



# Annual Report 2016/17

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





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

Dear Chief Minister

I am pleased to present to you the Annual Report for the Ombudsman for the Northern Territory for the financial year 1 July 2016 to 30 June 2017.

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

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

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

Yours sincerely

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

**Peter Shoyer**  
**Ombudsman**  
**29 September 2017**





## Annual Report 2016/17

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# INTRODUCTION

## OMBUDSMAN'S OVERVIEW

### Exceptional decision-making

Creating rules for the conduct of business is essential for any organisation. We all need to put in place systems and structures that reflect the values and priorities of our organisation to guide decision-makers and staff. Yet in doing so, it is vital that those systems and structures reflect the need to deal with exceptions to the rules.

Any good system must recognise that one size never fits all. Customers and clients will be different. Their needs will vary, as will their circumstances. The best systems create general rules but also create processes that allow recognition of exceptions. They create discretions to vary the approach when a different tack is warranted. And they ensure those discretions can be exercised by frontline staff as far as possible.

Diversity can manifest itself in many ways. It may involve a client's language or cultural background, familiarity with authority, financial status, health status, personal preference, and a host of other factors. It may also arise due to the particular circumstances of the case. Staff need to be informed and authorised to deal with unusual cases as part of their everyday business.

Failure to adopt a flexible approach in a case with special circumstances is a common cause of complaint to my Office. It is not unheard of to receive an initial agency response along the lines, "We treat everyone exactly the same, so our process is absolutely fair". Yet treating radically different people and circumstances in exactly the same way is the antithesis of fairness.

Systemic investigations can highlight rigid processes that can be enhanced on review. We spend considerable time in our work with agencies addressing issues of this nature.

"Any colour so long as it is black" is not sustainable in the public or private sector. Building flexibility into decision-making systems facilitates exceptional decision-making.

### Office operations

In 2016/17, the number of approaches to the Office fell from over 2,500 in the previous year to 2,036, a figure more closely aligned to the historical average of just over 2,000 approaches per year.

The largest contributors to the fall were Outside Jurisdiction matters (down 222), followed by approaches relating to Correctional Services (down 106), NT Police, Fire & Emergency Services (down 56) and Power Water (down 40).

However, the fall in absolute approach numbers was countered by a rise in more complex matters. In 2016/17, the number of matters in the two more complex categories of approach rose from 440 in the previous year to 559 (a 27% increase). Workload demands on the Office therefore continued at a high level, requiring investment of more resources into dealing with more complex matters.

Of the approaches completed in 2016/17 (1,999 in total), we finalised 85% of general approaches within 7 days and 84% of Police conduct approaches within 28 days.

In the great majority of cases, we attempt to deal with and resolve approaches informally. There is a more detailed description of what we do and how we do it at Chapter 2.

In 2016/17, we finalised one major investigation on the conditions for women in the Alice Springs Women's Correctional Facility, with a two volume report to the Chief Minister for tabling in the Legislative Assembly.

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

- continuing an expanded indigenous engagement strategy, including visits to 19 indigenous communities across the Territory;
- contributing to NT Government policy development by:
  - providing input to the development of draft Independent Commissioner Against Corruption legislation;
  - serving on the Northern Territory Law Reform Committee, including contributing to a report on *Non-Consensual Sharing of Intimate Images*;
  - providing input into a range of other policy initiatives;
- conducting a Certificate IV course in *Government (Investigations)* for public sector officers;
- undertaking presentations as part of broader courses, for example, OCPE Machinery of Government courses and Prison Officer training;
- undertaking one-off presentations to a range of government agencies and stakeholders, including regional councils, indigenous councils, legal aid agencies and community organisations;
- serving on the Executive of the Australian and New Zealand Ombudsman Association.

From a corporate perspective, the Office finalised a comprehensive review of its *Accounting & Property Manual* as well as implementing various system improvements to its case management system.

I once again thank the senior managers and staff of the Office for their support and commitment during the year.

**PETER SHOYER**  
**OMBUDSMAN**



## VISION, MISSION, CORE VALUES

The Ombudsman NT:

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

### Our Vision (our ultimate aim)

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

### Our Mission (how we contribute to our vision)

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

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

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

## KEY PERFORMANCE INDICATORS

Key Deliverables	2014/15	2015/16	2016/17
<b>Total approaches received</b> Comprises all enquiries and complaints, including matters referred on to another body or found to be outside jurisdiction. The baseline average for the eleven years from 2003/04 to 2013/14 was 2,063 approaches.	<b>2,767</b>	<b>2,568</b>	<b>2,036</b>
<b>Total approaches finalised</b> Includes approaches carried over from the previous year and 2 approaches reopened after the end of that year. 78 approaches were open at 30 June 2017 compared to 39 at 30 June 2016.	<b>2,762</b>	<b>2,572</b>	<b>1,999</b>
<b>Police approaches finalised within 90 days</b> Includes enquiries and preliminary enquiries undertaken by the Office and matters dealt with by Police under oversight of the Ombudsman.	<b>97%</b>	<b>97%</b>	<b>97%</b>
<b>Other approaches finalised within 28 days</b> Refers to all non-Police approaches, including local government.	<b>97%</b>	<b>96%</b>	<b>96%</b>
<b>Recommendations accepted</b> Government or an agency may partially accept a recommendation or accept the principle behind a recommendation but decide to implement it in a modified form. In those cases, a proportional figure is allocated.	<b>94%</b>	<b>91%</b>	<b>95%</b>
<b>Statutory audit/inspection and reporting requirements met</b> The Ombudsman is required to undertake audit or investigation functions and make reports under telecommunications interception, controlled operations and surveillance devices laws within certain timeframes.	<b>100%</b>	<b>100%</b>	<b>100%</b>

## CHAPTER 1 – FOCUS AREAS

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

### CRIMES VICTIMS SERVICES UNIT

In recent times, the Office has received a large number of complaints about the Crimes Victims Services Unit (the CVSU). This is a unit within the Department of the Attorney-General and Justice that, amongst other things, processes applications for financial assistance under the *Victims of Crime Assistance Act*.

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

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

My Office has been working with the CVSU and the Department for some time in an effort to facilitate process improvements to streamline procedures and attack the backlog. CVSU has identified the following steps undertaken or in the process of implementation:

- Worked with NT Police to improve Police response times to requests for information. NT Police has allocated additional resources which has resulted in a substantial improvement in average wait times and a substantial reduction in the number of outstanding Police requests. CVSU will continue to monitor response times and work with Police to ensure improvement continues;
- Processes have been reviewed in an effort to reduce the times and resources required to process applications. Measures undertaken or commenced following the review include:
  - introduction of a triage process;
  - reducing the need for full Police records in some cases;
  - a project to close and archive files;
  - a project to identify old files and prioritise them;
  - introduction of regular call up process for case managers to keep applicants informed about the progress of their applications;
  - preparation of formal case management and administrative manuals for staff, including ongoing review of these manuals;

- developing clearer guidance in the manual around medical assessments, including no shows;
- introduction of regular file audits for each case manager to ensure older and complex files are not falling between the cracks;
- Restructure of the office, to provide improved training, supervision and staff retention;
- Improving stakeholder relationships, including developing new fact sheets particularly for legal representatives;
- Undertaking a comprehensive business planning process for 2017/18 to identify longer term priority projects, including;
  - Systems mapping and improvement project;
  - Paperless office project;
  - Project to identify and implement IT solutions for a case management system.

Even though a number of the above measures are at an early stage of development, it appears there are already signs of significant improvement with the average number of determinations growing from 18 per month in 2016/17 to 31 per month in the first quarter of 2017/18.

Ultimately, there is merit in reviewing the structure of the scheme. However, in the meantime, considerable improvements can be made through system enhancements and allocation of appropriate resources. My Office will continue to monitor the situation and work with the CVSU.

## POLICE CONDUCT COMPLAINTS AND DISCIPLINE

General principles of public sector personnel management in the NT make a clear distinction between discipline on the one hand and managing unsatisfactory performance on the other.<sup>1</sup> The great majority of performance related issues in the NT public sector are dealt with by way of routine management action, including regular communication and feedback and more structured performance management and development processes.

Disciplinary processes make up a very small proportion of action taken in relation to conduct warranting action or improvement.

In contrast, the traditional approach to dealing with or correcting unsatisfactory conduct within a disciplined force such as a police force is through disciplinary processes. This is a reflection of the extraordinary powers held by police, the dangerous situations they face on a daily basis, the need for them to closely and quickly follow direction and the historical development of such disciplined forces. In the NT, this structure is evident in the *Police Administration Act (PAA)*, of which *Part IV Discipline* comprises a substantial part.

In more recent times, there have been moves for police forces to depart from a predominantly disciplinary approach towards a balance between discipline and performance management which more closely equates to modern public sector management practices. The rationale for such a move is explained in a report of the Victorian Office of Public Integrity (the OPI):<sup>2</sup>

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<sup>1</sup> *Public Sector Employment and Management Act*, parts 7 and 8. A third element which it is not necessary to discuss here, is Inability.

<sup>2</sup> *A Fair and Effective Victoria Police Discipline System*, Office of Public Integrity (OPI), October 2007, pp. 3-4.

*This report examines the current Victoria Police discipline system, and finds that it is archaic, punitive, bureaucratic, and slow. It fails to support the integrity of police members, undermines their well-being, impedes their professional development and hinders the effective management of Victoria Police.*

*Police have a unique and demanding role, but policing in Victoria is not so different from policing elsewhere. Recent reviews of police discipline systems in other jurisdictions, interstate and overseas, have been unanimous in recommending changes to radically reform the police discipline system, generally agreeing that it should be aligned with systems applicable in other employment areas.*

*The report acknowledges that the needs and requirements of the office of constable and policing services may require some specific adjustments or refinements from systems applicable to others in the public sector workforce, but makes recommendations based on re-aligning the Victoria Police discipline system with contemporary public sector employment practices. It identifies four fundamental changes necessary to reform the Victoria Police discipline system:*

- **Shift the focus from a punitive system bent on establishing guilt to one that concentrates on providing remedial assistance** to individuals so that they can **rectify their mistakes or bad habits and improve their performance.***
- Simplify the system and remove the numerous intermediate sanctions for less serious misconduct that currently exist. **If misconduct is not sufficiently serious to justify dismissal,** the best means of getting someone do their job better in the future is not to punish him or her through a slow formal process, but to **provide assertive management support** that sets performance expectations to improve behaviour.*
- Streamline and speed up the dismissal process, without compromising fairness to the individual facing dismissal. It is neither fair to an employee nor an organisation to have a long drawn out dismissal process. When the conduct is dishonest, criminal or otherwise inconsistent with the person remaining a member of Victoria Police, or when performance improvement measures have failed, it should be straightforward for Victoria Police to dismiss the person.*
- Ensure managers at all levels take an active role in managing people effectively and accept responsibility for setting expectations for those they manage, motivating and developing their staff and monitoring their performance.*

*The proposed scheme presents a number of significant implementation challenges for Victoria Police. In addition to the legislative change that will be required, the successful implementation of the proposals will require a fundamental change in attitude towards performance management and discipline. As Victoria Police moves from a punitive system to one focused on learning from mistakes and improving performance, a key to the success or failure of the reform will be how Victoria Police management, from sergeants to superintendents and above, implement the system and demonstrate by example the fundamental differences in the new approach. **A cornerstone of the new system will be acceptance that a frank and open admission of an honest but reasonable mistake, will provide opportunities for a member to improve his or her performance, and will not work to the detriment of the individual.***

*Without a reformed performance management and disciplinary system, Victoria Police will be ill-equipped to meet the future needs of the Victorian community. [emphasis added]*

A follow-up report by the OPI elaborated on those reasons and steps taken by the Victoria Police<sup>3</sup>:

*Following OPI's earlier recommendations, Victoria Police has strengthened its performance management system. The system requires further refinement, but OPI is encouraged that Victoria Police has recognised the value of such a system in a professional workforce.*

*Victoria Police has not yet addressed the link between performance and conduct management, although OPI understands this issue will be addressed as part of a Victoria Police Ethical Health process review internally sponsored by Acting Commissioner Emmett Dunne, Ethical Standards Department. In OPI's view, the performance management system provides an ideal framework within which to address less serious misconduct issues. While Victoria Police reports that such matters are increasingly managed informally, incorporating the management of less serious misconduct into the performance management framework would allow patterns of less serious misconduct to be addressed as underperformance rather than dismissed as isolated incidents.*

***Incorporating less serious conduct management into performance management (except where misconduct is serious enough to warrant consideration of dismissal) is required to streamline Victoria Police systems. OPI has provided a more streamlined model for managing standards of conduct, service and performance. [emphasis added]***

The Commonwealth has also moved in the same direction with changes to the *Australian Federal Police Act* which place increased emphasis on dealing with less serious AFP conduct issues managerially rather than through formal disciplinary processes.

Points to note in that scheme include:

- Matters of underperformance and workplace conflict should be dealt with through other appropriate managerial mechanisms.
- Serious misconduct extends to deliberate and grossly negligent conduct that demonstrates wilful or reckless disregard.

The Commissioner of Police has indicated strong support for an approach along the lines discussed above for the NT Police Force. I accept there is scope for a move in that direction so long as there is Government support for the approach, disciplinary action remains an option for serious misconduct (as described above) and the scheme operates within legislative parameters.

During the year, my Office committed substantial resources to liaising with NT Police to refine processes for dealing with Ombudsman complaints. We will continue to work with NT Police in relation to these matters.

## **INDEPENDENT COMMISSIONER AGAINST CORRUPTION / FOI AND PRIVACY TRANSFER**

My Office valued the opportunity to contribute to the development of draft legislation relating to the establishment of an Independent Commissioner Against Corruption.

One of the recommendations in the *Final Report of the Anti-Corruption, Integrity and Misconduct Commission Inquiry* was that the Information Commissioner function (currently operating in a joint office arrangement with the Commissioner for Public Interest Disclosures) be transferred to the Ombudsman's Office.

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<sup>3</sup> *Improving Victoria Police discipline and complaint handling systems: A progress report*, OPI, 2011, pp. 7-8.

While this transfer is still subject to final confirmation by Government, my Office commenced initial discussions with the Office of the Information Commissioner and the Department of the Attorney-General and Justice with a view to facilitating a smooth transition in the event that the transfer is confirmed.

## **INDIGENOUS INTERPRETERS**

The Office continued with a major investigation into use of indigenous interpreters by NT agencies. It is anticipated this investigation will be finalised in 2017/18, with a report completed for presentation to the Chief Minister for tabling in the Legislative Assembly.

## **CORRECTIONAL SERVICES CRITICAL INCIDENTS**

In a previous submission to a review of Correctional Services (included as Appendix A to my 2015/16 Annual Report), I made the following points regarding critical incidents and investigations:

- There is a need for a stronger, comprehensive critical incident review policy. It must provide robust review processes, including external investigation and review in more serious cases.
- Responding promptly and effectively to such incidents is vital to the operations of Corrections. It is important that Corrections not cede responsibility for prompt management action on the basis that a Police investigation is being undertaken.
- There should be a standing committee to review critical incidents with one or more external representatives, eg, someone from NT Police or the Department of the Attorney-General and Justice.
- There should be a routine procedure for engaging an external investigator, eg, a standing arrangement with the NT Police, an external consultant or an interstate corrections entity if the actions of the Commissioner (and if appropriate, other senior executive officers) are being investigated.
- Where actions of the Commissioner are a subject of report, the report should be provided to the Minister at the same time as the Commissioner.
- There should be a review of the Professional Standards Unit to ensure that it is empowered and has capacity to carry out effective internal investigation and review of incidents and complaints, and support of Ombudsman investigations.

During 2016/17 my Office pursued preliminary enquiries into Corrections policies and procedures regarding critical incident management, reporting and monitoring, use of force and use of emergency restraints. Enquiries into these issues will continue in 2017/18.

## **INTERNAL CONTROLS FOR SUBSIDY SCHEMES**

My Office also spent time reviewing aspects of the Pensioner and Carer Concession Scheme as an example of a high volume, low value subsidy scheme, with particular reference to ensuring the development of structures and internal controls that will promote efficient and effective operations. It is anticipated this review will be finalised in 2017/18, with a report completed for presentation to the Chief Minister for tabling in the Legislative Assembly.

## CHAPTER 2 – WHAT WE DO AND HOW WE DO IT

The *Ombudsman Act* provides that our job is to:

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

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

- **Approaches – enquiries and complaints** – The bulk of our effort is spent in dealing with approaches to the Office. We received 2,036 approaches in 2016/17 and finalised 1,999 (including a number carried over from the previous year). In dealing with approaches, we emphasise speedy and informal resolution of issues, with agencies as far as possible taking responsibility for resolution of matters involving them.
- **Police conduct complaints** – A total of 443 of the approaches we received in 2016/17 were about Police conduct. Complaints about Police conduct have their own statutory framework set out in the *Ombudsman Act*. While the emphasis remains on speedy and informal resolution of less serious matters, more serious matters are subject to comprehensive investigation and reporting. In these cases, investigations are usually carried out by the Police under Ombudsman supervision.
- **Major investigations** – Complex investigations involve major commitment of resources and usually involve systemic issues. These may be initiated by a complaint or on the Ombudsman's own initiative. They may be finalised by a report to the Chief Minister for tabling in Parliament. We finalised one major investigation report for tabling in 2016/17 (see Chapter 3).
- **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 accredited training and presentations to public sector bodies and officers (Chapter 4).
- **Stakeholder and community engagement** – Other issues can be raised, clarified and resolved in the course of or as a result of stakeholder meetings, presentations and public discussions or through provision of information and links to information, for example, on the Ombudsman website (Chapter 5).
- **Statutory auditing and investigation** – In relation to surveillance devices, telecommunications interception and controlled operations, we have statutory obligations to audit/investigate and report on certain functions (Chapter 6).

