



# Thirty Third Annual Report 2010/11

*Presented and ordered to be printed by the  
Legislative Assembly of the Northern Territory*

ISSN 0159-4540



# OMBUDSMAN FOR THE NORTHERN TERRITORY OF AUSTRALIA

## Thirty Third Annual Report 2010-11

*The Honourable Paul Henderson, MLA  
Chief Minister  
Parliament House  
DARWIN NT 0800*

*Dear Chief Minister*

*In accordance with the provisions of Section 152 of the Ombudsman Act 2009, the Annual Report on the Office of the Ombudsman for the year ending 30 June 2011 is submitted to you for tabling in the Legislative Assembly.*

*Yours sincerely*

A handwritten signature in black ink, appearing to read 'Carolyn Richards'.

*Carolyn Richards  
Ombudsman*

*30 September 2011*

**Inquiries about this report, or any of the information or references contained within, should be directed to:**

Julie Carlsen  
Deputy Ombudsman  
GPO Box 1344  
DARWIN NT 0801

Telephone: 08 8999 1818 or 1800 806 380 (toll free within NT)

Facsimile: 08 8999 1828

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

Website: <http://www.ombudsman.nt.gov.au>

## STATEMENT OF ACCOUNTABLE OFFICER

I advise in respect of my duty as Accountable Officer, and 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 existed;
- 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 Part 2, Section 5 of the *Treasurer's Directions* where appropriate; and
- f) all actions have been in compliance with all Employment Instructions issued by the Commissioner for Public Employment.

In addition, I advise that in relation to items (a) and (e) the Chief Executive (CE) of Department of Business and Employment (DBE) has advised that to the best of his knowledge and belief, proper records are kept of transactions undertaken by DBE on my behalf, and the employees under his control observe the provisions of the *Financial Management Act*, the *Financial Management Regulations* and *Treasurer's Directions*.

The CE of DBE also advises all financial reports prepared by DBE for this Annual Report, have been prepared from proper accounts and records and are in accordance with Treasurer's Directions Part 2, Section 5 and Part 2, Section 6, where appropriate.



CAROLYN RICHARDS  
Ombudsman  
30 September 2011

<b>1. INTRODUCTION AND OVERVIEW .....</b>	<b>6</b>
<b>OMBUDSMAN'S FOREWORD.....</b>	<b>6</b>
<b>A YEAR IN REVIEW .....</b>	<b>8</b>
Jurisdiction .....	9
Approaches/Complaints .....	10
Website Visits .....	11
Achieving results .....	12
Customer Satisfaction Surveys .....	15
Certificate IV in Government (Investigations) .....	16
Resource Pressures .....	16
<b>2. ABOUT THE OFFICE OF THE OMBUDSMAN.....</b>	<b>19</b>
<b>OUR ORGANISATION.....</b>	<b>19</b>
<b>OMBUDSMAN SERVICE STANDARDS .....</b>	<b>19</b>
<b>ORGANISATIONAL STRUCTURE .....</b>	<b>20</b>
<b>STAFFING ESTABLISHMENT.....</b>	<b>21</b>
<b>UNREASONABLE COMPLAINANTS.....</b>	<b>22</b>
<b>3. PERFORMANCE.....</b>	<b>27</b>
<b>OVERALL PERFORMANCE.....</b>	<b>27</b>
<b>Outputs.....</b>	<b>27</b>
<b>ACTIVITY 1: RESOLUTION OF COMPLAINTS .....</b>	<b>29</b>
TOTAL APPROACHES .....	29
OUTSIDE JURISDICTION (OSJ) .....	33
CORRECTIONAL SERVICES .....	38
Request to Attend the Superintendent's Parade (RASP) .....	38
Prisoner complaints:.....	38
DEPARTMENT OF JUSTICE (EXCLUDING PRISONER COMPLAINTS) .....	42
Issues of Complaint.....	43
Case Studies .....	43
HOUSING, LOCAL GOVERNMENT & REGIONAL SERVICES (HLGRS) .....	49
Issues of Complaint.....	50
Case Studies .....	51
POWER & WATER .....	55
Case Studies .....	56
NORTHERN TERRITORY POLICE.....	60
How Complaints are finalised .....	60
Complaint Outcomes: .....	62
Complaint statistics: .....	62
Presentations to Police Recruits .....	64
Case Studies .....	64
DEPARTMENT OF EDUCATION AND TRAINING (DET) .....	68
Case Studies .....	68
DEPARTMENT OF HEALTH & FAMILIES (DHF) .....	74
Case Studies .....	75
DEPARTMENT OF BUSINESS & EMPLOYMENT (DBE).....	79
Case Studies .....	79
DEPARTMENT OF LANDS & PLANNING (DLP) .....	80

Case Studies .....	81
TREASURY .....	82
DEPARTMENT OF RESOURCES (DOR) .....	82
NATURAL RESOURCES, ENVIRONMENT, THE ARTS & SPORT (NRETAS) ..	82
Case Studies .....	83
ACTIVITY 2: IMPROVE THE DELIVERY OF SERVICES .....	88
OUTPUTS .....	88
HIGHLIGHTS .....	88
ACTIVITY 3: INSPECTION OF NT POLICE RECORDS .....	90
OUTPUTS .....	90
OVERSIGHT FUNCTION .....	90
Telecommunications (Interception) Northern Territory Act .....	90
Surveillance Devices ACT 2007 .....	90
ACTIVITY 4: ACCESS AND AWARENESS .....	93
OUTPUTS .....	93
HIGHLIGHTS .....	93
Meetings and Conferences .....	93
ACTIVITY 5: MANAGEMENT OF THE OFFICE OF THE OMBUDSMAN .....	96
OUTPUTS .....	96
STRATEGIC DIRECTION .....	96
HIGHLIGHTS .....	97
Corporate Governance .....	97
Equal Opportunity .....	97
Training and Development .....	97
Occupational Health and Safety .....	98
Annual Insurance reporting requirements .....	98
Information Act Annual Reporting Requirements .....	99
Records Management .....	99
4. APPENDICIES .....	101
APPENDIX A – ACCESS AND AWARENESS .....	101
APPENDIX B – FREEDOM OF INFORMATION .....	102
APPENDIX C – SERVICE STANDARDS .....	106
APPENDIX D – AGREEMENTS WITH OTHER JURISDICTIONS .....	109
MEMORANDUM OF UNDERSTANDING between THE COMMONWEALTH	
OMBUDSMAN and OMBUDSMAN FOR THE NORTHERN TERRITORY .....	109
PUBLIC INTEREST DISCLOSURES & OMBUDSMAN MOU .....	114
POLICE COMPLAINTS AGREEMENT .....	117
APPENDIX E – FINANCIAL STATEMENTS .....	141
CERTIFICATION OF THE FINANCIAL STATEMENTS .....	142
5. HOW TO CONTACT THE OMBUDSMAN .....	162

# Ombudsman

## Introduction and Overview

OMBUDSMAN'S FOREWORD.....	6
A YEAR IN REVIEW .....	8
Jurisdiction.....	9
Approaches/Complaints.....	10
Website Visits .....	11
Achieving results .....	12
Customer Satisfaction Surveys .....	16
Certificate IV in Government (Investigations) .....	16
Resource Pressures .....	16

# Ombudsman

## 1. INTRODUCTION AND OVERVIEW



### OMBUDSMAN'S FOREWORD



The 2010/2011 financial year is the 33rd anniversary of this Office. The term of appointment for the Northern Territory Ombudsman is 7 years with ineligibility for reappointment. I leave office in August 2012, and expect that this is my last annual report to the Legislative Assembly.

I look back on this Office's achievements this year with personal satisfaction and a great sense of gratitude towards my staff. Their commitment to the Ombudsman's values of fairness, independence and integrity is unquestionable. Their hard work and their unwavering loyalty and support to me is an enduring testament to our mutual belief that we contribute to improving public administration which itself underpins a fair and just society.

It has been a privilege and an honour to serve the Northern Territory community. I will leave this Office knowing that it is well-placed to continue providing fair, efficient, transparent and accountable services. I wish my successor all the best in managing the issues with which I have grappled. My term has been a challenging and enriching experience.

In the reporting period 2010/11 the Ombudsman performed oversight functions on the activities of government agencies, Public Servants, Shire Councils, Power and Water Corporation, Police and Correctional Services.

This report accounts to the Legislative Assembly for the resources allocated to the Ombudsman, for the exercise of the power of the Ombudsman to improve public administration and good governance, and to resolve grievances for the public. In addition, this report illustrates the process through which the Ombudsman has contributed to public accountability during the reporting period.

The Ombudsman is an institution vital to the operation of a robust democracy, particularly one that has aspirations to achieve Statehood in the Commonwealth of Australia. To be effective in improving the standard of public administration, accountability and services the Ombudsman needs allies. Nothing changes unless government agencies, policy designers, decision makers, and the Executive Government of the day give respectful consideration to the lessons to be learned from the investigations and reports of the Ombudsman.



All change is precipitated by good leadership, just as good administration will falter without good leadership. I have seen over my six years in office examples of poor decisions, fragmented systems, weakness in processes used by staff and a reluctance to change in response to complaints and inquiries by the Ombudsman which identify weaknesses. To lead takes courage to face difficult issues. To lead requires the ability to inspire and empower others and to lead by example. A skilled leader is respectful, responsive, ethical and demonstrates impartiality. So much that causes people to complain to the Ombudsman can be traced to poor leadership and mismanagement. Those two attributes are just as corrosive of good government as corruption. Very often problems uncovered by the Ombudsman have been recognised long before the Ombudsman receives a complaint and investigates.

The failure to address and redress the weaknesses is to me inexplicable. Some agencies do take an Ombudsman investigation as a catapult to action. Others batten down, become defensive, resist disclosure and sabotage themselves and those they serve by strenuous efforts to conceal information and refute recommendations without offering alternatives to fix weaknesses and failures that are undeniable.

I commend those leaders in agencies who have shown effective management in ensuring that problems are dealt with. I cannot name them because there have been no public reports about them and how they fixed things so that such a report was not necessary.

It is those agencies, and their leaders I count as successes for me and every one of my staff. I count as short sighted failures the leaders of agencies whom I could not persuade to *'put their house in order'* unless publicly exposed.



CAROLYN RICHARDS  
OMBUDSMAN  
30 September 2011



## A YEAR IN REVIEW

---

The legislative functions of this Office are to:

1. Investigate and deal with complaints about administrative actions of public authorities;
2. Consider the administrative practices and procedures of public authorities whose actions are being investigated, or dealt with on complaint and to make recommendations to authorities:
  - a) About appropriate ways of addressing the effects of inappropriate administrative actions; or
  - b) For the improvement of their practices and procedures;
3. To consider the administrative practices and procedures of public authorities generally and to make recommendations or provide information or other help to the authorities for the improvement of their practices and procedures;
4. To investigate and deal with complaints about the conduct of Police Officers;
5. To consider and prepare reports on investigations about the conduct of Police Officers and to make recommendations about action that should be taken in relation to them;
6. To perform other functions conferred on the Ombudsman under the *Ombudsman Act* or another Act.
7. To inspect records of the Northern Territory Police and report to the Legislative Assembly through the Minister on compliance with use of surveillance devices under the *Surveillance Devices Act*.
8. To monitor and report to the Minister on compliance with the *Telecommunications (Interception) Northern Territory Act* and the *Commonwealth Telecommunications (Interception and Access) Act* by law enforcement agencies within the Northern Territory.
9. Pursuant to a co-location agreement with the Commonwealth Ombudsman, to provide administrative support to representatives of the Commonwealth Ombudsman's Office who are co-located within the Office of the Ombudsman in Darwin.
10. To act as a member of the Northern Territory Law Reform Committee.

In the 2010/11 period this Office has received and resolved hundreds of complaints; referred complaints back to agencies to resolve directly; inspected Police records pertaining to telecommunications and surveillance devices; delivered three major investigation reports for tabling in the Legislative Assembly; provided nationally accredited training; presented to Police and Prison Officer recruits and to CDU law students; and conducted some community engagement.

This financial year it was envisaged that there would be a decrease in the number of approaches to this Office. This expected decrease is attributed to a number of changes. In July 2009 the Territory Insurance Office (TIO) was removed from the Ombudsman's jurisdiction. Also in 2009 the Public Interest Disclosure Office (commonly known as the 'Whistleblowers') was established. In 2008 the Children's Commissioner was appointed with many complaints being directed to that Office. As of 1 July 2011 due to legislative changes, all child complaints (except complaints against the Police) will be referred to the Children's Commissioner. There has also been a noted improvement in the manner in which some agencies are handling complaints, thus reducing the requirement for

complainants to seek Ombudsman intervention. Online complaint information has been improved providing detailed information to the public about where to complain.

In the 2010/11 period there were 2006 approaches to my Office compared to 2540 in 2009/10. A break down of those approaches and the actions taken to address these complaints are comprehensively set out within this report.

## Jurisdiction

My Office does not have the power to investigate certain complaints, for example, complaints about the decisions of:

- the Executive Council or Cabinet;
- a Committee of the Executive Council or Cabinet;
- the Administrator;
- a Minister;
- a person while discharging or purporting to discharge a responsibility of a judicial nature;
- a Tribunal or a member of a Tribunal;
- a person acting as counsel or legal adviser to the Territory, for the Territory or a Minister;
- A Coroner;
- A Magistrate or Justice;
- The Director of Public Prosecutions;
- A public authority in relation to its employment of a person;
- The Parole Board of the Northern Territory;
- The Territory Insurance Office (TIO).

The Ombudsman (section 16(2)) must also not investigate administrative actions of a public authority where there is a review right under the law under which the action is taken unless the authority agrees to the investigation. The exception to this is when the person who has the review right complains to the Ombudsman and I am satisfied it would not be reasonable to expect or to have expected the complainant to resort to the review right, or the matter merits investigation to avoid injustice.

Except in special circumstances, the Ombudsman does not investigate complaints where a complainant has known about the problem for more than 12 months before contacting my Office.

In general, investigations into a complaint will not be undertaken if the complainant has not attempted to resolve the problem directly with the agency concerned. This is because we believe each agency is responsible for trying to resolve complaints about its actions and should be given an opportunity to do so. Complaints of this nature may be declined or discontinued pursuant to section 33 of the *Ombudsman Act*.

## Approaches/Complaints

Approaches (also referred to as complaints) are recorded either as enquiries or cases depending on the seriousness of the matter. We use response and closure times as key indicators in measuring and assessing performance. These closure times do not include Police complaints as the Ombudsman does not investigate the vast majority of Police matters. Police complaints are investigated by the NT Police Ethical & Professional Standards Unit; as such the timeframes taken to conclude Police matters are not within my control.

There are a range of factors that can affect response times including the complexity of the issues raised, and the level of research and/or investigation required to properly consider a matter.

Enquiries and cases may be handled in one of the following ways:

- *Assessment*: Complaints are finalised through research and assessment, without contacting the agency concerned.
- *Preliminary Enquiry*: Complaints are finalised after obtaining information from the agency concerned.
- *Investigation*: Complaints are finalised by making inquiries with the agency or elsewhere and a written response is provided to the complainant by this Office.
- *Major Investigation*: We expend significant time and resources on investigating systemic maladministration.
- *Conciliation or Mediation*: Participation by the parties to the complaint in a conciliation or mediation process.
- *Referral*: The complaint is referred back to the agency to attempt resolution.
- *Declined*: The issues raised are not of substantial merit, not within the public interest, or resources are unavailable to be assigned to the complaint.
- *Discontinued*: Complaint issues after research and assessment with or without contact with the agency concerned are found to require only an explanation to the complainant to enable the person to understand the outcome.

In the prison system there is an internal complaint process termed RASP (Request to Attend the Superintendents Parade). It is expected that prisoners avail themselves of this internal process before seeking assistance from this Office. There are exceptions; each matter is assessed on receipt.

Exceptions to referring matters may be based on the complainants disadvantage either by language, literacy, age, disability or incarceration. In these cases this Office may assist the complainant by referring their complaint on their behalf and obtaining the outcome for the complainant.

All complainants that have been referred to an agency are invited to return to our Office if they remain dissatisfied after the agency has addressed or failed to address their complaint.

During the financial year our team received 1768 enquiries and investigated 264 cases. A breakdown of these figures can be found on page 29.

## Website Visits

Each year the number of persons accessing our website is recorded. This financial year there were 28,216 visits to our website. Of these visits there were 12,485 visits from 114 countries/territories outside of Australia. The average time spent on our site was 00:01:49 with 79.02% of the visits from persons who had previously not visited. Pages most viewed are listed below:

**Table 1: Pages most viewed on Ombudsman website**

Page content	Page views
Make a complaint	2,249
Publications/reports	4,076
Contact us	2,062
About us	1,950

The main interest appeared to be related to our public reports. Copies of these can be found on our website [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au)

Below are the website visit figures for the past three financial years:

**Table 2: 3 year website visit comparison**

Month	2008/09	2009/10	2010/11
July	3162	1793	1755
August	2874	2953	1864
September	2692	2881	2138
October	2871	2945	2854
November	2922	3147	2898
December	2592	1934	2165
January	2811	2135	2174
February	2779	2734	2643
March	2798	2295	2668
April	2553	1646	2321
May	3148	1776	2270
June	3012	1745	2466
<b>Total</b>	<b>34,214</b>	<b>27,984</b>	<b>28,216</b>

Countries/territories outside of Australia that visited the NT Ombudsman website during the 2010/11 financial year:

**Table 3: Website Visiting Countries**

Countries Visiting NT Ombudsman Website	
• United States	• South Africa
• United Kingdom	• Indonesia
• India	• Malaysia
• Canada	• Egypt
• New Zealand	• United Arab Emirates
• Philippines	

## Achieving results

Two major investigation reports were made public (tabled) in the financial year.

The first report was an investigation into the manner in which Charles Darwin University (CDU) managed livestock and conducted operations at the University's Mataranka Station. The investigation was instigated on the Ombudsman's Own Motion because of complaints made by people disturbed by the condition and treatment of cattle and horses at that property throughout 2009 and continuing in 2010. Sixteen (16) recommendations were made to CDU. Most of these were accepted, in relation to recommendations 3, 4, 6.1 and 6.2, CDU provided an alternative view and a proposed course of action.

On release of this report focus was directed to the number of animals that died on the property. My investigation determined that up to 800 animals died of neglect, whilst CDU determined the number to be about 340. A break down from initial CDU figures document approximately 216 cattle died in 2009 and 124 in 2010. The exact number of deaths remains unknown.

In my view, it is important not to focus on whether 1 or 1000 died. Neglect of any animal is an offence pursuant to the provisions of the *Animal Welfare Act*.

Surprisingly, this investigative report circulated worldwide. The majority of emails to my Office appeared to be generated from a petition (extract from website shown below):

[www.change.org/petitions/view/charles\\_darwin\\_university\\_covers\\_up\\_the\\_worse\\_case\\_of\\_animal\\_cruelty\\_in\\_australian\\_history](http://www.change.org/petitions/view/charles_darwin_university_covers_up_the_worse_case_of_animal_cruelty_in_australian_history).

