).

⁶ Authorities are described in this report as they were constituted during 2023-24. Subsequent machinery of government changes in 2024-25 will be reflected in the next annual report.

VARIATIONS AT AGENCY LEVEL

Police approach numbers saw a slight rise over a historical low in the previous year, from 492 to 510. Police conduct complaints remained static.

Families, Housing and Communities approaches rose from 102 in the previous year to 118, with Housing-related approaches rising from 83 to 93.

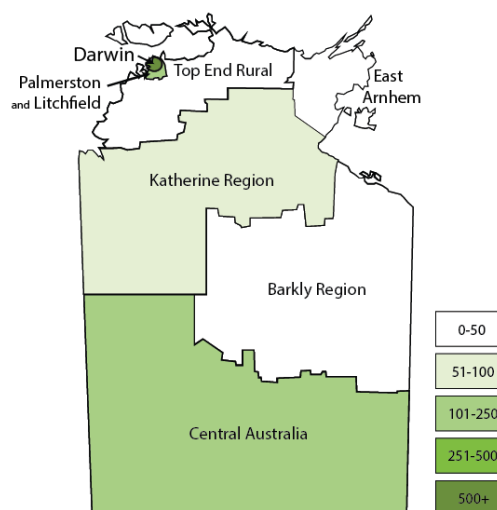
The majority of the other agencies either declined or stayed at a relatively consistent level compared with the previous year. Correctional Services approaches declined by 9%, Jacana Energy approaches by 11% and Attorney-General and Justice approaches by 21%.

Approaches in relation to local government councils remained at a similar level (37 this year compared to 38 the year before).

SOURCE OF APPROACH

Establishing the demographic make-up of people who approach the Office is difficult. People who make a brief phone call or contact us using e-mail or the online complaint form may not provide an address that shows the region where they live. The statistics by region shown below therefore exclude a large number of 'unknowns'.⁷

Region	%
Darwin	49.7
Palmerston/Litchfield	18.8
Alice Springs/Central	14.5
Katherine	8.5
Top End Rural	3.9
Barkly	3.0
East Arnhem	1.7



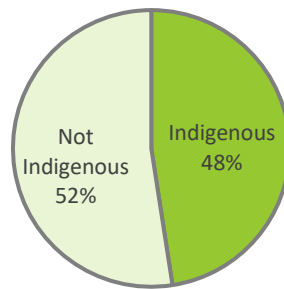
For similar reasons, it can be difficult to establish in the course of dealing with an approach whether an enquirer identifies as Indigenous. Our Office considers it important to obtain such information to help us identify any gaps in service provision and ways to improve our service.

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

In 2023/24, 24% of enquirers identified or were identifiable as Indigenous or representing an Indigenous person. However, over half of enquirers did not disclose a background at all, so these statistics are at best instructive rather than definitive. Of enquirers whose background was identifiable, 48% were Indigenous or represented an Indigenous person. This is broadly consistent with previous years.

⁷ They also exclude prisoners at correctional centres.

Complainants identifiable as Indigenous



HOW APPROACHES ARE MADE

The Office offers a range of options for contact.

In 2023/24, well over half of enquirers made initial contact with the Office by telephone.

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

Manner of approach	%
Telephone	56
e-mail	21
Referred (eg NT Police, ICAC)	13
Online form	6
Letter	2
In person	2

HOW QUICKLY APPROACHES ARE DEALT WITH

In 2023/24, 2,032 approaches to the Office were finalised, with 95% of those matters completed within 90 days, compared with 90% in the previous year.

Time taken to finalise - approaches finalised in 2023/24

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	42%	17%	26%	9%	6%	486
Other	82%	11%	5%	1%	1%	1,546
Overall	73%	12%	10%	3%	2%	2,032

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

These finalisation figures represented a substantial improvement over the previous year, particularly in relation to police conduct matters.

Age of open matters - 30 June 2024

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	7	15	14	10	3	49
Other	4	12	9	5	8	38
Total	11	27	23	15	11	87

This level of 87 open matters at a particular date is consistent with historical levels. This return from much higher levels (for example, 313 open matters, including 183 police conduct matters, on 30 June 2021) marks a significant achievement by the staff of my Office and the NT Police Professional Standards Command. The reduction in open matters over 180 days to 11 also represents a substantial reduction from a spike (predominantly of police conduct complaints) in recent years.

REFERRAL OR DECLINE OF APPROACHES

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

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

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

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

Referral to another independent body

In some cases, other complaint and investigative bodies have exclusive jurisdiction to deal with matters, while in others we may share jurisdiction. We may refer inquiries of this kind to another entity either informally or formally under section 32 of the Act. NT bodies of this type include:

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

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

Outside jurisdiction

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

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

In 'outside jurisdiction' cases, we attempt to either provide contact details or put the enquirer in touch with an entity that can assist them. In 2023/24, we dealt with 478 outside jurisdiction approaches compared with 601 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	2021/22	2022/23	2023/24
Consumer affairs	102	102	62
Health and community services	42	50	52
Employment	74	59	46
Financial services	36	40	27
Commonwealth government	27	30	26
Private housing	15	13	11
Telecommunications	10	17	10

ISSUES AND EXAMPLES FROM SPECIFIC AUTHORITIES

Utilities

Utility complaints continue to form a significant portion of complaints to our office.

As I discussed in last year’s Annual Report, part of this stems from ongoing overlap caused by the separation of the Power and Water Corporation into two government owned corporations – Jacana Energy and Power and Water Corporation – who, despite the separation, both continue to play interconnected roles in providing electricity to urban homes.

I noted that this shared responsibility requires Jacana Energy and Power and Water Corporation to work closely together to ensure electricity consumers don’t suffer from miscommunication, differences of opinion or blame shifting between agencies when a problem arises.

Our office has continued to emphasise this to both agencies when dealing with utility complaints throughout the year, and I am pleased to report that through our dealings we have seen improvement in how Jacana Energy and the Power and Water Corporation communicate with consumers in matters that involve both agencies, and how they work together behind the scenes to resolve issues.

I encourage Jacana Energy and the Power and Water Corporation to maintain their commitment to this joint approach, to continue their work to improve communication with consumers and to regard the consumer’s experience as a primary consideration in the performance of their work more broadly.

Jacana Energy

Jacana Energy approaches fell from 131 in 2022/23 to 118 this year. This compared with 86 in 2021/22, 115 in 2020/21 and 141 in 2019/20.

A list of issues raised in relation to Jacana Energy in 2023/24 are set out in the table below. The figures that follow are based on issues raised, not sustained issues.

Jacana Energy – Issues raised – 2023/24

Issue	Notes	No.
Excessive charges	Includes issues around estimation process and payment of refunds	35
Changed circumstances	Includes problems arising due to change in address or living arrangements, administration of estates, failure to disconnect on departure	21
Contact and communication	Includes problems with contacting Jacana Energy and poor communication	19
Financial hardship	Includes credit listing (5)	14
Billing	For example, bill not received, two bills received at same time, for wrong property, delay in sending	11
Solar	Includes issues relating to solar rebate changes, delay in paperwork for new systems, high estimates not taking solar installation into account	8
Fees	Includes issues relating to fees for connection and disconnection and administrative fees	5
Disconnection	Includes disconnection due to non-payment	2

Allegations of *Excessive charges* were again the most common issue raised, although lower in number than the previous year. Ten of these complaints arose after receipt of substantially increased bills following the introduction of new Smart meters, which are being rolled out across the NT. There were also two complaints about changes to billing formats following introduction of Smart meters.

We emphasised with Jacana Energy and Power and Water Corporation, the importance of ensuring that the new meters are accurate and that consumers are supplied with sufficient information to reassure them that this is the case.

The *Changed circumstances* description was broadened this year to include any issue around failure to disconnect on departure. We discuss this further below.

Notification of consumers about failed disconnections

In last year's report, I detailed the case of a consumer who was not notified that her electricity had failed to be disconnected. In response to Jacana Energy's position that it was not legally required to notify consumers in such circumstances and would not be doing so, I flagged that I would be looking at this issue more closely in the coming year.

To briefly recall the circumstances of that matter, Jacana Energy's failure to notify the consumer occurred in circumstances where it had also failed to share the gate access code provided by the consumer in her disconnection request with the contractor performing the disconnection. The consumer only found out about the failed disconnection a month later when she received a bill charging her for usage past the disconnection date, and then spent several more months trying unsuccessfully to sort out the problem.

We were able to quickly resolve the consumer's complaint, but it appeared to us that much of the pain could have been avoided if Jacana Energy had simply notified the consumer of the failed disconnection at the time. This would have prompted the consumer to address the problem with Jacana Energy before it ballooned out.

While there may not be a legal obligation to notify consumers where a disconnection can't be performed, this approach seems short sighted as any time or cost saved not notifying consumers is surely lost later when dealing with angry consumers scrambling to disconnect the power from a property they more than likely no longer live at nor have the ability to facilitate access to. This is so even where the consumer may be culpable for the failed disconnection attempt.

We have continued to receive complaints about this type of issue over the past year.

Example – Failed disconnection due to faulty lock

In this case, a consumer failed to have their electricity disconnected from their apartment as a result of a faulty lock on the meter box. They did not own the lock and they had no reason to apprehend that the technician would not be able to gain access to the meter.

The consumer was not notified of the failed disconnection, and they believed it had been performed as the bill following the disconnection attempt charged them for the disconnection and stated that there had been an 'actual meter read', indicating to him the technician had indeed gained access, not being aware that the read could be obtained from his smart meter remotely.

The consumer said he didn't receive a bill the following month, confirming in his mind that his account with Jacana Energy was finalised, but surprisingly received a bill for the month after. It was only in querying this bill with Jacana Energy that it informed him the disconnection attempt had failed. In responding to his query, the Customer Care Advisor apologised for not notifying him of the 'response status of [his] disconnection', despite it being Jacana Energy's position not to notify consumers, but reinforced that he was responsible for providing access to the meter and that as such he remained responsible for electricity usage and charges following the disconnection attempt.

In response to our inquiries, Jacana Energy acknowledged there were factors outside the consumer's control that prevented the disconnection going ahead, and as a good will gesture agreed to waive the second disconnection fee. It still, however, insisted that he pay for the electricity usage and charges following the failed disconnection. This required the consumer to work with his former property manager and the new tenant to transfer the electricity into the new tenant's name and have them agree to assume responsibility for the electricity charges they incurred after moving in. Thankfully for the consumer, the new tenant agreed to do so.

Example – Failed disconnection when complainant had legitimate expectation it could be conducted

In a similar matter, a consumer failed to have their electricity disconnected from their apartment as the access fob the technician held for the building was not working.

Again, the consumer was not informed of the failed disconnection attempt and only found out about it several months later when she received a bill containing charges past the disconnection date.

Jacana Energy agreed once more to waive the second disconnection fee but maintained that the consumer remained liable to pay for usage and other charges up until she could have the electricity disconnected.

Ultimately, due to the timing of the bill, and the need to arrange a second disconnection in difficult circumstances, the consumer ended up being charged for approximately an additional four months of electricity that she had not used.

It is also worth noting that it took significant effort from our office and Jacana Energy to arrange the second disconnection and make sure it went through.

These were not the only cases, and they demonstrate that there are many reasons a disconnection can fail to take place, not all of which are the fault of the consumer. Irrespective of whose fault it is, they make a compelling case for providing a simple, timely message to consumers to inform them about a problem with their disconnection and that they need to arrange another attempt.

In dealing with these complaints, my office has repeatedly suggested that Jacana Energy should institute such a practice.

In initial responses to our suggestions, Jacana Energy noted that it used to notify customers about a failed disconnection before resourcing issues made it impractical, noting again that it has no obligation to do so. In a welcome recent development, Jacana Energy advised that it has recommenced notifying customers by text when a disconnection attempt fails, but with the caveat that this practice is still subject to resourcing.

I commend Jacana Energy for changing its approach, and I am sure it will find that the resources it invests to communicate well with consumers pays significant dividends through receiving fewer complaints from consumers and inquiries from our office about these matters.

Power and Water

Power and Water Corporation approaches remained relatively steady at 51 compared with 56 in 2022/23. Some issues raised in relation to Power and Water Corporation in 2023/24 are described in the table below. The figures that follow are based on issues raised, not sustained issues.

Power and Water Corporation – Issues raised - 2023/24

Issue	Notes	No.
Excessive charges	Includes issues around estimation processes and payment of refunds	30
Works	Includes safety issues, failure to provide infrastructure, cost of provision or connection, inaccurate information, problems with infrastructure, damage due to works, remediation issues	9
Contact and communication	Includes problems with contacting PWC and poor communication	7
Billing	For example, bill not received, two bills received at same time, for wrong property, delay in sending	5

As in the past, the majority of issues related to concerns about excessive charging. These often arise due to access and estimation issues, water leaks and queries around the accuracy of meters.

Timely fixes

In my report last year, I detailed two cases where consumers' meters had faulted and weren't repaired for some time, leaving them with several bills that estimated their water or electricity usage.

Those cases explored issues with the estimation process itself, and this year my office sought to address the underlying issue of why it took so long to fix the meters in the first place. In our view, the quicker a broken meter is identified and repaired, the fewer estimated bills a consumer will receive, reducing several sources of complaint: concern about the accuracy of the estimated bills, bill shock from a lengthy period of underestimation, faulty appliances flying under the radar and significant reductions in water or electricity usage not being taken into account.

In looking into why some meters took so long to repair, we found an apparent gap in the *Water Metering Code* – an instrument that establishes the rights and obligations of customers and the Power and Water Corporation in relation to water metering. The Code provides that the Power and Water Corporation has 28 days to fix a broken meter. However, the 28-day timeline only commences after it has attended and determined that the meter is broken. There is no timeline in the Code for the Power and Water Corporation to attend and assess an apparently broken meter.

This results in what we saw as an artificial situation whereby the Power and Water Corporation can be said to be complying with the time requirements of the Code in circumstances where it has taken months to attend and inspect a meter it is aware may be faulty, such as in the following scenario.

Example – Significant delay in fixing a meter identified as having potential issues

A consumer's meter faulted in December 2022. Power and Water Corporation raised a meter assessment service request in mid-March 2023 due to the March cyclic read returning the same number as the previous billing period. Power and Water Corporation did not attend to assess the meter until mid-October 2023, some seven months after it became aware there was likely a problem with the meter. When Power and Water Corporation attended, it confirmed the meter had stopped recording and replaced it that day.

In explaining why it took so long to attend and assess the meter, Power and Water Corporation noted the delay was due to staffing issues and the need for a contractor to work through a long list of meter replacements spanning the breadth of the NT. It further noted that despite taking approximately seven months to attend and assess an apparently faulty meter, it had met the time requirements of the Code as it had replaced the meter on the day it assessed the meter.

A review of the *Water Metering Code* was conducted in early 2024, and we made a submission to the review based on the above and other similar cases. In our submission, we suggested the apparent gap in the Code be closed by introducing a time requirement for Power and Water Corporation to attend and replace apparently faulty meters.

To its credit, Power and Water Corporation acknowledged the gap, and while not creating a time requirement in the Code, instead agreed to introduce a time requirement in its *Customer Contract* to attend, assess and replace (if necessary) apparently faulty meters. We welcome Power and Water Corporation’s willingness to engage with our feedback and commitment to introduce measures to reduce delay.

Housing

During 2023/24, the public housing function was located within Territory Families, Housing and Communities. There were 93 public housing related approaches. Some of the issues raised are set out in the table below. The figures that follow are based on issues raised, not sustained issues.

Housing – Issues raised - 2023/24

Issue	Notes	No.
Conduct of tenants and third parties	Includes complaints about tenants, neighbour disputes, theft or damage to tenant property and anti-social behaviour	26
Repairs & Maintenance	Includes accommodating special needs	13
Allocation of housing	Includes priority housing	11
Tenancy management	Aspects of tenancy management such as inspections, removal or cleaning of property, facilities in property, approach to visitors staying on premises	11
Transfer of tenancy	Includes refusal to transfer and delay	8
Contact/communication	Difficulties in contacting Housing or poor communication	8
Financial issues	Includes rental amounts, debts, deductions and rebates	7
Property loss or damage	Caused by Housing or contractor	5

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

A tale of two houses – differences in oversight between public housing and community housing

While my office continues to receive individual complaints about public housing issues, this year it had cause to consider a systemic change to the makeup of social housing in the Northern Territory that may affect many public housing tenants.