### DEALING WITH APPROACHES AND COMPLAINTS

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



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

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

Chapters 7 and 8 contain a detailed analysis of approaches received during the reporting period.

## MAJOR INVESTIGATIONS

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

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

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

The reality is that almost all approaches and complaints are finalised without the need for a separate tabled report even if there has been a formal investigation.

## INVESTIGATIONS CONDUCTED IN PRIVATE – REPORTING ON OUTCOMES

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

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

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

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

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

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

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

## INDEPENDENCE

Independence and impartiality are key drivers of the Office of the Ombudsman. The *Ombudsman Act* makes it clear that the Ombudsman is independent of government in relation to complaints and investigations:

**12      *Independence in relation to complaints and investigations***

- (1)      *The Ombudsman is not subject to direction by any person about:*
- (a)      *the way the Ombudsman exercises or performs the Ombudsman's powers or functions in relation to complaints and investigations; or*
- (b)      *the priority given to investigations.*
- (2)      *The Ombudsman must act independently, impartially and in the public interest in the exercise or performance of the Ombudsman's powers or functions in relation to complaints and investigations.*

That independence has been strongly maintained in the 39 years since the Office commenced.

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

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

- appointment as Ombudsman can only be made on recommendation from the Legislative Assembly;
- appointment is for a seven year term, which gives security of tenure;
- appointment is non-renewable, so there can be no speculation about favouring government interests in order to gain re-appointment;
- a broad power to report to the Legislative Assembly (through the Chief Minister) on the performance of the Ombudsman's functions or on a particular case;
- conditions of appointment that cannot be altered to the detriment of the Ombudsman during his or her term;
- termination for misconduct or incapacity can only be affected through a 2/3 vote of the Legislative Assembly;
- the Ombudsman appears each year before the Budget Estimates Committee of the Legislative Assembly to report directly on appropriations matters.

## IMPARTIALITY

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

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

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

## SCOPE OF POWERS

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

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

## IDENTIFYING AND PRIORITISING ISSUES

The Office of the Ombudsman identifies issues or potential issues of concern by a range of methods including analysis of complaints received, monitoring parliamentary debates, media reports and developments in other jurisdictions, and community and stakeholder engagement.

The Office must act within the resources available to it and accordingly must make decisions on the priority given and resources allocated to its various statutory functions, including investigation of particular complaints.

The overall guide to allocation of resources and priority within the Office is what best serves the public interest, bearing in mind the objects and provisions of the *Ombudsman Act*. Factors used to assess the significance of issues and the priority that should be afforded to issues include:

### **Potential harm involved**

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

### **Other factors**

- Extent of potential harm – how much harm
- Number of people impacted or likely to be impacted
- Potential for ongoing future impact – is this a one off issue or will it continue in the future
- Number of similar complaints
- Unreasonable delay or disruption

- Potential corruption / criminal conduct
- Urgency, for example:
  - Statutory time limit for action
  - Potential for harm is imminent
- Serious / systemic issues
- Existence of prior investigations on similar issues – has the issue already been dealt with
- Availability of other suitable avenues for review, investigations / actions already in progress
- The extent of prior interaction by the complainant with agency – has the agency had a reasonable opportunity to deal with the issue
- Steps already taken by the agency to redress the issues.

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

## CHAPTER 3 – MAJOR INVESTIGATIONS

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

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

One major investigation report was provided to the Chief Minister in 2016/17 for tabling:

- *'Women in Prison II' – Alice Springs Women's Correctional Facility* (May 2017).

Updates on acceptance and implementation of recommendations made in that report and the following reports finalised in earlier years, are set out below:

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

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

### WOMEN IN PRISON II

*Women in Prison II* revisits similar issues to those discussed in a 2008 Ombudsman report, in the context of conditions faced by women in the Alice Springs Women's Correctional Facility. It concludes that progress since then has been limited at best. The ongoing initiative and dedication of correctional officers is acknowledged. But the reality is that promising initiatives have been proposed or commenced only to be swamped in time by the voracious resource requirements of the traditional correctional system.

The investigation was initiated in light of a range of complaints about conditions and analysis which shows the number and proportion of female prisoners in the NT has grown rapidly in recent years. Combined with substantial growth in male prisoner numbers, this has put enormous pressure on the correctional system and sub-standard conditions for female prisoners have persisted.

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

- Chronic overcrowding (growing numbers in a limited space, inside a male prison)
- Housing and facility issues (wear and tear, not enough amenities)
- Limits on education and rehabilitation programs
- Limits on employment opportunities
- Issues with health care of prisoners, including 'At Risk' prisoners
- Problems with the basics (clothing, hygiene, food and recreational activities)
- Cultural issues for the predominantly Indigenous population
- Language and communication issues for the predominantly Indigenous population
- Inadequate arrangements for housing children with their mothers.

The report identifies attributes shared by many female prisoners in Alice Springs:

- Indigenous
- Around 30 years old
- A carer
- Substantial health issues (including mental health)
- Dependence issues
- Communication issues (English may be a third or fourth language)
- Violent or otherwise confronting home situations
- In prison for less than 6 months.

The report concludes that the fundamental purpose of the correctional system should be rehabilitation and that, in order to promote rehabilitation, solutions must be designed with specific prisoner groups in mind. To that end, there must be:

- solutions designed specifically for women;
- solutions designed specifically for Indigenous women;
- involvement of Indigenous stakeholders and communities in both design of solutions and delivery of solutions.

#### **Focus on rehabilitation**

The report notes the potential for the young women in prison today to contribute positively to their families and their communities in the future. However, it concludes the chances are that without substantial support and guidance many will instead be in and out of the justice and health systems for decades to come.

It states that we cannot, as a society, financially or morally afford to allow this situation to continue. If there is not a transformational shift in the correctional system towards rehabilitation and reintegration, the underlying contributors to offending and poor health will persist as a burden on the community.

The traditional correctional model does not work; certainly in so far as women are concerned. As a community, we need to acknowledge that things will only get better if we invest in the future of offenders. We need to explore alternatives to custody and create an environment in custody and afterwards that encourages and assists people to build better lives for themselves, their families and their community. We need to facilitate non-offending.

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

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

*Women in Prison II* recognises that Government and Corrections are undertaking a variety of initiatives aimed at providing targeted and flexible options. It simply stresses that there is much more work to be done.

### **Reframing the public debate**

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

We can gain considerable guidance from international bodies and other jurisdictions around the world. We can learn and adapt their approaches as well as developing our own unique initiatives. Indigenous stakeholders and communities have an essential role to play in this regard but Government must take the lead role.

If we fail to act now, with initiative and resolve, there is every indication we will need to revisit these same, and worse, issues in years to come.

### **The bigger picture**

The report notes that the solutions extend well beyond the correctional system. The broader justice system must have a renewed focus on non-custodial solutions. This will include a greater focus on involvement, help and support for victims.

Even more broadly, offending levels are indisputably linked closely with socio-economic conditions. Low incomes, poor education and limited access to facilities and opportunities all contribute to an environment where crime is more likely. Solving problems of crime and offending necessarily requires society to address those broader issues.

## **Acceptance and implementation of Ombudsman recommendations**

The recommendations made in the report are set out below.

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

6. *The NT Government, the Department and Corrections fundamentally reconsider the approach to custody of female prisoners, with an emphasis on decentralisation, community and family support, ensuring that security matches the actual risk they present and providing an environment that facilitates rehabilitation and reintegration, including viable, well-resourced and timely accommodation and program options.*
7. *Corrections develop, in consultation with the Ombudsman, a detailed plan to pursue and address all of the issues raised in Chapter 8 and Volume 2 of this report. The plan should set out an initial response to each issue, a description of proposed actions to address the issue, the resource implications of those actions, the source of any additional funding required, measurable outcomes and a timeline for action. The plan should provide for action on priority issues within a matter of weeks or months but in any event should provide for implementation of all actions within two years of finalisation of this report. The broad topics covered by the plan will include:*
  - a. *overcrowding;*
  - b. *housing and facility issues;*
  - c. *education and rehabilitation programs;*
  - d. *employment opportunities;*
  - e. *health care;*
  - f. *the basics (clothing, hygiene, food, and recreational activities);*
  - g. *underlying supports (induction, legal assistance, making complaints and using interpreters); and*
  - h. *children in prison.*
8. *Corrections provide the Ombudsman with a copy of the initial plan within three months of the finalisation of this report, and updates on progress every three months thereafter. Corrections meet with the Ombudsman staff to discuss progress on each occasion.*
9. *Given the overwhelming proportion of Indigenous female prisoners, consideration and implementation of all recommendations be conducted in consultation with Indigenous communities and elders as well as prisoners and other stakeholders.*

When tabling the report in the Legislative Assembly, the Chief Minister stated:

*The recommendations of the report align strongly with the government's policy in relation to reforming the justice system in order to reduce unacceptably high Aboriginal incarceration recidivism rates and increased focus upon rehabilitation. The whole of government justice reform framework the Attorney-General announced on 19 October 2016 is already under development and will address in particular recommendation one which relates to the need to adopt a whole of government approach to the reduction of offending and recidivism.*

*The framework will set out principles, values and reform goals which will underpin the work which needs to be done in the justice area including improving the justice environment for women in prison, the ultimate objective being a safer community through reduced offending. It is important the understand the response to this report and other related recent reports including the anticipated report of the Royal Commission into youth detention and child protection, they are integrally connected and therefore require coordinated whole-of-government action.*

*For this reason the justice reform framework will be finalised after the report of the Royal Commission into youth detention and child protection is received. A further key piece of work which is being developed alongside the justice reform framework is the Aboriginal Justice Agreement; this innovative project which will deliver practical justice outcomes and partnerships between Aboriginal Territorians and government is a key policy and implementation platform. The Aboriginal Justice Agreement will focus on what communities want; consultations for the agreement are under way and will continue for the next 12 months.*



*Addressing the needs for Aboriginal women in prison is part of the work of the Aboriginal Justice Agreement and is particularly relevant to recommendation two which addresses local approaches to crime prevention and community safety. The government has already commenced implementation with a local decision-making agenda, a commitment that also supports recommendation two. We are working with local communities, police, Housing, Health, Education, Attorney-General and Justice and other agencies to work out ways in which communities can be supported to make decisions in these areas which will work for their specific community.*

*The Aboriginal Justice Agreement is facilitating the conversation for communities about how law and justice matters might be impacted at a local level. Correctional services have already started work on a number of the broad things which are commented on in earlier reports including a safer Northern Territory through correctional interventions, known as the Hamburger Review and the Commonwealth Prison to Work Report.*

*The correctional services purpose and direction strategy provides the strategic directions and core foundation for change at the operational level. Planning undertaken as part of the continuous improvement program has already highlighted areas that will specifically target women's needs, women's rehabilitation programs, women's reintegration services and the differing needs of women in prison compared to men.*

*The work is particularly relevant to recommendations three and four of the Ombudsman's report. Northern Territory Correctional Services is making considerable progress towards operational form agenda of particular note is work under way in the new Throughcare framework which aims to enable a case management approach in relation to each individual ensuring an individualised approach tailored to specific criminogenic risks and rehabilitation needs.*

*This work builds on the existing sentence management and Throughcare framework and is an exciting development which will fundamentally shift our approach to reintegration and rehabilitation. In line with developments and Throughcare a specific approach to address the needs of women in prison is being addressed through a management of female offender's reform program. This will be a changed management program which will develop the plan to implement the recommendation of the Ombudsman report.*

*Working groups have already been established including both management level and consultative forums. Consultative forums engage women in prison to jointly problem solve and get a firsthand understanding of issues facing women in custody.*

*Elders from the Elders visiting program and non-government service providers such as the YWCA who provide the Women of Worth program in Darwin also provide crucial information and feedback. Although it is essential that we address the needs of women in prison it is fundamentally clear that unless we have alternative non-custodial approaches, unless we work earlier with young people and adults at the risk of entering the justice system the unacceptably high levels of both female and male incarceration in the Territory will not be reduced.*

*The Department of the Attorney-General is, as part of the consultation for the Aboriginal justice agreement, working on the alternatives to prison. This work responds to recommendations five and six of the Ombudsman's report. Matters to be considered include whether legislation should be reformed to broaden the range of available sentencing options and what is a possible way of diversion restorative justice approaches.*

*Communities will be consulted upon whether there should be custodial rehabilitation centres upon their land managed by community and if so how they will be set up and run. Consistent with decisions being made locally one size will not fit all and centres in different areas may run differently. We are hoping to partner with the Commonwealth and local communities to run pilot programs in the next 12 months to build the evidence base so we can invest in solutions that work into the future.*

*Recommendations seven and eight refer to the development of a detailed plan to address the recommendations with robust arrangements and regular monitoring of its progress. The issue which the Ombudsman identifies overcrowding, housing, education, rehabilitation programs, employment, healthcare, basic amenity, underlying supports and children and prison are all priority areas.*

*We look forward to working with the Ombudsman's office on the development and presentation of this plan should be key to making significant change for women in custody in the Territory. However as I have already said deep and lasting change will depend upon us all working together to address the issues which we know need attention in our justice system.*

*Last but by no means least, the Ombudsman has pointed out that due to the shocking over representation of Aboriginal women in prison it is necessary to consult with Aboriginal women, communities and Elders in developing plans in these areas. The government has demonstrated that we are committed to this consultation. It is not only the right thing to do it is the smart thing to do.*

*As I have already stated the Elders visiting program in corrections and the community level consultation to Aboriginal justice agreement are part of that engagement. They are not the only part. We look forward to working with APONT, Aboriginal Legal Services and Medical Services, Land Councils and Aboriginal organisations and individuals at all levels in order to progress is vital work.*

*In order to succeed we must work together. I am pleased to report to the Assembly that dressing this report's recommendation will be included in the work this government is already undertaking on justice reform and I have already outlined a number of activities and projects are already under way as part of that reform. This work will ensure that ongoing statements to justice and correctional services meet the specific needs of women who unfortunately come into contact with our justice system so that our services support their rehabilitation and effective re-integration back to the communities where they belong.*

The Office has had positive discussions with the Chief Executive of the Department of the Attorney-General and Justice and the Commissioner for Correctional Services regarding implementation of those recommendations relevant to the Department and Correctional Services.

There is every indication that Correctional Services is approaching the recommendations with good will and considerable effort. The challenge for Government will be to ensure the ongoing allocation of sufficient resources and strategic focus necessary to attack the many issues identified. This Office will continue to monitor implementation.

## **BILLS, BILLS, BILLS**

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

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

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

The recommendations made in the report are set out below.

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

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

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

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

...

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

Media reports indicate that the town camps review report (running to some 16,000 pages) has been finalised but not yet approved for public release. My Office will seek further information on the implementation of the above recommendations once Cabinet has had an opportunity to consider the report and the report is publicly released.

## **LET THERE BE LIGHT**

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

The report recognised that the Department and PWC operate within a complex environment when providing public housing and essential services to remote communities. In Wadeye, the situation was exacerbated by the large number of houses with damaged meters, backboards and electrical fittings and the extent of the damage in some houses.

Nevertheless, the report concluded that there were number of instances of delay in repairing damaged meters and associated property and in developing agreed policies and procedures between the Department and PWC. The Report also identified instances of poor communication with interested stakeholders.

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

PWC advises that it has put considerable effort into developing customer contracts and a customer charter. However, it notes that the process of obtaining agreement/approval from a substantial number of stakeholders is involved. It has indicated that finalisation has been delayed pending the outcome of the town camps review.

Again, my Office will seek further information on the implementation of this recommendation following public release of the town camps report.

## CHAPTER 4 – QUALITY IMPROVEMENT

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

The second, and equally important object, is to “improve the quality of decision-making and administrative practices in public authorities”.

While information gained in the course of dealing with complaints may inform the Office in its pursuit of the second object, that object is considerably broader than the formal investigation of complaints.

The Office engages with public authorities and public sector officers through a range of mechanisms aimed at improving administrative practices across government. These include:

- delivery of accredited investigation training and a range of workshops and presentations;
- joint initiatives and regular contact with public authorities;
- joint initiatives and regular contact with complaints and review bodies;
- contributing to legislative and policy reform.

### ACCREDITED TRAINING

In 2016/17, the Office provided formal training to a range of investigators across Government by means of a nationally accredited Certificate IV in *Government (Investigations)* course.

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

Providing the course internally requires suitably skilled and formally trained staff at senior level within the Office. It also requires considerable effort to maintain national accreditation through a registered training organisation.

With the departure of a staff member who has conducted the course in recent times, the Office is currently reviewing the best way to facilitate the provision of appropriate investigative training to NT public sector officers.

### WORKSHOPS AND PRESENTATIONS

In 2016/17, my Office delivered or participated in the following training and presentations to public sector officers:

- Prison Officer training;
- OCPE Machinery of Government Program.