### CHARLES DARWIN UNIVERSITY COVERS UP THE WORSE CASE OF ANIMAL CRUELTY IN AUSTRALIAN HISTORY

#### SIGN THIS PETITION

The time period for signing this petition has ended



PETITIONING

- Hon Konstantine Vatskalis MLA
  - NT RSPCA
  - NT Ombudsman
- NT Chief Minister, Paul Henderson
  - Charles Darwin University VC
  - Dr Chris Burns

SIGNATURES

1,861

Of the one thousand eight hundred and sixty one signatures (1861) on this petition, one thousand, seven hundred and eighty one (1781) international persons and eighty (80) Australians emailed my Office ([nt.ombudsman@nt.gov.au](mailto:nt.ombudsman@nt.gov.au)) with the following:

*DEAR Ministers / RSPCA and other relevant parties,*

*I am utterly horrified by the cruel, brutal and indefensible treatment of cattle and horses at the hands of Professor Ian Gray. I am equally horrified that this man has not been prosecuted to the full extent of the law.*

*This sickening animal cruelty case has made its way not only around Australia, but worldwide, Mr Gray's obscenely cruel actions must not go unpunished, this man is an animal abuser and must be treated as such.*

*It appears that NO ONE stepped in to save these animals, and this is simply criminal.*

*I find it rather disturbing that Dr Brian Heim, of Charles Darwin University "dismissed the animal abuse complaints and said they were trivial and vexatious" and said "what they considered to be cruelty to animals was normal". What truly obscene comments to make.*

*Professor Robert Wasson, chairman of the universities 'animal ethics committee' (that in itself is horrifying), appeared to do his best to cover up this horrific animal abuse. It would appear that Mr Wasson has proven that he is not fit to hold such a position.*

*"The ombudsman would have recommended Professor Gray's prosecution, but says the 12-month time limit for charges has passed"? She would have recommended? Why on earth did the NT ombudsman and the authorities allow 12 months to pass? Or was this done deliberately? May be an investigation into how the ombudsman has dealt with this issue should be carried out.*

*To not lay charges is an insult to every animal that suffered and died a horrific death as a result of Mr Gray's neglect, and also the neglect of the Charles Darwin University as a whole.*

*I ask that this sickening case of animal cruelty be thoroughly investigated, and that Mr Gray be prosecuted. I also ask that Dr Heim be investigated, as this man clearly neglected to take action and as a result animals suffered terribly, and died.*

*This shocking case of animal abuse will destroy the reputation of Charles Darwin University, and with good reason. It shall also tarnish Australia's reputation as having the 'best animal welfare practices in the world'. All involved should be sacked from the university immediately.*

*Thank you for your time.*

Breakdown of international citizens who emailed the Ombudsman:

Country	Number	Country	Number
Africa	11	Korea	1
Alaska	2	Lebanon	1
Argentina	1	Malaysia	3
Australia	107	Mexico	14
Austria	5	Middle East	1
Belgium	10	Nambia	1
Borneo	1	Netherlands	10
Brazil	4	New Zealand	9
Buenos Aires	4	Nicaragua	1
Bulgaria	5	Norway	3
Canada	63	Pakistan	1
Canary Islands	1	Paraguay	1
China	2	Philippines	2
Colombia	2	Poland	7
Croatia	4	Portugal	5
Cyprus	2	Puerto Rico	3
Czech Republic	2	Rio De Janeiro	1
Denmark	15	Romania	2
Fiji	1	Russia	4
Finland	1	Saudi Arabia	1
France	51	Scotland	7
Germany	39	Serbia	4
Ghana	1	Singapore	1
Greece	21	Slovenia	2
Hawaii	6	Spain	21
Hong Kong	1	Sweden	6
Hungary	3	Switzerland	9
India	3	Syria	1
Ireland	3	UK	142
Israel	5	Unknown	22
Italy	36	USA	1077
Japan	3	West Bengal	1
Jordan	1	<b>Total</b>	<b>1781</b>

A number of Australian citizens also complained directly though the generic email address. Two extracts from Northern Territory residents (names withheld) are shown below:

*I wish to voice my feelings of shame and disgust that my government felt unable to do better for the poor wretched, vulnerable cattle at Mataranka.*

*And now their needless suffering is totally in vain with nobody to be held responsible.*

*To think of how many people must have been aware of this situation and over how long a period is unconscionable.*

**ALICE SPRINGS**



*What is the NT Ombudsman's position ... now? ...I have personally sent an e-mail to the International Humane Society about the unspeakable horror that has been allowed to perpetuate at Mataranka and am particularly disappointed by the Henderson Government's lack of respect towards your office and the advice and recommendations you have provided...*

**DARWIN**

I am also aware that CDU received similar complaints, although I am unaware of the number received.

Animal cruelty is not an Australia only issue. In May/June 2011 media reports about inhumane treatment of animals in eleven Indonesian abattoirs was exposed. It is upsetting that a number of the neglected cattle from the CDU Station may have had specialised care to bring them back to good health, before being sent to Indonesia for slaughter, that may have resulted in further inhumane treatment.

My second report was the result of an own motion investigation following multiple complaints to my Office about the Living Waters Chaplaincy Service, about the respective chaplains, pastors and about the Department of Education and Training (DET). The investigation covered the following Northern Territory Government rural schools: Humpty Doo Primary School, Bees Creek Primary School, Berry Springs Primary School, Girraween Primary School and Taminmin High School, who engaged the services of the Living Waters Chaplaincy Service through the Commonwealth funding arrangement. The funding arrangement was called the National Schools Chaplaincy Programme (NSCP) and commenced within the respective schools during late 2007 and early 2008.

Thirteen (13) recommendations were made within this report. The response from the Department of Education and Training are found under each recommendation within the report.

A third report tabled in the Legislative Assembly in August 2011 relates to a partial investigation into the Care and Protection of Children within the Northern Territory.

Most reports, after tabling, can be found within the publications section of our website [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au) however, the report into the Care and Protection of Children within the Northern Territory will not be published on our website, to do so may breach the provisions of the *Care and Protection of Children Act*.

## Customer Satisfaction Surveys

Satisfaction surveys are sent to numerous customers, the majority of these surveys are not returned. To provide our customers with an alternative way in which to provide feedback to my Office, changes are being made to the Ombudsman website to enable customers to complete online feedback forms. This financial year one (1) customer satisfaction survey was returned. This survey indicated that my staff are meeting the benchmarks of this Office.

## Certificate IV in Government (Investigations)

It is unfortunate that due to staffing shortages, this financial year my Office was not able to continue to offer this training past July 2010. This is a regrettable loss to the Northern Territory Public Service, and to the improvement of public administration generally in the Northern Territory.

The waitlist of Northern Territory Government staff seeking to undertake this training is now 40 persons. Other persons who were on the waitlist have either travelled interstate to complete training, completed training online or have sourced another provider to deliver in the Northern Territory. This may have resulted in funds to attend the course not remaining in the NT.

## Resource Pressures

Similarly to other publicly funded agencies our funds are finite. Priority is given to investigating complaints where there is a reasonable likelihood that we can achieve a worthwhile outcome for the complainant, the broader community or the public sector.

A number of complaints were declined or discontinued this year following assessment or preliminary inquiries. There are also occasions when people withdraw their complaint/s for various reasons.

Notwithstanding resource pressures, when declining a matter one of the following may have applied:

- The complainant had not tried to resolve their issue/s with the agency concerned.
- The complainant had not provided the agency with a reasonable period of time to address their concerns.
- The agency has its own formal complaint/review process which had not yet been pursued.
- Another agency had the specialist jurisdiction to handle the complaint.
- The complainant had known about the matter for more than 12 months before contacting us, and there were no special reasons for not making an earlier complaint.
- The complainant does not have sufficient direct interest in the matter.

When considering a matter for investigation, one or more of the following criteria may have applied:

- The matter affects a significant number of people;
- The matter is of significant public interest;
- The result will yield a result commensurate with the effort required to investigate;
- Where an individual injustice was outrageous;
- Where the potential for the event occurring again exists.

When discontinuing an investigation one of the following may have applied:

- It was found that the complainant had a right of review or appeal and had failed to avail themselves of that process;
- The agency agreed to review the administrative action or decision that led to the complaint;
- The initial investigation indicated that further investigation was unnecessary or unjustified.

One of the major problems faced by my Office resulted after the separation of my Office and the Health & Community Services Complaints Commission (HCSCC). On 1 July 2011, the HCSCC came under the banner of the Department of Justice (DoJ). The HCSCC team were to move to alternate premises, ceasing the ability of Ombudsman staff overhearing and viewing HCSCC complaints and records. The lack of office space resulted in interagency sharing of resources and in one office two Ombudsman staff members and one HCSCC officer shared.

The lengthy delay in moving the HCSCC team to alternate premises required several Ombudsman staff to continue to provide assistance to HCSCC clients. Phone calls and many visits were in the first instance addressed by Ombudsman staff. The Ombudsman staff had no delegation to accept complaints under the *Health & Community Services Complaints Act*. However, this only occurred in the absence of HCSCC staff. In most instances the names and contact details were taken and on-forwarded to HCSCC staff, however, in some cases the complainants travelled long distances; were very distressed; elderly and/or disabled; and sought immediate relief by providing a version of their complaint, despite the efforts of Ombudsman staff to dissuade them.

The Ombudsman business unit continued to separate costs between both agencies for over 13 months. Invoices were sent to the Department of Justice for facilities, vehicle, telecommunications and staff.

# Ombudsman

# Ombudsman

## About the Office of the Ombudsman

OUR ORGANISATION.....	19
OMBUDSMAN SERVICE STANDARDS.....	19
ORGANISATIONAL STRUCTURE.....	20
STAFFING ESTABLISHMENT.....	21
UNREASONABLE COMPLAINANTS .....	22

# Ombudsman

## 2. ABOUT THE OFFICE OF THE OMBUDSMAN

### OUR ORGANISATION

#### Our Vision

We strive for a Northern Territory where all Territorians can expect and receive excellence in public sector decision-making and where fairness and accountability are embedded as core components of good governance and administrative practice in all public authorities.

#### Our Goals

- An independent, high quality and accessible complaint resolution service modelling best practice
- Improved standards of administration and statutory compliance in public authorities
- Strengthened institutional capacity to deliver high quality services

#### Our Values

In everything we do, we value the principles of:

- Fairness, independence and impartiality
- Integrity and honesty
- Respect for all people
- Professionalism and diligence
- Efficiency and responsiveness

### OMBUDSMAN SERVICE STANDARDS

The Ombudsman aims for its services to be of the highest quality, open to scrutiny and accountable. The Office has developed a service charter (or Standards) against which it can be judged. These Standards can be found at appendix A. When complainants approach my Office there are certain expectations of them and my staff. These are:

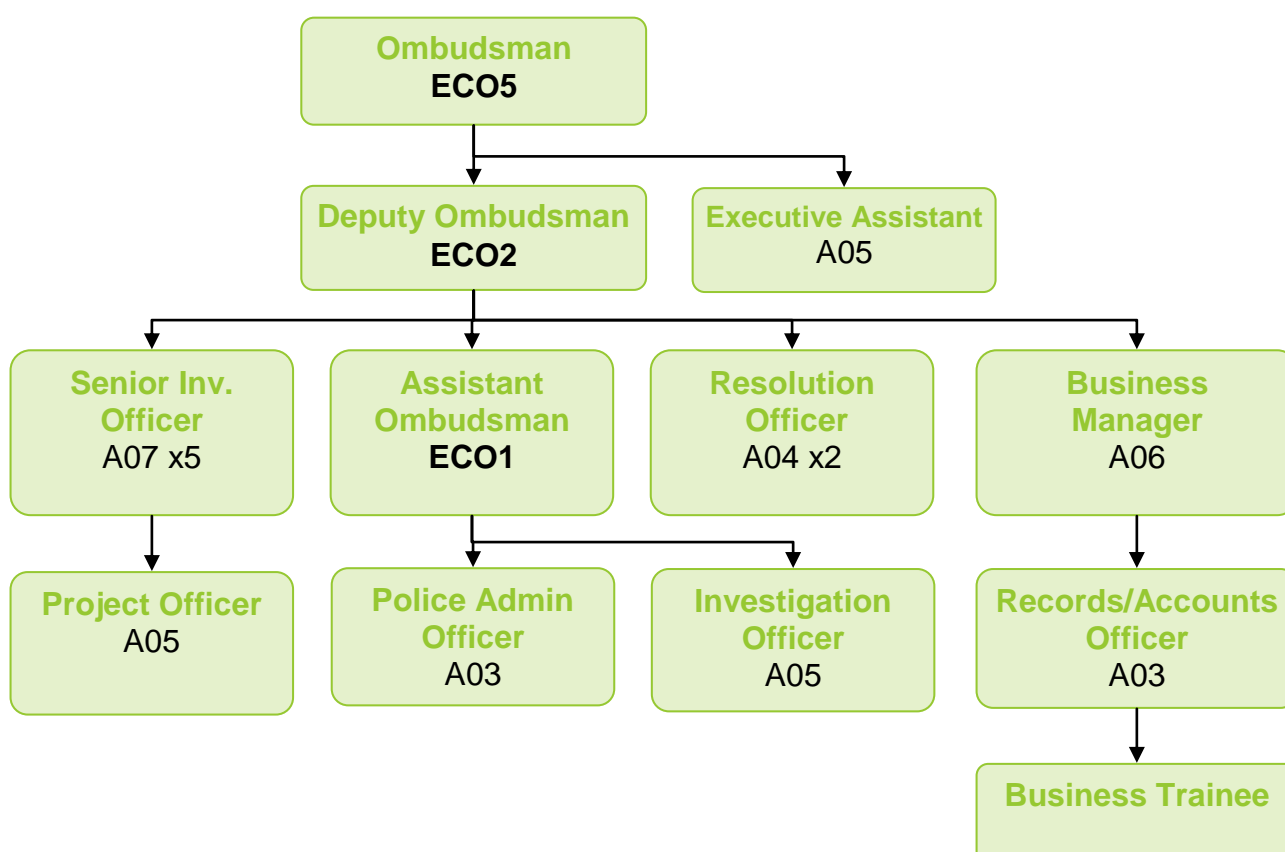
- To make their complaint and express their opinions in ways that are reasonable, lawful and appropriate;
- That a fair and impartial assessment and where appropriate, investigation of their complaint based on the merits of the matter;
- To be informed in at least general terms about the actions taken and the outcome of their complaint;
- To be given reasons that explain decisions affecting them;
- To be treated with courtesy and respect;
- Communicate valid concerns and views without fear of reprisal or other unreasonable response.

Ombudsman staff:

- Provide reasonable assistance to complainants who require help to make a complaint and where appropriate, during the complaint process;
- Deal with all complaints, complainants, people or organisations professionally, fairly and impartially;
- Give complainants or their advocates a reasonable opportunity to explain their complaint;
- Inform people or organisations the subject of investigation, at an appropriate time about the substance of the allegations made against them;
- Provide natural justice;
- Keep complainants informed of the actions taken and the outcome of their complaints;
- Give complainants reasons that are clear and appropriate to the circumstances of the complaint that adequately explain the basis of any decisions that affect them;
- Treat all persons with courtesy and respect;
- Take all reasonable and practical steps to ensure that complainants are not subjected to any detrimental action in reprisal for the making of their complaint;
- Provide warning of the consequences of unacceptable behaviour.

## ORGANISATIONAL STRUCTURE

The Organisational Structure for the Office at the end of June 2011 showing historically approved positions is depicted below. Two (2) positions were unfilled for the year initially due to a lack of funding, then an inability to fill positions due to unqualified applicants.



## STAFFING ESTABLISHMENT

At the end of the 2010/11 financial year there were 17 positions within the Office. Due to staff capping some have not been filled. However, an A03 position was filled by a contract officer to cover staff absences. Other positions remained vacant throughout the year, these vacancies are recorded in the tables below.

**Table 4: Ombudsman establishment at June 2011 by position level:**

Position Level	Total
Ombudsman ECO5	1
Deputy Omb ECO2	1
Assistant Ombudsman ECO1	1
Administrative Officer 7	5
Administrative Officer 6	1
Administrative Officer 5	3
Administrative Officer 4	2
Administrative Officer 3	2
Trainee	1
<b>Total</b>	<b>17</b>

*Note: One (1) Administration Officer position is a temporary contract to fill a position left vacant due to maternity leave. This contract position ceases as at September 2011.*

*One (1) Senior Investigation Officer (SIO) Administrative Officer level 7 and one (1) Administration Officer level 5 remain vacant.*

**Table 5: Ombudsman establishment at June 2011 by gender and position level:**

Position Level	Female	Male	Unknown	Total
Ombudsman ECO5	1	-	-	1
Deputy Ombudsman ECO2	1	-	-	1
Assistant Ombudsman ECO1	-	1	-	1
Administrative Officer 7	2	2	1	5
Administrative Officer 6	-	1	-	1
Administrative Officer 5	1	1	1	3
Administrative Officer 4	2	-	-	2
Administrative Officer 3	2	-	-	2
Trainee	1	-	-	1
<b>Total</b>	<b>10</b>	<b>5</b>	<b>2</b>	<b>17</b>

*Note: One (1) Senior Investigation Officers (SIO) position and one (1) Administration Officer level 5 position are currently vacant. Extensive advertising from December 2010 to April 2011 to fill an SIO position failed to identify a person with the necessary skills.*



## UNREASONABLE COMPLAINANTS

The majority of persons approaching this Office are polite, respectful and genuinely seeking assistance to address their concerns. Unfortunately, there are a small number of persons whose behaviour is particularly challenging. These persons display what is commonly termed as 'unreasonable conduct'. These behaviours can be categorised as follows:

- Unreasonable persistence;
- Unreasonable demands;
- Unreasonable lack of cooperation;
- Unreasonable arguments;
- Unreasonable behaviour (anger, aggression, threats);
- Inability to accept the outcome.

The mere fact that a complainant is persistent, makes demands, or may be angry does not necessarily mean that their conduct is unreasonable. However, when a person's conduct does become unreasonable a significant and disproportionate amount of resources are consumed to deal with such behaviour.

Unreasonable conduct has also resulted in there being occasions where my staff have been threatened with violence. This behaviour is not tolerated and these matters are reported to the Police.

## CASE STUDIES

### Case study 1:

*In 2008 a complaint was received against Family & Children's Services (FACs). The allegation from a Grandmother was that her daughter is an unfit mother. The complainant unhappy with the actions taken by FaCS stated my Office should become familiar with the Family Law Act 1975 (Federal legislation). Preliminary enquiries were undertaken to determine jurisdiction and interest. Enquiries revealed that FACs had adhered to policy and legislation with no maladministration identified in this matter. This ended the jurisdiction of my Office. The complainant was informed of the outcome with a suggestion that she seek legal advice to obtain the outcome she was seeking - access to her grandchildren.*

*Two years later (2010) the complainant returned to my Office with the same issues of complaint. The complainant was again advised to seek legal advice with a follow up letter sent to reinforce this suggestion.*

*In February 2011 the complainant returned, raising similar issues. Again, these issues were not within the jurisdiction of the Ombudsman. The complainant was advised by letter. She returned later with a complaint against the Police in relation to an investigation conducted nine years earlier for the Coroner. The matter was not within jurisdiction, the complainant was again advised to seek legal advice. Days later the complainant returned with the same issues against FACs spanning 2002 to 2011. The complainant was advised that the issues were not within jurisdiction and to raise the matter with the Children's Commissioner. She advised that she had reported the matter to the Children's Commissioner.*

*Days later the complainant returned advising this Office that her complaints had been misunderstood and that she wished to complain about the Police. A detailed outcome of enquiries undertaken to date was provided to the complainant. Days*

*later the complainant returned with some historical repetitive issues and some new issues of complaint against FaCs. Her letter to the Ombudsman copied in several Ministers and the Department of Family & Children's Services. The complainant provided the Ombudsman 14 working days to get a positive answer to her previous two letters. The upshot being that if she didn't get the outcome she was seeking it would result in her speaking with the media. The complainant was provided with a written response and advised that if she wished to speak with the media that was a matter for her. She was also advised to contact the Children's Commissioner.*

*A couple of days later the complainant faxed my Office. An excerpt from this fax follows: 'You Caroline have been banging your gums on TV saying all this crap about protecting children being abused, oh s\*\*t you must have to be BLACK to get protection'. A response was provided to the complainant setting out the behaviour expected of persons seeking assistance. Information pamphlets were also sent to the complainant about the Children Commissioner's role in relation to protected children.*

*A couple of days later the complainant faxed my Office. An excerpt from this fax follows: 'You never investigated any of my complaints so I will insult you again, you are a bunch of clowns that obviously have no concern for white kids being abused. So I have told god to give you lot the karma you all deserve and believe me you will get it, so think of me when things start to go wrong in your cozy little lives. No I am not mad just a ordinary grandmother trying to protect her grandchildren, but that would be to much for your pea sized brains to understand. You lady have no idea how I feel, because it is d\*\*\*heads like yourself that send people mad, and don't bother writing back'.*

*A few days later the complainant wrote again. Her issues again stemmed from a coronial held nine years earlier and the actions of FaCs at that time. A letter advising the complainant to contact the Children's Commissioner was sent. A few days later the complainant responded that she had written to the Children's Commissioner and that he had directed her back to the Ombudsman. DHF were contacted and advised that they were continuing to work with the complainant to provide an outcome she was seeking (access to her grandchildren). The other outcome sought, re-opening the Coronial Inquiry, is not an outcome that the Ombudsman can provide. The complaint was advised to seek legal advice. Three months later the complainant sent a copy to the Ombudsman of a letter she sent to the Commissioner of Police regarding their investigation for the Coroner.*

As can be seen despite making enquiries and providing information to assist the complainant, she refused to accept the outcome. It is not known whether she sought legal advice, which would have been the most appropriate avenue for her to take. Her letters/faxes became outbursts of insulting content when the result she sought could not be provided. The time spent enquiring into each allegation on a case-by-case basis was costly and exhausting.

## **Case Study 2**

*One particular customer is well known to staff in several government agencies. His complaints mainly relate to matters setting out that men are treated poorly by government and others. Much of his correspondence attempts to document issues in a legal format. The complainant purports on many occasions to represent men who are the subject of relationship separation. This person is not a lawyer and his attempt to write in a legal sense makes much of his correspondence difficult to*

*decipher. The majority of his letters set out men as victims and females as offenders.*

*This complainant also uses what is commonly called a 'scatter gun approach' sending the same letter of complaint to several departments. These departments usually consist of the Chief Minister's office, the Commissioner of Police, the Anti Discrimination Commission, the Department of Justice and the Ombudsman. On one recent visit to my Office the complainant wanted to complain about the government domestic violence advertising. Told that the matter was not in the jurisdiction of this Office the complainant insisted on leaving a lengthy document in support of his grievance. A letter was sent confirming the advertising was not within jurisdiction.*

This complainant probably has good intentions; however, unreasonable amounts of time are spent on continually responding when correct information has already been provided.