In its *Northern Territory Community Housing Growth Strategy 2022-32*, the NT Government flagged its commitment to progressively convert up to 40% of urban public housing to community housing properties through long term leases of select properties to community housing providers registered with the National Regulatory System for Community Housing (**NRSCH**).

Public housing is housing rented by government to people on low incomes, whereas community housing is housing rented generally by NRSCH registered not for profit organisations to people on low to moderate incomes

In April and July 2024, two tranches of approximately 250 public housing properties were converted to community housing, and my office was interested to understand the impact the conversion would have, if any, on tenants' ability to effectively complain about the conditions and management of their property.

My office has the power to consider complaints about many actions and decisions in respect of public housing properties, however it is the responsibility of the Northern Territory Community Housing Registrar to deal with complaints about community housing providers.

We reviewed the complaint system for public housing against the complaint system for community housing and identified several areas where the community housing system did not appear to be as effective:

- Less data is published about complaints and their outcomes – resulting in lower transparency.
- The Registrar appears to have less jurisdiction than my office to deal with complaints – resulting in more tenants likely having to raise their concerns with the Northern Territory Civil and Administrative Tribunal, a costlier and potentially less timely avenue of redress.
- Community housing providers are each required to develop their own complaint policies and practices – resulting in different approaches to dealing with complaints and differences in information provided to tenants about the process.

To address these issues, my office recommended, among other things, that the Department of Territory Families, Housing and Communities and the Registrar work together to:

- Consider how the Registrar can commence annual reporting of high-level information about its complaint handling function.
- Engage with community housing providers to ensure they all provide clear, publicly available information to tenants about the complaint process and avenues of escalation.
- Produce best practice guidelines and a model complaint policy for community housing providers to use to create and update their own policies, noting that the Victorian Ombudsman had recently made a similar recommendation to the Victorian Registrar, which that Registrar accepted.

In response, the Department advised:

- It and the Registrar have discussed the potential to commence an NT-specific Annual Report for community housing, now that the sector has grown, which would be public and include high level information on the Registrar's complaints management function during the year.
- It will work with community housing providers through the contract management process to encourage clear information regarding complaints processes to be publicly available. The Registrar reviews the complaint policies and procedures of each provider during their initial compliance check. The Registrar, as part of ongoing compliance, will ensure that providers are managing and addressing complaints and appeals, including that information on complaints and appeals is readily available and promoted to tenants.

- The Registrar will review current community housing provider complaint processes and consider them against alternative models, including the Victorian model.

I welcome the Department and the Registrar’s attention to these issues. My office looks forward to engaging further with them about protections for community housing residents in the coming year.

Other authorities

During the year, we engaged with Territory and Commonwealth authorities regarding the proposal to establish a National Student Ombudsman. That function is due to commence in early 2025. Discussions are ongoing with regard to respective jurisdictions as well as processes for sharing of information and referrals.

The Office receives a number of complaints each year regarding tertiary educational institutions. Frequently these relate to issues such as processes for review of marking, credit for prior study and student placements. Most are either resolved quickly or do not identify issues with processes.

Example – Practical placement

A student complained to us about a fail grade she had received for a nursing practical placement subject. The student said she was forced to withdraw from the placement part way through due to the sudden onset of a serious illness, which would have prevented her from attending a significant portion of her hospital placement.

In the limited time the student had attended the placement, staff at the placement provider had developed concerns about the student’s knowledge, expertise, and ability to meet the required standard by the end of the placement. In such circumstances, the university’s policy is to commence an ‘at risk of failure’ process whereby a student is informed early of their risk of failure and given an opportunity, with support, to meet the required standard.

The university and placement provider were taking steps to commence this process with the student when the student became ill. The university then proceeded to fail the student on the basis that the student had not met the required standard, despite being unable to provide the student an opportunity to improve their practice as stipulated in the university’s policy.

We brought this issue to the university’s attention, and noted university policy also guided in situations of sudden illness that the university should consider whether the student is ‘unfit for practice’ and as such should be able to reschedule their placement. This option did not appear to have been considered.

We noted the policy itself was ambiguous in some respects and did not provide clear guidance to staff about how they should deal with difficult circumstances involving both competency concerns and serious illness.

The university engaged with the student and took steps to resolve the situation by rescinding the fail grade and working with her to arrange another placement. The university also acknowledged our concerns about its policy, and committed to review and rework its policy, where necessary, to improve its guidance to staff about how best to handle these tricky situations.

While complaints about provision of health services are generally referred to the Health and Community Services Complaints Commission, we interact with NT Health in relation to a range of other functions it is responsible for.

Example – Taking reasonable steps to ensure information is current and accurate

An organisation complained that its services to a client had been negatively misrepresented in court through a report prepared by NT Health.

The client had been charged with committing a crime and was found to be mentally impaired. The Court required the report from NT Health to help decide the nature of any supervision order it should make in respect of the client.

Such reports require the CEO of NT Health to provide certain information about the person at the centre of the court case, including information about services that are being provided to the person.

In response to our inquiries, NT Health stated that it had already obtained, through other means, a number of documents about the services provided by the organisation and didn't consider it was necessary to obtain information directly from the organisation. Our inquiries identified however, that the only recent document it had about the organisation didn't contain much information about the services the organisation had provided to the client. Furthermore, other available evidence indicated that NT Health had sought information direct from other key organisations providing services to the client, but not the organisation that complained to us.

In the circumstances, we considered that it would have been prudent for NT Health to have sought information direct from the organisation to ensure the court report contained correct and current information about the organisation's services.

We noted that while NT Health did provide guidance and training to staff about how to prepare these kinds of reports, there appeared to be room to improve its guidance to staff about the quality and sources of information relied on to write the reports. NT Health acknowledged this and revised its guidance to staff accordingly.

CHAPTER 4 – NT POLICE – ISSUES AND EXAMPLES

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

In each case example, investigations were undertaken by a NT Police Professional Standards Command (PSC) Investigating Officer (IO), subject to oversight by our Office.

USE OF FORCE AND ESCALATION

I have previously made comments regarding a tendency in some cases for inflammatory words or action on the part of police to unnecessarily lead to a requirement for use of force. Examples 1 and 2 illustrate this potential and the need for police to make every effort to maintain composure and a professional approach to the conduct of their duties. Example 3 relates to inadvertent use of force through the actions of a police dog. All three include an additional element relating to duty of care.

Example 1 – Escalation, Use of force and Duty of care

The complaint related to:

- the language and behaviour directed by officers towards the complainant in the course of his apprehension and processing by NT Police;
- uses of force against the complainant; and
- failings in the duty of care to the complainant.

Each complaint allegation was found by the IO to be sustained. In addition, several ancillary issues were sustained.

There were several complaints of inappropriate language and behaviour. The complainant was being uncooperative and verbally hostile but unprofessional and antagonistic responses of officers escalated the situation. There was still substantial scope to effectively communicate with the complainant, or for officers to simply remove themselves from interaction with the complainant to avoid the temptation to engage in verbal sparring which increased the likelihood of dispute and physical altercation. Disciplinary action was commenced in relation to two officers and Managerial Guidance under section 14C of the *Police Administration Act 1978* (the PAA) was given to another.

Complaints of excessive use of force included dragging the complainant from the cage of the police vehicle to a bench in the processing area and later forcing him onto the bench, ground stabilising him and carrying him to a cell. As noted above, the unprofessional approach of the officers escalated the situation. There was still substantial scope to communicate with the complainant, including giving instructions to co-operate in his exit from the cage and movement into, and conduct in, the Watch House. The force utilised went considerably beyond what should have been required. Disciplinary action was commenced in relation to two officers.

Duty of care issues related to failure to notify an expression of suicidal ideation, failings with the Custody Health Assessment (CHA) process, and failure to remove a drawstring from the complainant's shorts, with which he subsequently attempted self-harm. Disciplinary action was commenced in respect of the Watch House Keeper in relation to aspects of the care provided.

Managerial Guidance was given to an officer in relation to failure to report suicidal ideation comments. Whether or not these might have been later picked up as part of a comprehensive CHA process (which was not completed), it was essential for any comments of this nature to be passed on at an early opportunity by any officer who heard them.

Remedial advice was also provided to another officer who was aware of the need to remove the drawstring in the complainant's shorts but left him in a cell with access to the drawstring. It was accepted this was in the context of a physical confrontation and an immediate attempt to remove the drawstring may have been complicated by the ongoing dispute. It was also accepted that (thanks to the early intervention of the Territory Duty Superintendent) the complainant was left in a cell unobserved for only a very short time. However, failure to remove the drawstring (or, at least to ensure he was kept under close observation until he changed clothes) left the complainant in a situation where he could attempt self-harm in a cell of which police had only limited vision. It was incredibly fortunate that enquiries by the Territory Duty Superintendent prompted this officer to check on the complainant when she did, upon which she took immediate action to come to his aid.

Sustained ancillary issues related to failure to wear an accoutrement belt, failure to wear a Reception Officer ID brassard, failure to activate a body worn video camera (**BWV**), and placement in an observation cell that was not fully operational (the camera was obscured). Disciplinary action was commenced in relation to two officers and remedial advice given to another officer in relation to those issues.

Comments

I accepted the sustained findings in relation to each issue. I also accepted the commencement of disciplinary action, provision of managerial guidance and remedial advice notified by the IO to be appropriate in the circumstances.

I have previously commented on the importance of police adopting de-escalation strategies. It is incumbent on police to make every effort to de-escalate. This is particularly relevant in a situation such as this, where the individual is under control in a watch house situation. In such situations, police have time to take a step back and plan their next moves. They can move away for a time. They can seek other officers to assist or replace them. They can ignore verbal outbursts and challenges to their authority.

There is no doubt that people in custody can be abrasive, antagonistic and offensive. It is not surprising that police can become frustrated. However, it is part of their role to make every effort to maintain a professional approach and keep their frustrations in check. No-one expects that police will get it right every time. However, the approach adopted in this case was antithetical to the behaviour expected of police or any hope that the complainant could be processed with a minimum of animosity and aggression.

I urged that the officers involved should reflect carefully on the rapid and unwarranted escalation of the situation, leading to extensive use of force and failings in duty of care that gave rise to the real risk of serious harm.

Example 2 – Threatened use of force and Duty of care

A 12 year old was arrested for serious breach of bail conditions, being out at night (4:45am) and failing to keep his ankle bracelet charged. He escaped from the grip of a police officer but was re-apprehended shortly after.

When he started running an officer said, "Stop or I'll f**ing smash you". The officer acknowledged that this was not professional but said that what he meant by it was that he would take down or tackle the child if he did not stop. He acknowledged that the word "smash" could be interpreted differently and said the investigation had made him appreciate that its use was inappropriate. The IO concluded that the attitude and language used was not professional and was completely inappropriate for a police officer to use towards a child or any member of the public. Managerial Guidance was given to the officer.

It was difficult to accept the interpretation put forward by the officer. Anyone may make a poor choice of words in the heat of the moment but it is important for officers to be forthright in acknowledging error. The use of such language to a 12 year old was not only offensive but could not be expected to result in anything other than scaring him and motivating him to run faster from the threat.

The complainant also alleged he was deliberately tripped when he was apprehended but the IO found there was insufficient evidence to sustain the allegation.

After being remanded in custody, the complainant was transported for six hours and 45 minutes, handcuffed, in the cage of police vehicles, between police facilities. The complainant raised issues regarding the use of handcuffs, being transported in the cage in cold and wet conditions and not being given food or water on the trip.

The IO concluded the use of handcuffs was not unreasonable in the circumstances, citing the *Custody and Transport Instruction* which provided, “*The use of handcuffs is recommended whenever escorting a person in custody*” and stating that the child had just assaulted police by spitting at them and had tried to escape custody.

The potential for overuse of handcuffs is an ongoing issue of concern. Current police policies start from a default position that handcuff use is encouraged, in some cases followed up with a statement of the need to assess individual risk. While the latter provides a conceptually sound basis for decision-making, the distinct impression we gain is that officers are often inclined to abide by the general position without sufficient consideration of the need to assess risk. This encourages a default approach of handcuff use which is then frequently backed by officers on review.

In this case, it is hard to see justification for maintaining handcuffs on a 12 year old, locked in the cage of a police vehicle, for such an extended period. Handcuffs certainly could have no impact on the ability of the child to spit again. There were stops along the way but there is no compelling reason why the child could not have been effectively managed without handcuffs. We consider that NT Police should enhance guidance to officers around handcuffing, including the need to assess risk according to the particular circumstances and the individual being transported.

The IO also concluded that carriage of the child in the cage of the vehicle was not unreasonable. The complainant was given a mattress and a blanket but complained that they became wet. While it rained sporadically during the journey, the transport took place during the day and recorded temperatures varied from a low of slightly below 20 degrees to a high of 30 degrees or above. Even so, it is easy to see how travelling at speed in wet weather could have made it feel cooler and uncomfortable.

The IO stated that the cabin of the police vehicle was a confined space and that, if the complainant had spat or otherwise acted in a violent manner in the vehicle travelling at speed, there could have been catastrophic consequences. The IO also found that BWV did not show the child raising issues around wet conditions during welfare checks on the road. The IO indicated that NT Police acknowledges the limitations of current prisoner transport vehicles, including potential exposure to elements, and is reviewing transport options.

The child was rated low risk. The *Custody and Transport Instruction* stated that children should be transported in the back of the vehicle, with use of the cage only as a last resort. The rationale for avoiding risks of a detained person travelling in the back of a vehicle at speed are acknowledged. However, the aims behind this provision of the *Custody and Transport Instruction* are important and should be facilitated wherever possible.

The frequent need to transport people over long distances, due to the physical size of the NT, raises significant issues for NT Police and for the people transported. It is important for NT Police to actively explore solutions. One step they may wish to investigate in that regard is the potential for modifications to police vehicles to install a barrier that will provide protection to the driver and front passenger to facilitate use of the back seat for transport of people in custody in appropriate cases.

The IO also concluded that the child had been provided with adequate food and water and did not complain in this regard during any stops.

Example 3 – Police dog bite and Duty of care

I discussed use of police dogs at length in my 2022/23 Annual Report (pages 49-52). The following example was inadvertent in that the dog handler was distracted by his other duties and did not maintain control of the dog. However, it illustrates one risk involved in dog use.

The complainant displayed confrontational behaviour in front of police while exiting a music event. He was arrested and resisted arrest. A police dog handler was present. When the dog handler became physically involved in the arrest, his dog joined in and bit the complainant on the foot. This was not at the direction of the dog handler. It was described as an operationally conditioned response. The dog handler received remedial advice and undertook remedial training.

The officer in charge of dog operations also issued a section-wide email reminding dog handlers that when a patrol dog is deployed to use caution when dealing with intoxicated persons.

The complainant made other allegations about use of force during his arrest but the IO concluded the actions were not found to be unreasonable in the circumstances.

The complainant was conveyed to a Watch House, where the Custody Nurse advised that he should be taken to hospital for treatment. The complainant continued to display aggressive behaviour in transit. On arrival at the hospital, the complainant's handcuffs were removed and he was left at the hospital to seek medical treatment if he chose.

Police did not advise medical staff of his arrival or stay to assist staff, should that prove necessary. One officer stated that, given his animosity towards police, it was hoped police leaving the vicinity would help the complainant to calm down and seek medical assistance.

However, a difficulty with this approach was that the complainant was in custody, being transported for treatment for an injury that arose in custody, from a bite from a police dog. Another difficulty was that, given his previous behaviour, hospital staff might well be faced by a person who was still showing signs of aggression or aggravation to people perceived to be authority figures. And further, the complainant was left without transport in a somewhat isolated location. Whilst it is acknowledged that police have many competing demands on their time, all these points should have been subject to consideration and appropriate action by the officers involved.