### OTHER INVOLVEMENT WITH PUBLIC AUTHORITIES

Section 150 of the *Ombudsman Act* allows for the Ombudsman and the Police Commissioner to make an agreement about dealing with police complaints. An agreement was finalised in 2014/15 (see Appendix A). It provides considerable additional detail on the processes and procedures in place for dealing with police complaints.

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

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

## COMPLAINTS AND REVIEW BODIES

In order to facilitate ongoing co-operative relationships with complaints and review bodies, the Ombudsman has entered into the following Memorandums of Understanding:

Entity	MoU commenced	MoU available
<b>Commonwealth Ombudsman</b>	November 2009	2013/14 Annual Report
<b>Commissioner for Public Interest Disclosures</b>	August 2010	2013/14 Annual Report
<b>Children's Commissioner</b>	June 2014	2013/14 Annual Report
<b>Information Commissioner</b>	May 2015	2014/15 Annual Report

The Ombudsman and staff of the Office interact in a variety of other ways with complaints and review bodies in the Territory, across Australia and internationally. In 2016/17, this included:

- one on one meetings with various independent officers including the Auditor-General, the Commissioner for Public Interest Disclosures, the Children's Commissioner and the Commissioner of Consumer Affairs;
- participation in the NT Integrity and Accountability Officers Group;
- discussion of individual matters and formal referral to other bodies where appropriate;
- meeting with interstate and national counterparts as the opportunity arises, for example, hosting visits by staff of the Commonwealth Ombudsman;
- maintaining membership of the International Ombudsman Institute (IOI), a global organisation for the cooperation of more than 170 independent Ombudsman institutions from more than 90 countries worldwide - <http://www.theioi.org/>;
- maintaining membership of the Australian and New Zealand Ombudsman's Association (ANZOA) a professional association and the peak body for Ombudsmen in Australia and New Zealand. ANZOA's members are individual Ombudsmen working in not-for-profit industry-based, parliamentary and other statutory offices, which meet accepted high standards of independence, impartiality and effectiveness, and which observe the *Benchmarks for Industry-Based Customer Dispute Resolution*. Through the Ombudsman's membership of ANZOA, our staff benefit from the professional development opportunities offered by participation in ANZOA's numerous interest groups - [www.anzoa.com.au](http://www.anzoa.com.au) ;
- serving on the ANZOA Executive Committee;

- attendance at the following meetings and conferences:
  - Institute of Public Affairs Australia, National Investigation Symposium;
  - Australian and New Zealand Ombudsman Association, AGM;
- contributing to joint projects with Australasian parliamentary ombudsmen, for example, ombudsman statistical benchmarking.

## LEGISLATIVE AND POLICY REFORM

One of the roles of the Ombudsman is to take part in meetings of the Northern Territory Law Reform Committee (NTLRC). The NTLRC advises on issues referred by the Attorney-General relating to reform of the law in the Northern Territory.

During the year, the Ombudsman contributed to the production of an NTLRC *Report on the Non-Consensual Sharing of Intimate Images*.

The Ombudsman is also asked to make submissions or provide input from time to time on policy and legislative reform relating to aspects of public administration. Input was provided in relation to a number of issues during the year, for example:

- the development of the Independent Commissioner Against Corruption legislation ; and
- the development of the NT Correctional Services *Purpose and Directions Strategy 2016-20*.

## CHAPTER 5 – STAKEHOLDER & COMMUNITY INVOLVEMENT

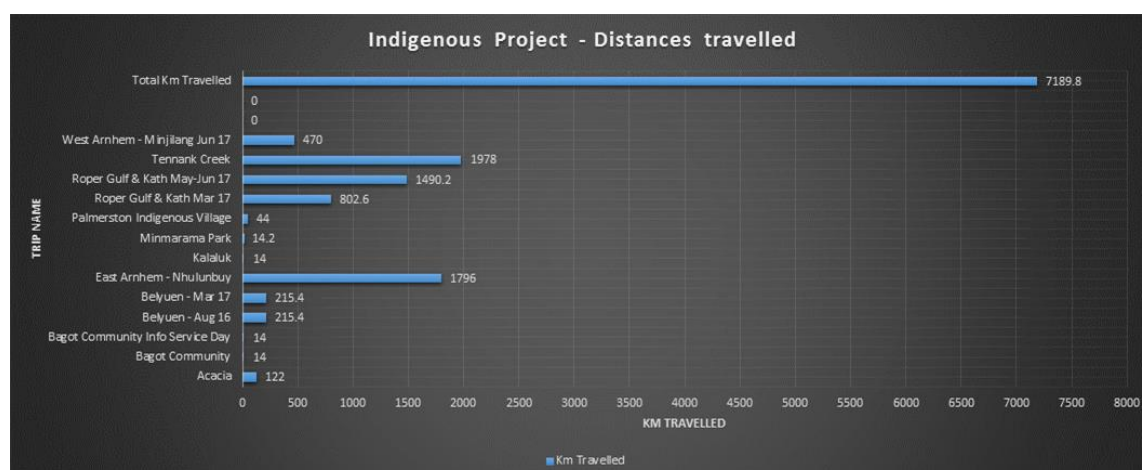
The Office regularly engages with stakeholder groups and the broader community in a variety of ways.

### INDIGENOUS COMMUNITY VISITS

In 2016/17, Ombudsman staff visited the following indigenous communities across the Territory:

Acacia	Jilkminggan	Minmarama Park
Bagot	Kalano	Minyerri
Barunga	Kulaluk	Palmerston Indigenous Village
Belyuen	Manyallaluk	Pine Creek – Kybrook Farm
Binjari	Mataranka	Tennant Creek
Gapuwiyak	Minjilang	Yirrkala
Gunyangara		

Ombudsman staff travelled over 7,000 km throughout the Territory visiting communities.



Community residents raised some specific complaints during visits but also communicated general concerns. Areas of concern included:

- overcrowded housing;
- houses being left vacant for long periods;
- inadequate maintenance of houses;
- rudeness and unnecessary use of force by Police;
- Police showing bias or discrimination;
- not enough Police for the community;
- the need for more use of Indigenous interpreters;



- failure to give jobs to local people;
- issues relating to dogs;
- the need for a sobering up shelter.

## OTHER PRESENTATIONS, EVENTS AND VISITS

In addition, we conducted visits and presentations to a range of stakeholder and community groups, including:

- Top End Women's Legal Service;
- Darwin Community Legal Centre;
- North Australia Aboriginal Family Violence Legal Service;
- Multicultural Council of the Northern Territory;
- NT Legal Aid;
- various electorate offices.

At various venues, we conducted complaints clinics where members of the community could come forward to raise any issues of concern.

We also ran a number of radio advertisements in conjunction with visits to regional centres and communities.

Further community engagement was encouraged through participation in stalls at the following public events:

- Supreme Court Open Day;
- Council of the Ageing (NT) Seniors Expo;
- Bagot community – Info service day.

## PUBLICATIONS AND WEBSITE

The Office provides access to a broad range of publications, primarily through its website at [www.ombudsman.nt.gov.au/publications](http://www.ombudsman.nt.gov.au/publications).

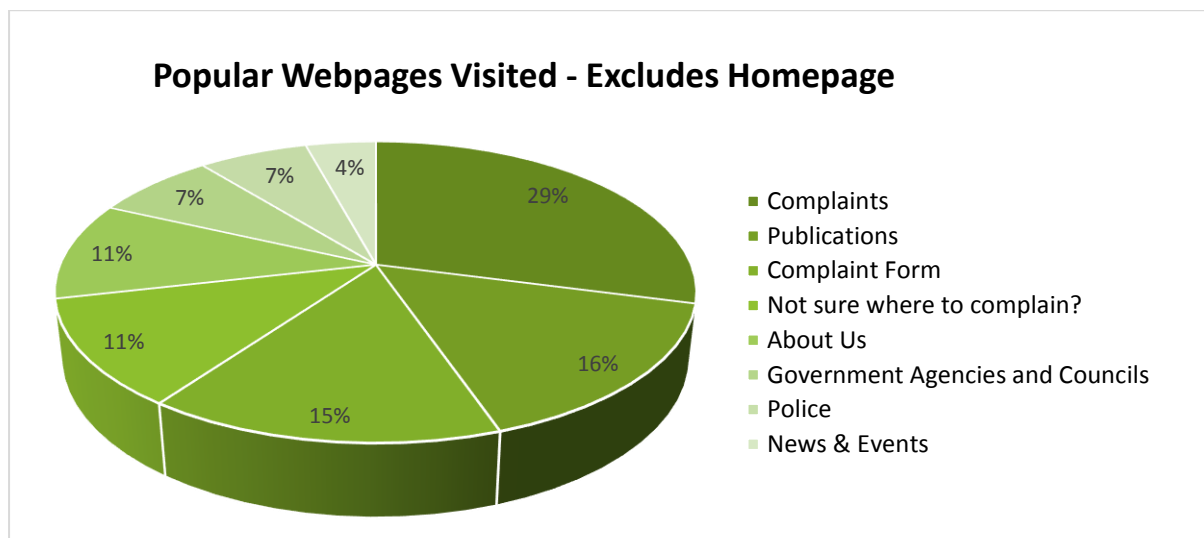
Available publications on the website include:

- Annual Reports dating back to 2002/03;
- Investigation Reports dating back to 2002;
- Surveillance Devices Compliance Reports dating back to 2014;
- a variety of brochures, guides and other information for enquirers and complainants.

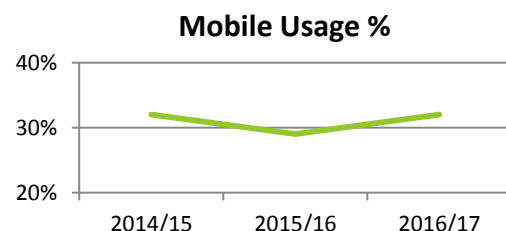
In addition to reports, resources added to the website during 2016/17 included a webpage with links to substantial reference materials on *Complaints Management Resources*. This page includes materials relating to complaint management, complaint resolution, investigations, remedies and apologies: <http://www.ombudsman.nt.gov.au/agencies/complaints-management-resources>.

Another new webpage deals with *Integrity and other resources*. This page includes materials relating to integrity, corruption, conflict of interest, accepting gifts, benefits and hospitality, governance and good decision-making and stakeholder engagement, along with Indigenous resource links: <http://www.ombudsman.nt.gov.au/agencies/integrity-and-other-resources>.

As in previous years, the most commonly visited pages on the website continued to be those that contained information on how to contact the Office and how to make a complaint, and those that contained publications and reports.



Website visits from mobile devices, including tablets, continue to make up a substantial proportion of total visits with 32% of visits originating from mobile devices in 2016/17 (compared to 29% in 2015/16).



## CHAPTER 6 – OVERSIGHT FUNCTIONS

### SURVEILLANCE DEVICES

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

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

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

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

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

### TELECOMMUNICATIONS INTERCEPTION

The *Telecommunications (Interception and Access) Act* (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* (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 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 Commonwealth Attorney-General.

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

## CONTROLLED OPERATIONS

The *Police (Special Investigative and Other Powers) Act* commenced on 1 July 2015. Part 2 of that Act 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, at least once each year, in order to determine the extent of compliance by NT Police and its officers with Part 2.

The Ombudsman must report on compliance each year to the relevant minister. The report must include comments on the comprehensiveness and adequacy of 6 monthly reports which the Commissioner of Police is required to provide to the Ombudsman.

A report for 2015/16 was provided to the Minister for Police, Fire & Emergency Services in August 2016 and tabled in due course. It noted that reports received from the Commissioner of Police in line with section 30 and advice from NT Police at the time of inspection confirmed that no applications had been made or controlled operations undertaken under Part 2 since commencement of the Act. The report was therefore limited in scope.

In this context, it is pertinent to note that the *Misuse of Drugs Act* contains an alternative provision authorising undercover operations in so far as they would otherwise represent an offence of acquisition, supply or possession of a dangerous drug or precursor (section 32). In those cases, authorisation is given by a senior police officer.

That provision is not subject to monitoring and reporting requirements corresponding with those contained in the *Police (Special Investigative and Other Powers) Act*. It is possible that undercover operations have been undertaken under the authority of the *Misuse of Drugs Act* but it is not known whether this is the case.

The scrutiny of authorisation, conduct and recording of such operations would fall within the general jurisdiction of the Ombudsman. By its structuring of Part 2 of the Act, the Legislative Assembly has evinced its intention that special operations of this nature, which would otherwise involve criminal offences, should be subject to closer scrutiny. With that in mind, there is justification for closer monitoring and reporting of NT Police functions under section 32 of the *Misuse of Drug Act*. This is a matter which my Office may consider pursuing further in the future under its general jurisdiction as time and resources permit.

In the meantime, I would raise for consideration by the Commissioner of Police the potential for a level of basic public reporting on the extent of use of section 32 of the *Misuse of Drug Act* and outcomes achieved. This might be as simple as including in the NT Police Annual Report information on the annual number of authorisations given, the number of distinct acts of acquisition and supply, and the number of prosecutions commenced and convictions secured in which utilisation of section 32 was a material factor. This would provide the public and the Legislative Assembly with a better appreciation of the extent of use and the need for, and priority to be given to, closer scrutiny.

## CHAPTER 7 – APPROACHES – ENQUIRIES AND COMPLAINTS

### NUMBER OF APPROACHES

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

The top government agencies by approach received in 2016/17 are set out below.<sup>6</sup>

Department / Agency	2014/15	2015/16	2016/17
<b>Police, Fire and Emergency Services</b>	525	560	504
<b>Correctional Services<sup>(1)</sup></b>	608	430	324
<b>Jacana Energy</b>	52	85	83
<b>Housing &amp; Community Development</b>	102	102	75
<b>Attorney-General and Justice<sup>(2)</sup></b>	33	54	58
<b>Power Water</b>	90	84	44
<b>Infrastructure, Planning &amp; Logistics<sup>(3)</sup></b>	-	-	43
<b>Charles Darwin University</b>	28	25	20
<b>City of Darwin<sup>(4)</sup></b>	24	28	17
<b>Health</b>	8	18	17
<b>Territory Families</b>	12	15	17

#### Notes

- (1) Numbers for Correctional Services will continue to be reported separately although this is now part of the Department of the Attorney-General and Justice.
- (2) Includes Crimes Victims Services Unit (20) and Fines Recovery Unit (15).
- (3) Includes Motor Vehicles Registry (21).
- (4) In total, there were 44 approaches in relation to local government councils compared with 67 in 2015/16.

### VARIATIONS FROM PREVIOUS YEARS

In 2016/17, the total number of approaches to the Office trended towards the historical average of just over 2,000, falling substantially from the previous year. Large contributors to the fall were Outside Jurisdiction matters (222 fewer), Correctional Services (106 fewer), NTPFES (56 fewer), Power Water (40 fewer) and Housing & Community Development (27 fewer). However, it is fair to say that the number of approaches relating to many agencies fell compared to the previous year.

The fall in approach numbers was countered by a rise in more complex matters. The Office categorises matters into three levels of complexity, with Complex matters followed by Resolved expeditiously and the simplest matters identified as Enquiries.

<sup>6</sup> The list reflects the names and structures in place at 30 June 2017. Substantial changes to the structure of some Government agencies were made following the advent of the new Government in August 2016. In some cases, this will make comparisons with earlier years problematic.

The number of more complex approaches rose substantially in 2016/17 compared with the previous year. The reduction in approach numbers came in the simplest form of approaches, as the table below shows.

Complexity	2014/15	2015/16	2016/17
<b>Complex matters</b>	79	94	117
<b>Resolved Expeditiously</b>	400	346	442
<b>Enquiries</b>	2,288	2,128	1,477

There were 443 Police conduct approaches during the year, a notable decrease from 498 in 2015/16. The decrease was not obviously attributable to any factor. The number of NTPFES approaches about other matters remained the same. These other approaches related to a wide variety of matters, for example, general enquiries about processes, RBT locations, cost of providing a criminal history check, attempts to dispute an infringement notice, issues to do with court proceedings, delays in providing reports needed for insurance purposes, payment of a fire alarm call out fee, personnel issues and matters relating to civilian employees.

I have previously noted a spike in Correctional Services approaches in 2014/15 arising from the transition to the new Darwin Correctional Centre. In 2016/17, Corrections approaches again dropped substantially compared to the previous period. It is anticipated they will continue at around this level in the future.

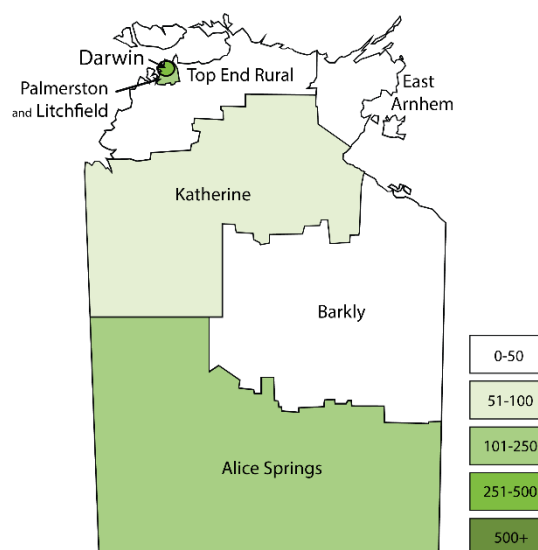
Overall, energy and water approaches (Jacana Energy and Power Water) continued to be the third most prevalent source of approach. However, 2016/17 saw a reversal of an increasing trend from earlier years with numbers dropping from 169 to 127.