### **Case study 3**

*In May/June 2011 the person referred to in case study 2 wrote to this Office stating that he was acting on behalf of a client. He requested that responses from this Office be made through him, although he had no standing to receive this information. As such, a response was sent to the aggrieved party, strongly suggesting that the person seek legal advice to assist with child custody issues. As a result of not sending the response as requested a letter to the Ombudsman was received setting out that the Ombudsman had indulged in 'official obstructionism' and a 'serious attempt to defame the letter writer'. The writer alleged that the Ombudsman had a 'personal misandry' (hatred of males). Incorrect reference was made to the Hague Convention of Children of which Australia is a signatory. The Hague Convention refers to children who are removed from Australia, which was not the case in this matter.*

*Further inaccurate conclusions were reached by the writer who appeared to believe that the Criminal Code of the NT is invalid when applied to 'child abduction' between husband and wife. The writer sought a full retraction of 'false suggestions' made to his client, an 'unreserved apology' to both his client and himself, and further that the Ombudsman ceases compromising the 'gender impartiality' of the Office of the Ombudsman. The writer stated that he makes no claims of being a solicitor and that he is not a qualified solicitor, he makes no claims of dispensing legal advice, seeks no fees (except donations), does not represent himself as an organisation but as 'a sole proprietor offering a leg up service to the less informed and capable'. He believes that he assists persons by writing and articulating complaints 'because humble folk do not know the protocols'. He concluded by providing 21 days for the remedies sought before he would consider further options.*

The Ombudsman is not subject to direction by any person about the way the Ombudsman exercises or performs the Ombudsman's powers or functions in relation to complaints and investigations (Section 12). I therefore did not respond to this letter. Despite the writer's protestations, his letters to this Office do not assist his clients, nor are they written in a manner that is articulate and in many cases contain material that is irrelevant or incorrect. I stand by my decision to exclude this person from information that he is not entitled to obtain.

## Case study 4

*An unreasonably persistent complainant with unusual issues regularly contacts this Office. Some of his complaints are as follows:*

- *Doesn't like to be asked questions by the Police, such as "When was your last drink?" "What is your date of birth?"*
- *Reported that Police attending his property had speech and hearing impediments which indicated to him that Police suffer from psychological problems;*
- *Writing letters with comments such as - "Police and Police Auxiliarys suffer psychological problems as to who they are, they have lost sight of their own identity...with the ever increasing threat of terrorism it clearly demonstrates how dangerous the Police really are";*
- *Auxiliaries answer the phone and they are not Police;*
- *Pre-emptive complaint that the Commissioner of Police will not respond to correspondence;*
- *Police didn't hand the mouth piece from an RBT to the complainant, 'this suggests they will do further testing on it';*
- *No legislation or document had been supplied to the complainant explaining that he had to renew his firearms licence;*
- *Numerous complaints regarding Police attitude;*
- *Being asked questions by a medical receptionist when he was trying to make a medical appointment. He hung up as 'it was none of her business';*
- *Pages and pages of correspondence that raise the same historical issues;*
- *Complaints about minor incidents that occurred in 1995;*
- *A letter about a traffic matter which in part reads 'the Police and the Ombudsman should consider medical attention for their problem. Do not respond to this correspondence as I do not expect an intelligent reply'.*

This complainant in most instances receives written responses from my Office clearly setting out conclusions and supporting legislation. If he does not like the outcome or information provided, he then complains about my staff needing *medical attention*.

## Case study 5

*An elderly complainant who is unhappy about medical treatment continually calls this Office despite being advised that his issues are not within jurisdiction. He has been provided with contact details of the external agency and officer handling his complaint and the Commonwealth Ombudsman details to address his complaint about APRHA failing to provide an outcome. He has received written information with contact details, pamphlets to explain legislative changes and constant verbal instruction to no avail. Within a matter of days he rings again to complain about the same issue. To date nothing appears to have convinced this person that this Office is unable to assist. The complainant does not appear to accept that he is wasting his time and that of my officers by continually seeking help from my Office on medical issues.*

## **DEALING WITH UNREASONABLE COMPLAINANTS PROJECT**

The NSW Ombudsman in conjunction with all other Australian Parliamentary Ombudsman offices has been trialling a new approach to managing unreasonable complaint conduct. I encourage all agency staff to obtain a copy of the *Managing Unreasonable Complaint Conduct Practice Manual* (free download [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)) to assist staff in dealing with unreasonable complainant conduct.

# Ombudsman

## Performance

OVERALL PERFORMANCE .....	27
OUTPUTS .....	27
ACTIVITY 1: RESOLUTION OF COMPLAINTS .....	29
ACTIVITY 2: IMPROVE THE DELIVERY OF SERVICES.....	88
ACTIVITY 3: INSPECTION OF NT POLICE RECORDS .....	90
ACTIVITY 4: ACCESS AND AWARENESS.....	93
ACTIVITY 5: MANAGEMENT OF THE OFFICE OF THE OMBUDSMAN.....	96

# Ombudsman

## 3. PERFORMANCE

### OVERALL PERFORMANCE

#### Outputs

The NT Ombudsman's Office measures the achievement of its goals against a series of output targets.

The below statistics relate to the Office's levels of success in achieving these output targets.

#### OUR OUTPUTS

1. Initial receipt, assessment and acknowledgement of complaint.
2. Approaches resolved through provision of advice.
3. Investigate complaints in a timely, thorough and independent manner.
4. Completion of investigation and finalisation of report.
5. Take appropriate action as a result of investigations.
6. Review investigations conducted by Northern Territory Police of its own members.
7. Report to the Legislative Assembly.
8. Surveillance Device audit report tabled.
9. Telecommunications audit reports and notification to the Attorney General.

#### Overall Performance

All approaches to the Ombudsman are recorded. Approaches consist of complaints, requests for information and inquiries that are within and outside of my jurisdiction. The following tables' document approaches made to this Office and the action taken.

There are currently two IT systems used for recording complaints. One is termed 'Enquiries'. These are files that record non-urgent matters that can be resolved expeditiously or by conducting preliminary enquiries, matters that have been declined/discontinued, matters that are not within jurisdiction or matters that are referred to another agency.

The second recording system is termed 'Cases'. These are approaches that record more serious matters and formal investigations.

In some instances Enquiries may, after preliminary investigation, be moved into Cases. These transfers are also recorded.

## Activity 1

### Resolution of Complaints

ACTIVITY 1: RESOLUTION OF COMPLAINTS.....	29
TOTAL APPROACHES.....	29
OUTSIDE JURISDICTION (OSJ).....	33
CORRECTIONAL SERVICES .....	38
DEPARTMENT OF JUSTICE (EXCLUDING PRISONER COMPLAINTS).....	42
HOUSING, LOCAL GOVERNMENT & REGIONAL SERVICES (HLGRS) .....	49
POWER & WATER .....	55
NORTHERN TERRITORY POLICE .....	60
DEPARTMENT OF EDUCATION AND TRAINING (DET) .....	68
DEPARTMENT OF HEALTH & FAMILIES (DHF) .....	74
DEPARTMENT OF BUSINESS & EMPLOYMENT (DBE) .....	79
DEPARTMENT OF LANDS & PLANNING (DLP).....	80
TREASURY .....	82
DEPARTMENT OF RESOURCES (DOR).....	82
NATURAL RESOURCES, ENVIRONMENT, THE ARTS AND SPORT (NRETAS).....	82



## ACTIVITY 1: RESOLUTION OF COMPLAINTS

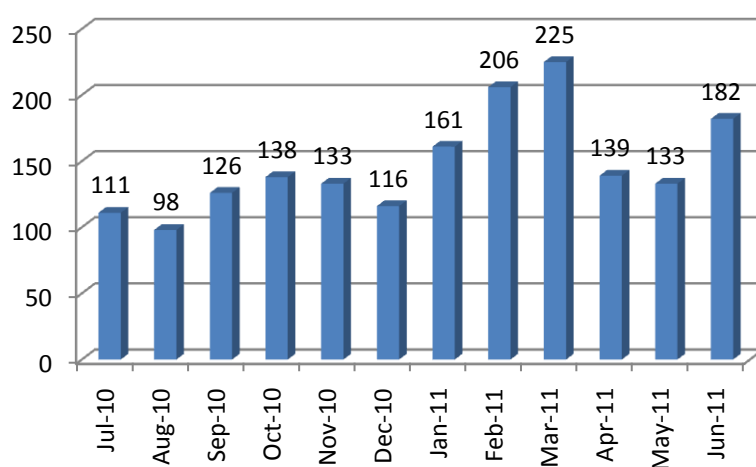
### TOTAL APPROACHES

The total of all approaches to the Ombudsman consists of contacts received in person (visit), by telephone, by email, by fax, via the internet or in writing.

These approaches are recorded in the following tables.

**Table 5: Approaches recorded on the Enquiries database**

#### Approaches Logged as Enquiries



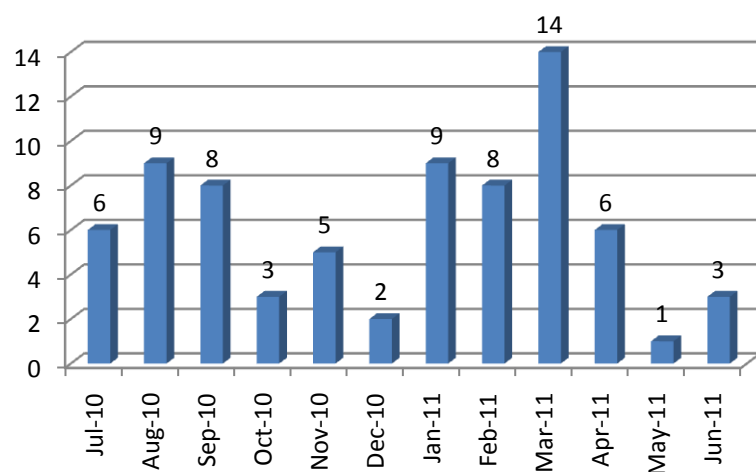
This table documents all approaches to the Ombudsman that were logged as Enquiries.

Interestingly, the peak complaint period for all Australian Ombudsman jurisdictions is March. No explanation for this peak period has been identified.

Of these 1768 enquiries 74 were moved into cases.

**Table 6: Enquiries moved to Case management database**

#### Enquiries Moved to Cases



This table documents all approaches moved to cases.

The below table documents the ratio of male to female complainants recorded on the Enquiries database. Over the years the gap between genders is closing.

**Table 7: Enquiries – ratio of male to female complainants**

Year	Male	Female
July 2010	56	55
August 2010	60	38
September 2010	83	43
October 2010	87	51
November 2010	72	61
December 2010	65	51
January 2011	86	75
February 2011	102	104
March 2011	113	112
April 2011	79	60
May 2011	73	60
June 2011	101	81
<b>Total:</b>	<b>977</b>	<b>791</b>

Men continue to be the highest proportion of complainants.

**Table 8: Enquiries – Manner of Approach**

Year	Telephone	Visit	Email	Written	Fax	Referred
July 2010	77	9	20	4	-	1
Aug 2010	66	8	14	10	-	-
Sep 2010	84	14	22	6	-	-
Oct 2010	103	6	24	4	1	-
Nov 2010	101	14	17	1	-	-
Dec 2010	86	5	17	8	-	-
Jan 2011	118	5	33	5	-	-
Feb 2011	149	9	34	12	1	1
Mar 2011	169	16	27	8	4	1
Apr 2011	96	7	27	5	2	2
May 2011	102	7	18	4	-	2
June 2011	140	14	15	8	-	5
<b>Total:</b>	<b>1291</b>	<b>114</b>	<b>268</b>	<b>75</b>	<b>8</b>	<b>12</b>

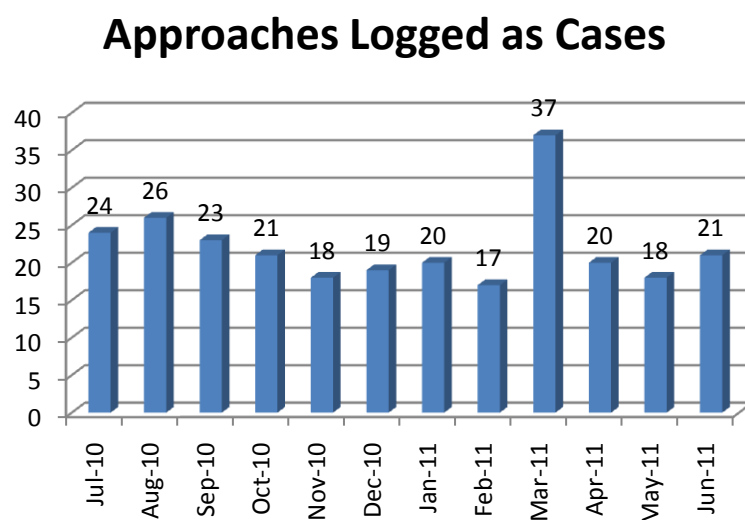
Each year the number of persons complaining via email increases. However, the majority of persons still prefer telephone contact to voice their concerns. This Office does not have an automated answering service, except after hours. All calls are received by a staff member delegated to accept complaints.

**Table 9: Enquiries – Source of Awareness**

Year	Don't know	Internet	Been before	Posters Pamphlets	Word of mouth	Dept	Lawyer	MLA	Media
Jul 10	71	3	17	1	14	2	2	1	-
Aug 10	74	1	12	-	4	4	2	-	1
Sep 10	81	7	18	1	9	4	3	1	2
Oct 10	86	-	25	2	18	5	1	-	1
Nov 10	88	3	16	1	11	11	2	-	1
Dec 10	92	2	14	-	5	1	1	1	-
Jan 11	127	3	14	-	6	10	-	1	-
Feb 11	149	4	27	-	17	7	2	-	-
Mar 11	160	2	18	-	15	26	2	-	2
Apr 11	94	1	24	-	15	4	1	-	-
May 11	93	1	22	1	2	10	2	2	1
Jun 11	132	1	14	-	7	20	6	-	2
<b>Total:</b>	<b>1247</b>	<b>28</b>	<b>221</b>	<b>6</b>	<b>123</b>	<b>104</b>	<b>24</b>	<b>6</b>	<b>10</b>

It can be seen from the above table that a number of complainants have utilised the services of this Office more than once. The majority of these returning complainants are prisoners.

**Table 10: Cases - Approaches logged as Cases**



There were 264 cases investigated. This figure includes the 74 enquiries moved into the case management database.

The majority of these cases refer to complaints against Police.

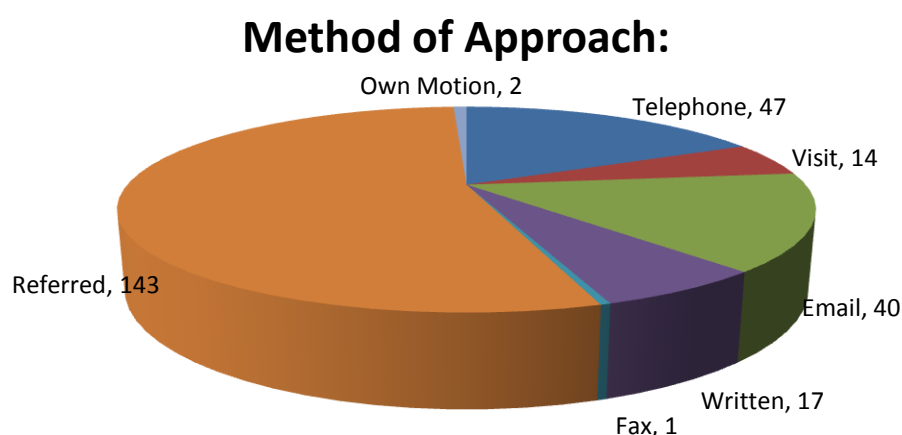
For more information about Police cases see page 60.

**Table 11: Cases – ratio of male to female complainants**

	Male	Female
<b>Total Cases - male:female ratio:</b>	<b>150</b>	<b>114</b>

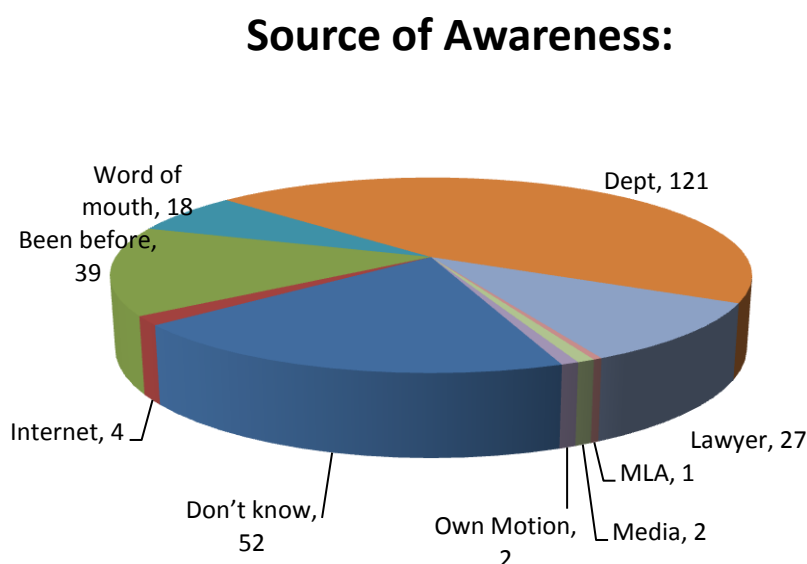
This table includes complaints against the Police. A separate table relating only to Police can be found on page 63. Men continue as the highest proportion of complainants.

**Table 12: Cases – Method of Approach**



As with enquiries, the preferred manner of approach continues to be by telephone. The high number of referrals relate to Police matters that are referred to my Office by the Ethical & Professional Standards Command of the Northern Territory Police.

**Table 13: Cases – Source of Awareness**



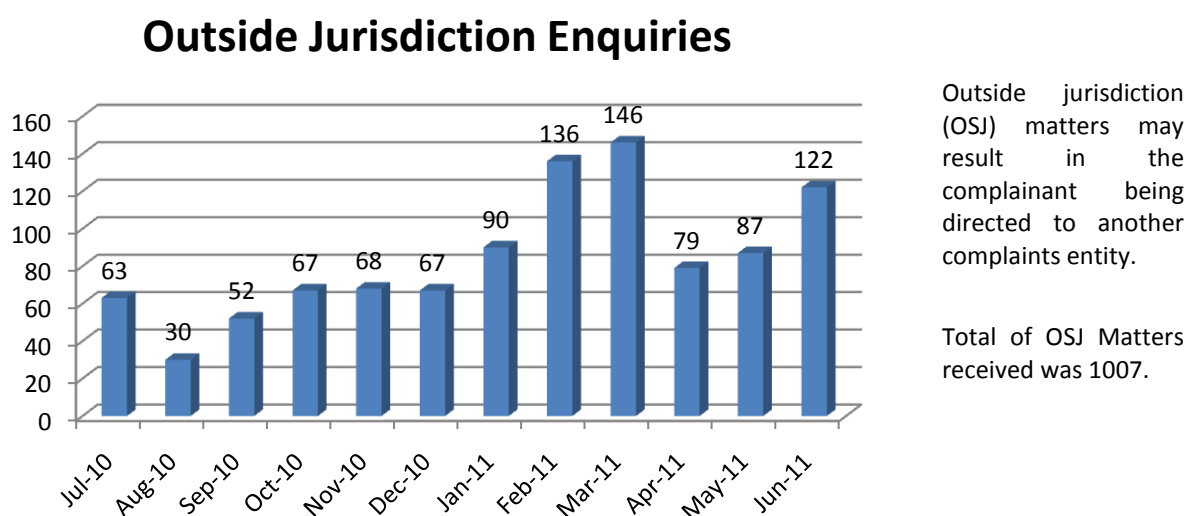
A breakdown of the agencies complained about in the 2010/11 financial year are found further in this report.

## OUTSIDE JURISDICTION (OSJ)

Each year this Office receives large numbers of approaches relating to matters outside jurisdiction. In some instances although the matter is not an issue that can be dealt with by my Office, information or advice is provided to the complainants to assist them with their complaint or to refer the matter to a more appropriate agency.

These approaches are recorded below. It is expected that as the public become more aware of complaint agencies and processes this number will decrease.

**Table 14: Approaches outside jurisdiction (OSJ)**

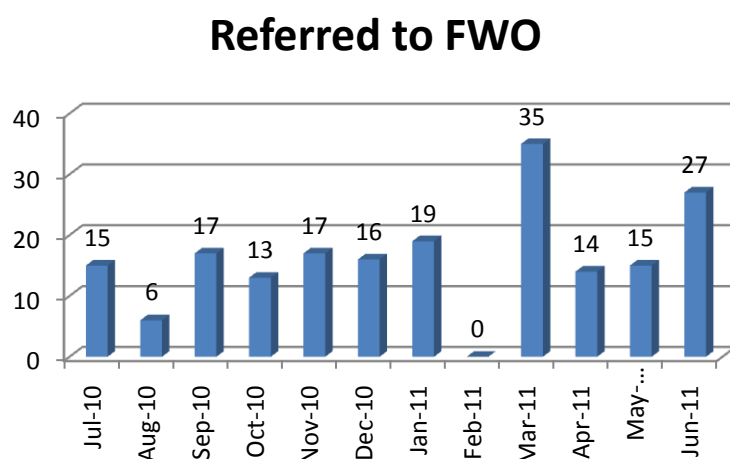


Other OSJ matters may be closed without referral. In these situations the complainant is provided with information to assist them in addressing their issues utilising the knowledge of the Ombudsman staff.