The IO noted that police have a duty of care for any person injured while in police custody and a handover either in company with, or in the vicinity of, the complainant should have taken place. If the complainant refused assessment or treatment that could then have been recorded. Remedial advice was given to three officers in that regard.

CARE IN CUSTODY

All three of the above examples involved a failing in duty of care. Following is another example. Together they illustrate some of the challenges that face NT Police in the conduct of their duties but also the reasons why awareness and attention to providing an appropriate level of care are essential. This case also discusses the need to deal appropriately with a youth who complains as a victim of a criminal offence, even if they do so when they have come to adverse attention of police.

Example 4 – Duty of care and manner of criminal investigation

Police arrested a 14 year old in relation to an unlawful entry. The arrest was made in the back yard of a private residence following a chase. The child was sitting on the ground and complaining of a broken leg. Officers were dismissive. They lifted the child to his feet to get him to walk to a police vehicle about 20 metres away, despite his protests.

After a short walk, the child dropped to the ground. Police carried him the rest of the way. Once in the cage, a further assessment was made and an ambulance was called. The police vehicle met the ambulance a short distance way. The child was transported to hospital and treated for a broken ankle.

The IO concluded that police did not act out of malice but from a preconceived but unjustified notion that the child was faking his injury. One officer was given Managerial Guidance and another given remedial advice in relation to duty of care and managing a person who is unable to walk. An officer was also given Managerial Guidance in relation to talking in an unprofessional manner to the child at the time of the apprehension.

While being attended by ambulance officers, the child told police he had been hit on the back by a rock thrown by someone chasing him. A PROMIS case was created for this allegation and a person was interviewed but denied the allegation.

An officer subsequently attended a private residence, entered a bedroom and woke the child to seek further information in relation to the allegation of assault. The child initially said he was willing to make a statement but the officer told him that he would have to provide names of other parties at the location, including his alleged co-offenders. The child then declined to make a statement. The officer later explained to the IO that, failing provision of this information by the child, all lines of enquiry would be exhausted, as there was otherwise no way to identify witnesses to the alleged assault. The IO accepted that this was the case, noting that it was a matter for the child whether he supplied names of potential witnesses.

However, the IO considered that the approach of the officer in entering a bedroom, waking the child and saying that he would have to name alleged co-offenders, in the absence of a responsible adult, was unreasonable. An alternative would have been to leave a card and invite the child to arrange for an interview at a better time, with a responsible adult present. The officer was provided remedial advice in relation to the manner of investigation.

YOUTH JUSTICE

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

In 2023/24, 7 of the 23 Category 1/2 complaints received by our Office were made by or on behalf of a youth. Of 19 finalised Category 1/2 complaints involving a sustained finding, 7 were made by or on behalf of a youth. Sustained findings related to:

- unlawful detention;
- failure in duty of care;
- use of rude or offensive language;
- failure to adequately investigate;
- failure to take all reasonable steps to inform a responsible adult;
- failure to properly search systems;
- failure to protect property;
- failing with respect to accoutrements; and
- failure to make adequate records.

Examples 2, 4, 5, 6 and 9 in this Chapter relate to youths.

Example 5 considers obligations under the PAA with respect to the time for which a youth can be held in custody prior to being brought before a court. It also looks at complications that can arise in satisfying *Youth Justice Act 2005 (YJA)* provisions relating to the presence of a responsible adult, the need for clear communication between officers and the importance of recording of steps taken when dealing with youths in custody.

Example 5 – Extended detention of youth and finding a responsible adult

A 14 year old was apprehended early on a Sunday afternoon in relation to a number of offences. He was held in custody for over 30 hours before a Judge considered and refused bail. Concerns were raised regarding the length of his detention and investigations gave rise to a number of issues.

The child was arrested at around 1:05pm. Investigations were concluded in respect of the child and an arrest file to enable charging was delivered to the Watch House around 8:16pm.

There were complications with securing the presence of a responsible adult to meet YJA requirements and consequently the child could not be immediately charged. The father of the child had initially attended the Watch House but then left. Watch House officers advised that numerous unsuccessful attempts were made to call the father. Other youths were processed in the meantime. The child was considered likely to be refused police bail and, after 10pm, there was no opportunity for a Judge bail review until morning.

In the absence of the father, a Red Cross volunteer was ultimately contacted to act as a responsible adult so the child could be charged but they did not attend until after midnight. The child was charged and refused police bail at 12:59am, with the Red Cross volunteer present. He remained in custody overnight.

A new Custody Sergeant commenced at 7am the next morning, having to deal with over 20 arrests from the previous night and having only two of four rostered staff available for a 12 hour shift. The Custody Sergeant advised that numerous calls were made to a Judge from early in the morning and numerous bail reviews were conducted.

The Custody Sergeant stated he made numerous unsuccessful calls to the father of the child throughout the day but did not record them. He stated he discussed this with the Judge over the course of the day, who asked that further attempts be made to contact the father before conducting the bail review.

That evening, a Red Cross volunteer was arranged to attend as a responsible adult and another Judge conducted a bail review, with bail refused at 9:35pm.

Section 137(4)(b) of the PAA requires that to continue to hold a youth taken into custody, there must be four hourly reviews by a Senior Sergeant or higher ranking officer. Further, before the end of 24 hours, there must be an application to a Local Court Judge to continue to hold the youth.⁸

NT Police expressed their understanding that requirements under section 137(4) cease when the holding of the youth for the purposes of enabling them to be questioned or investigations to be carried out is no longer required. This would mean section 137(4) ceased to apply once police were ready to charge the child (at just after 8pm on the first night). There is some support for such an approach in the Explanatory Statement to the Bill that introduced section 137(4).⁹

⁸ A failure to comply with section 137(4) does not make any action unlawful (section 137(5)).

⁹ *Youth Justice and Related Legislation Amendment Bill 2019*.

However, this would mean that subsequent delays in actually charging a youth and in bringing a youth before a Judge, in this case due to the unavailability of a responsible adult, would not fall within the ambit of section 137(4).¹⁰

In this case, the first contact with a judge took place within 24 hours of the child being taken into custody but there was no evidence of four hourly reviews by a senior police officer. However, even on NT Police's interpretation, there would have been a requirement for a four hourly review before the investigation stage, and so the application of section 137(4), ceased shortly after 8pm on the Sunday.

The failure to conduct a review may be partly explained by confusion as to whether investigations had finished. A number of youths were arrested in relation to the same incident, and there appears to have been misunderstanding as to which of them required further investigation. One watch house officer stated they were informed investigations into the child had concluded (with the next step being charging). Further investigations in respect of the child were, in fact, necessary but this was not recorded in watch house systems. Even so, there was a clear failing in this regard. One officer was given remedial advice on the need to ensure compliance with section 137(4)(a).

If it has not already been clarified by a court, NT Police should provide clear guidance to members on the scope of section 137(4). If it does have a narrow scope as contended, the NT Government may wish to consider whether that scope should be extended to ensure protections for youths to situations where there are post-investigation delays in bringing a youth before a court.

It was accepted that the Custody Sergeant responsible for holding the child during the second day was operating in a very busy environment, with limited staff. He stated that he made a number of phone calls to attempt to contact the child's father. However, the IO noted that, given the length of time in custody, additional steps could have been taken, such as:

- tasking a general duties or other officer to attend the home of the father;
- contacting NAAJA, who had acted for the child previously;
- asking the child about any other person who might be called on to act as a responsible adult; or
- seeking advice from the Watch Commander.

Managerial Guidance was given to the Custody Sergeant in relation to the importance of:

- taking all reasonable steps to contact a responsible adult; and
- accurate recording of details to substantiate actions taken.

The use of force on arrest of the child was also reviewed and an officer was given remedial advice on the importance of assessing and reassessing in situations requiring force, in circumstances where it was considered a physical hold was maintained for approximately 30 seconds longer than necessary. The officer was also given remedial advice in respect of failure to complete a Use of Force case note.

CARE AND PROTECTION OF CHILDREN

In addition to justice-related functions, police also carry out functions in relation to the care and protection of children. These functions are carried out under, or to assist with, the *Care and Protection of Children Act 2007* (the **CPC Act**). Section 57(1) of the CPC Act allows police to remove a child from a place where the wellbeing of the child is at risk and take them to their usual place of residence or another safe place. They can use reasonable force to do so.

¹⁰ Even if that is the case, the requirement to bring the youth before a Judge as soon as practicable would still remain (section 137(1)).

These are functions where the focus is very much on the wellbeing of the child, not on the commission of an offence or other wrongdoing. Example 6 provides an illustration of police use of these powers.

Example 6 – Care and protection and property

At 3am, a 12 year old was cycling through town with friends. Police, who were responding to a report of a youth disturbance, asked him his name. He provided a false name. Police asked him whether that was his name and he tried to cycle away. An officer then held him with a one-handed escort. He provided his name and began to cycle away.

Police decided to apprehend him and take him home under section 57(1) of the CPC Act. An officer approached him and took hold of his arm. The child complained about the strength of the grip used to hold him. The IO found that use of force was not unreasonable.

The officers leaned the child's bicycle against a wall. They told him his friends could get it. They later informed his responsible adult that it had been left with a friend they named. This was not the case. The officers later searched for the bike but could not find it.

The officers stated that they did not believe the bicycle belonged to the complainant. One of them suggested that if they took the bicycle they believed they would be stealing it. Managerial Guidance was provided to the officers with reference to the failure to deal properly with the property and giving incorrect information. The complainant was provided an apology and an amount in compensation.

The officers placed the child in the cage of a police vehicle to transport him back to his home. Shortly after, a male adult and another child were also placed in the cage. We raised concerns about both steps.

The *Custody and Transport Instruction* stated that children should be transported in the back of a vehicle, with use of the cage only as a last resort. The IO noted that three officers were working from the vehicle and the back seat was occupied by one of them and their kit bags, stating there was no room in the cab. Notwithstanding this, we noted the bags could clearly have been shifted to the cage, making room for the child.

However, the IO also noted that it was clear to police that multiple people would require conveyance, including the other child and his father, who had asked for a lift. It was also noted the distance to the home of the complainant was only about 800 metres. For both issues, the IO concluded that the action was not unreasonable in the circumstances.

During the year, I also wrote to the Commissioner of Police in the context of another case in which a child had been conveyed in the cage of a police vehicle in the exercise of CPC Act powers. I suggested that, while use of force and the use of the cage of the police vehicle are matters for assessment by officers on the ground, every reasonable alternative should be explored, particularly in relation to a young child.

I stressed that children in such situations are not being detained for having committed an offence and that being placed in the cage is only likely to heighten their distress and agitated state. I emphasised that it is important that officers always give sufficient consideration to the fact that they are exercising a care and protection function, to the real level of risk posed by a young child and to how they can otherwise control the situation with the best interests of the child in mind.

I raised the importance of ensuring adequate guidance and training for police in relation to the exercise of this care and protection function, which should differ in many respects from the way police investigate and apprehend alleged offenders.

I referred to the *Care and Protection of Children Learner Guide* from the NT Police College. I indicated that it provides a brief introduction to the objects and principles underlying the CPC Act, including the best interest principle, the need for inclusion in decision-making and the need for culturally specific responses. However, I noted the bulk of the information in it deals with legal provisions and processes. In other words, the focus appears to be more on legal powers and responsibilities than on the importance of prioritising the care and best interests of the child.

I noted advice from NT Police that there are a number of officers who have undertaken Child Forensic Interview training or worked in the Child Abuse Taskforce who are likely to be well equipped to assist in CPC Act matters.

I said it is essential for NT Police to provide officers with the necessary guidance and training to ensure they are clearly aware of their responsibilities to children when they are performing functions under the CPC Act. I expressed the view that, in addition to awareness of legal powers and responsibilities, this should include significant emphasis on the principles underlying the CPC Act, particularly the need to act in the best interests of the child. I finally suggested that this may involve review of the emphasis placed on care and protection principles in guidance materials and training.

EXTRAORDINARY RESTRAINTS

In my report on police use of extraordinary restraints - spit hoods and emergency restraint chairs (ERCs),¹¹ I made a number of recommendations for action by NT Police for so long as any use of these restraints is continued.

I discussed responses to my report and implementation of recommendations in my 2022/23 Annual Report (at pages 11-12 and 41-44). The Commissioner of Police has subsequently provided an update on implementation of six ongoing recommendations (in italics) as follows:

Recommendation 1 - Agree in Principle - Complete

NT Police should, in all relevant documentation, guidance and training, place major emphasis on encouraging patience, empathy and connection as a routine first step in interaction with children and other members of the public.

Recruit and In-Service training includes effective communication and negotiation techniques to engage with people in difficult circumstances, no matter their age or vulnerability. This training includes, but is not limited to, cultural engagement customer service sessions, suicide and mental health intervention, incident management, operational safety training and first aid. Additionally, scenario training activities are based around the trainee selecting the most appropriate course of action by using effective communication, negotiation and de-escalation techniques. Additionally, the College every year provides an in-depth Investigative Interviewing of Vulnerable Persons (Child Forensic Interviewing) Course, which provides specialist police officers a specific skillset in communicating with children and youths as victims.

Recommendation 6 - Agree in Principle - Ongoing

NT Police introduce into its recruit training and ongoing professional development program for members practical, scenario-based training on the correct use of a spit hood. This training should, at a minimum, address the real prospects of contracting infectious diseases through spit, mucous or other bodily fluids, and test members ability to:

¹¹ <https://ombudsman.nt.gov.au/news-and-publications/2023/extraordinary-restraint-spit-hood-and-emergency-restraint-chair-use-on-children-in-police-custody> .

- a. utilise alternative strategies to avoid the use of a spit hood;*
- b. appropriately apply the threshold for use of a spit hood: that is, the existence of a threat to members or others beyond the general behaviour of spitting;*
- c. recognise the circumstances in which spit hoods must not be used; and*
- d. monitor the health and wellbeing of a person in a spit hood to a high standard.*

Spit hoods are only used on adult persons in custody at a Watch House. The use of spit hoods on children ceased on 6 October 2022.

The new 'spit guard' provides unrestricted eye contact to reduce wearer anxiety. The spit guard is only used within a Watch House environment, and is not to be used during the transport of persons in custody. This information along with other spit guard usage requirements, biohazard information, monitoring requirements and additional health and wellbeing information is provided within the NTPF Instruction on Custody and Transport.

The NTPF Operational Safety Section (OSS) provide training in the Emergency Restraint Chair (ERC), which highlights the option of spit guards within a Watch House environment; however, no specific training (verbal or practical) is currently provided by OSS in regards to the use of spit guards. Spit guard training is provided by individual Watch Houses, as spit guards can only be used within a Watch House environment by Watch House staff, and the majority of police do not work within a Watch House environment.

To ensure consistency in the training, the NTPFES College is currently working in conjunction with Risk Management and Internal Audit (RMIA) and Custody Managers to create an online training course for the use of spit guards. This course will be considered mandatory for all members who work in Watch Houses, and must be completed prior to using the device. The course is expected to be completed and ready for release during 2024.

Recommendation 9 - Agree in Principle - Ongoing

NT Police explore options to fill the therapeutic gap for crisis support for persons in custody, or at risk of being taken into custody, who are exhibiting extreme emotional distress or behavioural disturbance.

NT Police continue to strongly support the proposal to expand the operating hours and locations of Custody Nurses across the NT, with a view to providing a greater therapeutic model of support for persons in police custody who require medical intervention. Presently the Custody Nurse Service is only in major centres, and is not a 24 hour funded service.

NT Police also strongly support the extension of the Co-Response Operational Protocol for Collaborative Care (Mental Health Co-Response Team). Their aim is to deliver a collaborative response to a person experiencing a mental health emergency or crisis within a community setting, and prevent them from being taken into custody or admitted to hospital unnecessarily.

Recommendation 10 - Agree in Principle - Complete

For as long as ERC use is retained as an option for use of force by officers, NT Police expand on its ERC training module to incorporate scenario-based training on effective communication to avoid the use of an ERC, and practical strategies for effective health monitoring and rapid de-escalation to minimise the duration of use.