Police conduct complaints are discussed in the next Chapter. Approaches relating to administrative actions of corrections, energy and water and housing agencies are discussed in this Chapter.

## SOURCE OF APPROACHES

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

Region	%
Darwin	50
Palmerston/Litchfield	20
Alice Springs/Central	16
Katherine	7
Top End Rural	5
East Arnhem	2
Barkly	2



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

For similar reasons, it can be difficult to establish in the course of dealing with an approach whether an enquirer identifies as Indigenous. My Office considers it important to obtain such information to help us establish any gaps in service provision and ways to improve our service. We have therefore developed a demographic information script for our staff to explain to enquirers why obtaining information of this type is important and ask questions about region, Indigenous status and how they found out about the Office. The script and questions have also been incorporated into our complaints form.

However, as we stress to enquirers, it remains a matter of their personal choice whether they wish to answer any or all of these questions. In 2016/17, 16% of enquirers identified or were identifiable as Indigenous. However, over half of enquirers did not identify a background at all. Of those whose background was identifiable, 43% were Indigenous. That being the case, these statistics are at best broadly instructive rather than definitive.

## HOW APPROACHES ARE MADE

The Office offers a range of options for contact. In 2016/17, close to two thirds of enquirers made initial contact with the Office by telephone. This compared with 21% of people who utilised either e-mail or the Office's online web form (up from 15% last year).

Even with other options available, a substantial number of people still made initial contact by visiting the Office in person.

Manner of approach	%
Telephone	63
Online: complaint form or e-mail	21
Referred by police	10
In person	4
Letter	3
Facsimile	<1

## HOW APPROACHES ARE DEALT WITH

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

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

## Ombudsman matters

The Ombudsman NT deals with complaints about NT government agencies, local government councils and the conduct of NT Police. Complaints against Police have special rules regarding their conduct and approaches of this type are discussed in Chapter 8.

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

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

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

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

Our office maintains the view (strongly supported under the Act) that the relevant agency should be given the opportunity to resolve a complaint in the first instance. For this reason, complainants who come to our office without first addressing their concerns with the relevant agency will be assisted by our staff in making contact with the agency.

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

### **Referrals to another complaints entity**

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

Complaints entities that we may refer a matter to include:

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

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

### **Outside jurisdiction**

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

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



In outside jurisdiction cases, the Office attempts to either provide contact details or put the enquirer in touch with an entity that can assist them.

In 2016/17, we dealt with 763 outside jurisdiction approaches (compared to 985 in 2015/16 and 1,153 in 2014/15). The following table lists the most common outside jurisdiction sectors where approaches were referred on to another complaints body or forum.

Sector	2014/15	2015/16	2016/17
Consumer affairs	118	131	122
Employment	170	150	108
Commonwealth government	78	82	76
Telecommunications	58	57	70
Financial services	71	80	58
Private housing	62	68	44
Health services	84	57	43

## HOW QUICKLY APPROACHES ARE DEALT WITH

In 2016/17, 1,999 approaches to the Office were finalised. The bulk of approaches are dealt with expeditiously by the Office. This year, 84% of Police conduct approaches were finalised within 28 days and 85% of other matters were finalised within 7 days.

### Time taken to finalise approaches - approaches finalised in 2016/17

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police conduct	52%	33%	13%	2%	1%	412
Other	85%	10%	4%	<1%	<1%	1,587
<b>Total</b>	<b>1,565</b>	<b>299</b>	<b>112</b>	<b>14</b>	<b>9</b>	<b>1,999</b>

A total of 78 matters remained open at 30 June 2017, compared with 39 at 30 June 2016. Of those matters, 49 were NT Police matters and 57 were less than three months old. While the figure is higher than in previous years, it includes a number of older, more complex matters that are anticipated to be finalised in 2017/18 and is not regarded as a matter for concern.

### Age of open matters - at 30 June 2017

Group	Up to 7 days	8 to 28 days	29 to 90 days	91 to 180 days	Over 180 days	Total
Police	4	13	21	7	4	49
Other	5	5	9	4	6	29
<b>Total</b>	<b>9</b>	<b>18</b>	<b>30</b>	<b>11</b>	<b>10</b>	<b>78</b>

## CORRECTIONAL SERVICES APPROACHES

The year saw a substantial decrease in the number of approaches to our Office regarding Correctional Services (324 in 2016/17 compared to 430 in 2015/16).

A list of the most common issues raised by approaches in 2016/17 is set out in the following table. Some approaches raised more than one issue.

Issue	Notes	No.
<b>Officer conduct</b>	Includes rudeness, insensitivity, harassment, poor communication, inappropriate treatment of a vulnerable person	<b>54</b>
<b>RASP processes</b>	Problems accessing Request to Attend Superintendent's Parade forms	<b>52</b>
<b>External contact</b>	Includes issues with phones, mail and visits	<b>45</b>
<b>Health / welfare</b>	Issues regarding health services are referred on to the Health & Community Services Complaints Commission.	<b>44</b>
<b>Classification / Housing</b>	Includes issues about the classification of a prisoner, eg, high, medium, low security, as well as accommodation arrangements such as which area or block they are placed in and cell type	<b>39</b>
<b>Money / buys</b>	Any issues dealing with prisoner accounts and purchases	<b>25</b>
<b>Personal safety/security</b>	Assault, fight, threat by prisoner (3) – Assault, excessive force, threat by prison officer (8) – Housing prisoners together in a way that puts one or more at risk (4)	<b>16</b>
<b>Condition of facilities</b>		<b>12</b>
<b>Food</b>	Issues relating to quality or service of food. Includes issues relating to special dietary requirements	<b>11</b>
<b>Educational programs</b>		<b>11</b>
<b>Recreation / Amenities</b>	Matters relating to recreational activities and everyday aspects of living, eg access to publications, smoking, access to television, sporting and craft equipment	<b>9</b>

## ENERGY AND WATER APPROACHES

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

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

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

PWC will also be involved where, for example, a person wishes to challenge a credit listing due to an unpaid old debt.

The total number of energy and water approaches for 2016/17 was 127, down from 169 in the previous year. This comprised 83 approaches recorded against Jacana Energy and 44 against PWC.

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

The top issues raised in relation to Jacana Energy in 2016/17 were:

- Disconnection (21) - unreasonable or in error, charging reconnection fee;
- Excessive charges (17);
- Financial hardship, debt collection arrangements, credit listing (17);
- Billing (13) – for example, bill not received or two bills received at the same time, or sent to wrong address.

The top issues raised in relation to PWC were:

- Excessive charges (15);
- Financial hardship, debt collection arrangements, credit listing (15).

Positive outcomes achieved during the year through approaches to the Office included:

- reductions in charges where the location of a water leak was uncertain and/or had not been detected for an extended period;
- waiver of an emergency reconnection fee that had not been notified to the consumer;
- removal of credit listings where there had been process errors in the listing;
- a substantial credit where a consumer had been charged for four sanitary fixtures over a number of years when there were only two on the property.

## **HOUSING APPROACHES**

There were 75 approaches to the Office relating to the Department of Housing and Community Development in 2016/17 (compared to 102 in 2015/16). The five most common issues raised by enquirers related to:

- Repairs and maintenance (14);
- Financial issues (13), including rental amounts, debts, deductions and rebates;
- Failure to take appropriate action on complaints against neighbours (11);
- Transfer of tenancy (7), including refusal to transfer to new accommodation and delay in transfer;
- Allocation of housing (5), including priority housing and delays in completion of housing.

## CHAPTER 8 – POLICE CONDUCT

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

The Act requires the Commissioner of Police and the Ombudsman to notify each other, upon receipt of a complaint, and to provide details of the complaint. It provides a framework for the investigation of complaints against Police and defines the role of the NT Police 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 2017, is set out at Appendix A of this Report.

During 2016/17, my Office received 443 approaches relating to Police conduct, a substantial decrease from 498 in the previous year.

### HOW POLICE CONDUCT APPROACHES ARE DEALT WITH

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

Careful consideration is given to the potential seriousness or importance of the complaint, whether it is appropriate for the Police to deal with the matter in the first instance, and the responsible allocation of resources. The classification of complaints is intended to be flexible and, if necessary, may be changed according to the results of enquiries/investigations to hand. The final decision on the classification of a complaint rests with the Ombudsman.

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

#### **Enquirer assistance and preliminary inquiries**

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

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

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

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

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

## Complaint Resolution Process

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

Ideally the Police officer and the complainant should be satisfied with the outcome but this may not always be achievable. CRP is a means of dealing with common complaints about practices, procedures, attitudes and behaviours and is not intended to be an approach focused on fault-finding or punishment.

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

In 2016/17, 96 approaches were categorised as CRP matters (compared with 68 in the previous year).

## More serious complaints

For complaints that are assessed as more serious, there are a number of options for action.

Method	Description
<b>Ombudsman investigation</b>	<p>The Ombudsman may decide to directly investigate any Police complaint if satisfied it:</p> <ul style="list-style-type: none"> <li>○ concerns the conduct of a Police Officer holding a rank equal or senior to the rank of PSC Commander;</li> <li>○ concerns the conduct of a PSC member; or</li> <li>○ is about the practices, procedures or policies of NT Police; or</li> <li>○ should be investigated by the Ombudsman for any other reason.</li> </ul> <p>The Ombudsman may decide that the investigation be undertaken in conjunction with a PSC member.</p> <p>The Ombudsman can also commence an 'own motion' investigation into the conduct of a police officer.</p> <p>In 2016/17, the Ombudsman did not initiate an investigation of this type into police conduct.</p>

Method	Description
<b>Category 1 complaint investigation</b>	<p>This category is for the most serious allegations, for example complaints:</p> <ul style="list-style-type: none"> <li>○ considered to be of a serious or urgent nature, e.g. major assault, use of fire-arm or other perceived weapon, etc.;</li> <li>○ involving threats or harassment considered to be of a serious nature e.g. threat to kill, threat to endanger life, threat to unlawfully harass, etc;</li> <li>○ likely to result in criminal or disciplinary proceedings;</li> <li>○ raising a matter of public interest; or</li> <li>○ likely to raise significant questions of Police practice or procedure.</li> </ul> <p>Police investigate and provide a report which is assessed by this Office. The Ombudsman provides an assessment, and any recommendations, to the Commissioner. If the Commissioner agrees with the recommendations, the Ombudsman then advises the complainant of the relevant outcomes of the investigation.</p> <p>If the Commissioner and the Ombudsman are unable to agree on the outcomes and recommendations, the Ombudsman may provide a report for tabling in the Legislative Assembly.</p> <p>In 2016/17, 3 matters were assessed as Category 1 complaints (the same number as in the previous year).</p>
<b>Category 2 complaint investigation</b>	<p>These complaints are not at the level of Category 1 complaints but are nevertheless important enough to warrant comprehensive investigation.</p> <p>They are investigated and resolved directly by Police in the first instance. Police report on the investigation to the Ombudsman and the complainant. The Ombudsman reviews the investigation and the complainant can raise any ongoing concerns relating to the police response with Ombudsman.</p> <p>In 2016/17, 20 matters were assessed as Category 2 complaints (compared with 9 in the previous year). This increase is reflective of a change in practice to earlier categorisation of complaints. Categorisation is based on the allegation in the complaint. It does not represent an assessment of the credibility or validity of the complaint.</p>
<b>Deferral</b>	<p>If criminal proceedings or disciplinary procedures have been or will be commenced in relation to police conduct, the <i>Ombudsman Act</i> allows for the Ombudsman to discontinue investigation pending the outcome of those proceedings or to decline to deal further with the matter (sections 107 and 67(1)).</p> <p>In practice, I will consider this option on application by NT Police. In order to adopt this approach, I need to be satisfied that the proceedings will encompass all the substantive issues raised by the particular complaint. If satisfied that is the case, I may then defer further investigation until completion of the proceedings.</p> <p>On completion of proceedings, NT Police advise my Office of the outcome and I consider whether any further action is necessary.</p> <p>In 2016/17, I deferred 2 investigations pending the outcome of proceedings. One deferral was later reversed at the request of NT Police and the matter proceeded as a Category 2 investigation.</p>

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

## Investigations

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

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

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

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

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

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

## ISSUES AND OUTCOMES

Analysis of Police conduct approaches to the Office in 2016/17 shows that the most common issues raised related to:

- the attitude or behaviour of officers, for example, complaints of rudeness or offensive language;
- concerns about police investigations, for example, relating to delay or inaction;
- use of force;
- poor communication; and
- failure in the exercise of a discretion.

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

## Sustained issues in Category 1 and 2 complaints

As indicated above, Category 1 and Category 2 investigations deal with more serious complaints. For those complaints, an investigation is undertaken and a report is prepared by a Police investigating officer. The report is reviewed firstly by senior Police and then by Ombudsman investigators.

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

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

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

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

How finalised	2014/15	2015/16	2016/17
<b>Category 1 - sustained</b>	0	1	2
<b>Category 2 - sustained</b>	8	8	6
<b>Deferred in light of disciplinary action / charges</b>	3	2	1
<b>Total</b>	<b>11</b>	<b>11</b>	<b>9</b>

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

Sustained Issue Type	Cases
<b>Behaviour – abuse/rudeness/insensitivity</b>	3
<b>Arrest – unlawful / inappropriate arrest /detention</b>	3
<b>Custodial – personal safety / wellbeing – failure to monitor /safeguard</b>	2
<b>Practice/procedure – unreasonable</b>	2
<b>Arrest/custody – unreasonable force</b>	1
<b>Failure to advise of right to lawyer</b>	1
<b>Information – inadequate / incorrect recording of information</b>	1
<b>Investigation – failure to undertake / inadequate / delay</b>	1

Actions taken in relation to officers arising out of complaints finalised in 2016/17 included counselling, written cautions, good behaviour bonds, remedial guidance, the requirement to undergo remedial training and managerial guidance under section 14C of the PAA.

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

Case studies of some Category 1 and 2 Police conduct complaints finalised during the year follow.



## POLICE CONDUCT CASE STUDIES

In the two Category 1 cases finalised during the year, there was divergence between my conclusions and the position of NT Police. In one case, NT Police accepted that the officers involved had acted inappropriately but there was no consensus on the action that should be taken in respect of two of the officers. In the other case, I determined that the complaint was sustained notwithstanding the view of NT Police that the conduct of the officer was not unreasonable given the circumstances.

Both matters involved significant issues, so I will discuss them in detail before moving on to briefly summarise a number of other matters that were finalised during the year.

### Duty of care

The complainant was a 16 year old female detained at a watch house. Concerns regarding excessive use of force were investigated but not sustained. An allegation relating to the failure of officers to take prompt action to stop or dissuade the complainant from repeatedly hitting her head against a Perspex cell door was sustained.

The case involved the consideration of the interplay between more formal, Part IV disciplinary proceedings and less formal, Managerial Guidance under section 14C of the PAA. The former can result in one or more of a broad range of penalties while the latter is restricted to matters of a 'minor nature', with a sanction of counselling or caution.

The complainant was placed in a holding cell. She was behaving loudly and aggressively. She acknowledged that she had been drinking alcohol and had taken drugs. While Police may not have been aware of her age, there is no doubt that she was relatively young and of slight build. There was an initial incident in the cell when the complainant managed to remove her handcuffs and throw them against a wall.

After Police exited the cell, the complainant proceeded to alternate between hitting her head and her legs (mostly her legs) on the Perspex of the cell door for approximately 1½ minutes. After a break of approximately one minute, she kicked the door for a brief time and then started again to hit her head against the door. She hit her head on the door almost constantly for three minutes and 20 seconds. During that time, a number of officers saw what she was doing but there was no move to attempt to stop or dissuade her from hitting her head until after officers were contacted by a Duty Superintendent and told to take action.

The initial incident of hitting her head (lasting about 24 seconds) was interspersed with the complainant kicking her legs against the door. At that time, officers were dealing with another person in custody and it is accepted they may not have been able to easily give their full attention to the complainant's behaviour. However, it should at least have alerted those who saw her actions that there was a potential duty of care issue.

With regard to the next incident (lasting over 3 minutes), it appeared clear that an Auxiliary was aware that the complainant was hitting her head against the door from the outset. While another Auxiliary was not immediately aware that the complainant was hitting her head, both she and the Custody Sergeant were aware that this was happening for a period of over two minutes.

Eventually, on prompting from the Duty Superintendent and despite initial reservations expressed by the Custody Sergeant, an Auxiliary opened the door to cell and said to the complainant (who had started hitting her head on the door again after a brief respite - this time for 14 seconds): "Hey! Stop doing that." With the door open, the complainant could not continue to hit her head on it.

It is clear that the Custody Sergeant, made a conscious decision not to act in the face of the complainant hitting her head against the door. He noted that the door was only Perspex and, based on his experience, did not consider the complainant would harm herself. A Custody Nurse on duty at the time also stated that the complainant wasn't hitting her head "that hard".

There was CCTV footage of the entire incident. Some angles included audio coverage. The force with which the complainant hit her head against the door varied throughout the period. Sometimes it appeared relatively light. On other occasions, she was exerting considerable force. The risk that the complainant might do some damage in over 200 instances was real and should have been addressed much earlier than it was.

Many individuals who find their way to the watch house and exhibit behaviour of the type exhibited by the complainant are under the influence of alcohol or drugs. The complainant has acknowledged that she was under the influence of both. This can severely limit a person's capacity to feel pain and exercise judgement about what may or may not harm them. The officers may not have known that the complainant was under the influence but it was a strong possibility and a factor that needed to be taken into account in addressing the risk that she might harm herself.