Examples of matters referred:

1. Caller complaining about paying \$45.00 to obtain a copy of their medical record.
2. Caller banned from the casino for two years, ignored the notice and returned, resulting in arrest. Caller wanted to know their rights.
3. Caller had been served with a trespass notice for a shop in Nightcliff. The complainant wanted to return to shop at these premises and was enquiring as to what actions should be taken.
4. Caller was complaining about the noise the neighbours roosters were making.
5. Complaint about delays caused by a private builder.
6. Complaints about bullying by co-workers.
7. Caller wished to complain about discrimination/racism.

**Table 15: OSJ matters referred to FairWork Ombudsman (FWO)**



Complaints referred to the FWO relate to remuneration, discipline, transfer or promotional issues.

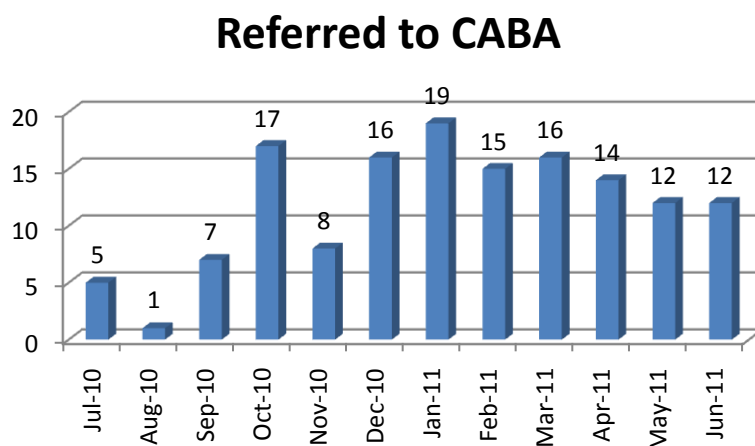
Matters regarding termination of employment are referred to Fairwork Australia.

Total number of matters referred to FWO was 194.

Examples of matters referred to FWO:

1. An officer from Centrelink called on behalf of a client, wishing to lodge a complaint regarding salary issues.
2. Caller stated he was working for a private firm and had some questions regarding his employment contract.
3. Complainant advised that she was working for a private firm. The complainant said there had been a tense atmosphere between her and her boss, since she became pregnant. An argument between the two resulted in the complainant going home with her boss recommending that she resign. Complainant stated this may be due to her employer not wanting to pay maternity leave.

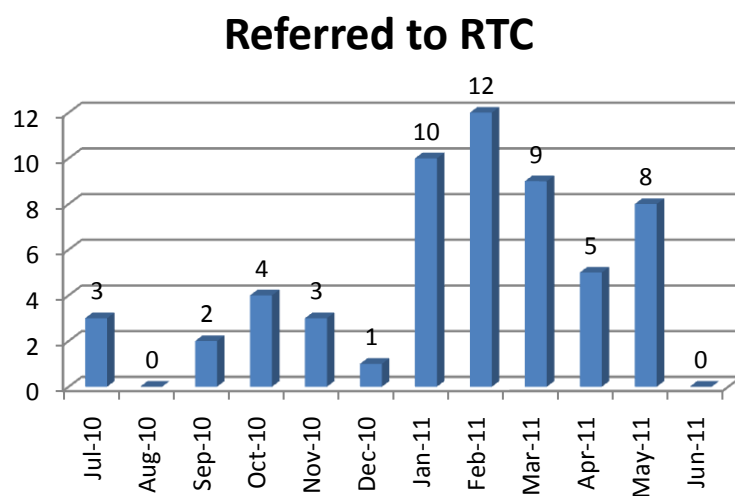
**Table 16: OSJ matters referred to Consumer & Business Affairs (CABA)**



The majority of these matters relate to persons unhappy with faulty goods.

Total number of matters referred to CABA was 142.

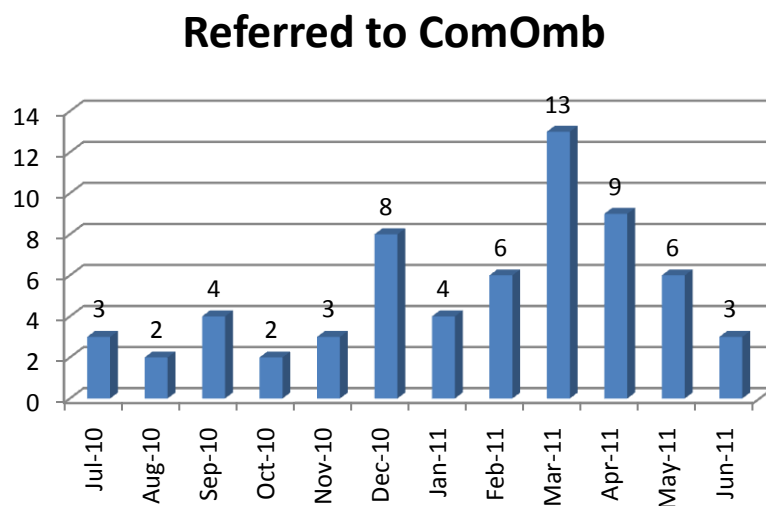
**Table 17:** OSJ matters referred to Residential Tenancies Commissioner (private rentals) RTC



Few approaches to this Office are related to private rental properties (57 this year). The busiest period for complaints relating to private rentals usually occurs after the Christmas period.

For complaints relating to public housing (Local Government Housing & Regional Services -Territory Housing) please refer to page 49.

**Table 18:** OSJ matters referred to Commonwealth Ombudsman (ComOmb)

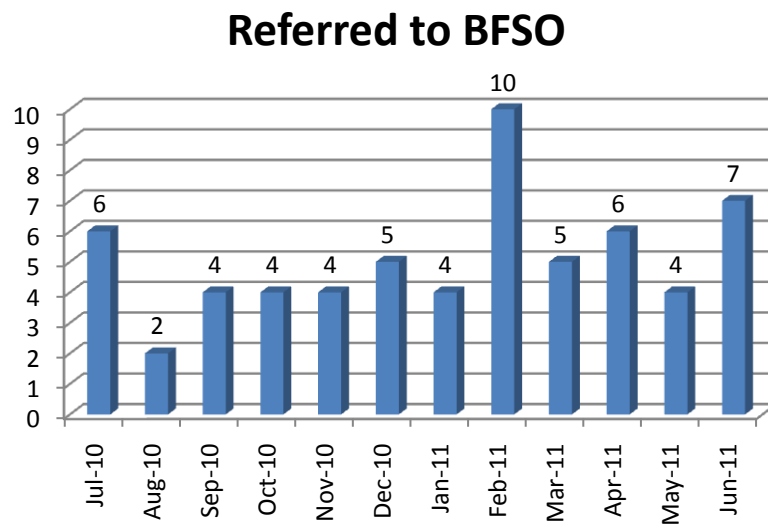


The majority of these complaints (63 in total) relate to Centrelink payments.

The Commonwealth Ombudsman up until September 2010 had a representative based in this Office. Unfortunately this vacant position has not yet been filled. Persons wishing to contact the Commonwealth Ombudsman are required to call 1300 362 072.

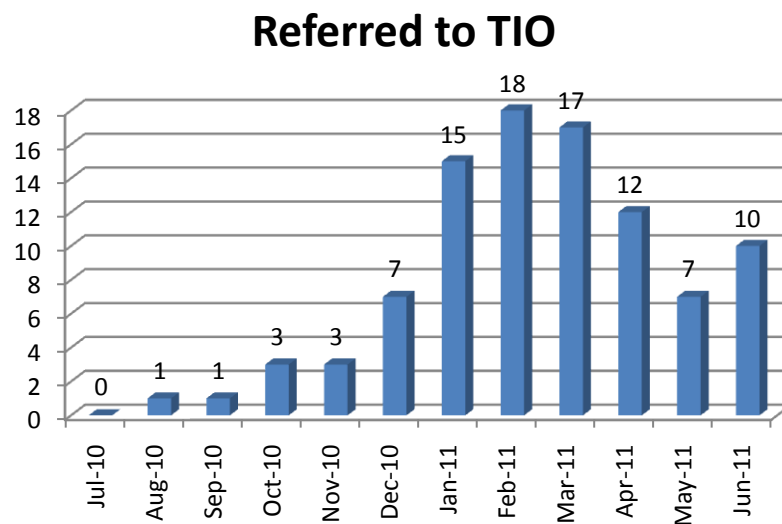


**Table 19: OSJ matters referred to Banking & Financial Services Ombudsman (BFSO)**



The majority of these complaints (61 in total) relate to insurance.

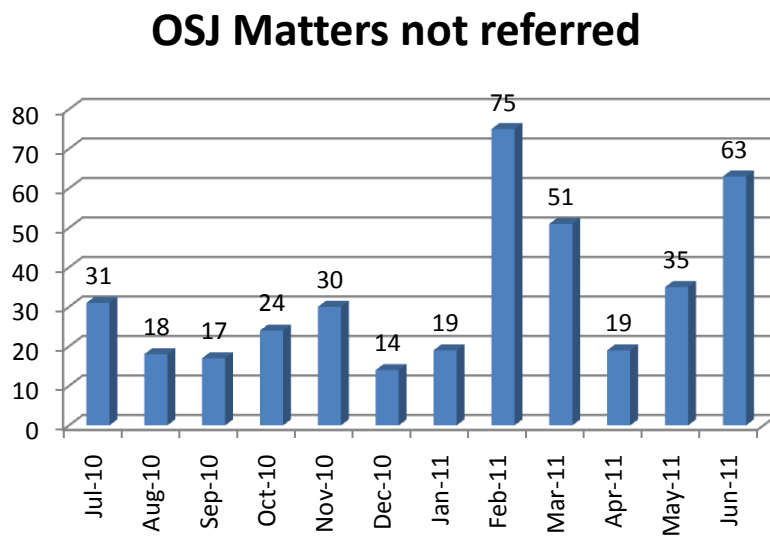
**Table 20: OSJ matters referred to Telecommunications Industry Ombudsman (TIO)**



Billing, reception for mobiles and phone contracts are the main issues of complaint.

In total 94 Complaints were referred to the TIO.

**Table 21: Other - OSJ matters not referred**



These (396) matters may relate to persons seeking assistance or advice on simple or minor issues. For example a person calling to ask what they need to do after being served with court papers.

My staff deal with these issues, in most instances, without referring the complainant.

In the next financial year OSJ matters will also record the approaches of persons wishing to make a complaint to the Health & Community Services Complaints Commission.

## CORRECTIONAL SERVICES

During 2010/11 this Office received 162 complaints about the actions and decisions of the Northern Territory Correctional Services.

The prison phone system was the most common method used by prisoners to complain. This is a free and confidential service that is available to every Northern Territory correctional centre. There are currently three (3) correctional centres. Darwin (male & female segregation), Alice Springs (male & female segregation) and Don Dale (joint male and female youth facility).

As of 1 July 2011 as a result of legislative changes complaints from youths' will no longer be investigated by the Ombudsman. Youths in custody will need to contact the Office of the Children's Commissioner. A new phone line should be installed to enable youths to make direct contact with the Children's Commissioner.

With the separation of the Ombudsman and Health & Community Services Complaints Commission (HCSCC) on 1 August 2010 correctional service health complaints should have been made directly to the HCSCC. However, the HCSCC did not move out of the Ombudsman's office during this financial year, nor was a dedicated phone line for health complaints installed within prisons during this period. This resulted in Ombudsman staff continuing to receive health complaints on the Ombudsman complaint line. This is a breach of confidentiality provisions within the *Health & Community Services Complaints Act* and was forced upon my staff due to government failing to relocate the HCSCC after the separation of the two offices.

### Request to Attend the Superintendent's Parade (RASP)

In the adult prison system there is an internal complaint process termed RASP (Request to Attend the Superintendent's Parade). It is expected that a prisoner avail themselves of this internal complaint process before seeking assistance from my Office. If a prisoner fails to utilise the RASP process the majority are referred back to the RASP process with the option of returning to my Office if they remain dissatisfied with the outcome.

It is interesting to note that no complaints during this financial year were received from female prisoners. There were 4 complaints from the Don Dale Youth Correctional Centre which are recorded in the below tables.

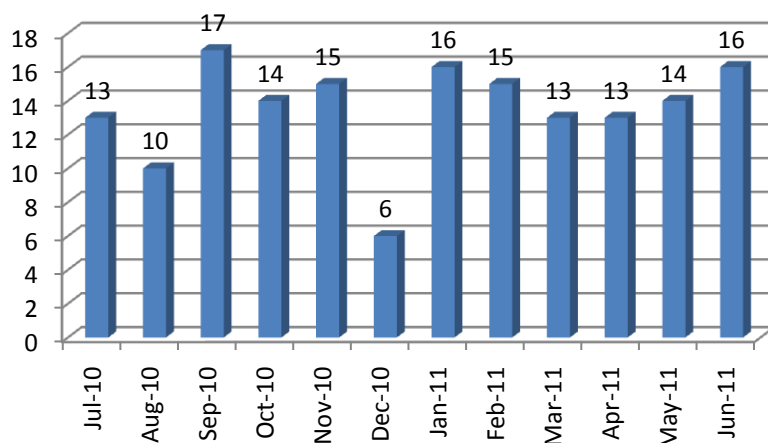
### Prisoner complaints:

The number of complaints from prisoners has not changed much over the years. The issues of complaint also remain the same regardless of which prison the complaint is generated from (Darwin or Alice Springs) or the security level of the prisoner.

A new issue that arose this year and had not previously been reported appears to be due to the excessive wet season providing abundant food and little shelter for rodents. Complaints from the Darwin prison have come in about a rat plague and from Alice Springs a mouse plague. Correctional Services advised they are doing everything they can to eradicate these unwelcome guests.

**Table 22 - Prisoner complaints received**

## Prisoner Complaints listed on Enquiry System



In October 2010 one (1) complaint was from the Don Dale Youth Correctional Centre.

In November 2010 two (2) complaints were from the Don Dale Youth Correctional Centre.

In January 2011 one (1) complaint was from Don Dale Youth Correctional Centre.

As of 1 July 2011 all Don Dale youth complaints will be directed to the Children's Commissioner.

There were no serious matters reported during the year.

### What do prisoners complain about:

Many prisoners complain about issues not considered serious or within the public's interest. Many prisoners believe that the prison should provide similar services to hotel rooms, ie TV, DVD players, kettles, fridges. In some cells there are these facilities, however when a prisoner burns another inmate with boiling water kettles are removed for a period of time. Removing kettles has resulted in several complaints to my Office.

Some other complaints are listed below:

- Lack of heating within Alice Springs Prison
- Lack of air-conditioning in Darwin Prison
- Overcrowding within sleeping areas
- Mouse problem in Alice Springs Prison after the wet season
- TV reception unreliable.
- Lack of DVD choices.
- Being punished for calling a prison officer 'a piece of shit'
- Unhappy with being bitten on the scrotum by a rat.
- Prison buy scheme overly expensive.
- Quality and temperature of food and a lack of choices
- Ability to transfer to a newer and cleaner prison (usually a request for interstate transfer)
- Rat problem in Darwin Prison after the wet season.
- Refusing to let prisoners wear sports shoes with laces.
- Unhappy about not going to court, resulting in prisoner not seeing relatives.
- Misconduct charge for prisoner who damaged soft drink machine.
- Cost of cigarettes

## Food complaint - quote from a prisoner letter:

*The lunches that we receive especially the hot ones are non existent, by the time we receive our beef, chicken, vegie burgers they are stone cold as well as our pies/pasties and yesterday (Sunday) was hot dog day and the name is just a joke, the frankfurts and onions were so cold mine went straight in the bin. The evening meals are mainly stews and rice or slop and rice as I call them, don't get me wrong I don't mind stew and rice but we are given 75% rice and a little corner of stew and the stews are just tasteless slop and when we complain to kitchen officers the reply is 'don't come to jail' and that's not right, we are in prison because of our wrongs and we are paying the price for that, but that does not give them the right to ignore our complaints and feed us crap that isn't even something I would feed my dog. And when we mention it to the prisoner's that work in the kitchen they just laugh and say it doesn't worry them...I hope that you take this matter seriously and that the matter is fixed before someone gets seriously ill from the food...*

The below table documents complaint issues that were logged onto the Enquiry system. None of these complaints were found to be serious enough, after preliminary enquiries, to be moved into investigation. The issues were dealt with either by referring the prisoner to the RASP process or finalised during preliminary enquiries.

It is interesting to note that many complaints are made by the same prisoners who ring a few times each month. These prisoners are well known by my staff due to their repeated contact sometimes spanning several years. Prisoner rights continue to be the main issue of complaint.

**Table 23: Enquiries - Correctional Services issues most complained about**

Year	Assault	Harassment	Property	Rights	Food	Admin	Staff	Mail	Other
2010/11	By staff	By staff					Attitude		
July 10	-	1	1	8	1	1	-	-	1
Aug 10	1	-	1	4	-	-	2	1	1
Sep 10	-	-	-	14	-	-	-	1	2
Oct 10	-	-	1	7	-	-	4	-	2
Nov 10	1	-	4	7	-	-	2	-	1
Dec 10	-	-	-	4	-	-	1	-	1
Jan 11	-	-	1	10	-	-	-	1	4
Feb 11	-	-	-	8	-	-	-	1	6
Mar 11	-	-	1	6	-	-	1	1	4
Apr 11	-	-	-	10	-	-	1	-	2
May 11	-	-	-	9	-	-	4	-	1
Jun 11	-	-	1	12	-	-	1	1	1
<b>Total:</b>	<b>2</b>	<b>1</b>	<b>10</b>	<b>99</b>	<b>1</b>	<b>1</b>	<b>16</b>	<b>6</b>	<b>26</b>

**Assault by staff** – prisoner complains about being assaulted by prison staff. These allegations amount to a criminal action with the prisoner advised to report the matter to the Police. The complaint is also forwarded to the Professional Services Unit (PSU) to investigate should the Police determine that there is a lack of evidence to proceed to court.

**Harassment by staff** – prisoner complains of receiving excessive or unwarranted attention from correctional services officers.

**Property** – includes not having batteries readily available, loss of property by prison, disposing of property without seeking the approval of the prisoner, taking property from prisoner due to misconduct.

**Prisoner rights** - are issues such as not having access to education, hobbies, phone calls, or prison buys (mainly cigarettes), access to the Superintendent, visitors and television. Complaints about rights also include complaints about accommodation, security classification and ability to transfer between prisons.

**Food** – includes complaints about variety, temperature, presentation, options for lactose intolerance.

**Administration** – are issues such as the court appearance being deferred/cancelled with the prisoner failing to be advised.

**Staff attitude** - are issues of rudeness, incivility, swearing, bias.

**Mail** - complaints mainly relate to censored mail. Some prisoners complain about correctional services reading incoming/outgoing mail and the censoring of this mail.

**Other matters** - relate to discipline, allegations of asbestos in prison blocks, being protected from attacks by other prisoners, requests by prisoners not to be visited by FaCS, having to pay full price for cigarettes, cost of other items available through the prison buy system.

In past years I have documented case studies relating to prisoner complaints. This year none have been serious enough to warrant investigation by my Office. There are no case summaries of worth to document in this report. All complaints were addressed by Correctional Services Professional Standards Unit.

I expect the actions taken by correctional services to be reported in the Department of Justice Annual Report.

## DEPARTMENT OF JUSTICE (EXCLUDING PRISONER COMPLAINTS)

The Department of Justice (DoJ) has several agencies that fall under the direction of the Chief Executive Officer. The below agencies (except Prisoner complaints) responsible to the Department of Justice had complaints made against them:

- Anti Discrimination Commission (ADC)
- Consumer & Business Affairs (CABA)
- Court Services (CS)
- Fines Recovery Unit (FRU)
- Racing, Gaming & Licencing (RGL)
- Public Trustee
- Worksafe

**Table 24: DoJ Agencies complained of: Table 25 Complaints received by month:**

Agency	Number
ADC	1
CABA	1
CS	8
FRU	17
Public Trustee	11
RGL	7
Worksafe	4
Total:	49

Month	Number
July 10	4
Aug 10	5
Sep 10	7
Oct 10	4
Nov 10	4
Dec 10	5
Jan 11	4
Feb 11	4
Mar 11	3
Apr 11	5
May 11	3
June 11	1
Total:	49

In relation to the complaint against the ADC, section 16(2) of the *Ombudsman Act* provides the Ombudsman with the power to investigate certain exempt Authorities if satisfied there has been an unreasonable delay by the Authority. In this matter the complainant had made a complaint to the ADC and having not received a response for approximately four months approached my Office. As the complainant had not complained to the Commissioner about this delay I referred the matter back to the ADC.

It can be seen from the above table that the majority of DoJ complaints relate to matters generated from the Fines Recovery Unit (FRU). FRU complaints mainly relate to fees/charges applied to fine enforcement action.

Many persons complaining about these fees/charges had been issued with fines that had not been paid within the 28 day timeframe. Rather than sort out the matter when it first came to their attention, it wasn't until enforcement action was undertaken that these persons complained.

## Issues of Complaint

The following table documents the issues of complaint raised with my Office. Each year these issues remain similar.