The Operational Safety Section (OSS) during their Defensive Tactics training package teach cell extractions to recruits. This training includes the use of an ERC, inclusive of scenario-based training involving the effective and safe use of an ERC. The training provided by the OSS

includes effective communication strategies, which promotes a safety first, minimal force only when required and the promotion of de-escalation techniques. This training is supported by the current NTPF Instruction on Custody and Transport, which details the requirements of using an ERC, including strategies for maximum times allowed for the use of the ERC, reporting requirements, health monitoring and de-escalation.

Recommendation 11 - Agree in Principle - Ongoing

For as long as ERC use is retained as an option for use of force by officers, NT Police review and consider amendments to the Instruction to address the following matters:

- a. to make clear the purpose of remaining with a child for the first five minutes they are placed in an ERC includes engaging with them in order to connect with and de-escalate their behaviour, and expand this requirement to any adult placed in an ERC;*
- b. require that the basis for an assessment of the need to continue restraint in a padded cell or ERC be recorded in the custody journal; and*
- c. ensure that the entire duration of ERC use, including wellbeing checks and assessments of the need to continue use, is recorded in a manner that captures both video and audio.*

The NT Police General Order and Instruction on Custody and Transport has been reviewed and the draft update is currently being assessed by the RMIA.

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

Recommendation 14 - Agree in Principle - Ongoing

NT Police develop a strategy for training and ongoing development for all NT Police members with respect to child development, the impact of trauma and disability on behavioural responses and specific communication and de-escalation for children.

The NTPF has mandatory online courses regarding Youth justice and Engagement. The course includes 5 modules on dealing with youth, in particular subjects including domestic and family violence situations, brain development and intellectual disabilities, foetal alcohol spectrum disorder and trauma.

Notwithstanding the mandatory online courses, the NTPFES College are committed to further developing a strategy and training in consultation with partner agencies, to improve the knowledge and communication skills of police when dealing with children.

BODY WORN VIDEO

In 2022/23, I finalised a report on police utilisation of body worn video (**BWV**): *Keeping a watchful eye*.¹² The report noted the substantial benefits of BWV for NT Police reviewing the actions of individual officers. BWV can be tremendously helpful in resolving conflicting versions of events regarding particular incidents. It is frequently crucial in quickly identifying the truth of the situation.

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

¹² <https://ombudsman.nt.gov.au/news-and-publications/2023/keeping-a-watchful-eye>

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

I discussed responses to the report and implementation of recommendations in my 2022/23 Annual Report (at pages 13-14). In that report, I noted a drop in the number of sustained Category 1 and 2 cases involving adverse BWV findings from 46 in 2021/22 to 17 in 2022/23. This dropped further to 5 cases in 2023/24 (all from complaints made in 2022/23).

Even so, there continue to be cases where there are adverse BWV findings, with outcomes such as:

- failure to turn on BWV in a situation where there was a blackspot for CCTV left unresolved an allegation of excessive use of force on arrest of a youth; and
- failure to utilise BWV (and attendant absence of audio) in a watch house setting left open questions in relation to adequacy of care for an injured person.

The Commissioner of Police has recently provided an update on implementation of recommendations (in italics) as follows:

Recommendation 1 - Ongoing

NT Police continue to maintain and adequately resource its broad-based Body Worn Video program.

The Axon Products Working Group is currently reviewing the number of 'licenses' required for NT Police and exploring a budget submission to address any shortfalls. This matter is ongoing and is a priority of the working group to resolve.

Recommendation 2 - Complete

NT Police senior executives actively express to the NT Government and to police officers, ongoing commitment to the BWV program, noting the numerous benefits for the community, the NT Police Force, the justice system and individual officers in maintaining broad-based use of BWV.

The Axon Working Group are currently exploring the role out of new upgraded BWV cameras for NT Police. The commitment to the BWV program is cemented in the role of the Working Group.

Recommendation 3 - Ongoing

NT Police continue to actively promote and closely monitor use of BWV by officers across the board, including enhancement of written guidance on its benefits and consequences of non-compliance.

Professional Standards Command (PSC) have attended each Sergeant's course that has been run since commencing in 2023. Additionally, PSC are currently providing education on BWV and the value of BWV through their workplace engagement and presentations. With the recent deployment of additional staff to Alice Springs, PSC provided talking points for front line supervisors on the importance of using BWV and how it can assist in reducing complaints against police.

BWV is monitored through Use of Force reviews and when issues are identified they are followed up with local management or referred to PSC, depending on the issue.

Recommendation 4 - Ongoing

NT Police develop clear policies and processes for notification of failure or loss of a BWV device and for replacement.

In late 2023, the rewrite of a range of internal policies was placed on hold. As of 25 March 2024, I have committed to establishing this team to continue to progress the role out of updated policy and procedures. Advice will be provided to your office as soon as the General Order 'Body-Worn Video Cameras and Evidence.com' has been completed.

Recommendation 5 - Closed

NT Police consider [several instances of refresher training].

As previously communicated, College staff do not support the creation of an additional refresher training package for members on probation. For officers who have or may have failed in some aspect of BWV utilisation, remedial or disciplinary action remains the preferred treatment, however remedial actions should be accompanied by a referral to undertake remedial BWV induction training or undergo one-on-one refresher training, as required. Of note the College has introduced Reality Based Training, which BWV was a key part. I note that you attended a session at the College which was facilitated by Commander PSC.

Recommendation 6 - Complete

NT Police continue to investigate and assess individual failings with regard to BWV utilisation, engaging as appropriate a range of training, personnel management and disciplinary options to promote effective utilisation.

The Operational and Safety Tactics and Training team at the College are now responsible for reviewing all uses of force and report any anomalies to either front line managers or PSC if there are serious concerns around the member's conduct.

...

Recommendation 8 - Ongoing

NT Police provide adequate internal personnel and resources to effectively maintain the BWV program.

Recommendation 4 of the Northern Territory Police Review, which has been accepted by the NT Government, will address this recommendation in full.

Recommendation 9 - Ongoing

NT Police:

- *establish a governance structure for the BWV program to oversight all aspects of administration and actively promote utilisation by officers. It should provide for ongoing oversight of BWV utilisation trends and identification of any potential risk areas.*
- *implement an audit program (with random and structured elements) to establish levels of compliance with BWV utilisation and other requirements, including storage, categorisation and access. Results of audits to be fed into the governance structure.*

The Risk Management and Internal Audit (RMIA) section have placed BWV compliance as a mandated audit on the next Annual Internal Audit Plan. The results of this audit will include any systemic issues and identified risks which will be provided to the Axon Working Group, PSC as well as the Audit and Risk Committee. These audits results will also inform the focus of future audits with regards to BWV compliance to ensure identified deficiencies and risk are appropriately addressed.

Recommendation 10 - Ongoing

NT Police develop a policy around use of non-BWV official and personal devices to record the exercise of police functions and activities. Issues for consideration in policy development [were set out in detail.]

As per recommendation 4, as of 25 March 2024, I have committed to establishing this team to continue to progress the role out of updated policy and procedures. Advice will be provided to your office as soon as the General Order BWV has been completed.

Recommendation 11 - Ongoing

NT Police review current categorisation and retention requirements to ensure they are effective from a practical perspective and comply with legislative records management requirements, including the Information Act. This may include exploring the potential for use of AP/ technology with service providers for the purpose of categorizing incidents for retention purposes.

The new General Order 'Body-Worn Video Cameras and Evidence.com' will specifically address this recommendation. Currently in draft, the document has the following information;

The retention period is in line with the Information Act and the relevant NTG record disposal schedules. Most minor offences are retained for a period of 7 years, moderately serious offences are retained between 30 and 75 years and serious offences are retained permanently.

There are 5 categories of BWV:

- Category A - permanently retained
- Category B - 75 years retention
- Category C - 30 years retention
- Category D - 7 years retention
- Category E - 2 years retention

All evidence must be categorised within 30 days. A category must be selected from the available list. To ensure that critical evidence is not deleted, NT Police have created a 6th category for all uncategorised BWV. The retention period for uncategorised BWV is 75 years.

Recommendation 12 - Complete

NT Police:

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

A Memorandum of Understanding (MoU) has been developed between NT Police and NAAJA to facilitate the sharing of BWV footage with NAAJA via evidence.com. This MoU was signed and is in effect as of the 19 September 2023.

To date we are seeing excellent results with NAAJA lodging 25 requests for BWV. As of 29 April 2024, only 9 of those matters have progressed to a complaint against police.

Through their proactive engagement with the workforce, PSC have been highlighting the MoU's existence and the value of BWV as a very effective tool in reducing complaints against police. PSC report NT Police members' feedback regarding the new MoU with NAAJA is positive.

With regard to Recommendation 12 and the MoU with NAAJA around early sharing of BWV footage, my Office is aware of further positive progress since the time of the update. A review is currently underway but initial outcomes are very promising.

VEHICLE SAFETY

In my 2022/23 Annual Report, I included a number of cases relating to police driving and vehicle safety. The further example below reinforces the importance of proper notification, recording and investigation of collisions involving police vehicles.

It also points to the importance of maintaining police integrity by acknowledging fault or the potential for fault in what was a relatively minor incident.

Example 7 – Driving and quality of internal investigation

A police vehicle was involved in a collision with a private vehicle. The driver of the private vehicle complained that police had identified her as the driver responsible for the collision. She stated that the police vehicle reversed into her vehicle, causing a moderate level of damage.

The matter was initially identified as suitable for the Complaint Resolution Process (CRP) but, in light of inconsistencies identified in early PSC investigations, it was escalated to a Category 2 complaint.

Police on routine duties were driving down a residential street. The complainant was driving behind them. Police heard a noise and stopped. The complainant stopped about 10 metres behind them. The driver of the police vehicle (the police driver) then reversed and struck the private vehicle. The police driver then had a discussion with the complainant during which he allegedly acknowledged he was at fault.

He reported the collision to his supervisor, who attended the scene. Both drivers were tested for alcohol (both negative) but otherwise no further enquiries were conducted. The supervisor essentially relied on the version of events from the police driver (that his vehicle was stationary on impact) to negate the need for further enquiries.

The police driver was then instructed on the steps he needed to take. He recorded some details on PROMIS but as a road crash, not a departmental crash. The details stated that the police vehicle was stationary, and the private vehicle had run into it. The crash was reported to the Southern Watch Commander who assigned it for action but there were delays in following it up. PSC investigations identified inconsistencies.

When later questioned, the police driver stated that he believed he had stopped his vehicle before the collision. He also stated he believed he had turned on his BWV. In a later interview, he said he believed he had stopped his vehicle but stated he was not confident and suspected he was still reversing. He also acknowledged, upon being shown images from another officer's BWV, that he had not turned on his BWV. The police driver was issued a traffic infringement notice. The identified issues with the police driver's version of events raised concerns and disciplinary action was recommended but he separated from NT Police before action was finalised.

On interview, the supervisor and others involved in, or having responsibility for, the investigation of the matter acknowledged aspects of the investigation were substandard. Managerial Guidance was given to three officers in this regard.

Police made arrangements for the repair of the private vehicle and apologised to the complainant.

FAILURE TO UPDATE SYSTEMS

I have reported over time on an ongoing number of instances where failings in updating or checking justice systems have led to unwarranted arrest and detention. The following two further cases finalised this year may be added to the tally.

Any unwarranted time in custody is a very serious matter. While there will always be the potential for human error, it is essential that precautions and systems be implemented to minimise the potential for such errors and for officers to make all reasonable enquiries when the potential for such an error is drawn to their attention.

Example 8 – IJIS and DVO service

This complaint involved inadequacies with recording on the Integrated Justice Information System (IJIS) and drew attention to a need for NT Police to establish the legal position with respect to the interaction between a police Domestic Violence Order (DVO) and an unserved court DVO.

The complainant was subject to a police DVO which had a 'non-contact' condition. A Court made a subsequent DVO (with a 'non-contact while intoxicated' condition). This DVO was served on the complainant in court. However, service was not recorded on IJIS and enquiries from police to the prosecutor about whether it had been served were not answered.

A third party made a report to police that the complainant had assaulted the person protected under the DVO. Police attended but the protected person refused to provide a statement. Police obtained a statement from a witness and again attended on the protected person to follow up and conduct a welfare check.

The complainant was present with the protected person and police arrested him for a breach of the police DVO non-contact condition.

The IO rejected allegations of excessive use of force on arrest.

The IO noted that NT Police instructs police officers that, "*positive intervention by police is vital to breaking the cycle of violence, and preventing further possible harm*" and that, "*the safety and welfare of the victim, the prevention of future violence, and the prosecution of offender/s are primary responsibilities of police*".

Regarding the arrest, officers advised that they took the view that there was insufficient evidence to prosecute the complainant for assault or criminal damage but that the police DVO would still operate in the absence of service of the court DVO.

The IO could not identify any legal opinion or case law on the ongoing operation of a police DVO when there is an unserved court DVO. The IO concluded that there was insufficient evidence to find that the action of officers in arresting the complainant for breach of the police DVO was unlawful. This raised a significant issue about which we recommended NT Police seek legal advice to inform future decisions. In that regard, NT Police advise that the matter has been clarified and amendments made to the relevant General Order to state, "*If a DVO has been varied by a court and the respondent has not been given a copy of the varied DVO, the respondent can still be guilty of contravening the DVO if their conduct constitutes a contravention of **both** the varied DVO and the DVO last given to them (section 120(2)(b)(iii)).*" NT Police also advise that the General Order contains examples to provide guidance to officers.

The IO concluded that remedial advice should be given to one officer to better record attempts to serve the court DVO. He also recommended that PSC correspond with the Department responsible for IJIS regarding deficiencies in recording. NT Police have confirmed that the Department has been advised and engaged with.

In the course of his arrest, the complainant attempted to advise police that he had paperwork to show he was not breaching his DVO. However, officers indicated they did not hear this at the time. Even so, one officer had a conversation with another person at the time who told him they would provide the orders. That person did not provide the orders prior to the officers' departure but, in the circumstances, it would have been prudent for the officer to liaise further with the person.

The IO concluded that reasonable avenues of enquiry had been left unexplored. The IO would have recommended remedial advice be given to the officer but he had separated from NT Police.

Example 9 – IJIS and the need to make reasonable checks

This case highlighted issues with failure to update IJIS and risks of reliance on only one system.

A female youth on a suspended sentence was resentenced following a breach. An initial condition relating to non-consumption of drugs and alcohol was not continued on resentencing but the IJIS entry was not updated to reflect this change.

Following a police search of the IJIS record, the youth was taken into custody at 8:50pm for breaching the condition and held in custody overnight. A complaint of unlawful detention was sustained.

The Custody Notification Service contacted the Watch House at 10:38pm to advise that it had been informed by NAAJA that the condition was not operative. The WebEOC note of the conversation stated that the Custody Sergeant would be notified. There were no other records of the conversation or indication they had been notified.

Such advice should clearly raise concern and should have led to further enquiries. IJIS showed the condition as operative but there were other systems that could be checked, eg, criminal history. Unfortunately, the Custody Sergeant was on long term leave at the time of the PSC investigation, limiting avenues of enquiry.

The next morning, NAAJA emailed the Prosecutions section with the same information at 8:48am, asking for an urgent review of the file and advice on what application the Prosecution would be making. The prosecutor responded that the youth had been apprehended for a breach of her conditions and NAAJA replied with more details. At about 10:15am, the youth appeared in court and was released because her suspended sentence was unconditional.

The Prosecutor was clearly occupied that morning with preparing for a full court load of approximately 80 files. He could not recall the specific case. In the circumstances, it appears he checked IJIS and consulted a supervisor but did no more until the matter came into court. The IO considered that approach not unreasonable in the circumstances.

The youth also complained that she had told apprehending officers about the change. Further, she complained that a phone was snatched away from her when she was talking to her mother in a cell. The IO found there was insufficient evidence to support a finding on either allegation.

Our Office raised a concern regarding limited record keeping in relation to the youth's behaviour and interactions with the youth while in custody. That issue was sustained, with remedial advice to be provided to the Custody Sergeant.

PROTECTING SOURCES OF INFORMATION

In particular cases, there are statutory obligations not to identify a source of information. Even if there is not, unless disclosure is essential or inevitable for the purposes of investigation (which it often will be), it is important for officers to maintain the privacy and confidentiality of a source whenever possible.