An effort could have been made to talk to the complainant considerably earlier. If this did not work there was always the option, eventually adopted, of moving the complainant to a safer cell.

Both Auxiliaries subsequently acknowledged that something should have been done. The Custody Sergeant maintained a contrary view but in doing nothing, I considered he failed to exercise reasonable care for the complainant. That conclusion was supported by the findings of the investigator that the issue was sustained.

### **Action in relation to officers**

The investigation report recommended that all three officers be subject to Managerial Guidance under section 14C of the PAA.

The Custody Sergeant was the senior officer involved in the incident. Following a preliminary investigation, an Acting Superintendent had recommended that action be commenced against him under Part IV of the PAA. This was endorsed by an Acting Commander. In considering a draft investigation report, the Deputy Ombudsman also expressed the view to PSC that strong action was warranted.

Notwithstanding the previous recommendations of the Acting Superintendent and the Acting Commander, and the comments of the Deputy Ombudsman, the report was finalised without further reference to my Office, with the recommendation that the Custody Sergeant receive Managerial Guidance.

I considered that the failure to act was a significant breach of the Custody Sergeant's duty of care. Given the circumstances of the case, I considered that it was sufficiently serious to warrant action being taken under Part IV. This would have opened up a range of sanctions for consideration and emphasised the gravity of the matter.

With regard to the two auxiliaries, I noted they acknowledged they were at fault. They were also, to some extent, following the Custody Sergeant's lead. I accepted that one Auxiliary should receive Managerial Guidance. However, I noted that the other Auxiliary had been subject to Managerial Guidance within the 12 months prior to this incident and expressed the view that the circumstances provided ample scope for escalation of disciplinary procedures in relation to her.

In responding to my Assessment, the delegate of the Commissioner stated:

*I note the concerns you raise regarding the use of Managerial Guidance pursuant to 14C of the Police Administration Act, as opposed to disciplinary action under Part IV of the Act.*

*Where appropriate, 14C Managerial Guidance provides positive outcomes for the subject officers and for the police force. It is a robust, structured process between a subject officer and their manager and provides an opportunity to explain to the officer in some detail the expectations of the police force. A written record is kept and the officer signs an acknowledgement of the delivery of the guidance.*

*In line with our values led approach, we are invested in ensuring that our people, receive the necessary training, support and leadership to enable them to undertake the challenging role of being police officers in a dynamic and complex Northern Territory environment. That being the case, the use of punitive outcomes in internal disciplinary matters, can be seen to be a remnant of the paramilitary mindset that previously existed in most Australian police jurisdictions.*

*The disciplinary regime is now focussed more on corrective actions such as training or managerial guidance as preferred outcomes. That is not to say that punitive actions will not eventuate as a result of serious misconduct; Part IV of the Act will be employed where necessary and where appropriate.*

*In keeping with our values led approach, I support the outcomes provided to the subject officers on this occasion.*

In a varied Assessment, I noted that NT Police accepted that the three officers were wrong in not responding earlier to the situation. I did not vary my views on the action that should be taken. Ultimately, Managerial Guidance was given to each of the officers but no action was commenced under Part IV of the PAA prior to the expiration of the statutory time limit for taking such action.

### **General recommendations**

Bearing in mind the broader implications of the case, I made the following general recommendations which were accepted by NT Police:

Recommendation 1 - NT Police take action to stress to all officers the importance of addressing duty of care issues in a timely manner, particularly in the case of young or otherwise vulnerable people.

Recommendation 2 - NT Police continue to ensure that when managerial guidance is undertaken, a detailed record of the reasons for guidance and the guidance provided is created by the officer giving guidance and signed by the officer subject to guidance — that this record be placed on the officer's file — and where the action arises out of a police conduct complaint under the *Ombudsman Act*, a copy be provided to the Office of the Ombudsman.

Recommendation 3 - NT Police continue to provide draft investigation reports to the Ombudsman for consultation purposes, and engage in further consultation if there is a substantial change in the proposed report or it is proposed not to take up a point of substance made by Ombudsman officers in the course of consultation.

Action taken by NT Police included issue of an Internal Broadcast on *Duty of Care – Youth and Vulnerable Persons in Custody*.

## Capsicum spray

This complaint related to the use of capsicum spray (also described as OC spray and Aerosol Subject Restraint (ASR)) on an 11 year old child in the cage of a police vehicle, parked in the sally port of a watch house.

In my Assessment Report, I concluded that the complaint was sustained. However, NT Police maintained the position that the conduct of the officer was not unreasonable given the circumstances. It is therefore appropriate to discuss the circumstances in detail.

The child was described by one officer as “skinny, quite small”. The child later acknowledged that he had inhaled a large amount of volatile substances on the day in question. Police reported a number of instances of him resisting, abusing, threatening and spitting at officers.

The police van in which the child was transported and held was a dual cab with a cage on the back. The sides were covered. Parts of the back and front of the cage were wire mesh, allowing air in and spit out. The cage door had a lever which served as a latch. The latch secured the door against opening from the inside but it could also be further secured by a padlock.

The relevant events are set out in the table below.

Time	Event
6:35	Officers A and B get a despatch call in relation to a youth who is acting erratically at a shopping centre. Officers A and B attend and see the child inhaling volatile substances. They tell him they will take him home. During the initial approach (and on a number of occasions after that) the child spits at the officers.
6:45	The child is placed into the cage at the back of the police van. He is transported to his mother’s house. Before the officers can let him out of the cage, he spits at both of them, one through the front of the cage and the other through the back of the cage.
7:07	He is arrested without having left the cage. He is transported to the watch house. The cage is latched but not padlocked on the journey to the watch house because of the officers’ concerns about spitting.
7:35	The van enters the watch house sally port. Subsequently, due to the involvement of volatile substances, a decision is made that the child should be transported to hospital for assessment.
7:50	Authority is sought to use a spit hood. A towel is placed on the front of the van to stop the child spitting on officers as they get into the vehicle. The van is driven out of the sally port for short time to allow another vehicle to enter and backed in again at 7:58.
8:00	There are four officers present. Officer C, who is present in the watch house on another matter, assists. Officer A gives the child a direction to face the front of the van and informs him that if he does not comply he will be taken from the van and handcuffed. The child complies. The cage door is opened. The child is handcuffed behind his back and a spit hood is placed on his head. The cage door is open for 30 seconds.
8:01	Within 15 seconds of the door being latched, the child has started to bring his arms to the front of his body in order to remove the spit hood. After initially kicking or hitting the wall of the cage several times, the child is quiet until the next incident.

<b>8:02</b>	Officers within the watch house discuss the option of using spray. Officer C indicates twice that he would have used spray during the incident that just occurred. The Custody Sergeant suggests that use of spray was almost justified, although then indicates that it may have made it worse (it is unclear whether other officers heard those comments). Another officer refers to spray but it is not clear precisely what he says. In preparation to go to the hospital, Officers A and B obtain additional Personal Protective Equipment. Officer C asks if there are any alerts on the child. He raises the potential for blood borne viruses. No one says they are aware of such an alert for the child. One officer suggests that it may be possible for a medical assessment to be done with the child still in the cage.
<b>8:03</b>	Officers A and B prepare to drive to the hospital. Officer C attempts to engage the child in conversation to divert him from spitting on Officers A and B as they get into the van. He asks the child's name three times. He makes a further statement which, with the quality of recorded audio, is unclear.
<b>8:03:40</b>	As the van starts to drive off, Officer C notices that the child is trying to choke himself with the spit hood. He gets the attention of Officers A and B. The van is stopped and the sally port doors are closed. The child has stopped attempting to choke himself by the time Officer B gets to the back of the van but the spit hood is still in the cage.
<b>8:03:56</b>	In the space of two seconds, Officer B begins to take the padlock off the cage door, the child throws the spit hood to a spot near the cage door and Officer C takes out his spray canister.
<b>8:04:01</b>	There are four officers present. Officer C instructs the child to turn around and face the front of the van. Officer C says to the child that if he spits again, he will get sprayed. Officer C directs the child to sit on his/the bottom. The child asks if he is going to get sprayed. Officer C says he will get sprayed if he spits. Officer C tells the child to sit back down and face the front. The child says he does not want to get sprayed. Officer C says to the child that if he does not comply with directions he will get sprayed.
<b>8:04:28</b>	Officer A opens the cage door for 3 seconds and retrieves the spit hood which is sitting next to the opening. While he is shutting the door the child turns his head and spits on Officer A's arm. Officer C immediately uses the spray (8:04:31).  At this time, the door has just been closed but is not latched. Officer A has moved to the side and still holds the door closed although at an awkward angle. Once the spray has been used, Officer A puts the latch in place at 8:04:36. The child is clearly very distressed from this point on.
<b>8:05:20</b>	Officers B and C remove the child from the cage and take him over to a tap and shower in the sally port to wash away the spray. The officers continue to hold him to control him. The child struggles a great deal while he is being washed. The officers explain what they are doing and continue to attempt to wash any residue off him.
<b>8:06:44</b>	The child is returned to the cage of the van. The child can be heard asking "When is it going to stop burning?" on a number of occasions. Officer B talks to him about this.
<b>8:08:48</b>	Officers A and B leave for the hospital with the child in the van.

On reviewing all the available material, I was satisfied that the demeanour of the officers involved was appropriate throughout. They were measured in the discussions they had with the child and the directions they gave to the child.

The substantive issues were therefore with the discharge of the spray and the aftercare provided.

### **Use of force provisions**

There were two General Orders of particular relevance, the *Operational Safety, Training & Procedures General Order* (OSTP GO) and the *Operational Safety and Use of Force General Order* (Use of Force GO).

The OSTP GO described the tactical options model as requiring continual reassessment of the circumstances. It noted that the Safety first approach at the core of the model must encompass an assessment of the risks. It provided that each situation must be carefully assessed so that only the minimum level of force will be applied to resolve each situation safely and effectively.

In addition to broad guidelines on use of reasonable force and minimum force, there were specific restrictions on the use of ASRs in the Use of Force GO, relevantly including:

- An ASR can be used by an officer when they believe it is necessary to resolve an incident where a person is acting in a manner to cause the officer to believe there is a physical threat to the officer, the person, or others, and the officer cannot reasonably protect themselves, or others, less forcefully;
- Officers are not to use an ASR solely as a method of subject compliance at any time;
- Except for extraordinary circumstances, an ASR is not to be used against young children or a prisoner who is handcuffed or otherwise secured (although this was qualified by the statement that in those circumstances there is no specific cut off level or absolute prohibition point but the characteristic mentioned is a contraindication for use that must be balanced against other identified risks that may exist).

### **Input from NT Police officers**

Officer C indicated that he was very concerned about the potential for the child to choke himself. I accepted that this was a genuine underlying motivation for his actions and noted that he should be commended for his swift action in bringing the matter to the attention of Officers A and B as they were driving off.

Officer C stated that he went through every option of the Tactical Module, of what could and couldn't work and the only plausible option came out as the ASR. He detailed numerous options he had considered and why he had rejected them. Among others, he rejected maintaining presence, indicating that the officers had stayed near the child and tried to communicate with him without success. He rejected empty hand tactics because it put him and others at risk of spitting and bio hazards and was likely to cause harm to the child because he wasn't of big build. He rejected negotiation because the child had been spoken to and failed to comply.

He stated that ASR was the best option because it would be effective, would work quickly and not cause long standing harm. He indicated that from prior training he recalled that ASR had no negative effect on things like asthma, so it would be unlikely to affect lung capacity.

With regard to the timing of the discharge of the spray, the Officer stated that he was not initially aware that Officer A had already been able to remove to spit hood from the cage when he closed the cage door. He indicated that the cage door was closed but not latched and that he was concerned that the child may be able push his way out of the cage.

As part of the investigation, the views of the Senior Sergeant in charge of the Operational Safety Section of NT Police, an officer of 18 years' experience, were sought. He stated:

*The footage shows that there were four Police Officers present. The 11 year old boy was already handcuffed and secured in the cage of a police vehicle. Apparently, the immediate goal of the 4 police present was to remove the spit hood to prevent the child from continuing self-harm, which he had apparently done tying the spit hood around his neck.*

*Given there were 4 Police Officers present and when the ASR was discharged the cage door was closed it does not appear to me to be a reasonable response in the circumstances.*

*The threat of physical injury from an 11 year old spitting on the forearm of a Police Officer is not of the level to justify the use of ASR and the incident could have been resolved less forcefully.*

*It appears to me that in this situation, ASR was used solely as a method of subject compliance, because it was discharged after the subject was already handcuffed and secured in the cage. There was no direct threat to any person at the time the ASR was discharged.*

*In my opinion, this situation did not constitute "extraordinary circumstances". Tying a nylon mesh hood (similar in construction and size to the cloth mesh built-in underwear in some sports shorts) around one's neck does not seem to me to be capable of effectively causing serious harm or death. The child being 11-years-old could be defined as a young child for the purposes of section 216.2. Furthermore, as per subsection 216.5, the prisoner was handcuffed and was otherwise secured in the cage of the police vehicle.*

*The ASR was not discharged to defend anyone from threat, and was discharged after the fact. Whilst it may have dissuaded further spitting, it is my opinion that in this situation, force could have been avoided and the use of an ASR was not justified, and there were other options available given the number of Police present and other resources available.*

*Whilst assault by spitting is generally considered by the standards of the community to be disgusting and provocative, provocation is not an excuse for the application of force after the fact.*

The NT Police Internal Investigator concluded:

- There were no other suitable options available;
- The force used had nil chance of causing injuries or longstanding harm and also provided the highest level of safety to the officers, removing the chance of them being further assaulted;
- If the officers had used open hand tactics they would have increased their likelihood of being assaulted and given the parity/disparity between officers and the 11 year old youth, there would have been a significant chance of injury to the youth;
- Officer C found himself in extraordinary circumstances and the use of ASR was suitably balanced against other identified risks that existed. No other options were available that would have resolved the incident utilising less force and with less chance of injury.

### **Ombudsman Assessment**

I first acknowledged that spitting at someone is provocative and disgusting. As Officer C noted at the time, it has the potential to transfer serious disease.

Even so, I stated that it must be recognised that the work of a police officer carries many risks. This makes the possibility of being spat on no easier to accept but does mean that this risk must be assessed and addressed against the many others that officers face as part of their day to day functions.

### **No other options available**

The Internal Investigator dismissed the opinion of the Officer in Charge of the Operational Safety Section that there were other options available because the Officer in Charge had not identified any. I did not consider it adequate for an investigator to simply reject the opinion of a highly experienced officer on that basis without at least going back to that officer to seek further information.

One option that appears to have been open was not to use or threaten to use force at all. Less than 5 minutes earlier, the child had been given directions by Officer A to turn around while handcuffs and a spit hood were applied. He had complied with those directions. (He had subsequently manoeuvred his hands to the front and removed the spit hood but had otherwise been relatively quiet.)

Although Officer C indicated that communication had been attempted, there was relatively little communication by any officer with the child throughout. Officer C spoke to him briefly to distract his attention from Officers A and B as they were getting into the van. However, following the attempted choking incident, the first words directed to him in the lead up to the use of the spray were a direction from Officer C to turn around and face the front, followed immediately by a statement that if he spat again he would be sprayed (at which time Officer C had the spray canister in his hand).

The child might have been directed to throw the spit hood to the floor near the door (which he in fact did on his own initiative prior to any threat of use of the spray). Alternatively, he might have been directed to push the spit hood through the wires of the cage. Further efforts could have been made to engage the child in a genuine conversation, explaining what was happening and then seeking his co-operation. This may or may not have worked but was an option to be considered.

Use of Personal Protective Equipment and other suitable clothing combined with opening the cage door and use of physical force (if necessary) was also a realistic option when the age and small stature of the child is considered. Officer C suggested that the potential for injury to the child may have been greater due to his small stature. Conversely, I considered that the respective strengths and physical abilities of the child on the one hand and the four police officers present on the other would have considerably reduced that risk.

Turning to the use of ASR itself, that measure had risks. It was almost certain that the child would experience substantial pain and discomfort for some time. The fact that the spray was being discharged in a small, confined space (the cage of the van) would almost certainly make the situation worse, particularly if the child was left in the cage for any period of time. It was also certain that the child would have to be removed from the cage in order to decontaminate him. This would give rise to all the risks identified as justification for using the spray (namely, spitting on officers, need for physical control and use of open hand tactics and attempted escape) although they would probably be mitigated for a time by the effects of the spray.

There was also a risk that officers would be contaminated by the spray, particularly because the spray was administered from a distance through the mesh of the cage and may splash back off the cage. It is clear that officers did in fact suffer some after effects from the spray because they can be seen coughing. There was also the potential, although it would appear to be relatively small, for a major health impact, particularly given the age of the child and the possibility that his respiratory system had been compromised by inhaling volatile substances.

Using the spray was far from risk-free for both the child and the officers involved.



The tactical options model called for continual reassessment. At the time the child threw the spit hood on the floor of the cage, he was handcuffed and locked inside. With the hood on the floor, he was not attempting to harm himself. He could have been monitored and a short time taken to reassess the situation and the best option for action.

Later, when the use of the spray had been threatened and Officer A had opened and then closed the door (albeit without it being latched), there was an opportunity to reassess the situation and not immediately use the spray. The prospect of the 11 year old, who had taken no action other than spitting, attempting and being capable of bursting out from the closed door was limited.