**Table 26 – DoJ complaint issues:**

Issue of complaint	Number
Failure or refusal to act/investigate/consult/respond	6
Practice/procedure	13
Misapplication of law/policy	3
Complaint/grievance process	3
Delayed action	1
Fees/charges	11
Staff attitude	3
Delivery of service/entitlement	4
Providing natural justice	2
General administration including information	2
Contracts/tenders	1
<b>Total:</b>	<b>49</b>

## Case Studies

### **CASE STUDY 1 – Fines Recovery Unit**

#### **Background**

*The complainant called my Office after receiving a fail to pay notice. This notice related to three offences, speeding, failing to stop at a set of traffic lights and driving an unregistered vehicle. The initial fine appeared to have resulted from a red light camera image. The complainant wanted to dispute issuance stating it was her son driving. The complainant claimed that she had lost the traffic infringement notice before she had had the opportunity to have the matter heard in court. She claimed she had contacted FRU to request a copy but one was never sent to her. Despite not receiving a copy, the complainant did not make any further enquiries.*

*The complainant was asked what outcome she was seeking from my Office. She replied that she wanted the infringement notice and FRU notice quashed, and her drivers licence reinstated. If this wasn't possible she wanted the court to hear the matter in June/July 2011 after she returned from helping flood and cyclone victims in Queensland.*

#### **Outcome**

*The complainant was advised that this Office did not have the power to fulfil any of her requests. She was advised to seek legal advice, she responded that she had already done this and was disappointed with the information provided to her. The complainant was then provided with information on entering into time to pay arrangements. The laws of the Northern Territory make it difficult for persons who misplace or fail to act on infringements. On receipt of a traffic infringement notice (TIN) a person has 28 days to pay (or make arrangements to pay in instalments), or fill in the TIN to challenge issuance. The complainant on receipt of the TIN 'lost' the paperwork. Her failure to act within the legislated timeframes resulted in her by default accepting the penalty. The complainant was advised that the onus was on her at that time to contact the traffic infringement office to obtain a duplicate copy*



rather than let the period to deal with the matter expire. This Office did not determine that there was maladministration on behalf of FRU; as such our jurisdiction ended. The complainant was advised.

## **Case Study 2 – Fines Recovery Unit**

### **Background**

In November 2009 the complainant incurred a traffic infringement notice (speed camera). The complainant said he was the driver responsible, however as the infringement notice was not issued in his name he attended Tourism House to have the offending party details changed. The complainant stated he asked for the notice to be amended and re-sent. He said he provided an alternative postal address. In September 2010 the complainant received a notice from FRU stating the initial fine had not been paid. The complainant advised that on receipt of this notice he contacted FRU to have the \$55 penalty waived on the basis that the amended fine had not been sent to him. The complainant said that FRU refused to listen to him or waive the penalty.

### **Outcome**

The complainant was asked who he had dealt with, the address where he went to deal with the issuance and when; he couldn't provide this information. Asked what outcome he was seeking he said that he wanted the \$55 waived as a matter of principle claiming it was not his fault.

My Office emailed FRU with the details of complaint as provided by the complainant. My Office also facilitated contact between FRU and the complainant. FRU advised the complainant that the matter could be resolved by submission of a statutory declaration. The complainant submitted the declaration and the fee was waived. No further action was necessary.

## **Case Study 3 - Public Trustee**

### **Background**

Between 2009 and 2011 eight approaches were made by the complainant to my Office. The complainant stated she was unhappy with the attitude of the staff at the Public Trustee's Office. The complainant explained that the Public Trustee was refusing to sell her unit in Darwin to enable her to purchase a property interstate where she was now living. The Public Trustee had advised the complainant in 2010 that the status of her trust had been reviewed and a decision had been made not to sell her Darwin unit. The complainant explained she was renting a property interstate and the sale of her Darwin home would be of financial benefit. It was the complainant's wish that my Office intervene to direct the Public Trustee to sell her property. Advised that this outcome could not be achieved she was advised to seek legal advice. The complainant returned several times seeking a response as to why her request to sell her property was denied.

### **Outcome**

The Public Trustee was provided with the complaint issues. In response the Public Trustee advised that the most recent appraisal on the property returned a value less than an earlier appraisal. Additionally, due to the current value, income and expenditure, the Public Trustee determined not to sell. The Public Trustee advised that they would be reviewing the trust again in the middle of 2011 and if the circumstances had changed ie the property had significantly increased in value; then

*the Public Trustee may be open to reconsidering the sale of the property. It was explained to the complainant that this Office is unable to direct an agency to undertake certain action/s. It was again suggested that the complainant seek legal advice to assist her in obtaining the outcome she was seeking. Despite this advice the complainant continued to return with the same issues of complaint. A letter was sent setting out the actions the complainant could take to have the matter heard in court.*

## **Case Study 4 - Racing, Gaming & Licencing (RGL)**

### **Background**

*In 2010 a young man was enjoying the entertainment at a Darwin nightclub; this young man died later that morning, however not from the injuries sustained at the club. At some stage while at the nightclub an altercation occurred. The young man was punched in the face by an off duty security officer, resulting in the dislodgement of teeth. This young man was then grabbed in a headlock by an on duty security officer, and restrained by the off duty security officer and a friend of the security officer. He was physically removed. During restraint the friend of the guard assaulted the young man. After ejection the young man went home and a few hours later committed suicide.*

*The father of the deceased made a complaint to RGL. The complaint mentioned the actions of one particular nightclub employee who was incorrectly believed to have been involved. The investigation by RGL focused on this employee appearing to ignore the actions of the on and off duty security officers. The complainant sought assistance from my office.*

### **Outcome**

*My Office wrote to DoJ seeking answers for the complainant. DoJ were asked how the determination was made that no further action was warranted. DoJ responded that the letter of complaint alleged an assault by the Nightclub Manager, not a security officer. Further that a full investigation had been carried out by Licensing Inspectors and showed no evidence to support the allegation against the Nightclub Manager. DoJ continued - the findings of the investigation were carefully considered by the Director of Licensing and it was determined that the components of the complainants allegations were not substantiated. Subsequently, the Director of Licensing recommended to the Northern Territory Licensing Commission that the complaint be dismissed.*

*The issue of an inappropriate technique (head lock) used by the on duty guard and the assistance of the off duty guard who had just punched the young man dislodging a tooth did not appear to have been considered. DoJ wrote "The subject of the complaint lodged by (name withheld) was that his son (name withheld) had been assaulted by (name withheld) and that (name withheld) had been operating as a security provider at the time of the incident. The CCTV evidence gathered by the investigating officers clearly showed that (name withheld) was nowhere in the vicinity of (name withheld) during his ejection from the premises. Whether or not (name withheld) lost teeth during an altercation with unknown person/s was not the subject of the complaint and the subsequent investigation. LRAs regulate licensees and employees of licensees. The CCTV footage obtained by the investigating officers captures the removal of (name withheld) from the premise. As such the investigating officers interviewed the crowd controller involved in the removal in relation to the amount of force that was used. The crowd controller involved was cautioned to take more responsibility when releasing patrons from restraint holds*

*after removing patrons from the premises. In the opinion of Licensing Inspectors, the removal did not constitute the use of excessive force”.*

*I do not agree that the RGL investigation was thorough. The off duty security officer was described in DoJ’s response as an ‘unknown person’. He was not unknown, he was an employee of the nightclub, a licenced security officer and could have been identified had appropriate questions and a thorough investigation been undertaken. The off duty security officer punched a patron with such force as to knock out a tooth. The on duty security officer used a head lock to remove the patron, despite the off duty officer and a patron assisting in the removal. In my view this amounted to excessive force. Due to the inadequate response, the complaint of assault was referred by me to the NT Police for investigation.*

*In relation to the inadequate investigation, it was noted that the Nightclub Manager’s statutory declaration was brief, failing to mention events that occurred on the night. This statement was witnessed by one of the RGL investigation officers who had been involved in investigating the father’s matter. This was pointed out to DoJ, who responded that the footage was obtained and reviewed by the investigating officers, and that the statutory declaration of the Nightclub Manager was based on his recollection of events. It was not deemed necessary by DoJ to reinterview the Manager or to question why pertinent information was not provided.*

*Another question raised by the complainant related to the Nightclub Manager allegedly undertaking functions of a security officer over a period of time, ie physically removing patrons. DoJ investigated this issue on the night in question, however whether RGL viewed footage from other nights to determine if this allegation may have substance, is unknown.*

*Two other complaints related to CCTV footage that night being in possession of the Manager on a personal lap top and the filming of girls changing for Tuesday nights (Tequila on Tuesdays – TOT). DoJ responded that these two issues are the subject of current investigations.*

At the time of writing this report, several months after the initial complaint, I remain dissatisfied.

In relation to the assaults, I wrote to the Commissioner of Police on 1 June 2011 seeking reasons why the NT Police were not pursuing a prosecution. Initial enquiries with Police resulted in Police responding that there was ‘no victim, no prospect of conviction’ and that the father should ‘take civil action’.

According to one of the Detectives involved in the case, the security officer who loosened teeth and knocked out the patron’s tooth was *acting in self defence after being pushed*. I disagree.

The off duty security officer stated that he approached the patron to have ‘a discussion’. What was said is not known, it was at this time that the patron pushed the off duty security officer. It is possible that the patron in pushing the off duty security officer may have been attempting to create a distance between himself and the security officer. This was not established.

The *Criminal Code* (section 43BD – Self-defence) states that a person is not criminally responsible for an offence if the person carries out the conduct constituting the offence of self-defence. This section also states that a person carries out conduct in self defence *only if the person believes* the conduct is necessary to defend himself/herself or another person.

There was no evidence provided to me that the off duty security officer was acting in self defence, he didn't state that this was the case, or that he believed his conduct was necessary to defend himself or others, or that he couldn't walk away or that he was in danger.

The off duty security officer said during questioning that he '*wanted to go and talk*' to the patron whom he described as '*drunk and seemed to be looking for trouble*'. Why the off duty security officer wanted to talk to a person '*looking for trouble*' was not pursued. Asked why he punched the patron, the off duty security guard said '*Instinct, I suppose, just a reaction*'. I reiterate that he did not state or indicate that it was *self defence*.

The Commissioner of Police responded to my concerns on 8 September 2011:

*...“While the footage provides evidence of an alleged assault by (name withheld), there are no reasonable prospects of being able to obtain a conviction. There is no evidence to negate the defence of defensive conduct given the conduct of (name withheld) towards (name withheld) prior to the alleged assault occurring”*

*“The video footage provides evidence of an assault by (off duty officers friend – name withheld) however as (name withheld) declined to make a complaint at the time, this matter was not originally pursued. The time for laying a charge of common assault has lapsed and pursuing a charge of aggravated assault is not possible as the evidence is not capable of proving a circumstance of aggravation beyond a reasonable doubt”.*

*“The review of this matter was inclusive of all available information, and there was nothing identified that would justify further Police action against any of the persons involved in the incidents that occurred immediately prior to (name withheld) taking his own life”...*

The time limit (statute of limitation) for investigating a common assault has expired. It is well known that Police will not take a complaint from an intoxicated person. The patron was apparently told that he could make a complaint at a later time. As a result of his death, his father made the complaint.

I do not have directive powers and could not take this matter further. The only avenue left was to notify the complainant of the result. The complainant went to his MLA. This MLA attended my Office. The MLA stated he was concerned that nothing had been done about

the security officers. Further, that he had seen the CCTV footage and believed the violence used was excessive and that an aggravated assault had occurred. I agree.

The circumstances of this matter are disheartening. There is nothing further I can do to address this matter, my powers are limited. My Office subsequently received a call from a family member unhappy with the outcome.

## HOUSING, LOCAL GOVERNMENT & REGIONAL SERVICES (HLGRS)

The Department of Housing, Local Government & Regional Services is responsible for a number of agencies.

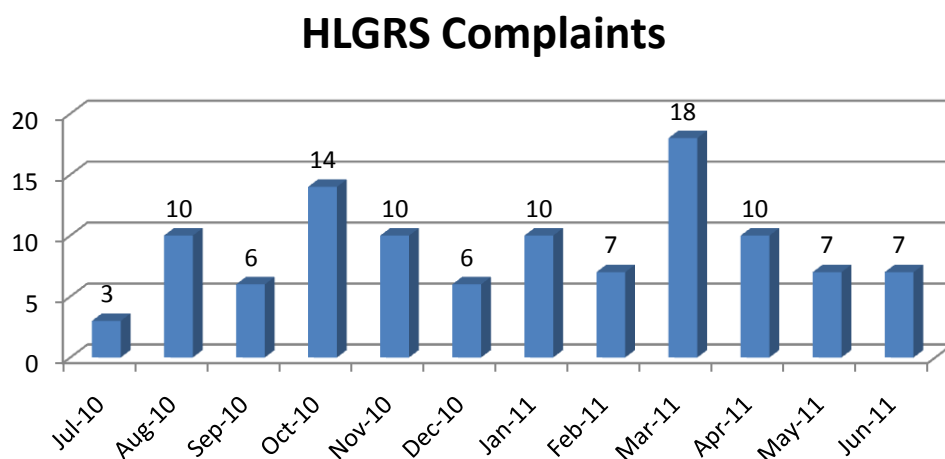
One hundred and eight (108) complaints were received this financial year. These matters related to the action/inaction of fifteen (15) HLGRS agencies.

The 15 Agencies complained of were:

- Alice Springs Town Council
- Animal Welfare Branch
- Central Desert Shire Council
- Commalie Council
- Darwin City Council
- East Arnhem Shire Council
- Katherine Town Council
- Litchfield Shire Council
- Palmerston City Council
- Regional Development
- Roper Gulf Shire Council
- Territory Housing
- Tiwi Island Council
- Victoria Daly Shire Council
- Wagait Shire Council

The below table documents the number of complaints received each month.

**Table 27 – Complaints recorded in Enquiry database**



**Table 28 – Breakdown of complaints**

Agency	Number
Alice Springs Town Council	2
Animal Welfare Branch	2
Central Desert Shire Council	3
Coomalie Shire Council	2
Darwin City Council	10
East Arnhem Shire Council	1
Katherine Town Council	6
Litchfield Shire Council	4
Palmerston Town Council	4
Regional Development	1
Roper Gulf Shire	2
Territory Housing	68
Tiwi Island Council	1
Victoria Daly Shire Council	1
Wagait Shire Council	1
<b>Total:</b>	<b>108</b>

This chart highlights that most complaints received relate to Territory Housing (TH).

Many complainants are referred back to TH to undergo the two (2) tier complaints process. The first tier is when the Housing Manager deals with the complaint and if the complainant remains unhappy with the decision the Territory Housing Appeals Board will address the matter. If the complainant continues to be dissatisfied they may return to my Office.

### Issues of Complaint

The issues of complaint remain consistent with other years.

TERRITORY HOUSING	ISSUE OF COMPLAINT	TOTAL
Territory Housing	Program Service/Delivery/Entitlement	12
	Practice/Procedure	25
	Fees/Charges/Compensation	15
	Attitude of Staff	3
	Natural Justice	1
	Information	1
	Failure to Act	2
	Misapplication of Law/Policy	3
	Delayed Action/Response	5
	Threats/Intimidation	1
<b>Total:</b>		<b>68</b>

COUNCILS	ISSUE OF COMPLAINT	TOTAL
Katherine Town Council	Fees/Charges/Compensation	2
	Failure to Investigate/Respond	2
	Practice/Procedure	2
Roper Gulf Shire Council	Information	1
	Practice/Procedure	1
Tiwi Island Council	Practice/Procedure	1
	Fees/Charges/Compensation	2
	Practice/Procedure	4
	Attitude of Staff	1
Darwin City Council	Fail to Act/Investigate/Respond	2
	Program Service/Delivery/Entitlement	1
	Practice/Procedure	1
Litchfield Shire Council	Practice/Procedure	4
Coomalie Council	Fail to Investigate/Respond	1
	Threats/Intimidation	1



Palmerston City Council	Practice/Procedure	3
	Failure to Investigate/Respond	1
East Arnhem Shire Council	Conflict of Interest	1
Central Desert Shire Council	Practice/Procedure	2
	Fail to Act/Respond	1
Waggit Beach Shire Council	Fees/Charges/Compensation	1
Alice Springs Town Council	Practice/Procedure	1
	Program Service/Delivery/Entitlement	1
<b>Total:</b>		<b>37</b>

OTHER	ISSUE OF COMPLAINT	TOTAL
Dept of Regional Development	Fees/Charges/Compensation	1
Animal Welfare Branch	Practice/Procedure	2
<b>Total</b>		<b>3</b>

## Case Studies

### CASE STUDY 1 - Territory Housing

#### Background

*A terminally ill resident of Territory Housing had applied for a housing transfer on advice from community nurses and the Director of Palliative Care. The residence was no longer suitable due to a worsening state of health. The complainant said he had logged his original request for housing improvements four years earlier and in that time no maintenance was undertaken. The complainant said that paint is peeling off in sheets in every room, the roof in the lounge is rotten and leaks, tiles are lifting in many of the rooms due to water damage and there are many other problems. Territory Housing advised the complainant that he is not eligible for a medical transfer due to his doctor's report. The complainant challenged this decision citing that the report was sent quite some time ago and the complainant's cancer had worsened. The complainant said his cancer is widespread and the complainant's doctor and cancer team advised him that he could have a stroke or heart attack at any time. The complainant claimed Territory Housing admitted that he was well and truly overdue for a transfer.*

#### Action Taken

*Preliminary inquiries pursuant to section 28 of the Ombudsman Act 2009 were conducted. Following contact with TH the Darwin Housing Manager and complaints officer met with the complainant to discuss the transfer application. The complainant acknowledged during this meeting that he lodged the transfer application with TH in July 2009 and had recently changed this transfer to the Casuarina region. TH advised that the complainant wanted to move to a dwelling with a more manageable yard, a veranda and closer to the hospital. The type of house the complainant was seeking is called a Barclay home. These properties do not become vacant very often and the complainant would be waiting a considerable time for this type of property.*

*During the meeting TH were advised that the complainant's condition was deteriorating and would soon be in a wheelchair requiring bathroom modifications. TH advised that the complainant's medical practitioner had not returned telephone messages. The complainant said he would contact his doctor and obtain a medical certificate outlining his current medical condition.*



*The result of the meeting was the Housing Manager Casuarina undertook a commitment to allocate a 3 bedroom dwelling, taking into consideration the complainant's current and future medical needs. The complainant was advised that an allocation of a dwelling to meet specific needs or has the ability to be modified to meet needs may take some time and a timeframe could not be given.*

*TH advised that while they would endeavour to meet all housing requests, it is not always possible. As per TH Policy, medical needs will be met with the appropriate supporting documentation and any modifications will be undertaken prior to moving into the property.*

*It was explained to the complainant that when vacating the current dwelling, an outgoing property inspection would be undertaken. TH stated that while they take into consideration fair wear and tear and the complainant's ability to undertake tasks, if the inspection identifies neglect it will be the tenant's responsibility.*

### **Conclusion**

*The information and actions of Territory Housing appeared reasonable; it was considered that any further action by this office was unnecessary.*

## **Case Study 2 – Roper Gulf Shire**

### **Background**

*The complainant in this matter sent an online email to my Office setting out the following (amended for publication – reference to statute sections removed):*

- 1. No agenda or minutes are online for any council meetings in 2009, further that since December 2008 there is a record of only one meeting, a council meeting on 24 February 2010, but meetings occurred in 2009 and there were public notices of at least 2 other council meetings since 2010.*
- 2. No notice or agenda or minutes are online for any Local Board meetings. However, these meetings occurred as they are referred to in council newsletters.*
- 3. Minutes that are online refer to reports considered in meetings, but no details are provided on how to access those reports.*

*The complainant continued 'there is blatant non-compliance with the Local Government Act'. The complainant asked 'who is checking Shires to see if the CEO is meeting their legal obligations under this legislation?' The complainant concluded 'It is not unreasonable for public to expect government to ensure basic compliance by Shires with the Local Government Act to enable scrutiny by agencies, taxpayers, ratepayers, media and the public... Is no one interested in ensuring that the Shires are spending the millions of dollars of both Territory and federal government funding appropriately?... With today's modern technology this is surely not an onerous expectation on Shires nor an onerous job for the Department of Local Government to check and ensure it is occurring'.*

### **Actions Taken**

*No response was provided to the complainant who had lodged the matter anonymously.*

## Case Number 3 – Tiwi Islands Shire Council

### Background

The complainant in this matter reported that he is the manager of a club within the jurisdiction of the Tiwi Island Shire Council. The complainant said that he pays over \$1000/month in council fees to have rubbish around his business collected. The complainant said that the Council had not collected rubbish for the past 6 months so the complainant had ceased payments. The complainant said that the Council would refer the matter to debt collectors if there was a failure to pay.

### Action Taken

The matter was determined to be within jurisdiction. The complainant was asked to supply documents that he said he had to support his allegation and that he had written to the CEO to resolve the matter.

### Outcome

The complainant failed to provide the requested documents. A follow up call to the complainant was made to seek the evidence. The complainant did not provide the requested documents and the matter was discontinued.

## Case Number 4 – Darwin City Council (DCC)

### Background

The complainant attended my Office with a parking fine for Fail to Display Valid Pay & Display Ticket received from DCC. The complainant said that he had purchased a ticket but that he had left a window open in his vehicle and the wind had caused the ticket to blow onto the floor. The complainant had written to DCC requesting the fine be cancelled on the ground that he had purchased a ticket and did intend to display it. DCC responded to the complainant and he provided this letter.