Example 10 – Disclosing a source

NT Police received a report of alleged child abuse from the complainant. During investigation of the report, an officer disclosed the identity of the complainant as the source of information. The complainant expressed fears for her safety because of the disclosure.

Attending officers said there was confusion because the incident was tasked to them as a child welfare incident, not as an indecent or sexual assault. The IO confirmed this was the manner in which the job was recorded but concluded that, regardless of the job type, officers should not have disclosed the complainant's name.

Managerial Guidance was given to one officer and a broadcast disseminated explaining obligations in relation to protecting persons making a report under the CPC Act. NT Police also apologised to the complainant.

PRIVATE SECURITY GUARDS

During the year, there was public discussion of the use of private security guards to patrol public areas, including suburban streets. I sought and received helpful briefings in relation to this practice. It was clear that the work of private security guards formed part of a broad strategy closely guided and monitored by NT Police's Territory Community Safety Coordination Centre (TCSCC).

I subsequently wrote to the Commissioner on the matter, including the following commentary and suggestions:

It is clear from our discussions [with NT Police staff] that, over the course of contract development and implementation in recent times, there has been considerable thought put into the approach to necessary elements of such arrangements. I have listed below what I regard as essential elements for arrangements of this type, if it is considered necessary and appropriate to maintain them in the future. It is clear that many of those elements are already evident to, and being implemented by, the officers involved in reviewing and preparing relevant documentation. I nevertheless consider it helpful to set out those elements for future reference.

It is evident that involving private security guards in routine monitoring of suburbs and public spaces gives rise to an increased level of public sensitivity. People may be used to seeing a level of police presence on the streets but are not universally welcoming of security guards patrolling those spaces. It is important that the reasons for such involvement and limitations on the roles and powers of private security guards in this context are made clear to members of the public.

It is also essential that the guards themselves are made very aware of both public sensitivities and the limits on their powers. It should be made clear to them that even the limited powers they might exercise in guarding private or discrete government-owned properties will not necessarily be available to the same extent when they are patrolling a public locality. Regular guidance to private security officers on their role in these particular circumstances and a reinforcement of the limits of their powers should be important management tools to ensure that the object of this arrangement (i.e. a visible reassuring presence in public spaces) is supported and adhered to.

This distinct role for private security officers warrants additional scrutiny by government beyond reliance on standard security licensing and complaint provisions. In part, this is achieved by the daily involvement of firms in briefings around safety and security issues. However, I consider it should also extend to reporting and monitoring requirements within contracts for provision of the services. Such reporting and monitoring provides a mechanism for closer scrutiny and action by government in the event there are failings on the part of individual guards or more generally on the part of security firms.

With that in mind, I regard the following measures as important to maintain effective management and public trust in such arrangements:

- *Ensuring contracts include:*
 - *requirements for security providers to:*
 - *record detail of all 'incidents' (need to define, at least including any use of force or unusual incident and any complaint);*
 - *report all incidents to the contract administrator (currently NT Police);*
 - *provide the contract administrator with further information about incidents and complaints on request;*
 - *have an internal complaint mechanism in place;*
 - *publish and inform enquirers about how to access the internal complaint mechanism;*
 - *publish and inform enquirers about external complaint mechanisms, eg., Director of Private Security Regulation or Police (for criminal offences);*
 - *regularly remind all private security officers of limits on their role and powers when carrying out such functions.*

- *capacity for the contract administrator to review the actions of individual private security guards and the firm during the contract and require that an individual guard is not utilised further in the provision of contracted services, or to terminate the contract if failings are of sufficient gravity;*
- *acknowledgement of the capacity for the administrator to refer an incident or a series of incidents to the Director;*
- *capacity for the administrator to refine or limit the scope of activities during the term of the contract (eg, defining or confining the scope of actions such as the manner of interaction with members of the public, use of weapons or dogs).*
- *Ensuring there is an effective and appropriately resourced internal mechanism within the administrator for monitoring and review of contract performance;*
- *Ensuring that there is an effective and appropriately resourced mechanism for administrator evaluation of performance prior to any extension of a contract/new contract;*
- *Government review whether it is prudent to exclude certain features that might otherwise be present when engaging such services (eg, carrying particular weapons or patrolling with dogs);*
- *Government publish clear explanations about the nature and scope of the functions being carried out by private security guards in public places – including information about available complaint mechanisms.*

The Commissioner replied advising that several of the matters I raised were already included in current operational management of existing services.

He stated that any future arrangements would utilise government panel contracts for greater operational direction, accountability and governance arrangements, and that this will ensure appropriate span of control and capacity for variations as security needs emerge or transition.

In addition, he advised that there will be mandatory inclusion for every security contract or service to include cultural competency relevant to the region of operations, mandatory reporting of physical engagement with clients and established complaint mechanisms to the licensing authority and the contract provider.

He advised that work remains ongoing with existing providers to ensure culturally appropriate engagement, with information readily available in the event of an incident or need for a complaint or concern to be raised by members of the public or persons directly engaged with.

He stressed that the safety of the community is paramount and acknowledged that some of the persons engaged with through these services are amongst our community's most vulnerable and in need of respectful engagement in a safe environment. He concluded by saying that ensuring a complaint mechanism and standard engagement practices across all services are essential to provisioning this service.

OTHER POLICE-RELATED MATTERS

I have previously commented on a substantial backlog of police conduct cases under investigation by PSC subject to the oversight of our Office. Further significant progress has been made in addressing that backlog. The number of open police conduct matters at end of financial year fell from 183 in 2021 to 71 in 2023 and again to 49 at 30 June 2024. At that time, the number of open police conduct matters over 6 months old had fallen to 3.

Other police-related activities during the year included:

- a series of ongoing discussions with PSC around enhancing the processing of police conduct complaints;
- contributing to an external review of police functions commissioned by the NTG;
- writing to the Commissioner in preparation for a statutory review of hand-held scanner (wanding) provisions, to take place in 2025;
- writing to the Commissioner in preparation for a statutory review of public disorder declaration (curfew) provisions, to take place in 2025; and
- working with the ICAC and the Commissioner to develop a Memorandum of Understanding in relation to oversight of critical incident management (ongoing).

CHAPTER 5 – NT POLICE - APPROACHES & PROCESS

This Chapter:

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

POLICE CONDUCT APPROACHES

Approaches received

Police conduct approaches can be distinguished from other approaches to NT Police. These may relate to broader issues regarding police powers, for example installation of CCTV, and other functions such as working with children checks and general administrative and employment functions.

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

Received	2021/22	2022/23	2023/24
Approaches	612	465	464
Complaint Resolution Process	186	161	177
Category 2	66	44	23
Category 1	1	3	0

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

***Category 1** cases are the most serious level of complaints.*

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

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

For more on complaint classification, see [How Police conduct approaches are dealt with](#) later in this Chapter - and the Police Complaints Agreement at Appendix A, in particular, clauses 12.3, 12.2 and 11.2.

The total number of police conduct approaches received remained steady at 464, maintaining a marked decline from prior years (for example, 612 in 2021/22). The total number of more serious complaints received (Category 1 and 2) declined again to 23, from 47 in the previous year, 67 in the year before that and 82 in the year before that. This is clearly a positive development. The number of CRPs remained relatively consistent with prior years.

Of the new Category 1/2 complaints received, 7 were made on behalf of youths, down from 13 in the previous year.

Breaking down the Category 1/2 matters received by region of origin, 8 were from Central Australia, 7 from Darwin/Palmerston/Top End, 5 from the Katherine region, 2 from the East Arnhem region and 1 from the Barkly region.

Police conduct outcomes

Police conduct issues may be identified in a complaint to NT Police or our Office, by the NT Police Professional Standards Command (PSC), by the NT Police Investigating Officer or by staff of our Office. Frequently, more than one issue is identified in relation to a particular complaint.

Category 1 and 2 complaint outcomes

A total of 33 Category 1/2 complaints were finalised during 2023/24.

Category 1/2 complaints finalised	2021/22	2022/23	2023/24
Category 1	2	6	2
Category 2	105	83	31
Total	107	89	33

Of those finalised complaints, 19 involved a finding that at least one issue was sustained.

How finalised	2021/22	2022/23	2023/24
Category 1 – sustained issue	2	5	1
Category 2 – sustained issue	80	42	18
Deferred in light of disciplinary action / charges	2	11	0
Total	84	58	19

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.

Five complaints finalised in 2023/24 involved sustained findings of failure to appropriately utilise a body worn video camera (BWV). That was a marked drop compared with 46 in 2021/22 and 17 in 2022/23.

A further 10 cases involved findings of failings in relation to keeping accurate and comprehensive records. This included findings such as failing to complete, or to adequately complete, Use of Force entries, a PROMIS entry, a WebEOC entry, an Offender journal entry, Custody Health Assessments and Custody Illness and Incident Reports.

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

Sustained Issue Type	Cases
Behaviour – abuse/rudeness/insensitivity	6
Failure to provide adequate care, eg, response to health issues, aftercare after spray or Taser	5
Practice/procedure – failings in processes, searches, accoutrements, knowledge of powers/law	3
Arrest/custody – use of force	2
Information – inappropriate disclosure	2
Practice/procedure – effecting rights of detainee or victim, eg, interview, interpreters, notification	2

Arrest – unlawful / inappropriate arrest/detention / fail advise reason	2
Property – damage, improper removal, disposal or care	2
Investigation – failure to undertake / inadequate / delay	1
Supervision	1
Vehicle safety and control – includes traffic breaches	1
Complaints against police – failure to take/adequately investigate complaint, failure to report questionable conduct, delay	1

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

Outcomes for individual complainants included further explanations and apologies.

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

- the need for works to be undertaken to improve security at police facilities;
- circulating a broadcast on proper processes for reception of individuals into watch houses, focussing on the custody health assessment process;
- circulating a broadcast on protecting the identity of individuals who provide information to police;
- contacting the Director of Public Prosecutions and the Department of the Attorney-General and Justice regarding service of DVO orders and recording orders on justice systems;
- circulating a broadcast instructing that BWV be used when dealing with people in custody within a watch house environment, to enhance video and audio coverage; and
- sending a section-wide email to dog unit members on the need to use caution when dealing with intoxicated individuals.

Examples of some police conduct complaints finalised during the year appear in Chapter 4.

Internal Investigations outcomes

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

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

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

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

- failings in relation to BWV utilisation;
- assisting an officer to falsify records regarding a qualification;
- failure to keep adequate records;
- failure to report or take action in respect of inappropriate conduct on the part of another officer;
- failings in relation to compliance with firearms possession and storage requirements, and related laws;
- inappropriate access to, use or disclosure of, information;
- failings in relation to compliance with liquor laws;
- failings in relation to management of accoutrements.

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

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

- failings in relation to BWV utilisation;
- inadequate ID or system checks;
- rude or offensive behaviour;
- excessive use of force;
- inadequate response to a domestic violence situation;
- failure to take necessary steps to rectify an error in bail documentation;
- inappropriate disclosure of information;
- failure to ensure safety and security in a watch house;
- failure to keep adequate records;
- failings in relation to management of accoutrements;
- failings in vehicle safety or control;
- wrongful arrest or detention; and
- failure to conduct a proper search.

HOW POLICE CONDUCT APPROACHES ARE DEALT WITH

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

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

The provisions of the Act are supplemented by a detailed Police Complaints Agreement entered into between the Commissioner of Police and the Ombudsman under section 150 of the Act. The agreement, as in force at 30 June 2024, is set out at Appendix A to this Report.

Enquirer assistance and preliminary inquiries

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

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

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

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

Complaint assessment

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

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

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

Complaint Resolution Process

The Complaint Resolution Process (**CRP**) is an informal process undertaken by NT Police where early personal contact between police officers and complainants may lead to a quick and effective resolution. A CRP may involve explaining to a person why a particular course of action was taken, the legal and practical considerations surrounding the incident or an apology.

The CRP is a means of dealing with common complaints about practices, procedures, attitudes and behaviours and is not intended to be an approach focused on fault-finding or punishment. The CRP may well involve a significant amount of investigation to establish the facts and enable assessment of the conduct of officers. Our Office may make suggestions as to the approach to be adopted as part of the categorisation process. We also obtain and review copies of outcome documentation.

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

There is provision for formal conciliation in the Act. Conciliation may only be undertaken by agreement between the parties. It is not intended to absolve police officers of any misconduct or action. It is an alternative dispute resolution process 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 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 complaints, NT Police correspond directly with the complainant to inform them of the outcome and complainants are advised that they can approach our Office if they are dissatisfied with that outcome.

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

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

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

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

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

Investigations

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

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

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

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

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

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

Outcomes

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

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

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

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

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

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

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

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

STATUTORY OVERSIGHT FUNCTIONS

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

Firearm prohibition orders

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

- (a) *acquiring a firearm or firearm related item; and*
- (b) *possessing or using any firearm or firearm related item; and*
- (c) *being in the company of a person who acquires, possesses or is using a firearm or firearm related item.*¹³

The amended *Firearms Act* provides that the Ombudsman must review, during the first two years after commencement:

- (a) the exercise of powers conferred on police officers under Part 8A – Firearm prohibition orders; and
- (b) the financial effect of the result of the commission of offences against this Part.¹⁴

The Ombudsman was required to give a copy of the report of the review to the Minister as soon as practicable after the expiry of the two year period. A report was finalised and provided to the Minister for Police during this year. It was not required to be tabled. It is discussed in Chapter 1.

¹³ *Firearms Act 1997*, s.49E.

¹⁴ *Firearms Act 1997*, s.49ZB(1).

Surveillance devices

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

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

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

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

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

Tabled reports are available on the Ombudsman website.

Telecommunications interception

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

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

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

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

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

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

Controlled operations

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

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

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

Tabled reports are available on the Ombudsman website.

CHAPTER 6 – CORRECTIONAL SERVICES

This Chapter:

- discusses specific issues identified in relation to NT Correctional Services (**NTCS**) operations;
- analyses NTCS approaches received and finalised during the period; and
- includes a range of case examples.

NTCS ISSUES

Report for Commissioner

As noted in last year's Annual Report, our office conducted a review of NTCS-related cases we received between 2021 and early 2023 to identify systemic issues. The review concluded in this reporting period and culminated in a report to the Commissioner of Corrections raising 11 separate issues, discussing 17 different case studies and making 22 recommendations for improvement.

Broadly speaking, the report identified issues relating to the following topics:

1. Key operational areas for improvement
 - Use of force
 - CCTV and body worn video
 - Police notification
 - Separate confinement
2. Systemic causes of prisoner dissatisfaction
 - Heat stress
 - Lockdowns
 - Hygiene
 - Overcrowding
 - Transfer process between prisons
3. Issues with the current prisoner complaint system
 - Issues with the complaint process
 - Engagement with our office.

Following receipt of the Commissioner's response to the report, we set up monthly meetings with senior NTCS officers to discuss the issues identified in the report and to work through implementation of the report's recommendations. This work is progressing.

Prisoner complaint process review

Separate to our work with NTCS to address issues with the complaint process identified in the report, NTCS commenced its own review of the prisoner complaint system. We provided a detailed submission to the review and highlighted the importance of resolving issues at the lowest level and with as little formality as possible, as well as providing a personalised approach when responding to a complaint.

Provision of information by NTCS

During the period, there were a number of cases where my office faced delays in receiving responses from NTCS to inquiries we conducted into prisoner complaints.

I acknowledge the substantial challenges NTCS faced during the year dealing with record prisoner numbers, and appreciate that urgent operational imperatives will, on occasion, take precedence and cause a response to be delayed. There were also issues with securing and maintaining staffing within the NTCS Professional Standards Unit (**PSU**).

Even so, the extent of delay (sometimes measured in months) was concerning as it hampered my ability to effectively discharge my oversight role and my office's ability to obtain fresh evidence and provide timely resolution or outcomes. It also obviously led to frustration on the part of complainants.

The Commissioner has assured me steps are being taken to address these issues and has detailed structural changes underway to achieve a more timely response framework, including restructuring the PSU, creation of a new position to oversee Performance and Business Improvement and creation of a team focused on Policy and Operational support. I regard improvement in response times as essential to fair and effective disposition of complaints.