Officer C stated that he was not aware that Officer A had removed the spit hood from the cage at this time. The spit hood was removed and thrown on the floor rapidly. This is something Officer C may well not have seen with his attention being primarily on the child. I accepted that this was the case.

There was, even so, an opportunity to reconsider the situation and look at alternatives prior to discharging the spray. If that had been done, Officer C would have quickly learned that the spit hood had been removed and there was no longer a need for immediate action beyond latching the door.

### **Extraordinary circumstances**

The Use of Force GO provides that an ASR can only be used in extraordinary circumstances on a young child or on a prisoner who is handcuffed or otherwise secured.

The Officer in Charge of the Operational Safety Section expressed the view that there were no extraordinary circumstances in this case.

The investigating officer discussed whether an 11 year old is a young child. I do not doubt for a second that an 11 year old falls into this category. While Officer C may not have known the child's precise age, having dealt with him only five minutes prior to this incident, he can have been in no doubt that the child was a young child. The child was also handcuffed and sitting in the cage of the van.

The only potential qualifying circumstances in this case were the fact that the child was spitting and that he had attempted to harm himself.

As unpleasant as it was, I saw no basis for spitting by a slightly built 11 year old child without known alerts about communicable diseases to qualify on its own as an extraordinary circumstance justifying use of an ASR.

It was not clear precisely how long before the hood was thrown on the floor the child had ceased to attempt to choke himself. However, by the time the spray was discharged, the hood had been on the floor of the van for over 30 seconds. It was certainly appropriate for the officers to take prompt action to retrieve the hood from the cage but this did not give rise to an extraordinary circumstance that justified discharge of the spray.

While I accepted that Officer C had genuinely formed the view that use of spray was the best option in the circumstances, I did not accept that there were extraordinary circumstances in play at the time it was discharged.

### **Complaint sustained**

I acknowledged Officer C's concern at the potential for harm to the child and stated that his subsequent actions should be viewed with this in mind. I also noted he was motivated by concern to avoid the prospect that he or his fellow officers might be spat on again by the child. I accepted as relevant the fact that all these events took place within a short space of time.

I noted that the child was clearly warned that if he spat again he would be sprayed and there is no reason to doubt that the child understood this to be the case. I expressed the view that, in one sense, there was a natural progression that took place within a few seconds in a tense situation. The child was warned, the child spat, the spray was discharged.

Even so, however challenging it may have been in the heat of the moment, I stated that officers are required to continually reassess the situation with a view to using the minimum force required.

I considered that the risk of the child forcing open the cage door while it was being held by Officer A was overstated by Officer C, even though Officer A could not apply his full strength to the door. The child had not displayed any tendency to suggest a likelihood that he would try to break out of the cage. The sally port doors were closed. He was 11 years old and slightly built. Officer A had at least some control of the closed door.

I referred to the potential for greater communication with the child and other alternative steps that might have been taken, stating that I did not accept that the discharge of the spray was the only plausible option.

I concluded that the complaint was sustained.

In relation to options for action regarding Officer C, I noted that advice had been received from the Director of Public Prosecutions that there would be no reasonable prospect of a successful prosecution against Officer C. Due to the time that had passed in the investigation of the matter, I also noted that the time limit for commencement of disciplinary proceedings under Part IV of the PAA had passed.

This would have left open Managerial Guidance under section 14C of the PAA or other personnel management options. Given the position of NT Police regarding the outcome of the complaint, I did not make a specific recommendation concerning action regarding Officer C. I did, however, make a number of general recommendations discussed below.

### **Delegate's comments**

In relation to my Assessment, the delegate of the Commissioner responded:

I refer to your comment, *"Even so, it must be recognised that the work of a police officer carries many risks. This makes the possibility of being spat on no easier to accept but does mean that this risk must be assessed and addressed against the many others that officers face as part of their day to day functions."* This comment carries the inference that these risks must be accepted. Police work does carry many risks, it is for this reason that the first of the 10 Operational Safety principles is "Safety First". It is incumbent upon police officers to mitigate any risk presented and take steps to protect themselves and other officers.

I note your comments, *"As unpleasant as it is, I see no basis for spitting by a slightly built 11 year old child without known alerts about communicable diseases to qualify on its own as an exceptional circumstance justifying the use of an ASR."* Intentionally spitting on a person is an assault, whether or not the assailant is slightly built is irrelevant, if the youth is capable of spitting then they are as competent as any adult to assault a person. This youth spits because he knows it is offensive and upsetting to the officers. The absence of an alert for a communicable disease does not make the act any less offensive.

The child in question was in custody following his intoxication from abuse of inhalants. The deliberate inhalation of volatile substances can result in a significantly raised or non-existent pain threshold; the question of disparate size is a valid consideration for the officer in these circumstances. A 'slightly built' youth who feels no pain is at significant risk of physical injury if they resist physically stronger officers.

I note your comment, "*I have discussed the potential for greater communication with the child and other alternative steps that might have been taken. I do not accept that the discharge of spray was the only plausible option.*" The option exercised by the subject officer was done so following attempts by the officer to control the conduct of the youth by verbal direction. Continued verbal engagement with the youth was not resolving the situation, the officer exercised the option he considered most appropriate to the risks he faced.

No use of force is risk free, the use of an Aerial Subject Restraint was considered the best option by the subject officer.

In an amended Assessment, I indicated that I had already extensively analysed the situation in my Assessment and did not consider that the delegate's comments added anything that required further analysis or explanation. I noted that Police must manage risk in accordance with relevant policies. I reiterated that there were not extraordinary circumstances justifying use of the spray on an 11 year old who was handcuffed and in the cage of a police van.

I stated that I remained of the view that the discharge of the spray at the time it happened was not justified and the complaint was therefore sustained.

#### **Care after spray**

There was a period of just under 50 seconds from the time the spray was discharged to the time the child was taken out of the cage and walked to the tap/shower area. The OSTP GO requires:

- appropriate aftercare;
- close monitoring of the subject's condition until full recovery;
- medical treatment, if required due to a health condition;
- verbal reassurance that the effects will be temporary;
- decontamination by flushing the face and eyes with cool water and/or allowing the subject to face into a breeze.

During the period in the van after discharge of the spray, the child was displaying extreme distress and yelling and crying constantly. One officer attempted to talk to the child after 40 seconds but he continued to yell and cry.

The officers initially tried to use the tap to wash away the spray from the child's face but within ten seconds turned on the shower. The officers did not attempt to explain to the child what they were doing until they turned on the shower. Within a short time of the shower being turned on, they started to give directions to the child and explain what they were doing.

The child was struggling. He was clearly concerned that he would take water into his lungs. It was by no means easy to control him and effectively decontaminate him. The shower was on for just under 60 seconds. The child was then returned to the cage of the van.

I acknowledged that the officers took some time to prepare to wash their hands and prepare to take the child out of the van. However, the ongoing distress of the child was obvious and he was in an enclosed space with the spray. I considered it would have been preferable for the officers to have acted with more urgency to attempt to explain the situation to the child and get him to the tap/shower.

I also noted that the OSTP GO did not provide guidance on the extent of decontamination required. This may well be covered in mandatory training. However, a number of sources suggest that a period of decontamination substantially longer than 60 seconds would be preferred.

I also questioned whether immediately placing the child back in the confined space of the cage (which had not been cleaned or aired out except for wiping down the door) was advisable. I stated that it would be appropriate to review the level and frequency of guidance provided to officers about decontamination procedures.

### **Broader considerations**

The case raised two broad issues for consideration, the circumstances in which ASRs are used and the special challenges that NT Police face in dealing with children, particularly young children.

#### *Use of ASRs*

Consideration of NT Police General Orders relating to ASRs and various comments of Police noted in this case, suggested a significant divergence of views as to the gravity of use of ASRs.

For example, the Internal Investigator is stated to have found the “ASR had nil chance of causing injuries or longstanding harm” to the child and that ASR is seen as a much preferable option to the use of open hand tactics. Other officers at the watch house, including Officer C, freely discussed use of ASR on the child as an available potential option.

On the other hand, General Orders placed substantial restrictions on the use of ASRs which put them in a class of restricted options not dissimilar to a Taser or gun. The Officer in Charge of the Operational Safety Section discussed the limits imposed on use of ASRs. Given the potential for extreme discomfort in the short term and the ongoing debate about the risks (albeit apparently low) of long term harm or even death, these limitations seem appropriate, particularly in relation to use on young children.

It is important for the NT Police to consider where ASRs fit into the range of Use of Force options available to Police, and if this is accurately reflected in the General Orders, step up measures to reinforce with officers the parameters and restrictions on use, particularly on young children and other vulnerable persons.

#### *Treatment of younger children*

I noted that this case, and others dealt with in recent times, strongly suggested that NT Police should take further action to emphasise to officers the importance of recognising and acting on the fact that, in exercising their duty of care to children, and particularly young children, their circumstances may differ appreciably from adults and there will frequently be times when a different approach is required to meet those circumstances.

It is vital for officers to consider their conduct in relation to its impact on young children. Older children nearing adulthood may present similar challenges to adults but even so, different considerations may apply. The conduct displayed by younger children may mirror the conduct of adults. It can be just as unpleasant and challenging. However, it is important that officers not lose sight of the fact that they are dealing with children.

## **General recommendations**

Arising from this allegation, I recommended that NT Police:

1. consider where ASRs fit into the range of Use of Force options available to Police, and if this is accurately reflected in the General Orders, step up measures to reinforce with officers the parameters and restrictions on use, particularly on young children and other vulnerable persons;
2. take action to emphasise to officers the importance of recognising and acting on the fact that, in exercising their duty of care to children, and particularly young children, their needs and circumstances may differ appreciably from adults and there will frequently be times when a different approach is required to meet those circumstances;
3. review the level and frequency of guidance provided to officers about decontamination procedures, particularly in relation to time periods required for decontamination and placing a person in a confined space after contamination;
4. review their vehicle design to minimise the chance of officers being spat on;
5. examine an alternative type of handcuffing technique that prevents a person from manoeuvring their handcuffed hands from the rear to the front of their body;
6. ensure that protective equipment and clothing is available that allows an officer faced with a person spitting to, as far as practicable, cover their body and limbs as well as their face.

## **Response to general recommendations**

In response to those recommendations, the delegate of the Commissioner stated:

**Recommendation 1, 2, 3** - *The guidance in relation to the use of Aerosol Subject Restraint (ASR) is provided with the Operational Safety, Training Procedures General Order and Operational Safety Use of Force General Order. In line with the Tactical Options Model, officers consider all options, with continual assessment/reassessment, according to the Tactical Options Model, with the priority being Safety First.*

*To ensure ongoing education in relation to the use of the Tactical Options Model, the annual defensive tactics requalification training package which is currently under review, will incorporate further considerations to be applied before applying ASR to young children and/or vulnerable persons, including risk assessments and exhaustion of other options.*

*The annual defensive tactics requalification package currently includes:*

- *instruction on decontamination and aftercare when ASR is applied*
- *officers responsibility for adequate decontamination, aftercare and monitoring of the subject, including arrangements for further medical assessment if required*
- *careful consideration as to options before placing a person in a confined area after decontamination.*

*In addition to the current package, the reinforcement of considerations where ASR is used against a youth and/or vulnerable person/s will be included in line with the recommendations.*

**Recommendation 4** – *[A] trial of a 'Prisoner Transport Pod', being the 'PrixCar' Pod [has] commenced. Features of the PrixCar include that it is air-conditioned and fully enclosed, which minimises the opportunity for officers to be spat on. The review and trial is ongoing, however, options are being explored and trialled to utilise what is most suitable.*

**Recommendation 5** - This is actioned and the technique known as 'Stack Cuffing' is being taught as part of the defensive tactics training package.

**Recommendation 6** - This has been forwarded to the Superintendent, Custody and Judicial Services Division for action, and monitored by the Custody Steering Committee, to ensure the most appropriate safety equipment is available to Northern Territory Police Force.

*I can advise that the Operational Safety and Use of Force policies and training packages for the NT Police are currently under review and it is envisaged that changes to the policy, to reflect the recommendations to the defensive tactics requalification package, will be introduced in the first part of 2017.*

## OTHER POLICE CONDUCT CASE STUDIES

### Time spent in custody

During an early review of a complaint, my Office raised queries as to the length of time that a young child remained in custody at a watch house before he appeared before a Magistrate and was remanded to a youth detention centre. This stretched from 9:30 on a Friday evening to 4:00 the next afternoon.

The following factors were put forward in explanation of the time taken:

- due to outstanding warrants, bail had to be decided by a Magistrate;
- to do this a responsible person must be present;
- the child's mother did not attend and there were difficulties in obtaining the services of Red Cross to support the child;
- delaying until a responsible adult was in attendance was thought to be in the interests of the child, as bail would almost certainly be refused if one was not present;
- the child was one of 9 youths in custody that day, many more than usual;
- processes involving youths take more time than adults.

A fundamental problem for NT Police identified by the investigating officer was the failure to keep adequate records of attempts to contact a responsible person. Putting to one side an initial phone call on the Friday evening, there was no record of subsequent attempts to contact the child's mother. Given that the custody of the child extended over several work shifts, the lack of adequate records was even more problematic.

Police had phoned the child's mother shortly after he was detained. Attempting to make further contact with the mother may not have been a specific requirement but failure to take further steps to arrange for attendance of the mother, together with problems in securing Red Cross attendance, contributed to delay in taking the child before a Magistrate.

As his mother lived locally, it may have been an option for police to visit her residence to facilitate her attendance; and/or contact a legal representative to alert them to the child's custody.

The investigating officer found the allegation was sustained. He recommended Managerial Guidance be provided to one officer and that police strengthen processes relating to youths in custody. The recommendations relating to process involved:

- Organisational Broadcast identifying responsibilities of the Custody Sergeant in relation to youths in custody;
- Further training to Custody Sergeants to ensure they are aware of their responsibilities;
- Update to Police Practice and Procedures to include these responsibilities; and
- Mandatory recording on WebEOC of dates and times when contact to responsible adult(s) is undertaken.

I accepted the finding and actions recommended by the investigating officer and made no further recommendation.

### **Alleged threat to assault**

A young child was taken into custody under the *Volatile Substance Abuse Prevention Act*. The child had been located unconscious and in need of assistance. He was initially being conveyed to hospital by St John Ambulance service. However, due to his unruly behaviour on waking, he was transferred to a police caged vehicle on the way. A medical assessment was completed at the hospital. He was then conveyed to his mother's residence by police.

It was alleged that the Officer, during a conversation with the child's mother, threatened the child by stating words similar to, *'if [he] spits on me, I will punch his head in.'*

Two independent witnesses, interviewed more than 6 months after the event, recalled comments along those lines but both said that they did not believe it to be a direct threat, rather a comment made *'out of frustration'* as a response to the behaviour of the child.

The investigator recorded a finding of *Not prepared to find action/conduct unreasonable given the circumstances* in relation to the complaint of 'Threat to assault'. He concluded that no formal disciplinary action should be taken against the Officer but that remedial advice be provided to make him aware of the appropriate choice of words and how his comments could be perceived.

I accepted the broad reasoning of the investigator and the action recommended but did not consider that a simple finding of 'not prepared to find conduct unreasonable' was appropriate. I expressed the view that there should be a two part finding along the lines that:

- there is insufficient evidence to sustain the allegation of a threat to assault the child; but
- the allegation is sustained, in so far as improper conduct was displayed, through the use of inappropriate language.

The Commissioner's delegate accepted this alternative finding and confirmed the officer would be provided with remedial advice.

## **Unlawful arrest due to administrative error and limited checks**

Police attended at a home seeking a support person to attend the watch house to sit in on an interview. The complainant was located but on checking an officer determined that she had a current warrant. She was arrested and taken to the watch house even though she advised police that she had been to court and the matter had been addressed.

The complainant was correct but due to an administrative error, the updated status of her matter only appeared on certain screens within the relevant systems. More detailed checks would have revealed this.

NT Police acknowledged their fault and apologised to the complainant. Managerial Guidance under section 14C of the PAA was given to two officers. Disciplinary proceedings were commenced in relation to another officer in respect of information provided during the investigation.

Investigation of the complaint also identified an ancillary issue concerning inappropriate comments by officers. Three officers were subject to Managerial Guidance in respect of the making of comments and a supervisor was given Managerial Guidance in relation to supervision of those officers.

## **Unlawful detention**

The complainant was found by Police drinking alcohol in a public place. Police checks revealed that he was also subject to a non-alcohol, suspended sentence condition. He was arrested and taken to a watch house.

A number of issues of complaint were raised around the arrest and detention of the complainant. Issues relating to the lawfulness and use of force on arrest were not sustained. However, the investigator determined that holding the complainant beyond four hours resulted in unlawful detention.

It transpired that Police contacted Corrections in relation to the breach of suspended sentence and thereafter no further action was taken by Police in that regard. The arresting officers prepared an infringement notice for the liquor offence and left the watch house, believing that the complainant would be released and served with the notice within four hours.

The continued detention beyond that point arose through misunderstanding of the action that Corrections would take in relation to the breach of suspended sentence and lack of clear communication between officers. The complainant was ultimately detained until he appeared in court the next morning and, no matter having been listed, was allowed to leave.