### Actions Taken

The letter from DCC containing an extract from the Traffic Regulations was sighted. I agreed with the DCC and did not find their actions inappropriate or a case of maladministration.

### Outcome

The complainant was advised that the actions of DCC were deemed reasonable and no further action would be taken. The following legislative provision was applicable to this matter.

Traffic Regulation - 207 Parking where fees are payable

(1) This rule applies to a driver who parks on a length of road, or in an area, to which a permissive parking sign applies if information on or with the sign indicates that a fee is payable for parking by buying a ticket or putting money into a parking meter.

(2) The driver must:

- (a) pay the fee (if any) payable under the law of this jurisdiction; and Traffic Regulations
- (b) obey any instructions on or with the sign, meter, ticket or ticket vending machine.

## Case Study 5 - Coomalie Community Government Council

### Background

*The complainant in this matter advised that he lived in Batchelor. He reported a concern with a gang of 8-10 dogs running wild in the community. The caller said he had been bitten twice in the last 2 years by roaming dogs and that his wife had been chased by these dogs whilst riding her bike.*

*The complainant said he had spoken with the Council CEO who advised him that traps would be put out. The complainant said that one month later this action had not been undertaken. The complainant appeared distressed by the situation stating that he would take his complaint 'all the way to the top'.*

### Outcome

*The complaint was referred to the Council. My Office was advised that no evidence of a gang of dogs had been uncovered. The CEO stated that someone is employed on a part-time basis to undertake dog patrols. Traps have been set in the past to catch troublesome dogs and some dogs have been shot.*

*The CEO explained that there are a lot of indigenous persons living in the area who keep dogs. Some of their dogs had been shot only to be replaced by others. The Council stated they are doing everything within their power to control dog problems, however they must work within a limited budget.*

## POWER & WATER

There is noted improvement in the manner in which PWC handle complaints which would account for only 60 approaches made to my Office this financial year. Most issues of complaint relate to fees/charges however, several of these complaints relate to customers being listed with credit agencies for *failure to pay*.

Table 29 below documents approaches made to my Office.

**Table 29 - Approaches made to Ombudsman.**

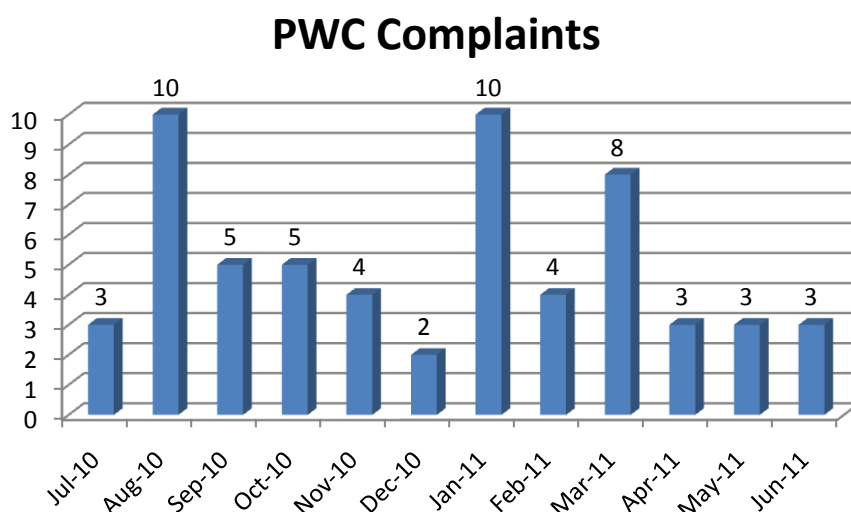


Table 30 below documents issues of complaint. These issues were dealt with by PWC's internal complaints handling process, or the outcome of PWC enquiries was provided to my Office for further consideration. Where PWC provided the outcome to my Office, these were later provided to the complainant.

**Table 30 - PWC Issues of complaint**

PWC ISSUE/COMPLAINT	No.
Fees/Charges/Penalty	39
Practice/Procedure	9
Entitlement to service/program	1
Misapplication of law/policy	4
Damages/compensation	5
Information	2
<b>Total</b>	<b>60</b>

The majority of issues relate to the fees/charges imposed by PWC, this issue has remained consistent over the years.

PWC improved handling of complaints is reflected in the below case summaries. Most complainants were satisfied with the outcome of their complaint and did not return to my Office seeking a review of PWC decisions/actions.

## Case Studies

### Case Study 1

#### Background

*The complainant in this matter discovered on his return from work that his power was not functioning. He said he called PWC to report a fault, and after waiting 40 minutes to speak to a customer service officer he was told that PWC had disconnected his power due to non payment. The complainant said he did not receive a power bill, reminder notice or phone call to notify him of the proposed disconnection. The complainant said the PWC Customer Charter documented that 5 days prior to disconnection a notice would be sent.*

*The complainant said he immediately paid the full amount and asked for PWC to check his contact details. The complainant said he discovered that PWC apart from having his correct details also had his mobile phone number. He asked why he was not contacted by SMS or voice on his mobile to seek payment. PWC allegedly told the complainant that PWC are not funded to do so. The complainant said he would have happily paid an administration fee for an SMS or phone call rather than be disconnected, he also said a postage stamp is about the same cost as an SMS. The complainant was also unhappy when he received via post a re-connection bill of \$343.37 that was a higher than normal connection fee. He was aware that this was due to his call going into after hours business billing consultants. He felt the charge was excessive and reiterated that PWC should make reasonable attempts to contact a person either by SMS or call to mobiles (applying a reasonable charge for this service) in an effort to avoid disconnection.*

#### Action Taken

*At the time of receiving this matter the complainant had not yet attempted to resolve his issues with PWC, as such the complaint was forwarded to PWC (Section 33 Ombudsman Act). PWC responded that their records showed an invoice for charges being sent to the complainant's home address and a follow up courtesy letter sent a month later reminding the complainant to pay the outstanding amount. A month later a letter advising of the pending disconnection was sent. None of these letters were returned to PWC.*

*PWC checked wait times for the date the complainant said he called. The maximum wait time for the disconnection queue between 4:00pm and 6pm was 6:40 minutes, the maximum wait time for the time to pay queue was 6.55 minutes and the connections queue had a wait time of 10.57 minutes. The complainant's allegation that he waited for 40 minutes was not supported by PWC's recorded wait time periods. In relation to the issue of reconnection fees, PWC advised that customers are told of the higher fee when seeking a reconnection out of hours and are provided with an opportunity to wait until the next business day to reconnect at the business hours tariff. The charges are also gazetted and appear on the PWC website. PWC concluded that the Customer Contract advises customers to notify PWC of changes to personal records including postal addresses.*

#### Outcome

*The complainant was provided with the above information by PWC. The complainant was told that if he remained dissatisfied he could return to the Ombudsman for further investigation; nothing was received and the matter was closed.*

## Case Study 2

### Background

*The complainant in this matter is a teacher who periodically works in remote communities. When working remotely the education department provides the house, however utilities are the responsibility of the teacher using the premises. During one of these teaching periods the complainant faxed PWC to advise the date she would be arriving at the remote house and the date she would be departing. She believed she had fulfilled her duty in providing written dates to PWC to inform them when to connect and disconnect the power. Invoicing was sent to her home address in Melbourne.*

*On the date of disconnection PWC sent out a meter reader, who according to the complainant took the final figure. The complainant said the meter reader told her that the power would now be off and no longer in her name. The complainant said she did not contact PWC to confirm this information as they had her fax for the disconnection date and had sent out a meter reader on that day.*

*A few months after leaving the remote location a phone call was received from the education department advising her that the power was still on in her name despite a number of teachers living at the premises since she left. The education department advised that they would divide up the account between all persons who had lived there since the last bill was issued. The complainant said she called PWC to discuss this and was informed that the account was still in her name and that no final account had been issued.*

*The complaint related to the procedure used by PWC stating it was flawed.*

### Actions Taken

*The issues of complaint had not yet been dealt with by PWC. The complaint was forwarded to PWC pursuant to section 33 of the Ombudsman Act.*

### Outcome

*The complainant was contacted directly by PWC. A new invoice was raised reflecting the corrected disconnection date and a rebate of \$50.00 was applied to the account in recognition of the untimely processing of the complainant's request for disconnection.*

## Case Study 3

### Background

*The complaint issues are similar to case study 3 above. The complainant said the meter had been replaced several months ago. She said she had received a water bill for an amount in excess of \$4000 whereas her previous water bills were \$300-\$400. The complainant said her current bill showed she had been using over \$25/day in water. Previously, at its highest, the usage was \$1.55/day. The complainant said that when the new meter was installed the technician turned the tap on the meter to 'full blast' whereas she would usually have the tap on 'halfway'. 4 months after the meter was replaced the complainant was gardening and at this time found a broken water pipe that was leaking. She attributed the breakage to PWC technicians turning the tap on 'full blast' during installation. The complainant said she had called PWC querying why they had not sent her a bill within the last 6 months which may have alerted her to the leakage. The complainant was seeking a reduction in her bill and an explanation for the technician's actions.*

### **Actions Taken**

*PWC acknowledged that a period of 173 days had passed between bills and as such a waiver had been approved. The complainant's first outcome of a bill reduction was met.*

*The second issue was addressed in a letter to the complainant. PWC explained that to avoid flow restriction it is usual practice to fully turn on a meter stop cock after a meter is replaced. The main purpose is to provide an adequate water flow service to all plumbing fixtures in order to cope with the daily peak hour demand. PWC stated that high water pressure may damage water infrastructure but not water flow. Further stating that water meters are removed around 10 years of age.*

### **Outcome**

*The complainant was advised that if she remained dissatisfied with the actions and information provided in relation to her complaint she could return to my Office. The complaint was closed when the complainant failed to return.*

## **Case Study 4**

### **Background**

*The complainant called my Office due to an unusually high reading on her last quarterly water bill. The complainant advised that the bill is usually around \$200, however had increased to over \$2000. The complainant said she went to PWC to talk to staff about her unusually high bill and also to enter into a time to pay arrangement. Staff at PWC allegedly told the complainant that she might have a leak, however the complainant believed the issue to be a faulty meter.*

*The complainant said she had an independent plumber confirm that there wasn't a leak, which enforced the complainant's belief that it was a faulty meter. Several days later a PWC meter reader attended the property to read the meter. It was at this time that the complainant noticed a new meter had been installed, however the complainant didn't know when her meter had been replaced. The complainant said she called PWC seeking to have her \$2000+ bill reduced to reflect her usual water consumption.*

### **Action Taken**

*The matter was referred to PWC to provide a response to the complainant. PWC wrote to the complainant explaining that PWC endeavour to read meters for domestic customers every 90 days, however leaks can occur at any time within the period so it is advisable for landowners to check water meter readings regularly.*

*PWC further stated that NT legislation indicates that PWC charge landowners for all water and sewerage charges including a fixed daily charge. PWC noted the Customer Contract which states that landowners are responsible for any leakage beyond the meter.*

*PWC's billing process can take between 5-10 working days for a bill to be issued from the time meters are read, until the printing of the invoice. PWC state the billing process includes checking reports for above average high/low consumption; billing is then delayed to request a check read to confirm the read is correct prior to issuing the bill.*

*PWC advised the complainant that they are not required to notify customers of high bills, however, as a courtesy and where practicable, a high bill notice may be issued.*



*In relation to the complainant's old meter, PWC advised that meters are owned by PWC and that this meter was tested and recorded accurately.*

*In the complainants case the meter was read in May and another check read taken 6 days later. The invoice was issued in June which PWC did not consider to be within a timely manner.*

*PWC approved a waiver in recognition of the amount of time for notification to the complainant.*

*PWC explained that they do not normally offer a reduction in the costs of water and recommend customers check insurance policies as some companies provide cover for water leaks.*

**Outcome**

*The complainant was provided with a substantial reduction in her bill and entered into a time to pay arrangement. The complainant was satisfied with this result.*



## NORTHERN TERRITORY POLICE

Over the years the number of complaints received at my Office about NT Police has been increasing. I contribute this to an increased population, a better understanding of how to lodge complaints, minor complaint matters being appropriately reported and recorded and an increase in the number of Police employed within the Northern Territory.

Interestingly, many of the complaints about Police relate to the same officers. That is, a small group of officers who repeatedly come to notice.

In previous Annual Reports I have provided information about the length of time it has taken to finalise complaints about Police. As I am not able to influence the time taken to investigate Police complaints (as the majority are not investigated by my Office) I have removed this data from future Annual Reports.

Many people believe that I investigate all complaints against Police (commonly referred to as CAPS). This is not the case. Resources available to my Office do not allow me to undertake this function. CAPS are referred to Ethical & Professional Standards Command (EPSC) within NT Police to resolve.

### How Complaints are finalised

#### Resolved expeditiously (RE)

These are matters that my staff resolve without referring the issues to the NT Police to finalise. Usually these matters are persons ringing to complain about the issuance of a traffic infringement notice (TIN) or Summary Infringement Notice (SIN). There is a process where the complainant can challenge the facts of the matter in a court of law and if issued with a TIN or SIN complainants are referred to that process. Other RE matters may relate to persons who have had search warrants executed at their properties and are seeking information; or persons who do not wish to complain per se but enquire as to whether they should complain.

#### Preliminary Enquiry (PI)

At the preliminary enquiry stage EPSC acquire further information to be reviewed before an informed assessment can be made as to the appropriate category of the complaint. That further information may include CCTV footage where available, Police account of events or any other relevant information. Complaints closed at the preliminary enquiries stage can be resolved before an investigation is required or where it is found the complaint lacks substance.

#### Complaint Resolution Process (CRP)

This is an informal process where early personal contact between Police members and complainants may lead to a quick and effective resolution. CRP may involve explaining to a person why a particular course of action was taken by Police, the legal and practical considerations surrounding the incident or a simple apology. Ideally the Police member and the complainant should be satisfied with the outcome but it is appreciated that this may not always be achievable. CRP is a means of dealing with common complaints about practice, procedures, attitudes and behaviours and is not a punitive or fault-finding approach.

## Category 2 (Cat2)

Category 2 is for complaints which do not fall within the guidelines for CRP complaints, but which are not considered sufficiently serious or of such a nature as to warrant Ombudsman involvement.

These complaints are not likely to result in criminal or disciplinary proceedings. The outcome might include the need for:

- Training/education
- Coaching/mentoring
- Counselling
- Personal Improvement Plan
- Reprimand or warning
- Restricted duties
- Caution – verbal or written
- Transfer by agreement

These complaints will be managed, investigated and resolved in most instances by the Police. Where, in the course of investigation, serious misconduct or maladministration is suspected to have occurred then the matter shall be reported to the Ombudsman, through Ethical & Professional Standards Command (EPSC). The Ombudsman in consultation with EPSC will then give further directions on the complaint.

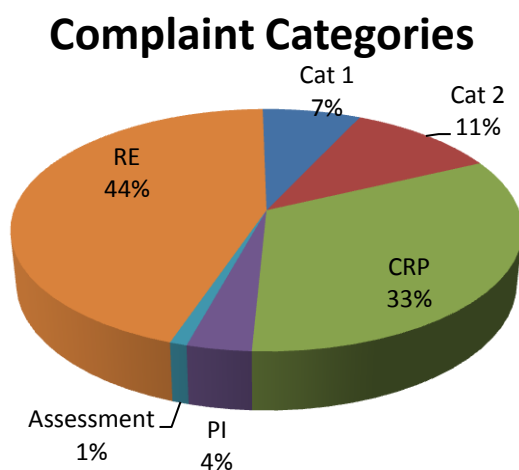
## Category 1 (Cat1)

Category 1 investigations will normally be undertaken into complaints which are:

- Considered to be of a serious or urgent nature, eg major assault, use of firearm;
- Likely to result in criminal or disciplinary proceedings;
- A matter of significant public interest; or
- Likely to raise significant questions of Police practice or procedure.

EPSC are tasked with undertaking the investigation. Once the investigation is complete, a report is created containing the findings of the investigation. The report is forwarded to the Commissioner of Police for his comments and then to the Ombudsman's office. The report is assessed and the Ombudsman may make recommendations and the report is then returned to the Commissioner. Once recommendations have been agreed upon all parties are notified of the outcome. The following chart documents the category given to the complaint:

**Chart 31 – Police complaint categories**



Category	Number
Cat 1	31
Cat 2	47
CRP	140
PI	15
Assessment	4
RE	190
<b>Total</b>	<b>427</b>

Matters under assessment were new complaints that had not yet been assigned a category at the time of writing this report. The majority of complaints were dealt with by CRP.

### Complaint Outcomes:

As documented above, cases are investigated by the Northern Territory Police. The following table records cases for the financial period and the results:

**Table 32 – Police Cases Outcomes**

Cases - Outcome of Complaint	Number
Actions deemed lawful	56
Apology	77
Changes to Police General Orders	1
Damages/Compensation paid	1
Discontinued/Withdrawn/Declined	24
Infringement Notice Withdrawn	1
Managerial Guidance	48
Open	49
Remedial training provided to Staff	1
<b>Total</b>	<b>258</b>

Of the 24 matters discontinued/withdrawn/declined, the majority of these were due to the complainant failing to cooperate.

There were 238 cases investigated by Police this financial year. Of these cases there were 209 (less 49 open cases) outcomes recorded for finalised cases.

The outcomes reflect the actions taken, in some cases more than one outcome resulted from investigation.

Note: The reference to 'Open' in this table relates to matters remaining under investigation by Police.

### Complaint statistics:

There were a total of 428 complaints against Police (CAPs) logged with my Office. These 428 complaints consist of enquiries (190 matters dealt with by Ombudsman staff) and cases (238 matters referred to Police), or received by Police in the first instance.

These figures will not tally with the NT Police figures. There are 3 reasons for our varying figures. As explained in last year's Annual Report, one of the reasons that our two agency figures are different is due to the dates incidents are recorded. Another reason why complaint figures do not tally is due to EPSC recording an incident as one matter, whereas if there are a number of aggrieved parties to an incident, each individual person is recorded by my Office. This individual person recording is done to ensure that each complainant is informed about matters concerning them and where possible the privacy of others identified during the investigation maintained. The third reason is that my Office addressed many CAPs in the resolve expeditiously stage which did not require referral to the Police.

The following tables document the number of complaints recorded:

**Table 33 – Police complaints enquiries and cases**

Police Enquiries		Enquiries moved to case		Police Cases	
Month	Number	Month	Number	Month	Number
July 10	12	July 10	5	July 10	23
Aug 10	22	Aug 10	8	Aug 10	24
Sep 10	22	Sep 10	4	Sep 10	19
Oct 10	19	Oct 10	2	Oct 10	21
Nov 10	21	Nov 10	2	Nov 10	16
Dec 10	24	Dec 10	2	Dec 10	17
Jan 11	20	Jan 11	7	Jan 11	19
Feb 11	25	Feb 11	4	Feb 11	14
Mar 11	23	Mar 11	10	Mar 11	31
Apr 11	15	Apr 11	3	Apr 11	16
May 11	13	May 11	1	May 11	17
Jun 11	25	Jun 11	3	Jun 11	21
<b>Total</b>	<b>241</b>	<b>Total</b>	<b>51</b>	<b>Total</b>	<b>238</b>

Enquiry matters are dealt with by Ombudsman staff.

Enquiries moved into cases were unable to be resolved by my staff.

Matters investigated by Police. These figures include enquiries moved into cases.

Male to Female complaint ratio – 142:99

Male to Female complaint ratio - 139:99

At the time of writing this report there were 49 open cases under investigation by Police. The below tables compare the Source of Awareness and the Manner of Approach for persons lodging complaints (recorded as Enquiries or Cases) against the Police.

**Table 34 – Enquiries and Cases**

Enquiries – Source of Awareness		Cases – Source of Awareness	
Source	Number	Source	Number
Word of Mouth	26	Word of Mouth	12
Lawyer	10	Lawyer	26
Department	6	Department	116
Internet	4	Internet	3
Don't know	142	Don't know	48
Been before	52	Been before	31
Media	1	Media	2
<b>Total</b>	<b>241</b>	<b>Total</b>	<b>238</b>

Enquiries – Manner of Approach		Cases – Manner of Approach	
Source	Number	Source	Number
Referred by EPSC	5	Referred by EPSC	124
Visit	38	Visit	10
Phone	152	Phone	38
Email	28	Email	33
Referred by Lawyer	1	Referred by Lawyer	17
Written	14	Written	13
Faxed	1	Faxed	1
Referred by ComOmb	2	Referred by ComOmb	2
<b>Total</b>	<b>241</b>	<b>Total</b>	<b>238</b>

The issues of complaint are similar each year. The following chart documents all complaint issues (Enquiries and Cases) for the financial year.

**Table 35 – Enquiries and Cases complaint issues:**

Enquiries & Cases Issues of Complaint	Number
Abuse/Rudeness	66
Arrest	27
Assault	42
Breach of Rights	11
Custodial	15
Corruption	2
Entry/Search	13
Fees/Charges	1
Firearms	5
Harassment/Threats/Excessive Attention	39
Information	17
Investigation failure/delay/inadequate	33
Juvenile other	1
Misconduct	9
Procedure	157
Property	16
Prosecutorial Discretion	6
Traffic	14
Unlawful Detention	5
Warrant	3
<b>Total</b>	<b>482</b>

To explain the discrepancy between the number of complaints against the number of issues, it should be noted that while there were 428 complaints against Police, in some instances more than one issue of complaint was raised.