Heat stress in prisons

As previously noted, environmental conditions in Alice Springs are notoriously challenging in the summer months. I have continued to raise concerns regarding heat stress at the Alice Springs Correctional Centre (**ASCC**) with NTCS.

NTCS advise that an independent consultant has conducted a cooling assessment which recommended a variety of passive and active design strategies, including shading devices, insulation (ceilings, walls and windows), landscaping and evaporative cooling.

It advises that additional capital funding has been approved for ASCC and that design and documentation for improving the safety, security and accommodation conditions are being progressed. It advises that it is working closely with the Department of Infrastructure and Logistics to develop operational plans to progress investment in ASCC to address safety and security of the prison while progressively attending to heat mitigation strategies.

With regard to evaporative cooling, it advises that ASCC does not have the site power capacity to support additional load to the system necessary for implementation but that part of the additional capital funding is for an upgrade of the electrical substation to increase system capacity. NTCS states that the next steps for heat mitigation for ASCC will be informed by the outcome of works undertaken to address passive cooling options and electrical upgrades with the current project.

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

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

In recent times, similar conditions faced in the Pilbara led the Western Australian Government to commit to air-conditioning Roebourne Regional Prison. Action on mitigating heat stress should remain a high priority for government.

Women in prison

The NTG has committed to the establishment of two new therapeutic stand-alone women's detention facilities. NTCS advise that early planning works are progressing. Removing women from existing male facilities was a major focus of our report, *Women in Prison II*.¹⁵ It has many advantages for female prisoners and in terms of the management of both female and male prisoners. This commitment is welcome and I can only implore its timely implementation.

In addition, there are many recommendations from *Women in Prison II* that merit careful consideration and action in the short, medium and longer terms.

It is vital for decision-makers to seek the best advice on achieving optimal outcomes for women in prison in terms of rehabilitation. Many incarcerated women are parents or carers and, while acknowledging that public safety is paramount, locking caregivers away may leave families vulnerable and without support. There are no easy solutions but keeping women in prison without specifically designed programs for rehabilitation, treatment and training is not in the interest of the prisoner or wider society.

Use of police watch houses for prisoners

In order to address record numbers of people in custody, NTCS has for some time utilised the Darwin Police Watch House, the Peter McAulay Centre (**PMC** - a police facility) and the Alice Springs Watch House as temporary accommodation for prisoners. We visited those centres to observe conditions for prisoners and identify areas where there was scope for improved comfort and safety of staff and prisoners.

We wrote to the Commissioner reiterating our view that, due to the limitations of the watch house facilities and their restrictive nature, it is highly undesirable to hold prisoners there for extended periods and as anything more than a stop-gap measure. We noted a year had passed and prisoners are still being held in the watch houses without a communicated end date to their use.

We acknowledged the work NTCS has been undertaking to address prison overcrowding by expanding prison capacity, both through increasing beds at existing facilities and moving to establish two stand-alone female prisons. Even so, from what we understand of the trajectory of prisoner numbers, we suggested this may not be enough to ensure prisoners no longer need to be accommodated in ill-equipped police watch house facilities.

Accordingly, we again emphasised the need for the NT Government to not only consider additional custodial options, but also to seek to provide reasonable alternatives that avoid or minimise custodial sanctions and streamline justice procedures to reduce time spent in custody on remand.

During our visits, we again observed genuine effort on the part of correctional staff to ensure prisoners accommodated in the facilities were disadvantaged as little as possible while housed there, and we were pleased to see improvements in day-to-day management and access to forms of entertainment to enhance prisoner comfort.

Notwithstanding this, we noted there has been minimal change to address our observations regarding flaws in the facilities' infrastructure, which severely limit their ability to meet minimum human rights standards. Of concern, the facility shortcomings we identified in respect of Darwin Watch House and

¹⁵ <https://ombudsman.nt.gov.au/news-and-publications/2017/women-in-prison-ii-vol-1> .

PMC appear to apply equally if not more to the Alice Springs Watch House. We acknowledged previous advice from NTCS in response to our suggestions arising from our 2023 visit that NTCS is confined by the infrastructure already in place at the watch house facilities.

However, this advice only serves to support our concern that the facilities are not capable of being sufficiently improved to meet minimum standards and so should not be used in an ongoing capacity.

While expressing our strongly held view that use of the watch houses should be phased out as a matter of priority, we also provided further observations of the facilities for awareness, as well as feedback, including from prisoners, regarding steps that could be taken in the interim to improve their treatment and conditions.

NTCS responded, noting an increase in prisoner population of 18% over the past 24 months and creation of an additional 255 surge and temporary beds in Darwin Correctional Centre (DCC) and the ASCC, with new accommodation modules to be completed.

NTCS indicated that both prisons are continually experiencing maximum prisoner numbers and acknowledged that while NT Police facilities were intended as a temporary arrangement, the continued increase in prisoner numbers has extended the requirement to utilise these facilities for longer than anticipated.

NTCS states that it is anticipated that completion of new modular facilities, creation of more work camps, and establishment of new facilities for female prisoners will remove the need for use of NT Police facilities.

The NT Government has recently expressed an intention to remove prisoners from police facilities. The Commissioner has identified this as a key priority and has noted a commitment to fast track accommodation strategies to exit prisoners from the watch houses during 2024-25. In the meantime, with respect to specific suggestions by our Office (in bold) NTCS responded as follows:

1. **NTCS continue to explore ways to better utilise space at Darwin Watch House to ensure prisoners have improved access to sunlight and fresh air during their time at the watch house.**

Whilst the NTCS acknowledge there are some limitations with the physical design of the facility, there have been a number of mitigations and additional support provided for prisoners implemented, including;

- *The prisoners accommodated at the watch house are provided;*
 - *Additional food packs provided three times a week free of cost, and increased mail access each week:*
 - *Access to TVs, DVDs, exercise equipment, basketball, cards and games*
- *Prisoners are released from the accommodation wings for 9.5 hours a day.*
- *Prisoners are rotated every two weeks, noting that a number of (approximately 19) prisoners have requested to stay for longer periods at the watch house.*

2. **NTCS consider providing tracksuit pants to prisoners at both Darwin Correctional Centre and PMC for the duration of their stay to help them cope with the cool conditions caused by the constant air-conditioning.**

This option is being implemented for prisoners, and quotes have recently been requested for the supply of tracksuit pants to be issued to prisoners housed at the watch house. This option will be provided to prisoners as soon as possible.

3. **NTCS consider providing prisoners savoury snack options in addition to the confectionary items already provided in order to accommodate prisoner taste and their inability to purchase the items through prisoner buys whilst at the watch houses.**

In addition to the provision of meals, there are savoury options provided within the aforementioned food packs that are distributed three times a week, which consist of [various specified items].

- 4. If NTCS has not already done so, NTCS consider engaging with NT Police to explore how maintenance requests can be actioned more expeditiously, particularly for urgent maintenance works.**

The management team at DCC have been requested to explore this opportunity further with NT Police to achieve more efficient responses to maintenance works. I support updates on the progress of these discussions and commitment being provided to you through the monthly NTCS/Ombudsman Office meeting with the Assistant Commissioner - Custodial Operations and General Managers of ASCC and DCC.

- 5. NTCS expand the size of the outdoor area at PMC so that prisoners can engage in activities outside. Action should also include additional shade so that prisoners can sit or exercise comfortably outside.**

Options are to be considered within the context of discussions with NT Police, as per the response to recommendation 4. Whilst noting that facilities are managed by NT Police, all options will be considered, including temporary shade options, providing there is no risk to safety or security of the facility.

- 6. NTCS consider providing a clock at PMC so prisoners have greater ability to monitor the passage of time.**

I can confirm that a clock has recently been ordered and will be installed.

- 7. NTCS consider making outside-cell toilets in Alice Springs Watch House available for prisoner use again.**

NTCS have an agreement with NT Police to manage one side of the Alice Springs Watch House, which will provide an opportunity for access to outside-cell toilets through an operating model where prisoners have freedom of movement within that secure half of the watch house.

- 8. NTCS engage with NT Police to consider how some indoor space at the Alice Springs Watch House can be converted to be a communal recreation area, similar to how the sally port in PMC was made available for prisoner use.**

As per the above response, it is proposed that when there are prisoners accommodated in the Alice Springs Watch House, that there will be freedom of movement between accommodation cells. There will be placement of items of entertainment, such as TVs, DVDs and other activities similar to those provided at watch houses in the Darwin Region, for use by prisoners.

- 9. NTCS engage with NT Police to explore how prisoners can have access to fresh air and sunlight during their time at the Alice Springs Watch House.**

Work is currently underway to reform the operating model for the Alice Springs Watch House, which will include scoping possible options for opportunities to have prisoners access open air activities outside the facility, such as the oval area of the ASCC. But, this would be dependent on prisoner numbers, assessments of the security classifications of prisoners and the staffing availability, and as such the scoping of the potential opportunity will include options of accommodating prisoners in the watch house with the appropriate classifications.

Whilst the NTCS agrees the use of NT Police watch houses is not preferred, the current demands on services through increased prisoner numbers and the fact NTCS is confined by the existing infrastructure and security requirements for these facilities as the watch houses come under the portfolio of NT Police.

We will continue to liaise with NTCS in relation to utilisation of police facilities.

CORRECTIONAL SERVICES APPROACHES

Correctional Services approaches totalled 453 in 2023/24, down from 497 in 2022/23. Of approaches relating to a particular facility, just under two thirds concerned the DCC and just over one third concerned the ASCC.

A list of the most common issues raised by approaches in 2023/24 is set out in the following table. Some approaches raised more than one issue. The table lists issues raised, not issues sustained.

Correctional Services – Issues raised - 2023/24

Issue	Notes	No.
Health / welfare	Issues regarding health services are generally referred on to the Health & Community Services Complaints Commission but we deal with issues regarding how correctional officers facilitate access to health care and implement health and medical advice	82
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, cell type and management plans	81
Complaint processes	Includes problems accessing complaint system and investigation of complaints	78
Officer conduct	Includes rudeness, insensitivity, harassment, poor communication, inappropriate treatment of a vulnerable person	76
External contact	Includes issues with phones (24), visits (18) and mail (17)	59
Money / buys	Any issues dealing with prisoner accounts and purchases	35
Recreation / Amenities	Matters relating to recreational activities and everyday aspects of living, eg access to publications, access to television, sporting and craft equipment	30
Transfers	Includes intra-Territory and external transfers	30
Time spent outside	Issues relating to lockdowns and other limitations placed on time outside of cells	26
Condition of facilities		18
Food	Issues relating to quality or service of food. Includes issues relating to special dietary requirements	18
Work	Employment inside or outside prison	15
Educational programs		15
Information	Includes requests for information and documents, complaints that information was not provided	15
Personal safety/security	Includes assault, fight, threat by prisoner – assault, excessive force, threat by prison officer – housing prisoners together in a way that puts one or more at risk - other safety concerns	13
Property		11

The top five issues this year were the same as for the past two years. The number of approaches for each type of issue mostly fell or stayed the same. The only types of issue with an increase of more than five approaches were Officer conduct, Transfers and Time spent outside.

CORRECTIONAL SERVICES EXAMPLES

Below are examples of corrections-related complaints dealt with by our office that demonstrate what can be achieved through making a complaint.

In the first two examples, we were able to obtain quick resolutions to time-sensitive matters.

In the second two, we identified procedural issues or policy deficits and were able to achieve more systemic change.

Example – Facilitating call with ill grandmother

A prisoner called our office concerned about an ill relative. His grandmother had recently been hospitalised following a fall and he was anxious to talk to her.

The prisoner said he was told by prison officers that he could arrange a call with his grandmother by filling out a welfare form, which he did. However, the prisoner faced a problem as his grandmother didn't have a phone with her that he could call from the prison, and he didn't know and didn't have means to find out the hospital's telephone number to provide with his request.

He reported that the absence of a contact number was causing problems with arranging the call and that he needed urgent help as his grandmother was quite elderly and he heard she was very unwell.

We brought the matter to prison management's attention and within a short time the prison acted to facilitate a call between the prisoner and his grandmother.

Example – Prisoner pay while in rehab

A prisoner contacted our office to complain that he had not been able to access his prison income while participating in an offsite rehabilitation program.

He said he should be receiving an amount per week, and that without it, he hadn't been able to purchase any hygiene products.

We once again brought the matter to prison management's attention, and several days later we received word that the prison had resolved the issue by providing the prisoner access to his funds.

Example – Strip search leading to improved guidance to officers

We received a complaint from a prisoner about action taken by officers to perform an unclothed search. The search occurred in circumstances where officers were moving the prisoner to an 'at risk' cell for close monitoring due to their concerns that he may self-harm. In such circumstances, officers are directed to perform an unclothed search to ensure prisoners aren't taking any items into the cell that they can use to self-harm.

When changing from his clothes into an 'at risk' gown, the prisoner did not fully undress before putting the gown on, and officers asked him to remove his clothes and the gown fully so that they could confirm he had no items on him. The prisoner didn't respond to the requests and ultimately officers used force to remove the gown.

From our review of the available evidence, we could see that while officers spent quite some time trying to negotiate with the prisoner to remove the gown, they did not explain why it was necessary that he should do so or express their concerns that they had not been able to confirm he did not have any items on him that he could use to self-harm. This appeared contrary to NTCS's directions to staff about how they are to perform unclothed searches, which require officers conducting a search to ensure prisoners understand the nature, process and reasons for the search.

In our view, an explanation from officers detailing their concerns that the prisoner may still have an item on him and the reasons why they needed him to fully undress may have obtained his cooperation and removed the need to use force, which, while sometimes necessary, is invasive, traumatic and can cause injury to both officers and the prisoner.

In dealing with the complaint, we noted that there appeared to be an oversight in NTCS's guidance material for staff, as the step-by-step reference document for officers didn't include the requirement that officers ensure prisoners understand the nature, process and reasons for the search. We brought this to NTCS' attention and it agreed to update the guidance material to ensure officers are properly informed of their responsibility to perform this important step when required to undertake an unclothed search. Prison management also agreed to meet with the prisoner to talk through the event and explain why officers required him to fully remove his clothes.

More recently, NTCS has advised that it has prioritised funding to install body scanners in the two main correctional centres to support a more dignified search process.

Example – Access to Commissioner's Directions

A prisoner contacted us to complain that his lawyer was unable to access the NTCS Commissioner's Directions. The Directions are written rules issued by the Commissioner and include rules about the conduct and entitlements of prisoners. The prisoner said it was difficult for his lawyer to help him complain about his treatment at the prison when his lawyer didn't have access to rules that govern how he should be treated.

The Commissioner is required by law to make the Directions available to prisoners in so far as they relate to the conduct and entitlements of prisoners. However, this requirement doesn't extend to making the Directions available to a prisoner's lawyer.

While there may not be a requirement to make Directions available to a prisoner's lawyer, we considered there were many compelling reasons for making the Directions that are available to a prisoner also available to their lawyer upon request.

These include:

- The reality that the NT's prisoner population includes many people who have limited formal education, learning or other disabilities and limited English language proficiency, which may make it difficult for them to comprehend and advocate for the entitlements set out in the Directions.
- The apparent unreasonableness in providing a prisoner access to the Directions but not their lawyer, who acts as a prisoner's representative in legal matters, and who can help address the above barriers by assisting prisoners to understand and advocate for their entitlements.
- The practical efficiencies to be gained from lawyers being better able to assist prisoners to target their complaints to the terms of the Directions, and a reduced need for lawyers to ask – and NTCS to respond to – basic questions about prisoners' entitlements.
- The reality that providing the Directions that are available to prisoners to their lawyer is unlikely to pose a security threat as those Directions only relate to the conduct and entitlement of prisoners and are therefore unlikely to contain any sensitive information relating to prison security.

For the above reasons, we suggested NTCS make a copy of the Directions relating to prisoner conduct and entitlements available to the prisoner's lawyer. NTCS agreed to do so in this case, and we look forward to this approach being maintained as a routine step in the future.