The investigator also found that the complainant was not advised by Police that he could contact a lawyer and that the infringement notice was not properly served on the complainant.

The investigator recommended that three officers be provided with remedial guidance.

The following general recommendations were also made:

- With regard to the requirement to ask Aborigines whether they wish to contact an Indigenous legal aid agency in the GO — *Arrests*, paragraph 28.2, an organisation-wide direction is currently being formulated by the Custody and Judicial Services Division. It is recommended that this is developed as a priority and Broadcast to all sworn officers.



- That specific Infringement Notice service instructions be provided to watch house staff by arresting members and those instructions be recorded on the WebEOC Arrest Details screen.
- GO — *Custody* does not provide instructions specific to the receiving of prisoner property generated during the detention period. It is recommended the GO be updated to reflect that such items (ie. Breath Analysis slips, Infringement Notices, etc.) received from members during the course of a prisoner's detention are to be added to the prisoner's IJIS Property Screen.

## CHAPTER 9 – OUR OFFICE

### CORPORATE GOVERNANCE, PLANNING AND PERFORMANCE

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

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

The Statement of Accountable Officer is on the first page of the Financial Statements for 2016/17, which form Appendix B of this Report.

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

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

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

Budget Paper 3 identifies Corporate Governance as a separate Output Group within the Office. The Key Performance Indicator for Corporate Governance is *Client satisfaction with services*. This is an internal measure of satisfaction on the part of staff with the performance of Corporate Governance. The target in the Budget Papers for 2016/17 was 90%. The outcome, based on client survey, was 95%.

### OUR STAFF

Staffing details for the Office as at 30 June 2017 are outlined below:

Position Title	Level	Number	Status
<b>Ombudsman</b>	ECO5	1	Statutory appointment
<b>Deputy Ombudsman</b>	ECO2	1	Executive Contract
<b>Assistant Ombudsman</b>	SA02	1	Ongoing
<b>Senior Investigation Officer</b>	AO7	3	2 Ongoing, 1 Fixed period
<b>Investigation Officer</b>	AO5	1	1 Ongoing
<b>Resolution Officer</b>	AO4	2	2 Ongoing (1 part time)
<b>Business Manager</b>	SA01	1	Ongoing
<b>Business Support Officer</b>	AO4	1	Ongoing

In order to aid the Business Support Unit (BSU) in the conduct of corporate and administrative duties, Resolution Officers provide additional administrative assistance as required. In turn, BSU staff assist Resolution Officers from time to time by taking initial calls from enquirers. This not only provides a broader skill base in a small office to deal with scheduled and unexpected absences and peaks in demand. It also adds substantially to the professional development and flexibility of the staff concerned.

## Public Sector Principles

The Office of the Ombudsman upholds the public sector principles relating to administration management, human resource management (including merit and equality of employment opportunity) and performance and conduct set out in the *Public Sector Employment and Management Act*.

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

## Professional Development

Staff professional development attendance conducted or supported by the Office during 2016/17 included:

- Certificate IV in *Government (Investigation)* course – Ombudsman NT
- Resolve conference and training - Resolve
- Investigation Symposium & Workshops - Institute of Public Administration Australia
- Statutory Interpretation training – NT Law Society
- Cyber Security workshop –Australian Signals Directorate
- Challenging Unconscious Bias – Anti-Discrimination Commission
- Putting your head in the cloud – Information Commissioner
- Open Data Keynote - ICT Industry Association of the NT
- Merit Selection – OCPE
- First Aid course –St Johns
- Internal development sessions by various staff, including:
  - Policies and procedures and where to find them
  - Values and Integrity
  - NT Correctional Services Internal Complaints Process
  - Community Engagement Visits
  - Online Investigation Techniques.

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

## SYSTEMS, POLICIES AND PROCEDURES

The operations of the Office are supported by a range of systems, policies and procedures.

During the reporting period, the Office completed a review of its *Accounting and Property Manual*. The review involved revision of all 24 chapters of the Manual in order to ensure compliance with relevant legislative and policy requirements.

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 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 Ombudsman offices in Australia utilise the Resolve system and we also participate in teleconference meetings of the ANZOA Resolve interest group. The Ombudsman is the Sponsor of this group.

## WORK HEALTH AND SAFETY

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

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

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

## ANNUAL INSURANCE REPORTING REQUIREMENTS

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

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

The Office does not hold large amounts of physical assets and as such the highest risk exposure to the Office is the physical risk of damage to its leased motor vehicle.

Risk to motor vehicles is mitigated through commercial vehicle insurance which costs the Office approximately \$1,000 per year.

## RECORDS MANAGEMENT, DISCLOSURE AND CORRECTION

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

### Information held by the Office

The Ombudsman holds information in the following categories:

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

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

### Administrative and policy files

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

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

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

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

### Complaint files

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

Physical files of documents relating to each written complaint are also maintained. On completion of matters, all physical files or documents are stored in the Darwin office until moved to archives or destroyed in accordance with approved disposal schedules.

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

### Legal opinions

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

### Annual reports

Copies of the current Annual Report and some previous Annual Reports are available for downloading on the Ombudsman's website at [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au).

### Brochures

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

### Policies, manuals and guidelines

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

### Service Standards

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

### Providing access to information

#### Publicly available documents

The following documents may be available for inspection, distribution or purchase on request:

**Brochures:** No charge.

**Annual Report:** Free on the website or \$30 for the purchase of a hard copy.

#### Administrative arrangements for access to information

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

#### Access under Part 3 of the Information Act

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

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

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

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

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

In 2016/17, the Ombudsman received no information access requests under the *Information Act*.

### Procedures for Correcting Information

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

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

In 2016/17, the Ombudsman received no personal information correction requests under the *Information Act*.

# APPENDIX A – AGREEMENTS WITH OTHER BODIES

## POLICE COMPLAINTS AGREEMENT

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

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

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## 1. Scope of Terms

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

## 2. Introduction

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

Specifically, the Agreement provides for the following matters:

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

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

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

## 3. Purpose and Intent of the Agreement

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

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

The Parties mutually agree to:

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

#### **4. Obligations of Professional Standards Command**

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

#### **5. Obligations of Police Officer**

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

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

#### **6. Notification on the Making of a Complaint**

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

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

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

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

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

#### **7. Assessing and Determining Whether to Deal With a Complaint**

##### **7.1 Complaints Made Out of Time**

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

## 7.2 Preliminary Inquiries

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

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

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

## 7.3 Declining a Complaint

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

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

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

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

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

As a general rule:

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

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

- (a) if the complaint was made directly to the Ombudsman by the complainant or their representative:
  - i) the complainant or their representative will be notified by the Ombudsman that no further action will be taken on the matter;

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

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

## 8. Classification of Complaints

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

Complaints fall into one of the following classifications:

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

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

Careful consideration is to be given to:

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

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

## 9. Re-Classification of Complaint

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

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

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

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

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

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

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

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

## **10. Conciliation [Part 7, Division 3]**

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

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

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

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

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

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

### **10.1 Representation at Conciliation**

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

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

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

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

- (a) that the early intervention into minor complaints may lead to a quick resolution of the complaint. This may involve listening to the complainant's specific issues and an explanation as to why a particular course of action was taken by members, the legal and practical considerations relating to the incident or the offering of a simple apology;

- (b) the CRP is not focused on fault-finding or punishment. The CRP is a means of dealing with common complaints about practice, procedures, attitudes and behaviour. One of the aims of this procedure is to settle and finalise minor complaints without proceeding to formal disciplinary action against members.  
If some inappropriate conduct is identified, a member is advised / assisted by the CRP officer to correct the conduct; and
- (c) the informal resolution may be undertaken by the police officer taking the complaint or some other police officer, but not the police officer whose conduct initiated the complaint.

#### **11.1 Ombudsman's Oversight**

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

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

#### **11.2 Categories of CRP Conduct**

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

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

#### **11.3 CRP Process**

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

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

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

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

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

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

#### **11.4 Successfully Completed CRP**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **11.5 Unsuccessful CRP**

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

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

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

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

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

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



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

#### **11.6 Police Officer Dissatisfied**

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

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

#### **11.7 Police Officer's Rights**

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

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

#### **11.8 Enquiries Reveal a Matter is More Serious**

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

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

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

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

#### **11.9 Withdrawal of Complaint**

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

#### **11.10 CRP Action Requirements**

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

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

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

## 12. Professional Standards Command Investigation

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

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

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

### 12.1 Preliminary Inquiry

#### Authorised Conduct of Preliminary Inquiry

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

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

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

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

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

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

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

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

## **12.2 Category 2 PSC Investigation**

### **Authorised Conduct of Category 2 Complaint**

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

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

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

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

### **Assignment of complaint to Investigating Officer**

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

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

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

### **Functions of Investigating Officer**

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

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

## Responsibilities of Investigating Officer

The IO is to:

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

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

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

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

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

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

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

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

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

### **Re-classification of Complaint**

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

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

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

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

### **Ombudsman Review**

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

### **Requirements when Serious Breach of Discipline Identified**

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

### **Commissioner Notification to the Ombudsman**

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

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

### **Deferral of Investigation**

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

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

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

## **12.3 Category 1 PSC Investigation**

### **Authorised Conduct of Category 1 Complaint**

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

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

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

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

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

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

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

### **Assignment of Complaint to Investigating Officer**

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

## Functions of Investigating Officer

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

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

## Responsibilities of Investigating Officer

The IO is to:

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

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

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

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

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

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

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

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

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

The Ombudsman may decide to investigate a CAP:

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

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

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

#### **13.1 Finalisation Process**

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

The Commissioner will notify the Ombudsman whether the Commissioner:

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

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

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

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

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

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

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



### 13.2 Complaint Findings

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

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

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

### 14. Reviews by Ombudsman

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

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

### 15. Confidentiality & Immunity

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

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

## **16. Suspected Criminal Conduct**

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

## **17. Procedural Fairness**

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

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

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

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

## **18. Other**

### **18.1 Non-Disclosure of Information**

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

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

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

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

## **18.2 Restricted Use of Information**

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

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

## **18.3 Register of Police Complaints**

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

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

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

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

## **19. Scope of This Agreement**

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

## **20. Review of This Agreement**

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

**October 2014**

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## APPENDIX B – FINANCIAL STATEMENTS

### OMBUDSMAN'S OFFICE FINANCIAL REPORT

#### FINANCIAL STATEMENT OVERVIEW

For the Year Ended 30 June 2017

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

During 2016-17 the net result for the Ombudsman's Office was a surplus of \$34,000. This surplus was partially attributable to additional revenue generated through delivery of a Cert IV in Government (Investigation) course during the period. Savings were also made in general administrative expenses and employee expenses due to temporary employment vacancies and reduction in costs due to lower staffing levels.

Operating expenses comprised \$1,712,000 for employee expenses and \$584,000 for the purchase of goods and services (which includes \$359,000 for services received free of charge and depreciation and amortisation of \$46,000).

#### CERTIFICATION OF THE FINANCIAL STATEMENTS

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

We further state that the information set out in the Comprehensive Operating Statement, Balance Sheet, Statement of Changes in Equity, Cash Flow Statement, and notes to and forming part of the financial statements, presents fairly the financial performance and cash flows for the year ended 30 June 2017 and the financial position on that date.

At the time of signing, we are not aware of any circumstances that would render the particulars included in the financial statements misleading or inaccurate.



PETER SHOYER

Ombudsman

31 Aug 2017



SARAH SCHULTZ

Business Manager

31 Aug 2017

**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2017**  
**COMPREHENSIVE OPERATING STATEMENT**  
**For the year ended 30 June 2017**

	Note	2017 \$000	2016 \$000
<b>INCOME</b>			
Appropriation			
Output		1 948	1 933
Sales of goods and services		23	
Goods and services received free of charge	4	359	362
Other income			
<b>TOTAL INCOME</b>		<b>2 330</b>	<b>2 295</b>
<b>EXPENSES</b>			
Employee expenses		1 712	1 683
Administrative expenses			
Purchases of goods and services	5	165	158
Repairs and maintenance		1	2
Property Management		13	16
Depreciation and amortisation	9	46	46
Other administrative expenses <sup>1</sup>		359	362
<b>TOTAL EXPENSES</b>		<b>2 296</b>	<b>2 267</b>
<b>NET SURPLUS/(DEFICIT)</b>		<b>34</b>	<b>28</b>
<b>COMPREHENSIVE RESULT</b>		<b>34</b>	<b>28</b>

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

*The Comprehensive Operating Statement is to be read in conjunction with the notes to the financial statements.*

**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
For the year ended 30 June 2017

**BALANCE SHEET**

**As at 30 June 2017**

	Note	2017 \$000	2016 \$000
<b>ASSETS</b>			
<b>Current Assets</b>			
Cash and deposits	7	1 089	969
Receivables	8	4	3
Prepayments		5	4
<b>Total Current Assets</b>		<b>1 097</b>	<b>976</b>
<b>Non-Current Assets</b>			
Property, plant and equipment	9	42	87
<b>Total Non-Current Assets</b>		<b>42</b>	<b>87</b>
<b>TOTAL ASSETS</b>		<b>1 139</b>	<b>1 064</b>
<b>LIABILITIES</b>			
<b>Current Liabilities</b>			
Payables	10	22	26
Provisions	11	270	161
<b>Total Current Liabilities</b>		<b>292</b>	<b>187</b>
<b>Non-Current Liabilities</b>			
Provisions	11		63
<b>Total Non-Current Liabilities</b>			<b>63</b>
<b>TOTAL LIABILITIES</b>		<b>292</b>	<b>251</b>
<b>NET ASSETS</b>		<b>847</b>	<b>813</b>
<b>EQUITY</b>			
Capital		346	346
Accumulated funds		501	467
<b>TOTAL EQUITY</b>		<b>847</b>	<b>813</b>

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

**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2017**  
**STATEMENT OF CHANGES IN EQUITY**  
**For the year ended 30 June 2017**

	Note	Equity at 1 July \$000	Comprehensive result \$000	Transactions with owners in their capacity as owners \$000	Equity at 30 June \$000
<b>2016-17</b>					
<b>Accumulated Funds</b>		467	34		501
<b>Capital – Transactions with Owners</b>		346			346
<b>Total Equity at End of Financial Year</b>		<b>813</b>	<b>34</b>		<b>847</b>
<b>2015-16</b>					
<b>Accumulated Funds</b>		438	28		467
<b>Capital – Transactions with Owners</b>		346			346
<b>Total Equity at End of Financial Year</b>		<b>785</b>	<b>28</b>		<b>813</b>

*The Statement of Changes in Equity is to be read in conjunction with the notes to the financial statements.*

**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2017**  
**CASH FLOW STATEMENT**  
**For the year ended 30 June 2017**

	Note	2017 \$000	2016 \$000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Operating Receipts</b>			
Appropriation			
Output		1 948	1 933
Receipts from sales of goods and services		32	8
<b>Total Operating Receipts</b>		<b>1 980</b>	<b>1 941</b>
<b>Operating Payments</b>			
Payments to employees		1 664	1 707
Payments for goods and services		198	172
<b>Total Operating Payments</b>		<b>1 861</b>	<b>1 879</b>
<b>Net Cash From/(Used in) Operating Activities</b>	13	<b>119</b>	<b>62</b>
Net increase/(decrease) in cash held		119	62
Cash at beginning of financial year		969	907
<b>CASH AT END OF FINANCIAL YEAR</b>	7	<b>1 089</b>	<b>969</b>

*The Cash Flow Statement is to be read in conjunction with the notes to the financial statements.*



**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2017**

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**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2017**

**1. OBJECTIVES AND FUNDING**

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

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

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

**2. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES**

**a) Statement of Compliance**

The financial statements have been prepared in accordance with the requirements of the *Financial Management Act* and related Treasurer's Directions. The *Financial Management Act* requires the Ombudsman's Office to prepare financial statements for the year ended 30 June based on the form determined by the Treasurer. The form of agency financial statements is to include:

- (i) a Certification of the Financial Statements;
- (ii) a Comprehensive Operating Statement;
- (iii) a Balance Sheet;
- (iv) a Statement of Changes in Equity;
- (v) a Cash Flow Statement; and
- (vi) applicable explanatory notes to the financial statements.

**b) Basis of Accounting**

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

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

The form of the agency financial statements is also consistent with the requirements of Australian Accounting Standards. The effects of all relevant new and revised Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that are effective for the current annual reporting period have been evaluated.

The following new and revised accounting standards and interpretations were effective for the first time in 2016-17:

**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2017**

**AASB 124 Related Party Disclosures**

This standard applies to not-for-profit sector for the first time in 2016-17. The accounting standard requires disclosures about the remuneration of key management personnel, transactions with related parties, and relationships between parent and controlled entities. For any such transactions, disclosures will include the nature of the related party relationship, as well as information about those transactions' terms/conditions and amounts, any guarantees given/received, outstanding receivables/payables, commitments, and any receivables where collection has been assessed as being doubtful.

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

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

**AASB 16 Leases**

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

For lessees with operating leases, a right-of-use asset will now come onto the balance sheet together with a lease liability for all leases with a term of more than 12 months, unless the underlying assets are of low value. The Comprehensive Operating Statement will no longer report operating lease rental payments, instead a depreciation expense will be recognised relating to the right-to-use asset and interest expense relating to the lease liability.