As documented in the above chart there were 56 case issues deemed to be lawful actions.

Table 35 lists issues when the initial complaint was made, not whether the actions were substantiated or not.

## Presentations to Police Recruits

This financial year this Office delivered 3 information sessions to Police recruits regarding the roles and functions of this Office relating to Police complaints (CAPS) and the interaction between EPSC and the Ombudsman in relation to CAPS.

These sessions were delivered on:

- 10 December 2010
- 12 April 2011
- 19 April 2011

## Case Studies

### Case Study 1

#### Background

*In May 2011 at about midnight the Alice Springs Police called a remote Health Clinic stating Police were unable to contact the local community Police. An on call health worker was requested to attend the residences of the Police to wake/notify them that the Alice Springs Police were trying to contact them. The health worker felt obliged to comply with this request. Unable to find any Police at the station the health worker went to the residence of the Aboriginal Community Police Officer (ACPO). The ACPO was advised that Alice Springs Police were trying to locate the*

local Police. The health worker returned to the clinic and attempted to call Alice Springs Police to communicate that the ACPO had been found, the call went unanswered. About 1am the Alice Springs Police again called the health clinic explaining that there was a domestic incident at one of the remote stations and they were looking for the local Police. The complainant was unhappy at being woken a second time because the Police could not be found.

#### Outcome

An investigation by Police revealed that the health clinic was contacted after exhausting all other available options. The health services officer claimed 4 hours overtime from the NT Police for the time spent trying to locate local officers.

### Case Study 2

#### Background

The complainant and his companion complained that they were the subject of an abuse of process and unlawful detention. In May 2011 when the Police were apprehending the complainant, his companion was told to throw her cigarette out. Following the Police instruction she received a summary infringement notice (SIN) for littering.

#### Outcome

The infringement notice was withdrawn.

### Case Study 3

#### Background

The complainant called the Police for assistance at her residence. The Police attended and during the incident allegedly said to one of the occupants 'If you don't go to your dad's you could end up at a f\*\*\*\*\*g blackfella's house tonight'. The complaint related to Police conduct, rudeness and a lack of information about what actions were being taken.

#### Outcome

The officer concerned was spoken too, he accepted his comments were inappropriate and out of character. An apology was offered and accepted by the complainant.

### Case Study 4

#### Background

The complainant a bystander in this matter was walking past a public carpark where a worker was hosing down the pathway. Water accidentally splashed onto a ute close by. A uniformed Police Officer exited the ute saying to the worker 'Do you want to wash the whole f\*\*\*\*\*g car?' The worker responded 'Get f\*\*\*ed' with the Police officer saying 'You can get f\*\*\*ed, I'll punch your f\*\*\*\*\*g head in'. The complainant stated there was no further altercation between the two. The complainant shocked by what she had heard attended the Police station to report the matter.

#### Outcome

The officer was spoken too and reminded of his responsibilities and conduct when in uniform. The complainant did not wish to take the matter further.

## Case Study 5

### Background

*In March 2011 the complainant's house was broken into. A call was made to the Police at about 7pm to request attendance. Two hours later the complainant rang the Police to find out how long they would be. Police couldn't find the job. The next morning the complainant called the Police, the original job was found, however the second call made the night before had not been logged. It appeared that the Police had incorrectly recorded the house number and had attended the wrong address. Another job was logged for Police attendance. Three hours later the complainant called the Police, the call taker had also incorrectly recorded the street number. The complainant frustrated said 'how hard is it'. The street number was confirmed and Police attended almost 22 hours after the first job was logged. The complainant said that the attending Police tried to talk her out of forensic attendance stating there wasn't any forensic they could see and forensics would not be able to get prints off the surfaces. The complainant refused to accept this or sign the form that said there was nil forensics. The Police and the complainant argued over this for almost half an hour. The Police changed the wording on her statement and advised forensics would attend. The next day forensics arrived stating that there were definitely prints visible. The complainant sought an apology from the Police.*

### Outcome

*The matter was successfully conciliated with an apology provided.*

## Case Study 6

### Background

*In March 2011 the complainant was attempting to enter licenced premises in Mitchell Street. As he was lining up, an officer known to the complainant advised staff that they were not to allow entry to the complainant as he was a trouble maker and drug dealer. The complainant was refused entry, and spoke with the officer stating 'you can't do this'. The officer responding 'there's nothing you can do about it'. The complainant said that he would complain to the Ombudsman. The alleged response was that complaints to the Ombudsman are empty and there was nothing the Ombudsman could do. The complainant tried to enter other licenced establishments but was refused. A complaint was subsequently made.*

### Outcome

*A Police investigation resulted in the officer concerned being removed from operational duties, not only for this incident but for a history of similar incidents. An apology was provided to the complainant who was happy with the Police response.*

## Case Study 7

### Background

*The complainant called my Office relating to a drug raid at her Territory Housing residence. She stated the Police had got the wrong address and in the execution of the warrant had damaged the front door and an internal fitting.*

### Outcome

*The Police acknowledged that an error had occurred and paid damages to Territory Housing.*

## Case Study 8

### Background

*Police executed a drug search warrant in January 2011. The complainant listed a number of concerns about the warrant execution including the issue of her father's ashes being taken from the home. The complainant alleged that the Police believed her father's ashes to be an illegal drug. Another issue of complaint was that when the Police conducted entry (termed a dynamic entry) the complainant's young child wet its pants.*

### Outcome

*Police investigated the matter. The drug warrant was lawfully executed and was a result of the complainant's then de-facto being involved in the drug scene. The ashes of the complainant's father were later returned with an apology offered for the upset caused to the children. The complainant was satisfied with the result.*

## Case Study 9

### Background and Outcome

*The complainant in this matter was an Australian Federal Police Officer who was posted to a remote Territory community subject to a joint agency intervention. The complainant raised many issues of complaint:*

*1. Allegation of misconduct and unprofessional behaviour by the Station OIC in that the OIC continually and obsessively referred to the complainant as a 'blonde c\*\*t of a b\*\*\*h' to other police officers and members of the public.*

Outcome: *The OIC after initially denying the matter, later relented stating he believed what he called the complainant was a 'blonde s\*\*t of a thing'. The matter was dealt with internally.*

*2. Breach of legislation (section 78(h) of the Police Administration Act)). – the complainant said that on arrival in the remote Community two AFP members were told by the OIC that possession and consumption of alcohol by Police Officers within the restricted area was permitted as long as the alcohol was consumed in private and the rubbish taken out of the Community.*

Outcome: *The matter was dealt with internally.*



## DEPARTMENT OF EDUCATION AND TRAINING (DET)

The Department of Education has a number of educational facilities that fall under the control of the Chief Executive Officer. This financial year the 11 educational facilities complained of were:

- Charles Darwin University (CDU)
- Darwin Middle School (DMS)
- Durack Primary School (DPS)
- Henbury Avenue School (HAS)
- Nightcliff Primary School (NPS)
- Palmerston High School (PHS)
- Roseberry Middle School (RMS)
- Sanderson Middle School (SMS)
- Taminmin High School (THS)
- Yirrkala School (YS)
- Other (DET services)

**Table 36 – DET complaints**

Facility	No.	Issues	No.
CDU	3	Attitude of Staff	5
DMS	1	Benefit/compensation/damages	3
DPS	1	Complaint handling	1
HAS	1	Entitlement to service/program	1
NPS	1	Failure to respond/investigate	1
PHS	3	Fees/Charges	1
RMS	1	Policy/Procedure	8
SMS	1	Tenders/contracts/employment	1
THS	1		
YS	1		
Other	7		
<b>Total</b>	<b>21</b>	<b>Total</b>	<b>21</b>

Some of the complaints related to allegations of bullying within schools not being appropriately addressed. The following case studies have included a couple of the bullying complaints and the outcome of those matters.

### Case Studies

#### Case Study 1 – Darwin Middle School

##### Background

*The complainant advised my Office that her child was assaulted at Darwin Middle School. The complainant said that she had attended the school and spoken with the Assistant Principal who advised that there was CCTV footage of the assault. The complainant asked whether she could view this footage and was informed that she would need to make an application through FOI. The complainant said the Assistant Principal then said that he would prefer that the complainant did not view the footage but rather spoke to Police. The Assistant Principal subsequently informed the complainant that she would need to view the footage with Police present.*

*A short time later the victim gave a statement to the school based officer. At the conclusion of the statement the Officer allegedly said to the complainant something similar to "everything sounds pretty good and lines up with what I have seen on the footage."*

*The complainant further stated that there have been two other incidences where her child had been assaulted by pupils of Darwin Middle School. The complainant scheduled an appointment with a solicitor and spoke to DET's Regional Operations Manager regarding her concerns.*

#### **Actions Taken**

*The complainant was advised that as she was seeking independent legal advice my office would await the outcome of any legal proceedings that might occur to determine whether the issues raised with our office had been dealt with by the court. It was stressed to the complainant that my office has no jurisdiction to request or enforce any compensatory amount.*

*The complainant stated that she had outlined her concerns and desired outcomes with the Department. The complainant was advised that should she continue to be dissatisfied she should approach my office again for us to assess the matter further.*

*The complainant was later contacted and advised that the Department expected to finalise their investigation within 10 days. DET contacted my Office to advise that a solicitor from the Legal Services Division of the Education Department had carriage of the matter. Whilst speaking to the complainant she mentioned a number of other bullying incidences which she had not previously mentioned. I suggested to the complainant that she should outline the approximate dates each of these incidences had occurred and who she had spoken to regarding these incidences eg teacher, principal, counsellor and also note whether it was via email or telephone.*

*My officer explained to the complainant that contact would be made with the solicitor with a request made not to finalise a response to the initial 4 points that the complainant had highlighted until the complainant had an opportunity to submit all of her concerns in summary form. The complainant agreed to undertake this within the next couple of days.*

*My Office subsequently contacted the solicitor. The complainant submitted her comprehensive issues of complaint.*

#### **Outcome**

*The Principal & Deputy Principal received managerial guidance as a result of the manner in which they dealt with the complaint. The child was offered counselling sessions with a departmental psychologist.*

## **Case Study 2 – Charles Darwin University**

#### **Background**

*The complaint related to CDU's decision to cancel the complainant's enrolment from a Batchelor degree, due to non payment of fees. CDU had written stating enrolment was cancelled due to periods of non attendance and non payment of fees.*

*The complainant said he appealed the decision in writing and provided reasons for non attendance/payment. Some reasons given for non attendance and non payment was that the complainant suffered migraines and had been assaulted while driving a taxi. The complainant wrote that after this assault he required medical attention at RDH and was told to rest up. He said he could not provide medical certificates to CDU because he did not see a doctor. Further that he could not provide his statement to Police for the assault as he was too injured to attend the station. CDU wrote to him upholding their decision.*

*He said he wrote another letter of appeal again requesting time to pay and to be re-enrolled. He received a letter from the Executive Director Corporate Services, in short, waiving one semester's fees, still requiring him to pay the balance of fees owing. Failure to pay would result in cancellation of enrolment and a requirement to notify the Department of Immigration and Citizenship.*

*The complainant still remained dissatisfied, on the grounds that he was not asked to attend an interview so that he could fully explain the circumstances/reasons for non attendance and non payment and on this basis, he believed he should be re-enrolled and be allowed to pay off the debt in instalments.*

#### **Action taken**

*Preliminary enquiries were undertaken. CDU had provided natural justice to the complainant during the initial and appeal phases, and had comprehensively set out their reasons.*

*As an outcome, the complainant said he wanted to be allowed to repay CDU in instalments and be re-enrolled otherwise he will be in breach of his student visa and be deported from Australia.*

*A review of the CDU file was undertaken. It did not appear that maladministration had occurred with the complainant breaching his agreement with CDU and possibly his Visa conditions.*

*The complainant had not made any effort to pay his outstanding debt for over 2 years despite being given adequate consideration by CDU and lodging two appeals. On the face of it, the actions of CDU appeared to be reasonable.*

#### **Outcome**

*CDU cancelled the complainant's enrolment, and the complainant was still required to pay almost \$14,000. CDU did not have much hope in recovering the outstanding amount. Given the circumstances the debt should not have been allowed to get that high. As an overseas student CDU were obligated to report the cancellation to DIMIA.*

*It was the view of my investigator that CDU had been more than generous and reasonable in considering the complainant's case. On one occasion the complainant was given an opportunity to make payments on the overdue fees however failed to make any payment.*

*To satisfy myself that the complainant did indeed have valid injury reasons for not attending classes I made further enquiries. The complainant had been assaulted whilst driving a taxi, however his injuries were a number of cuts, grazes and bruises not deemed to be serious or life threatening.*

*Documentation available to my Office showed that the Police had been in contact with the complainant one week after the assault in an attempt to take a statement. Although the complainant had told CDU that he couldn't attend the Police station due to injuries, he told the Police he couldn't attend the station due to work commitments. The complainant also told Police that unless the officer taking the statement was of Pakistani Nationality a statement would not be given. Due to a lack of cooperation the Police file was closed.*

*The complainant was called by my investigator. He was told that no maladministration had been identified and his lack of candour had not been helpful to our enquiries. No further action was required.*

### **Case Study 3 – Henbury Avenue School**

#### **Background**

*The complainant called my Office in regards to her 15 year old son who was a student at Henbury Avenue School. The complainant stated her son had been the victim of bullying at the school for the last 8 months, perpetrated by another 15 year old student and that all the bullying instances had been of a physical nature.*

*The complainant stated that her son had been scratched, pushed, grabbed and wrestled on an almost daily basis. On one occasion the complainant's son returned from school with scratch marks on his arms which had drawn blood. The complainant said that her son did not feel safe at school and was staying home.*

*The complainant said this issue was raised with the teachers at Henbury Avenue, but felt staff were not doing anything to put a stop to this behaviour. The complainant stated apart from personally speaking with the school she had also spoken to two staff both from the School Division Team.*

*The complainant stated that as a result of her discussions with the school the teachers were being rude to her son. The complainant said the bullying behaviour continues and she would like something done about it.*

#### **Actions Taken**

*The complainant's allegations were sent to DET to respond to in the first instance. Subsequently, a meeting took place at Henbury Avenue School.*

#### **Outcome**

*The meeting resulted in 4 agreed outcomes.*

- 1. The complainant and her son would explore a graduated entry to the Casuarina Senior College Outreach Centre of Henbury Avenue School.*
- 2. The school would draw up a timetable and playground map restricting where each of the children can go at lunch, ensuring they are not in contact.*
- 3. Staff would reinforce the need to be vigilant at recess in keeping the two boys apart.*
- 4. The complainant would undertake to open lines of communication with her son's new teacher. School senior staff would facilitate.*

*The complainant was happy with this outcome and the matter was closed.*

## **Case Study 4 – Sanderson Middle School**

### **Background**

*The complainant contacted Sanderson Middle school to complain about the actions of a teacher.*

*The complainant acknowledged in her complaint that her child ‘is no angel’ and could ‘display disheartening behaviour’ however this did not give the teacher the right to say “What do you do, lick up dog s\*\*t around town” or words to that effect. The complainant was also concerned by the next comment allegedly made to the child “You have geographical tongue”. The complainant provided an excerpt from the standards expected of departmental staff:*

*Section 5.4 states:*

*In order to maintain public confidence in the integrity of the Public Sector, employees should exhibit, and be seen to exhibit, the highest ethical standards in carrying out their duties, and employees should pursue, and be seen to pursue, the best interests of the people of the Northern Territory.*

*The complainant said that the teacher’s actions/comments were witnessed by a number of students and sought an investigation by DET. The complainant asked the department that the matter be dealt with immediately.*

*The complainant subsequently received an acknowledgement of her complaint from a Senior Teacher at Sanderson Middle School stating an investigation was being undertaken.*

*While this investigation took place the complainants child was removed from classes taught by the teacher under investigation with the reason provided “...would only aggravate both parties”.*

### **Actions Taken**

*The complainant documented that she was disappointed that the investigation appeared to focus on what her child did in class rather than the language used by the teacher. The complainant also noted that prior to this incident the school had not been in contact with her about her child’s history of alleged unruly behaviour.*

*NT Schools in part responded to the complainant ‘...my apologies that this matter has not been resolved from your perspective...’ A further discussion was offered to resolve the matter. The complainant documented her disappointment ‘...you say this matter has been resolved, yet neither myself or husband have been advised of this...’*

*The complainant said she had spoken to her child who believed the matter was still under investigation. She wrote that as far as she was concerned the matter had not been resolved.*

### **Outcome**

*The complainant was addressing her concerns directly with the department. She was advised that if at the conclusion of the investigation she remained dissatisfied she could return to my Office. The complainant did not return.*

## **Case Study 5 – Nightcliff Primary School**

### **Background**

*The complainant contacted this office after an incident where her preschool child suffered a fractured tibia after falling/being pushed from a slide at the Nightcliff Primary School.*

*The complainant said that she was informed by the school that there were 6 adults in the area at the time; however none of the adults present observed the incident. Several children apparently had stated that they saw the complainant's son pushed off the slide. The complainant advised that preschool children do not normally play on the primary school equipment, however on this day the preschool children were playing in the area.*

*The complainant said she was very dissatisfied with the way the incident was managed by the school, and feels that the school failed in its duty of care to ensure that children were safe. The complainant advised that she did not have transport, and no-one offered to take her son to hospital despite his injuries.*

*The complainant said that since the incident she is aware that students have been talked to about 'safe play', however she feels that this was an avoidable accident. The complainant advised that an adult should have been watching the children at all times, possibly with someone next to the slide to ensure that 'safe play' was adhered to.*

*The complainant informed me that she was reluctant to allow her son to return to the school, as she remains concerned for his safety.*

### **Actions taken**

*The complainant raised her concerns with the school, but remained dissatisfied with the response. The complaint issues were referred to DET.*

### **Outcome**

*The school contacted the complainant to discuss how to improve child safety at the school. The complainant advised that she no longer required an Ombudsman enquiry.*

## **Case Study 6 – Taminmin High School**

### **Background**

*Complainant contacted this Office to report a case of 'nepotism' at Taminmin High School. The complainant advised the Principal had employed the Principal's daughter as an A07 (administrative officer) stating that she was not suitable or qualified. The complainant added that the Principal also contracts work at the school to her husband (Principal's husband). The complainant said that these actions were inappropriate and that people qualified for both jobs were being passed over in favour of the Principal's family. The complainant wanted to remain anonymous due to concerns about their continued employment within the school.*

### **Outcome**

*Employment related matters are not within the jurisdiction of this Office. The complainant was referred to the Minister for Education and the Office of the Commissioner for Public Employment.*

## DEPARTMENT OF HEALTH & FAMILIES (DHF)

The Department of Health & Families (now known as the Department of Health DoH) has a number of agencies that report to the Chief Executive. Complaints received about DHF agencies were received for the following agencies:

- Aged Care & Disability
- Family & Children's Services (FaCS)
- Patient Assisted Travel Services (PATs)

As of 1 July 2011 due to legislative changes complaints relating to FaCS, now known as Department of Families and Children (DFC) will be referred to the Children's Commissioner for consideration and action.

**Table 37: Complaints recorded against DHF and FaCS**

DHF (excluding FaCS)	No.	FaCS	No.
July 10	6	July 10	2
Aug 10	0	Aug 10	6
Sep 10	2	Sep 10	7
Oct 10	1	Oct 10	4
Nov 10	0	Nov 10	5
Dec 10	0	Dec 10	3
Jan 11	0	Jan 11	2
Feb 11	1	Feb 11	7
Mar 11	0	Mar 11	2
Apr 11	1	Apr 11	0
May 11	0	May 11	0
Jun 11	0	Jun 11	0
Total	11	Total	38

Each year the issues of complaint are similar. The main complaint appears to be about the practices or procedures of the agency. In some instances these complaints could be avoided if comprehensive information was provided to persons setting out why actions are taken, whether these actions are supported by legislation/policy/procedure and what the persons can expect to occur in the future.