CHAPTER 7 – OTHER OMBUDSMAN FUNCTIONS

QUALITY IMPROVEMENT

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

Legislative and policy reform

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

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

- a proposal for hand-held scanner powers for NT Police;
- a proposal for public disorder declaration powers for NT Police;
- implementation of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*;
- a review of domestic and family violence legislation;
- a review of police operations;
- a review of the Northern Territory Correctional Services' complaints framework;
- a review of the Department of Education's complaints framework;
- a review of the *Water Metering Code*;
- development of policies at City of Palmerston to account for new animal management by-laws;
- development of a national student ombudsman.

Complaints and integrity bodies

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

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

During the reporting period, we also worked with the Children's Commissioner and the Principal Community Visitor to advance preparations and seek adequate resourcing for the National Preventive Mechanism (**NPM**) function under OPCAT.

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

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

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

In 2023/24, our involvement at this level included:

- continued membership of the International Ombudsman Institute (**IOI**), a global organisation for the cooperation of more than 200 independent Ombudsman institutions from more than 100 countries worldwide - www.theioi.org;
- ongoing membership of the Australian and New Zealand Ombudsman's Association (**ANZOA**) a professional association 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;
- in person or remote attendance at the following meetings:
 - ANZOA AGM and associated meetings;
 - ANZOA Meeting of the Minds
 - Deputy ANZ parliamentary ombudsmen forum;
 - OPCAT Australian NPM Network;
 - IOI Asia Pacific Ombudsman Region (**APOR**) forum;
 - Australia New Zealand Energy and Water Ombudsman Network (**ANZEWON**).

Training and presentations

In 2023/24, our Office delivered training and presentations in various forums, including:

- Tech in Gov conference: *Navigating emerging technologies*;
- ANZOA Meeting of the Minds presentation on AI;
- NT Police Recruit training;
- Prison Officer Training and information sessions;
- Foundations of Public Sector Governance presentations.

Other involvement with public authorities

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

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

COMMUNITY AND STAKEHOLDER ENGAGEMENT

During 2023/24, engagement in public and stakeholder events and consultations included:

- in Darwin/Palmerston:
 - participating in NAIDOC Week;
 - participating in a Council on the Ageing NT (COTA) event;
 - visiting Kulaluk community, YiSSA short stay accommodation and CatholicCare;
- in Katherine:
 - participating in the COTA Seniors Expo;
 - visiting NAAFLS, NAAJA, KWILS and Anglicare NT;
- in Alice Springs, visiting NTLAC, CAAFLU, NAAJA, CAWLS, NTCOSS and Central Australian Aboriginal Congress;
- visiting MLA offices; and
- engaging with stakeholders relating to OPCAT establishment and implementation.

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

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

CHAPTER 8 – OUR OFFICE

CORPORATE GOVERNANCE, PLANNING AND PERFORMANCE

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

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

The Statement of Accountable Officer is on the first page of the Financial Statements for 2023/24, which are set out at Appendix B.

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

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

OUR STAFF

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

Staffing levels vary throughout the year depending on the needs of the Office, flexible working arrangements, staff taking long term leave and staff acting in other positions. Staffing for the combined offices at 30 June 2024 (not including staff on long term leave) is set out in the table below. FTE is Full Time Equivalent staff and, in some cases, may be made up of more than one staff member working on a part-time basis.

Level	FTE	Status
ECO5	1	Statutory appointment
ECO2	1	Executive Contract
SAO2	1	Ongoing (HDA)
SAO1	3.14	3 ongoing (1 HDA), 0.14 fixed period
AO7	3	Ongoing
AO6	1	Ongoing
AO5	1	Ongoing
AO4	4.83	Ongoing (1 HDA)

Public sector principles

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

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

Professional development

Opportunities for staff professional development undertaken by Office staff during 2023/24 (in person, remotely or online) included:

- OPCAT Symposium
- ANZOA Meeting of the Minds
- *Accessing information in remote Indigenous communities* – Solomon Lecture – Queensland Information Commissioner
- *The Ombudsman in Australia* – Professor John McMillan AO – Australian Institute of Administrative Law
- *Governance and Risk Management Forum* – Governance Institute of Australia
- *Expectations & Standards: Are they necessary, how do they work and how to develop them*, Em Prof Neil Morgan UWA
- International Day of People with Disability event - with other independent bodies
- *Punctuation unpacked* - Writing course
- First Aid Training.

SYSTEMS, POLICIES AND PROCEDURES

The operations of the Office are supported by a range of systems, policies and procedures. The *Accounting and Property Manual* deals with a wide range of issues, including financial and procurement matters, corporate systems, Information and Communications Technology, Risk Management and Audit. The day to day work of resolution and investigative officers is also guided by the Office's *Operations Manual*.

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

Numerous other independent offices in the NT have taken up the Resolve system. We continue to provide *ad hoc* advice and assistance to these offices as requested, as well as providing advice and feedback to offices that are considering acquiring the system or are working on developing or implementing it.

During the year, we upgraded the Ombudsman website in the course of transfer to a new platform.

WORKPLACE HEALTH AND SAFETY

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

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

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

RECORDS MANAGEMENT, DISCLOSURE AND CORRECTION

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

Information held by the Office

The Ombudsman holds information in the following categories:

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

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

Administrative and policy files

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

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

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

Complaint files

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

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

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

Legal opinions

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

Annual reports

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

Brochures

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

Policies, manuals and guidelines

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

Service Standards

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

Providing access to information

Publicly available documents

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

Administrative arrangements for access to information

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

Access under Part 3 of the *Information Act*

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

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

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

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

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

In 2023/24, the Ombudsman received one information access request under the *Information Act 2002*, which was subsequently withdrawn.

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 2023/24, the Ombudsman received no personal information correction requests under the *Information Act 2002*.

APPENDIX A – POLICE COMPLAINTS AGREEMENT

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

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

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1. Scope of Terms

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

2. Introduction

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

Specifically, the Agreement provides for the following matters:

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

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

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

3. Purpose and Intent of the Agreement

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

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

The Parties mutually agree to:

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

4. Obligations of Professional Standards Command

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

5. Obligations of Police Officer

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

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

6. Notification on the Making of a Complaint

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

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

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

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

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

7. Assessing and Determining Whether to Deal With a Complaint

7.1 Complaints Made Out of Time

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

7.2 Preliminary Inquiries

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

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

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

7.3 Declining a Complaint

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

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

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

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

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

As a general rule:

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

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

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

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

8. Classification of Complaints

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

Complaints fall into one of the following classifications:

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

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

Careful consideration is to be given to:

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

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

9. Re-Classification of Complaint

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

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

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

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

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

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

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

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

10. Conciliation [Part 7, Division 3]

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

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

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

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

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

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

10.1 Representation at Conciliation

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

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

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

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

- (a) that the early intervention into minor complaints may lead to a quick resolution of the complaint. This may involve listening to the complainant's specific issues and an explanation as to why a particular course of action was taken by members, the legal and practical considerations relating to the incident or the offering of a simple apology;
- (b) the CRP is not focused on fault-finding or punishment. The CRP is a means of dealing with common complaints about practice, procedures, attitudes and behaviour. One of the aims of this procedure is to settle and finalise minor complaints without proceeding to formal disciplinary action against members.
If some inappropriate conduct is identified, a member is advised / assisted by the CRP officer to correct the conduct; and
- (c) the informal resolution may be undertaken by the police officer taking the complaint or some other police officer, but not the police officer whose conduct initiated the complaint.

11.1 Ombudsman's Oversight

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

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

11.2 Categories of CRP Conduct

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

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

11.3 CRP Process

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

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

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

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

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

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

11.4 Successfully Completed CRP

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

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

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

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

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

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

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

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

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

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

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

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

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

11.5 Unsuccessful CRP

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

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

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

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

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

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

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

11.6 Police Officer Dissatisfied

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

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

11.7 Police Officer's Rights

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

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

11.8 Enquiries Reveal a Matter is More Serious

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

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

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

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

11.9 Withdrawal of Complaint

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

11.10 CRP Action Requirements

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

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

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

12. Professional Standards Command Investigation

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

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

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

12.1 Preliminary Inquiry

Authorised Conduct of Preliminary Inquiry

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

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

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

- (a) examination of PROMIS, IJIS or any other NT Police computer systems;
- (b) examination of all relevant CCTV footage, including watch house audio recordings;
- (c) examination of any Territory Communications Section records including audio files of telephone calls and radio transmissions;

- (d) examination of any written documentation relevant to the complaint, including any notes made by a police officer;
- (e) contact with a police officer to clarify any aspect of the complaint;
- (f) contact with the complainant, a witness or other person to clarify any aspect of the complaint;
- (g) examination of any legislation, policy or procedure relevant to the complaint; and
- (h) examination of any evidence the investigator deems relevant to the enquiry.

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

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

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

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

12.2 Category 2 PSC Investigation

Authorised Conduct of Category 2 Complaint

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

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

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

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

Assignment of complaint to Investigating Officer

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

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

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

Functions of Investigating Officer

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

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

Responsibilities of Investigating Officer

The IO is to:

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

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

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

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

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

- iv) a decision made by the subject member be reconsidered, varied or reversed or reasons be given for a decision;
- v) the effects of a decision, act or omission made by the subject member be rectified, mitigated or altered; and
- vi) an Act, practice, procedure or policy on which a decision, act or omission was based be amended.

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

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

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

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

Re-classification of Complaint

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

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

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

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

Ombudsman Review

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

Requirements when Serious Breach of Discipline Identified

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

Commissioner Notification to the Ombudsman

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

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

Deferral of Investigation

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

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

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

12.3 Category 1 PSC Investigation

Authorised Conduct of Category 1 Complaint

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

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

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

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

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

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

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

Assignment of Complaint to Investigating Officer

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

Functions of Investigating Officer

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

- (a) collecting all relevant information and evidence (both inculpatory and exculpatory) relating to the grounds of complaint;

- (b) investigating and reviewing the information and evidence;
- (c) reaching a reasonable and logical conclusion; and
- (d) preparing a report and other supporting documentation for the Ombudsman's consideration.

Responsibilities of Investigating Officer

The IO is to:

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

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

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

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

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

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

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

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

The Ombudsman may decide to investigate a CAP:

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

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

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

13.1 Finalisation Process

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

The Commissioner will notify the Ombudsman whether the Commissioner:

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

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

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

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

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

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

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

13.2 Complaint Findings

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

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

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

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

14. **Reviews by Ombudsman**

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

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

15. **Confidentiality & Immunity**

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

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

16. **Suspected Criminal Conduct**

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

17. **Procedural Fairness**

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

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

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

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

18. Other

18.1 Non-Disclosure of Information

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

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

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

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

18.2 Restricted Use of Information

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

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

18.3 Register of Police Complaints

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

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

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

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

19. Scope of This Agreement

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

20. Review of This Agreement

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

October 2014

APPENDIX B – FINANCIAL STATEMENTS

OMBUDSMAN'S OFFICE

Financial statement overview

For the year ended 30 June 2024

The Ombudsman's Office has several discrete work units, each with different roles and responsibilities. These are discussed briefly below.

- The Ombudsman's role is to give people a timely, effective, efficient, independent, fair and free way of investigating, and dealing with complaints, about administrative actions of public authorities and the conduct of police officers, and to improve the quality of decision-making and administrative practices in public authorities.
- The Information Commissioner provides advice and promotes knowledge about Freedom of Information (FOI) and Privacy rights and resolves and investigates complaints about FOI and privacy matters, and related applications.
- The Judicial Commission Office receives complaints relating to the behaviour or capacity of judicial officers and NTCAT members, and provides support to the independent Judicial Commission.
- From March 2022 short term funding was approved for the Office to facilitate implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as the interim Northern Territory National Preventive Mechanism (NPM). While initial funding has ceased the Ombudsman remains the interim NPM and continued to do some work in this area utilising an approved carryover from 2022-23 for unspent OPCAT funding to the value of \$145,000.

The net result for the Office during 2023-24 was a deficit of \$7,000. Compared to the budgeted deficit of \$145,000 the office remained \$138,000 under budget. Operating expenses for the period totalled \$3,119,000 comprising \$2,530,000 for employee expenses, and \$589,000 for administrative expenses (which included approx. \$254,000 for the purchase of goods and services, \$320,000 for services received free of charge and \$14,000 for property management).

Certification of the financial statements

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

We further state that the information set out in the comprehensive operating statement, balance sheet, statement of changes in equity, cash flow statement, and notes to and forming part of the financial statements, presents fairly the financial performance and cash flows for the year ended 30 June 2024 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
27 August 2024



SARAH SCHULTZ
Business Manager
27 August 2024

OMBUDSMAN'S OFFICE
Comprehensive operating statement
For the year ended 30 June 2024

	Note	2024	2023
		\$000	\$000
INCOME			
Appropriation			
Output	4	2 785	2 948
Goods and services received free of charge	5	327	318
TOTAL INCOME	3	3 112	3 266
EXPENSES			
Employee benefits expense	6	2 530	2 820
Administrative expenses			
Property management		14	13
Purchases of goods and services	7	254	280
Other administrative expenses ¹		320	324
TOTAL EXPENSES	3	3 119	3 438
NET SURPLUS/(DEFICIT)		(7)	(173)
COMPREHENSIVE RESULT		(7)	(173)

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

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

OMBUDSMAN'S OFFICE
Balance sheet

As at 30 June 2024

	Note	2024	2023
		\$000	\$000
ASSETS			
Current assets			
Cash and deposits	9	1 939	2 112
Receivables	11	13	14
Total current assets		1 951	2 126
Non-current assets			
Property, plant and equipment	12		
Intangibles	14		
Total non-current assets			
TOTAL ASSETS		1 951	2 126
LIABILITIES			
Current liabilities			
Payables	15	69	115
Provisions	16	448	571
Total current liabilities		518	685
TOTAL LIABILITIES		518	685
NET ASSETS		1 434	1 440
EQUITY			
Capital		295	295
Accumulated funds		1 139	1 146
TOTAL EQUITY		1 434	1 440

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

OMBUDSMAN'S OFFICE
Statement of changes in equity
For the year ended 30 June 2024

	Note	Equity at 1 July	Comprehensive result	Equity at 30 June
		\$000	\$000	\$000
2024				
Accumulated funds		1 146	(7)	1 139
Capital – transactions with owners				
Equity injections				
Capital appropriation		573		573
Equity transfers in		(346)		(346)
Other equity injections		171		171
Equity withdrawals				
Capital withdrawal		(104)		(104)
Total equity		1 440	(7)	1 434
2023				
Accumulated funds		1 318	(173)	1 146
Capital – transactions with owners				
Equity injections				
Capital appropriation		573		573
Equity transfers in		(346)		(346)
Other equity injections		171		171
Equity withdrawals				
Capital withdrawal		(104)		(104)
Total equity		1 613	(173)	1 440

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

Ombudsman's Office
Cash flow statement
For the year ended 30 June 2024

	Note	2024	2023
		\$000	\$000
CASH FLOWS FROM OPERATING ACTIVITIES			
Operating receipts			
Appropriation received			
Output		2 785	2 948
Receipts from sales of goods and services		18	15
Total operating receipts		2 803	2 963
Operating payments			
Payments to employees		2 657	2 701
Payments for goods and services		320	282
Total operating payments		2 977	2 984
Net cash from/(used in) operating activities	10	(173)	(20)
Net increase/(decrease) in cash held		(173)	(20)
Cash at beginning of financial year		2 112	2 132
CASH AT END OF FINANCIAL YEAR	9	1 939	2 112

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

Ombudsman's Office

Index of notes to the financial statements

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Ombudsman's Office

1. Objectives and funding

The Ombudsman Office's primary objective is to foster excellence in public sector services through a range of statutory oversight and complaint mechanisms.

The Agency:

- receives, investigates and resolves complaints and enquiries under applicable legislation;
- conducts inspections, audits and reviews; and
- promotes, within the public sector and to the public, knowledge and understanding of Territorians' rights.