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

Consequently, it is expected that approximately \$10 thousand in operating lease commitments will be required to be recognised in the balance sheet through a lease liability and corresponding right to use asset from 2019-20 in accordance with AASB 16 Leases. In the comprehensive income statement the operating lease expense will be replaced with a depreciation expense relating to the right to use asset and interest expense relating to the lease liability. These cannot be quantified at this time.

**c) Reporting Entity**

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

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

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

**OMBUDSMAN'S OFFICE**  
**NOTES TO THE FINANCIAL STATEMENTS**  
**For the year ended 30 June 2017**

**d) Agency and Territory Items**

The financial statements include income, expenses, assets, liabilities and equity over which the Ombudsman's Office has control (Agency items). Certain items, while managed by the agency, are controlled and recorded by the Territory rather than the agency (Territory items). Territory items are recognised and recorded in the Central Holding Authority as discussed below.

**Central Holding Authority**

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

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

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

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

**e) Comparatives**

Where necessary, comparative information for the 2015-16 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 2016-17 as a result of management decisions.

**h) Accounting Judgments and Estimates**

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

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

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

**i) Goods and Services Tax**

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

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

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

**3. COMPREHENSIVE OPERATING STATEMENT BY OUTPUT GROUP**

	Note	Ombudsman Operations		Corporate & Governance		Total	
		2017	2016	2017	2016	2017	2016
		\$000	\$000	\$000	\$000	\$000	\$000
<b>INCOME</b>							
Appropriation							
Output		1 948	1 933			1 948	1 933
Sales of goods and services		23				23	
Goods and services received free of charge	4	359	362			359	362
Other income							
<b>TOTAL INCOME</b>		<b>2 330</b>	<b>2 295</b>			<b>2 330</b>	<b>2 295</b>
<b>EXPENSES</b>							
Employee expenses		1 486	1 464	226	219	1 712	1 683
Administrative expenses							
Purchases of goods and services	5	146	146	19	12	165	158
Repairs and maintenance		1	2			1	2
Property Management		13	16			13	16
Depreciation and amortisation	9	46	46			46	46
Other administrative expenses <sup>1</sup>		359	362			359	362
<b>TOTAL EXPENSES</b>		<b>2 050</b>	<b>2 036</b>	<b>246</b>	<b>231</b>	<b>2 296</b>	<b>2 267</b>
<b>NET SURPLUS/(DEFICIT)</b>		<b>280</b>	<b>259</b>	<b>(246)</b>	<b>(231)</b>	<b>34</b>	<b>28</b>
<b>COMPREHENSIVE RESULT</b>		<b>280</b>	<b>259</b>	<b>(246)</b>	<b>(231)</b>	<b>34</b>	<b>28</b>

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

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

**Income**

Income encompasses both revenue and gains.

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

**Appropriation**

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

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

**Sale of Goods**

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

- the significant risks and rewards of ownership of the goods have transferred to the buyer;
- the agency retains neither continuing managerial involvement to the degree usually associated with ownership nor effective control over the goods sold;
- the amount of revenue can be reliably measured;
- it is probable that the economic benefits associated with the transaction will flow to the agency; and
- the costs incurred or to be incurred in respect of the transaction can be measured reliably.

**Rendering of Services**

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

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

**Repairs and Maintenance Expense**

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

	2017 \$000	2016 \$000
<b>4. GOODS AND SERVICES RECEIVED FREE OF CHARGE</b>		
Corporate and information services	359	362
	<b>359</b>	<b>362</b>

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	2017	2016
	\$000	\$000
<b>5. PURCHASES OF GOODS AND SERVICES</b>		
The net surplus/(deficit) has been arrived at after charging the following expenses:		
<b>Goods and services expenses:</b>		
Consultants <sup>(1)</sup>	1	
Advertising <sup>(2)</sup>	2	2
Marketing and promotion <sup>(3)</sup>	12	5
Document production	1	5
Legal expenses <sup>(4)</sup>	2	
Training and study	11	4
Official duty fares	8	7
Travelling allowance	2	3
	<b>40</b>	<b>26</b>

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

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

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

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

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

The Ombudsman NT had no write-offs, postponements, waivers, gifts or ex gratia payments in 2016-17 and 2015-16.

	2017	2016
	\$000	\$000
<b>7. CASH AND DEPOSITS</b>		
Cash on hand		
Cash at bank	1 088	969
	<b>1 089</b>	<b>969</b>

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

**8. RECEIVABLES**

**Current**

Accounts receivable	1	1
Less: Allowance for impairment losses		

GST receivables	3	2
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**Non-Current**

Other receivables

<b>Total Receivables</b>	<b>4</b>	<b>3</b>
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Receivables include accounts receivable and other receivables and are recognised at fair value less any allowance for impairment losses.

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

Accounts receivable are generally settled within 30 days.

**Prepayments**

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

	2017 \$000	2016 \$000
<b>9. PROPERTY, PLANT AND EQUIPMENT</b>		
<b>Plant and Equipment</b>		
At fair value	66	66
Less: Accumulated depreciation	(66)	(66)
	<hr/>	<hr/>
<b>Computer Software</b>		
At Cost	400	400
Less: Accumulated depreciation	(358)	(313)
	<hr/>	<hr/>
	42	87
	<hr/>	<hr/>
<b>Total Property, Plant and Equipment</b>	<b>42</b>	<b>87</b>
	<hr/>	<hr/>

**2017 Property, Plant and Equipment Reconciliations**

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

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



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**2016 Property, Plant and Equipment Reconciliations**

A reconciliation of the carrying amount of property, plant and equipment at the beginning and end of 2015-16 is set out below:

	Plant and Equipment \$000	Computer Software \$000	Total \$000
Carrying Amount as at 1 July 2015		133	133
Additions			
Disposals			
Depreciation		(46)	(46)
Other movements			
<b>Carrying Amount as at 30 June 2016</b>		<b>87</b>	<b>87</b>

**Acquisitions**

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

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

**Complex Assets**

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

**Subsequent Additional Costs**

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

**Construction (Work in Progress)**

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

**Revaluations and Impairment**

**Revaluation of Assets**

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

- land;
- buildings;
- infrastructure assets;
- heritage and cultural assets;

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- biological assets; and
- intangibles.

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

**Impairment of Assets**

An asset is said to be impaired when the asset's carrying amount exceeds its recoverable amount.

Non-current physical and intangible agency assets are assessed for indicators of impairment on an annual basis or whenever there is indication of impairment. If an indicator of impairment exists, the agency determines the asset's recoverable amount. The asset's recoverable amount is determined as the higher of the asset's depreciated replacement cost and fair value less costs to sell. Any amount by which the asset's carrying amount exceeds the recoverable amount is recorded as an impairment loss. No assets were assessed as being impaired within the reporting period.

**Depreciation and Amortisation Expense**

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

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

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

	2017	2016
Plant and Equipment	10 years	10 years
Computer Software	6 years	6 years

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

**Leased Assets**

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

**Finance Leases**

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

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

**Operating Leases**

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

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	2017	2016
	\$000	\$000
<b>10. PAYABLES</b>		
Accounts payable	13	18
Accrued expenses	9	8
Other payables		
<b>Total Payables</b>	<b>22</b>	<b>26</b>

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

**11. PROVISIONS**

**Current**

*Employee benefits*

Recreation leave	217	119
Leave loading	17	13
Other employee benefits	1	
Other provisions	34	29
	<b>270</b>	<b>162</b>

**Non-Current**

*Employee benefits*

Recreation leave		63
<b>Total Provisions</b>	<b>270</b>	<b>225</b>

The Agency employed 11 employees as at 30 June 2017 (14 employees as at 30 June 2016).

**Employee Benefits**

Provision is made for employee benefits accumulated as a result of employees rendering services up to the reporting date. These benefits include wages and salaries and recreation leave. Liabilities arising in respect of wages and salaries, recreation leave and other employee benefit liabilities that fall due within twelve months of reporting date are classified as current liabilities and are measured at amounts expected to be paid. Non-current employee benefit liabilities that fall due after twelve months of the reporting date are measured at present value, calculated using the Government long-term bond rate.

No provision is made for sick leave, which is non-vesting, as the anticipated pattern of future sick leave to be taken is less than the entitlement accruing in each reporting period.

Employee benefit expenses are recognised on a net basis in respect of the following categories:

- wages and salaries, non-monetary benefits, recreation leave, sick leave and other leave entitlements; and
- other types of employee benefits.

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As part of the financial management framework, the Central Holding Authority assumes the long service leave liabilities of Government agencies, as such no long service leave liability is recognised in agency financial statements

**Superannuation**

Employees' superannuation entitlements are provided through the:

- Northern Territory Government and Public Authorities Superannuation Scheme (NTGPASS);
- Commonwealth Superannuation Scheme (CSS); or
- non-government employee-nominated schemes for those employees commencing on or after 10 August 1999.

The agency makes superannuation contributions on behalf of its employees to the Central Holding Authority or non-government employee-nominated schemes. Superannuation liabilities related to government superannuation schemes are held by the Central Holding Authority and as such are not recognised in agency financial statements.

## 12. COMMITMENTS

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

	2017		2016	
	Internal <sup>(a)</sup>	External <sup>(a)</sup>	Internal	External
	\$000	\$000	\$000	\$000
<b>(i) Other Expenditure Commitments</b>				
Other non-cancellable expenditure commitments not recognised as liabilities are payable as follows:				
Within one year	3		3	
Later than one year and not later than five years	8		11	
	<b>11</b>		<b>14</b>	

<sup>(a)</sup> Internal commitments are to entities controlled by the NTG (entities listed in TAFR 15-16 Note 41: Details of Controlled Entities at Reporting Date), whereas external commitments are to third parties external to the NTG.

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2017	2016
\$000	\$000

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

**Reconciliation of Cash**

The total of agency 'Cash and deposits' of \$ 1,089,000 recorded in the Balance Sheet is consistent with that recorded as 'Cash' in the Cash Flow Statement.

**Reconciliation of Net Surplus/(Deficit) to Net Cash from Operating Activities**

<b>Net Surplus/(Deficit)</b>	34	28
<i>Non-cash items:</i>		
Depreciation and amortisation	46	46
<i>Changes in assets and liabilities:</i>		
Decrease/(Increase) in receivables	(1)	(2)
Decrease/(Increase) in prepayments	(1)	1
(Decrease)/Increase in payables	(4)	(23)
(Decrease)/Increase in provision for employee benefits	39	15
(Decrease)/Increase in other provisions	6	(3)
<b>Net Cash from Operating Activities</b>	<b>119</b>	<b>62</b>

**14. FINANCIAL INSTRUMENTS**

A financial instrument is a contract that gives rise to a financial asset of one entity and a financial liability or equity instrument of another entity. Financial instruments held by the Ombudsman's Office include cash and deposits, receivables and payables. The agency has limited exposure to financial risks as discussed below.

**a) Credit Risk**

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

**Receivables**

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

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<b>External Receivables<sup>(a)</sup></b>	Aging of Receivables \$000	Aging of Impaired Receivables \$000	Net Receivables \$000
<b>2016-17</b>			
Not overdue			
Overdue for less than 30 days			
Overdue for 30 to 60 days			
Overdue for more than 60 days	1		1
<b>Total</b>	<b>1</b>		<b>1</b>
<b>2015-16</b>			
Not overdue			
Overdue for less than 30 days			
Overdue for 30 to 60 days			
Overdue for more than 60 days	1		1
<b>Total</b>	<b>1</b>		<b>1</b>

*<sup>(a)</sup> Internal receivables are from entities controlled by the NTG (entities listed in TAFR 2015-16 Note 41: Details of Controlled Entities at Reporting Date), whereas external receivables are from third parties external to the NTG.*

**b) Liquidity Risk**

Liquidity risk is the risk that the agency will not be able to meet its financial obligations as they fall due. The agency's approach to managing liquidity is to ensure that it will always have sufficient liquidity to meet its liabilities when they fall due.

**c) Market Risk**

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

**(i) Interest Rate Risk**

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

**(ii) Price Risk**

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

**(iii) Currency Risk**

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

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**15. RELATED PARTIES**

**i) Related Parties**

The Ombudsman's Office is a government entity recognized as an Agency in the Administrative Arrangements Order. Related parties of the agency include:

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

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

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

**iii) Remuneration of Key Management Personnel**

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

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

	<u>2016-17</u>
	\$000
Short-term benefits	261
Post-employment benefits	34
Long-term benefits	-
Termination benefits	-
Total	<u>295</u>

**iv) Related party transactions:**

**Transactions with Northern Territory Government controlled entities**

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

The Agency also has significant transactions with the Department of Corporate and Information Services for delivery of Goods and Services.

With the exception of transactions with the CHA and DCIS the departments' transactions with other government entities are not individually significant.

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

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

**16. CONTINGENT LIABILITIES AND CONTINGENT ASSETS**

The Ombudsman NT had no contingent liabilities or contingent assets as at 30 June 2017 or 30 June 2016.

**17. EVENTS SUBSEQUENT TO BALANCE DATE**

No events have arisen between the end of the financial year and the date of this report that require adjustment to, or disclosure in these financial statements.

**18. BUDGETARY INFORMATION**

<b>Comprehensive Operating Statement</b>	<b>2016-17 Actual</b>	<b>2016-17 Original Budget</b>	<b>Variance</b>	<b>Note</b>
	<b>\$000</b>	<b>\$000</b>	<b>\$000</b>	
<b>INCOME</b>				
Appropriation				
Output	1 948	1 948	0	
Sales of goods and services	23		23	1
Goods and services received free of charge	359	353	6	
<b>TOTAL INCOME</b>	<b>2 330</b>	<b>2 301</b>	<b>29</b>	
<b>EXPENSES</b>				
Employee expenses	1 712	1 719	(7)	
Administrative expenses				
Purchases of goods and services	178	225	(47)	2
Repairs and maintenance	1	4	(3)	
Depreciation and amortisation	46	39	7	
Services free of charge	359	353	6	
Other administrative expenses				
<b>TOTAL EXPENSES</b>	<b>2 296</b>	<b>2 340</b>	<b>(44)</b>	
<b>NET SURPLUS/(DEFICIT)</b>	<b>34</b>	<b>(39)</b>	<b>73</b>	
<b>COMPREHENSIVE RESULT</b>	<b>34</b>	<b>(39)</b>	<b>73</b>	

**Notes:**

The following note descriptions relate to variances greater than 10 per cent or \$20 000

1. Additional revenue through running of Cert IV in Government (Investigation) course during the year.
2. Short term savings were made where possible in Operations Expenses to allow for offset against potential overspend in Employee Expenses. Due to staff departures and delays in recruiting this did not occur in the 16/17 financial year causing a surplus in operation budget.



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	2016-17 Actual	2016-17 Original Budget	Variance	Note
<b>Balance Sheet</b>	\$000	\$000	\$000	
<b>ASSETS</b>				
<b>Current assets</b>				
Cash and deposits	1 089	907	182	1
Receivables	4	1	3	
Prepayments	5	5	0	
Other assets				
<b>Total current assets</b>	<b>1 097</b>	<b>913</b>	<b>185</b>	
<b>Non-Current assets</b>				
Property, Plant and Equipment	42	55	(13)	
<b>Total non-current assets</b>	<b>42</b>	<b>55</b>	<b>(13)</b>	
<b>TOTAL ASSETS</b>	<b>1 139</b>	<b>968</b>	<b>172</b>	
<b>LIABILITIES</b>				
<b>Current liabilities</b>				
Payables	22	50	(28)	2
Borrowings and advances				
Provisions	270	212	58	3
Other liabilities				
<b>Total current liabilities</b>	<b>292</b>	<b>262</b>	<b>30</b>	
<b>TOTAL LIABILITIES</b>	<b>292</b>	<b>262</b>	<b>30</b>	
<b>NET ASSETS</b>	<b>847</b>	<b>706</b>	<b>141</b>	
<b>EQUITY</b>				
Capital	346	346		
Reserves				
Accumulated funds	501	360	141	
<b>TOTAL EQUITY</b>	<b>847</b>	<b>706</b>	<b>141</b>	

**Notes:**

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

1. Variance due to greater cash holdings from operational savings in both current and prior reporting periods.
2. Reduced payables at end of reporting period due to settlement of bulk of outstanding debts within reporting period.
3. Increased provision due to staff leave not being utilised within the period and additional staff transferring into the agency with substantial leave balances.

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	2016-17 Actual	2016-17 Original Budget	Variance	Note
<b>Cash Flow Statement</b>	\$000	\$000	\$000	
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Operating receipts</b>				
Appropriation				
Output	1 948	1 948		
Receipts from sales of goods and services	32		32	1
<b>Total operating receipts</b>	<b>1 980</b>	<b>1 948</b>	<b>32</b>	
<b>Operating payments</b>				
Payments to employees	1 664	1 719	(55)	
Payments for goods and services	198	229	(31)	2
<b>Total operating payments</b>	<b>1 861</b>	<b>1 948</b>	<b>(87)</b>	
<b>Net cash from/(used in) operating activities</b>	<b>119</b>		<b>119</b>	
Net increase/(decrease) in cash held	119		119	
Cash at beginning of financial year	969	907	62	
<b>CASH AT END OF FINANCIAL YEAR</b>	<b>1 089</b>	<b>907</b>	<b>182</b>	

**Notes:**

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

1. Includes additional \$23 000 Receipts for delivery of Cert IV in Government (Investigation) course, remainder is ATO refunds/payments.
2. Savings as outlined in notes to Comprehensive Operating Statement.

## HOW TO CONTACT THE OMBUDSMAN

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