The functions of the Agency include:

- the Ombudsman role, which receives, investigates and resolves complaints about administrative actions and police conduct under the *Ombudsman Act 2009*, and carries out a range of audit and review functions under other legislation;
- the Information Commissioner role, which has responsibility under the *Information Act 2002*, for promoting knowledge about Freedom of Information (FOI) and Privacy rights, and investigating and resolving complaints about FOI and Privacy matters, as well as conducting reviews as required under other legislation;
- the Judicial Commission Office role, which receives complaints relating to the behavior or capacity of judicial officers and NTCAT members, and provides support to the independent Judicial Commission; and
- the OPCAT role, which facilitates implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as the interim NT National Preventive Mechanism.

The Agency is predominantly funded and therefore dependent, on the receipt of parliamentary appropriations. The financial statements encompass all funds through which the Agency controls resources to carry on its functions and deliver outputs. For reporting purposes, outputs delivered by the Agency are summarised into several output groups. Note 3 provides summarised financial information in the form of a Comprehensive operating statement by output group.

Additional information in relation to principal activities of the Ombudsman's Office, the Information Commissioner and the Judicial Commission may be found in their respective Annual Reports.

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.

Ombudsman's Office

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 2023-24 financial year

Several amendments and interpretations have been issued that apply to the current reporting period but are considered to have no or minimal impact on public sector reporting.

Standards and interpretations issued but not yet effective

No Australian accounting standards have been adopted early for 2023-24 financial year.

Several amendments and interpretations have been issued that apply to future reporting periods but are considered to have minimal or no impact on public sector reporting.

c) Reporting entity

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

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

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

d) Agency and Territory items

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

Central Holding Authority

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

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

Ombudsman's Office

e) Comparatives

Where necessary, comparative information for the 2022-23 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 2023-24 financial year as a result of management decisions.

h) Accounting judgments and estimates

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

There were no material changes adopted during 2023-24.

i) Contributions by and distributions to government

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

Ombudsman's Office

3. Comprehensive operating statement by output group

	Note	Ombudsman's Office		Information Commissioner		Judicial Commission		OPCAT		Corporate and shared services ¹		Total	
		2024	2023	2024	2023	2024	2023	2024	2023	2024	2023	2024	2023
		\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000	\$000
INCOME													
Appropriation													
Output	4	2 785	2 948							327	318	2 785	2 948
Goods and services received free of charge	5	2 785	2 948							327	318	3 112	3 266
TOTAL INCOME													
EXPENSES													
Employee expenses	6	1 493	1 656	429	395	126	402	119	87	363	280	2 530	2 820
Administrative expenses													
Property management		5	7	3	3					6	3	14	13
Purchases of goods and services	7	148	147	34	37	43	68	2	3	27	26	254	280
Other administrative expenses ¹										320	324	320	324
TOTAL EXPENSES		1 646	1 810	466	435	169	470	122	90	716	633	3 119	3 438
NET SURPLUS/(DEFICIT)		1 139	1 138	(466)	(435)	(169)	(470)	(122)	(90)	(389)	(316)	(7)	(173)
COMPREHENSIVE RESULT		1 139	1 138	(466)	(435)	(169)	(470)	(122)	(90)	(389)	(316)	(7)	(173)

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

This comprehensive operating statement by output group is to be read in conjunction with the notes to the financial statements.

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

Ombudsman's Office

4. Appropriation

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

	2024			2023		
	\$000	\$000	\$000	\$000	\$000	\$000
	Revenue from contracts with customers	Other	Total	Revenue from contracts with customers	Other	Total
Output		2 785	2 785		2 948	2 948
Total appropriation in the operating statement		2 785	2 785		2 948	2 948

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

a) Summary of changes to budget appropriations

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

Output appropriations reflect funding as a direct result of government-approved decisions, with actual funding received by the Ombudsman's Office in line with the budgeted amounts.

Ombudsman's Office

5. Goods and services received free of charge

	2024	2023
	\$000	\$000
Corporate and information services	325	315
Repairs and maintenance	2	2
Total goods and services received free of charge	327	318

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

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

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

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

6. Employee benefits expense

	2024	2023
	\$000	\$000
Salaries and wages	2 144	2 400
Superannuation expenses	237	260
Workers compensation		
Fringe benefits tax	18	19
Payroll tax	131	142
Total employee benefits expense	2 530	2 820

The number of full-time equivalent employees at 30 June 2024 was 16.3 (17.1 at 30 June 2023).

Salaries and wages are recognised in the reporting period when the employee renders services to the Territory Government. It includes recreation leave, allowances and other benefits, which are recognised in the reporting period when employees are entitled to the benefit or when incurred.

The recognition and measurement policy for employee benefits is detailed in Note 15: Payables and Note 16: Provisions.

Ombudsman's Office

7. Purchases of goods and services

	2024	2023
	\$000	\$000
The net deficit has been arrived at after charging the following expenses:		
Goods and services expenses:		
Accommodation	5	3
Advertising ¹		
Consultants ²		
Document production	2	1
Information technology charges and communications	165	167
Insurance premiums	13	10
Legal expenses ³	16	50
Marketing and promotion ⁴	2	5
Memberships and subscriptions	5	4
Motor vehicle expenses	4	4
Official duty fares	12	6
Regulatory and advisory boards and committees expenses	9	11
Training and study	5	6
Travelling allowance	3	1
Other	13	12
Total purchases of goods and services	254	280

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

² Includes marketing, and promotion consultants, excludes IT consultants which are included in Information Technology and communication charges.

³ Includes legal fees, claim and settlement costs.

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

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

The Ombudsman's Office had no write-offs, postponements, waivers, gifts or ex gratia payments in 2023-24 or 2022-23.

9. Cash and deposits

	2024	2023
	\$000	\$000
Cash on hand		
Cash at bank	1 939	2 112
Total cash and deposits	1 939	2 112

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.

Ombudsman's Office

10. Cash flow reconciliation

Reconciliation of cash

The total of agency 'Cash and deposits' of \$1,939 recorded in the balance sheet is consistent with that recorded as 'Cash' in the cash flow statement.

11. Receivables

	2024	2023
	\$000	\$000
Current		
GST receivables	2	5
Prepayments	11	9
Total receivables	13	14

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

Receivables are subsequently measured at amortised cost using the effective interest method, less any impairments. Accounts receivable and contract receivables are generally settled within 30 days and other receivables within 30 days.

Prepayments

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

Credit risk exposure of receivables

Receivables are monitored on an ongoing basis to ensure exposure to bad debts is not significant. The entity applies the simplified approach to measuring expected credit losses. This approach recognises a loss allowance based on lifetime expected credit losses for all accounts receivables, contracts receivables and accrued contract revenue. To measure expected credit losses, receivables have been grouped based on shared risk characteristics and days past due.

12. Property, plant and equipment

	2024	2023
	\$000	\$000
Plant and equipment		
At fair value	66	66
Less: accumulated depreciation	(66)	(66)
Carrying amount as at 30 June		
Total property, plant and equipment		

There was no movement in the carrying amount of property, plant and equipment during 2023-24 or 2022-23 as all property, plant and equipment was fully depreciated at the end of 2017-18 and there were no new acquisitions.

Ombudsman's Office

Acquisitions

Property, plant and equipment are initially recognised at cost.

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.

Revaluations and impairment

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

An asset is said to be impaired when the asset's carrying amount exceeds its recoverable amount. No impairment adjustments were required within the reporting period.

Depreciation and amortisation expense

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

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

	2024	2023
Plant and equipment	10 years	10 years

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

13. Agency as a lessee

Recognition and measurement

Inter-governmental leases

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

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

The following amounts are recognised in the Comprehensive operating statement for the year the Agency is the lessee:

	2024	2023
	\$000	\$000
Intergovernmental leases	5	16
Total amount recognised in the Comprehensive operating statement	5	16

Ombudsman's Office

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

	2024 ^(a)		2023 ^(a)	
	Internal ^(b)	External	Internal ^(b)	External
	\$000	\$000	\$000	\$000
Within one year	5		16	
Later than one year and not later than five years			12	
	5		28	

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

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

Ombudsman's Office

14. Intangibles

a) Total intangibles

	2024	2023
	\$000	\$000
Intangibles with a finite useful life		
Computer software		
At cost	400	400
Less: accumulated amortisation	(400)	(400)
Carrying amount at 30 June		
Total intangibles		

The agency's intangibles comprise only of computer software. There is no active market for the agency's intangible assets. As such, they are recognised and carried at cost less accumulated amortisation and any accumulated impairment losses.

The estimated useful lives for finite intangible assets are determined in accordance with the Treasurer's Directions and are determined as follows:

	2024	2023
Computer software	6 years	6 years

Intangible assets with finite useful life are assessed for indicators of impairment on an annual basis. If any indicator of impairment exists, the agency determines the asset's recoverable amount. If the recoverable amount is less than its carrying amount, the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss. No impairment adjustments were reported during the period.

Ombudsman's Office

15. Payables

	2024	2023
	\$000	\$000
Accounts payable	15	56
Accrued salaries and wages	55	59
Total payables	69	115

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

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

16. Provisions

	2024	2023
	\$000	\$000
Current		
<i>Employee benefits</i>		
Recreation leave	347	453
Leave loading	33	33
<i>Other current provisions¹</i>	67	84
Total provisions	448	571

¹ Includes provisions for Fringe Benefits Tax, Payroll tax and Superannuation.

Employee benefits

Provision for employee benefits include wages and salaries and recreation leave accumulated as a result of employees rendering services up to the reporting date. Liabilities arising in respect of recreation leave and other employee benefit liabilities that fall due within 12 months of reporting date are classified as current liabilities and are measured at amounts expected to be paid. All recreation leave is classified as a current liability.

No provision is made for sick leave, which is non-vesting, as the anticipated pattern of future sick leave to be taken is less than the entitlement accruing in each reporting period.

Employee benefit expenses are recognised on a net basis in respect of the following categories:

- wages and salaries, non-monetary benefits, recreation leave and other leave entitlements
- other types of employee benefits.

As part of the financial management framework, the Central Holding Authority assumes the long service leave liabilities of government agencies, including the Ombudsman's Office and therefore no long service leave liability is recognised within these financial statements.

Ombudsman's Office

17. Other liabilities

Superannuation

Employees' superannuation entitlements are provided through the:

- Northern Territory Government and Public Authorities Superannuation Scheme (NTGPASS)
- Commonwealth Superannuation Scheme (CSS)
- or non-government employee nominated schemes for those employees commencing on or after 10 August 1999.

The agency makes superannuation contributions on behalf of its employees to the Central Holding Authority or non-government employee-nominated schemes. Superannuation liabilities related to government superannuation schemes are held by the Central Holding Authority and therefore not recognised in agency financial statements.

18. Commitments

The Ombudsman's Office had no capital or other commitments at 30 June 2023 or 30 June 2024.

19. 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.

The Agency did not hold any non-financial assets or liabilities during the reporting period that would require measurement at fair value. Financial assets and liabilities are recognized at amortised cost. The carrying amounts of these financial assets and liabilities approximates their fair value.

20. Financial instruments

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

The agency's financial instruments include cash and deposits, receivables and payables. It excludes statutory receivables arising from taxes including tax receivables, GST input tax credits recoverable, and fines and penalties, which do not meet the definition of financial instruments as per AASB 132 Financial instruments: Presentation.

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.

Ombudsman's Office

a) Categories of financial instruments

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

	Fair value through profit or loss		Amortised cost	Fair value through other comprehensive income	Total
	Mandatorily at fair value	Designated at fair value			
	\$000	\$000	\$000	\$000	\$000
2024					
Cash and deposits			1 939		1 939
Receivables ¹					
Total financial assets			1 939		1 939
Payables ¹			15		15
Total financial liabilities			15		15
2023					
Cash and deposits			2 112		2 112
Receivables ¹					
Total financial assets			2 112		2 112
Payables ¹			56		56
Total financial liabilities			56		56

¹Total amounts disclosed here exclude statutory amounts, prepaid expenses and accrued contract revenue.

Categories of financial instruments

Financial assets at amortised cost

Financial assets categorised at amortised cost are initially recognised at fair value and subsequently measured at amortised cost using the effective interest method, less impairment.

The agency's financial assets categorised at amortised cost include receivables.

Financial assets at fair value through other comprehensive income

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

Financial assets at fair value through profit or loss

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

Financial liabilities at amortised cost

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

Financial liabilities at fair value through profit or loss

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

Ombudsman's Office

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.

Credit risk relating to receivables is disclosed in Note 11.

c) Liquidity risk

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

d) Market risk

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

(i) Interest rate risk

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

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

(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.

Ombudsman's Office

21. 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 exclude salaries and other benefits of the Chief Minister as the Chief Minister's remuneration and allowances are payable by the Department of the Legislative Assembly and consequently disclosed within the Treasurer's annual financial statements.

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

	2024	2023
	\$000	\$000
Short-term benefits	301	296
Post-employment benefits	27	27
Total remuneration of key management personnel	329	323

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.

Ombudsman's Office

22. Contingent liabilities and contingent assets

The Ombudsman's Office had no contingent liabilities or contingent assets as at 30 June 2024 or 30 June 2023.

23. Events subsequent to balance date

No events have arisen between the end of the financial year and the date of this report that require adjustment to, or disclosure in these financial statements.

Ombudsman's Office

24. Budgetary information

The following tables present the variation between the 2023-24 original budgeted financial statements, as reported in *2023-24 Budget Paper No. 3 Agency Budget Statements*, and the 2023-24 actual amounts reported in the financial statements, together with explanations for significant variations.

The variations within these tables do not include changes to budgeted appropriations from 2023-24 original budget to 2023-24 final budget. Refer to Note 4a for summary changes to budget appropriations.

Comprehensive operating statement	2024 Actual	2024 Original budget	Variance	Note
	\$000	\$000	\$000	
INCOME				
Appropriation				
Output	2 785	2 785		
Goods and services received free of charge	327	308	19	
TOTAL INCOME	3 112	3 093	19	
EXPENSES				
Employee expenses	2 530	2 560	30	1
Administrative expenses				
Purchases of goods and services	268	370	102	2
Other administrative expenses	320	308	(12)	
TOTAL EXPENSES	3 119	3 238	119	
NET SURPLUS/(DEFICIT)	(7)	(145)	138	
COMPREHENSIVE RESULT	(7)	(145)	138	

Notes:

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

1. Small variance in employee expenses due to delays in backfilling vacancies as staff turnover was experienced.
2. Underspend due to operational savings when staffing levels were not at capacity and lower than anticipated legal and administrative costs.

Ombudsman's Office

Balance Sheet	2024 Actual	2024 Original budget	Variance	Note
	\$000	\$000	\$000	
ASSETS				
Current assets				
Cash and deposits	1 939	1 967	28	1
Receivables	2	5	3	
Prepayments	11	9	(2)	
Total current assets	1 951	1 981	30	
TOTAL ASSETS	1 951	1 981	30	
LIABILITIES				
Current liabilities				
Payables	69	115	46	2
Provisions	448	570	122	3
Total current liabilities	518	685	167	
TOTAL LIABILITIES	518	685	167	
NET ASSETS	1 434	1 296	138	
EQUITY				
Capital	295	295		
Accumulated funds	1 139	1 001	138	
TOTAL EQUITY	1 434	1 296	138	

Notes:

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

1. Greater cash holdings due to operational savings as outlined in operating statement.
2. Decreased payables relating to timing of outstanding payments.
3. Decreased provisions due to improved management of staff leave balances and reduced FTE.

Ombudsman's Office

Cash flow statement	2024 Actual	2024 Original budget	Variance	Note
	\$000	\$000	\$000	
CASH FLOWS FROM OPERATING ACTIVITIES				
Operating receipts				
Appropriation				
Output	2 785	2 785		
Receipts from sales of goods and services	18		18	
Total operating receipts	2 803	2 785	18	
Operating payments				
Payments to employees	2 657	2 560	(97)	1
Payments for goods and services	320	370	50	1
Total operating payments	2 977	2 930	(47)	
Net cash from/(used in) operating activities	(173)	(145)	(28)	
Net increase/(decrease) in cash held	(173)	(145)	(28)	
Cash at beginning of financial year	2 112	2 112		
CASH AT END OF FINANCIAL YEAR	1 939	1 967	(28)	

Notes:

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

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

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