**Table 38: Issues of complaint**

DHF (Excluding FaCS)	No.	FaCS	No.
Attitude of staff	1	Attitude/behaviour of staff	3
Complaint procedures	1	Delayed action/response	1
Entitlement to service	1	Fail/Refuse to provide information	4
Information	1	Failure to investigate/respond	4
Misapplication of law/policy	7	Fees/Charges	1
Total	11	Misapplication of law/policy	5
		Practice/Procedure	20
		Total	38



## Case Studies

### CASE STUDY 1 – Family & Children's Services (FaCS)

#### Background

*In late 2010 a complainant attended my Office to make a complaint about FaCS. The history of the complaint as provided to my Office is as follows:*

*Around 1997/8 the complainant got a phone call telling her that her partner should do something about his 2 year old biological granddaughter. The caller told the complainant that the child was wandering the streets and walking into flats looking for food. The girl was reported as dirty, sick and hungry. The complainant collected the child and returned home. The complainant said that she informed the local health clinic and Police. The child's mother could not be located.*

*FACS were advised. The child was to be monitored by FaCS and was left in the complainant's care. FaCS was allegedly aware of charges the complainant's husband was facing in relation to child molestation of the complainant's daughter. When the complainant's husband was formally charged (indecent dealings) the complainant told the girls biological father, who was separated from the mother, that the girl was living in their home. The father took the complainant to court for full custody. The complainant claimed that FACS was heavily instrumental in the father gaining custody of the child despite the father leaving the girl with the complainant for two years. The complainant advised that after a period of time she had visitation rights but not at her home.*

*Over a period of time the child was allowed every second weekend and half of the school holidays with the complainant as she got older. The complainant said that over the years the child's father began to neglect her health, schooling and care. According to the complainant the child was always sick, dirty and lived in squalor. The complainant claimed that FACS did nothing. At the age of 7/8, the child spent nearly every weekend and all school holidays living with the complainant. When the child was 12 the complainant said she noticed that the girl was subdued with very dark rings under her eyes. The complainant stated she had seen this look before on her own child when her partner had been interfering with her daughter. She asked the girl if her father had been doing anything to her. The child broke down and said she was being abused. The complainant claimed that the things the father was doing to the child were so atrocious she called the police. The complainant along with the police took the girl to SARCS. The police then attended the father's residence and took him into custody.*

*The complainant alleged that FaCS knew the child was living with her grandfather and were not concerned for her welfare. The complainant said that weeks later the police arrived with FaCS officers. At this time the complainant was looking after the child and her 15 year old daughter's baby. The police informed the complainant that FaCS were there to take both children and that they had paperwork to allow removal. The complainant claimed that the paperwork for the older child had expired, and there was no paperwork for the baby. FaCS took the older girl however the complainant refused to let go of the baby. The next morning the police arrived again to take the baby, a stand-off took place until the baby's 15 year old mother arrived and took the child from the home.*

*The complainant alleged that FaCS failed to advise her why they were removing the children. The complainant stated that a police officer told her that there was concern for the children due to her husband's indecent dealings offence. The*



complainant's 15 year old daughter was told that if she wanted her baby she would have to relocate. The complainant alleged that FaCS shoved them into a grimy caravan park and then moved them to a small one bedroom unit and eventually into a flat (where there is allegedly violence, drinking and drug dealing). Sometime later the child was placed into foster care, from which she continually ran away. The girl allegedly told FaCS that she wanted to go home to nanas. On several occasions the girl was taken to the complainants as this was the address provided when she was located on the street. FaCS were informed. The child was removed and placed elsewhere. She continued to run away and return to the complainant's home. Eventually, she was allowed to stay with the complainant; however FACS would not register the complainant as the carer.

The complainant claimed that FaCS told her that it would not look good if the media got hold of the story. As the complainant could not register as a carer she was not entitled to the full carer's allowance. The complainant further alleged that since December 2009 no one from FaCS had initiated any calls to her or the child nor made any visits to the home.

#### **Actions Taken**

The complainant was asked what outcome she was seeking from her complaint. She stated that she wanted to be registered as a carer and receive financial payments applicable to carers. The complaint was forwarded to DHF for a response.

#### **Outcome**

A comprehensive response was received from DHF. My Office considered the content and forwarded same to the complainant. The complainant was provided with 21 days to reply to DHF findings if she remained dissatisfied with the outcome. Nothing further was heard from the complainant and the matter was closed.

## **CASE STUDY 2 – Family & Children's Services (FaCS)**

#### **Background**

In November 2010 the complainant called to advise that he had had his children (four sons) removed from his care and had not been kept informed of their whereabouts.

The complainant stated that he had a trespass notice against him and could not attend the FaCS Office to make inquiries. He provided the following background:

The complainant's children were wagging school, stealing and generally misbehaving. Mid 2009 the complainant contacted FaCS, and claimed that they had advised him that as there was no abuse or neglect they were not in a position to assist him.

The complainant advised he had reached a point where he became quite ill. The complainant claimed that he approached FaCS for assistance with respite care whilst he attended hospital, however he stated this was denied. The complainant went on to say that based on untruths FaCS lodged an application for custody of the four boys.

The complainant claimed that the school Principal made statements to FaCS about him being an alcoholic and drug addict. The complainant stated that he was never offered any support services by FaCS, and he believed the children were taken from him because they kept going missing.

*The complainant further claimed that his eldest son when in FaCS care went missing for a period of three weeks and he was not advised of his son's situation until a week after he first went missing. The complainant alleged that whilst he was at the police station on speaker phone one of the FaCS workers advised that his son had been found and asked the complainant to explain to his son over the speaker phone why he had to remain in the care of FaCS.*

*The complainant advised that his son was later returned to his custody however the other three were still in the care of FaCS. The complainant had concerns over the number of carers the boys had and felt this would make them feel quite uneasy. The complainant was also concerned that FaCS made an allegation that he threatened to kill one of their officers which was denied. A restraining order was later served. As the order prevents the complainant from contacting FaCS he claimed that he could not visit his children. The complainant advised that he had not seen his three sons in over five months and alleged he had not been provided with a reason.*

#### **Actions Taken**

*Preliminary inquiries were undertaken in accordance with the Ombudsman Act. It was revealed that FaCS had made extensive efforts to assist the complainant. Progress notes and documents supported many communications with the complainant and other support agencies. FaCS also recorded their contact to pursue the complainant's request to relocate. Support services from various agencies were being withdrawn due to the complainant's anger issues and alleged threats to cause harm and kill, which were matters being dealt with by the courts. FaCS suggested communications on the complainant's children be conveyed through the complainant's mother.*

#### **Outcome**

*On reviewing all the information available it was considered that there was no further action my office could take. The complainant was informed.*

### **CASE STUDY 3 – Patient Assisted Travel Scheme (PATs)**

#### **Background**

*The complainant who lives in Nhulunbuy contacted my Office to lodge a complaint against PATs for refusing her application to travel interstate for specialised treatment because the complainant did not have approval from a specialist.*

*The complainant said that there wasn't a specialist in Nhulunbuy to obtain an approval. The complainant said a similar PATs approved trip to Queensland was authorised some months prior after a specialist at RDH had completed the approval document.*

*The complainant did not think it fair to require travel to RDH to see a specialist to get an interstate referral.*

#### **Actions Taken**

*The matter was referred to PATs to consider and resolve.*

#### **Outcome**

*The matter was resolved directly with PATs.*

## **Case Study 4 – Patient Assisted Travel Scheme (PATS)**

### **Background**

*The complainant called and wrote to my Office asking that my staff provide the complainant with all information on aspects of Patient Assisted Travel Scheme policy administered by the Department of Health.*

*Specifically, the complainant questioned whether PATS should pay for a return interstate trip after surgery. Further, if surgery did not go ahead, what happens next should be included in PATS policy documentation and given to patients before travelling. Finally, the complainant wanted to know if PATS would pay for the return trip of a person who dies at an interstate hospital chosen by PATS.*

### **Actions Taken**

*Preliminary enquiries were undertaken. PATS policy is that if a patient fails to undergo surgery at the interstate hospital and provides supporting documentation from the treating Doctor justifying the reasons why surgery could not go ahead, then the patient's (and their approved escort if applicable) return trip will be paid by PATS. However, if the patient failed to attend their appointment and cannot provide evidence of why, the cost of return travel is at the patients own cost.*

*PATS advised that although this is not specifically stated in the policy, it is noted in the patient/guardian repayment declaration that the patient is required to repay PATS for the costs of failing to use pre-booked travel, failing to attend appointments, or pre-booked admission.*

*PATS advised my Office that a full review of the PATS scheme was underway which included the type of questions, issues and documentation raised by the complainant.*

### **Outcome**

*The actions taken and response by PATS was provided to the complainant. While the complainant remained unhappy, there was nothing further that could be accomplished to address the complainant issues.*

## **Case Study 5 – DHF**

### **Background**

*The complainant contacted my Office stating that she had issues with someone who works within DHF. After providing a name and contact number, the caller stated that the person she wished to complain about was on a committee but uses Government time and equipment for committee purposes not related to DHF duties. The caller stated she had proof of this.*

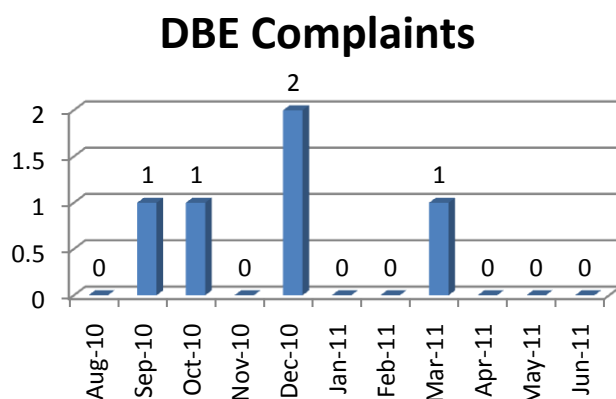
### **Outcome**

*The complainant was asked to place her concerns in writing to my Office setting out times, dates and any other 'proof'. Nothing further was received and the matter was closed.*

## DEPARTMENT OF BUSINESS & EMPLOYMENT (DBE)

There were six (6) complaints made about the administrative actions of DBE this financial year. None of these issue were investigated by my Office, all were referred to DBE to resolve.

**Table 39: Complaints against DBE**



After preliminary enquiries, the July 10 issue was referred to the Fair Work Ombudsman as this agency was better placed to deal with the issue raised.

September's complaint was from a member of the public complaining about an alleged misuse of an NT fleet car. The matter was dealt with by DBE in a timely manner and no further action was deemed necessary.

**Table 40: Issues of complaint**

DBE	No
Grievance/complaint process	2
Misapplication of law/policy	1
Practice/Procedure	2
Tender process	1
<b>Total</b>	<b>6</b>

4 complaints related to wage matters, these complaints were referred to DBE

2 complaints related to the tender process and were referred to DBE

## Case Studies

### CASE STUDY 1 - DBE

#### Background

December 2010 I received two complaint issues via an email. The first complaint related to a tender process, the second complaint was about Minister Gerry McCarthy not responding to the complainant's correspondence. The complainant's email documented that she had written to Minister McCarthy early November 2010. Attached to this email was an acknowledgement from Mr McCarthy's Ministerial Assistant. This response noted receipt with a notation that the correspondence was being actioned and a response would be received in the near future. I do not have the power to investigate the actions of Ministers.

#### Outcome

The complainant's issue regarding the tender process was referred to DBE to action and the complainant was advised to again contact the Minister for a response.

## DEPARTMENT OF LANDS & PLANNING (DLP)

Previously known as the Department of Planning and Infrastructure (DPI) there were 35 complaints received this financial year. The DLP currently has two groups under its authority. They are the NT Lands Group and the NT Transport Group. Complaints about DLP were dealt with by referral.

Prior to the implementation of these groups DPI had three areas of responsibility:

1. Lands consisting of:
  - *Land Information*
  - *Development Assessment*
  - *Building Advisory Service*
  - *Land Administration*
2. Infrastructure
3. Transport consisting of:
  - *Road Transport*
  - *Transport Safety*
  - *Public Transport*

The following table (41) lists a break down of the number of complaints received this financial year.

**Table 41: DLP Complaints**

Department of Lands & Planning	No
Lands	4
Infrastructure	15
Transport	16
<b>Total</b>	<b>35</b>

The following table (42) lists the issues of complaint.

**Table 42: DLP Issues of Complaint**

Issues	No
Attitude/Behaviour/Misconduct	3
Damages/loss of Property	1
Exercise of Discretion	1
Failure/Delay to Investigate/Respond/Act	6
Fees/Charges/Compensation/benefit	3
Information	1
Practice/Procedure	16
Tenders/Contracts	3
Use of Statutory Powers	1
<b>Total</b>	<b>35</b>

## Case Studies

### Case Study 1 – Motor Vehicle Registry (MVR)

#### Background

*The complainant in this matter called my Office unhappy about receiving a courtesy notice for a speeding infringement. It was not the speeding infringement that was the issue but the fine for driving an unregistered vehicle. The complainant said she was not aware that the registration had expired as she had not received a renewal notice in the mail. The complainant said that she had visited MVR and had spoken to a supervisor. She was told at this time that renewal notices are sent out as a courtesy however the onus for ensuring compliance was the responsibility of the vehicle owner.*

#### Outcome

*My Office checked the applicable legislation and MVR policies to determine if there was a legal requirement for MVR to send out renewal notices. Nothing could be found that required MVR to notify customers of pending expiry of vehicle registration. When a person receives vehicle registration papers the expiry date is documented on the paperwork. The registration disc for the vehicle window also alerts a vehicle owner to the month of expiry. While the complainant believed that she should not be penalised for failing to renew, maladministration was not identified and the complainant advised.*

### Case Study 2 – Construction and Infrastructure

#### Background

*A copy of an email and photographs were sent to my Office addressed to the Minister for Transport the Honourable Gerry McCarthy (and other Ministers). The complaint was about an unsafe and unsealed stretch of road adjacent to the complainant's property. Additionally, the complainant claimed that dust from the unsealed road caused loss of internet connection, damage to a satellite transmitter and an impact on the electricity supply, solar panels, solar hot water system, water supply, crops and the general health and welfare of the complainant.*

*The complainant also claimed that a vehicle rolled over at the front of the property due to corrugations in the road. The complaint related to the road not being sealed despite money being allocated for it in the government's budget program. The outcome sought from the complainant was an immediate sealing of the road.*

#### Actions Taken

*Unless a complaint is directed to my Office, other than recording the matter and notifying the complainant that they can complain directly to my Office no resources are assigned to investigate. In this instance the complainant did not complain directly to my Office and I am unaware of the outcome. This case study was added to this report to encourage people to complain to my Office directly, enabling enquiries to be undertaken asap.*

### Case Study 3 – Darwin Bus Service

#### Background

*The complainant sent an email complaint on behalf of his elderly parents. The complainant wrote that his parents were visiting Darwin from interstate. He advised that while waiting at a bus stop the driver of a bus stopped to let his parents on. Not*

knowing the area his parents asked the driver to confirm if the bus was going to Darwin. Allegedly the bus driver responded 'cant you read' while pointing at the front bus display. The complainant wrote that this was not how a driver should act towards the elderly who may be impaired or may not know if they were on the right bus.

#### **Action Taken**

The complainant had also logged a complaint with the Darwin Bus Service on the same day of complaining to my Office. The complainant was contacted and asked to return to my Office if the response from Darwin Bus Service was inadequate. The complainant did not return.

## **TREASURY**

There was one (1) complaint against Treasury in this financial period. The matter related to the difference in stamp duty between the cost of a property and the value of the property. The complainant was disputing having to pay further fees and fines on top of the initial amount paid for the property. The complainant had a right of appeal through a tribunal. Based on the ability of the complainant to seek a remedy through the tribunal it was deemed unnecessary and unjustified for my Office to assign resources and investigate.

## **DEPARTMENT OF RESOURCES (DOR)**

The Department of Resources has three (3) main business divisions:

- Minerals & Energy
- Primary Industry
- Fisheries

This financial year there were 3 complaints about DoR services. These matters were addressed by the agency after referral. The complainants did not return to my Office.

## **NATURAL RESOURCES, ENVIRONMENT, THE ARTS AND SPORT (NRETAS)**

There were 8 complaints received this financial year. All but one of the complaints were resolved by the agency. The following table and case studies document some of the issues raised with my Office.

**Table 44: NRETAS Issues of Complaint**

NRETAS Issues of complaint	Number
Program Service/Entitlement	1
Fail to Investigate/Respond/Act	1
Damage/Loss of Property	2
Use of Statutory Powers	1
Information	1
Complaint handling procedure	1
Fees/Charges	1
<b>Total</b>	<b>8</b>



## Case Studies

### Case Study 1 – Parks & Wildlife

#### Background

*In 2010 the complainant reported that a departmental burn off had caused a bush fire which destroyed his business and assets. The complainant held the Department liable and lodged a claim for compensation, Parks and Wildlife, investigated and sought legal opinion on liability.*

#### Outcome

*At the time of making a complaint to my Office the matter had been with the Department for a few weeks. I did not consider this timeframe unreasonable in the circumstances, particularly given the complexity of the claim. I declined to investigate this matter pursuant to section 33(d) of the Ombudsman Act 2009 (the Act), as any further investigation of the matter by this office was considered unnecessary and unjustified and to avoid duplication.*

*Section 35 of the Act also precludes the Ombudsman from investigating a matter that is already being investigated by the agency until the complainant informs the Ombudsman that they remain dissatisfied with the outcome and either no redress has been granted by the agency or the redress granted is inadequate. The complainant was advised that this Office did not determine issues of legal liability or provide legal advice or an advocacy service. The complainant did not return to my Office at the conclusion of the department's investigation.*

### Case Study 2 – NT Library

#### Background

*In this matter the caller wanted to complain about female staff at the NT Library Parliament House, allegedly not treating him properly. The complainant was abstract when asked to explain how specifically the staff treated him or what they allegedly said to him. Further enquiry found that the complainant had been issued with a 12 month Trespass Notice by the Speaker of the Legislative Assembly for being discourteous and rude to Library Staff. He also received a letter from the Department to this effect. When prompted the complainant was reluctant to say how or what Library staff said/did to him. He did not dispute the Notice but wanted my office to act for him in accosting the Library. When asked for basic details the complainant refused to give his phone number or address.*

#### Outcome

*The role and function of my Office was explained to the complainant. The complainant then said that he just wanted to give his side of the story to the Department. He was provided with the details of the CEO. The complainant was also advised to contact this office again if dissatisfied with the outcome. He did not return.*



## **Case Study 3 – NRETAS**

### **Background**

*In June 2010 departmental officers attended the complainant's property to conduct a fire break inspection. No fire break was found and the complainant was issued with a warning notice. A follow up inspection a month later noted that fire breaks had not been installed. A Notice was served. Attempts to contact the property owner were unsuccessful with an order from NRETAS for authorisation to enter and undertake the work. The complaint related to the work undertaken which the complainant said had left no tree standing within 6.5m of the boundary, there was damage to the fence and an electrical pit, and the eastern boundary was cleared 17m and 22m from the fenceline.*

*The complainant contacted the Minister for Environment and Bushfires NT. An independent environment report was undertaken. Dissatisfied with the responses received, the complainant called my Office.*

### **Actions Taken**

*Preliminary enquiries were undertaken. In relation to firebreaks, if a landholder has not established firebreak/s or the firebreak/s is deemed unsuitable the Chief Fire Control Officer has the authority to issue an order empowering Bushfires NT staff to enter and undertake the required works.*

*The Director of Bushfires NT, wrote to the complainant following the order issued to install fire breaks. It transpired that the complainant had agreed to take responsibility for the completion of the installation of the firebreak and that that installation included additional works requested at the time by the complainant's agent.*

### **Outcome**

*The complainant was not satisfied with the information provided to him and set out his complaint issues in dot point:*

- No tree standing within 6.5m of boundary
- Eastern boundary cleared 17m and in one place 22m from fence-line putting block in breach of the land clearing guidelines
- Clearing has left you in breach of Section 10.2 and 75.1 of the NT Planning Scheme
- Section 47 of the Bushfires Act does not allow excessive clearing as claimed by BFNT and DAS

*In reading the NT Planning Scheme, I noted that that clause 10.2 relating to the size of firebreaks and clearing of native vegetation does not apply if the clearing is required or controlled under any Act in force in the Territory. Lands & Planning had advised the complainant by letter that the works were undertaken as part of the annual Firebreak Enforcement Program pursuant to Section 47. Further, that as these works were authorized in accordance with the provisions of the Bushfires Act consent for clearing of native vegetation was not required. The NT Planning Scheme requirements do not override the provisions of legislation and in my view the complainant should not be held responsible for the actions taken by government supported by legislation. I noted that section 47 does not specify the minimum or maximum area to be cleared. Without this specified clearance, distances remain at the discretion of the Authority.*

- Underground electrical pit run over and damaged
- Fence leaning out due to earthmoving equipment
- Earthmoving equipment used causing damage
- Contractor left culverts and windrows up to 40cm high creating gutters and channels.

*In my view if the damage was not willful, civil action may be available to recover costs. However, this may not be the case in this instance. Section 53 Of the Bushfires Act states: Damage (1) A person who causes damage in the course of exercising a power conferred on him by this Act is not liable in respect of that damage. The complainant was advised to seek legal advice.*

#### **Cost of contractor**

*The issuance of the invoice for work undertaken and non-payment of this invoice was not within the Ombudsman's jurisdiction. The complainant was advised to seek legal advice.*

#### **BFNT failed to notify the complainant under Section 59 of the Bush Fires Act**

*A fire break warning was posted to the complainant by BFNT. This warning clearly documents that 72 hours was provided to make representations giving reasons why the complainant should not be served with a fire-break Notice. A fire-break Notice was subsequently posted. Section 59(2) states that a Notice may be given or served by post. I did not agree with the complainant that NRETAS (BFNT) failed to provide the required notification.*

#### **BFNT failed to complete the warning correctly under Section 11(1) of the Bush Fires Regulations.**

*Section 11 of the Regulations relates to Infringement Notices, not warnings. The complainant was not issued an infringement notice pursuant to the Regulations, he was issued a warning pursuant to the Act. I found no maladministration on behalf of the department.*

#### **BFNT have not been able to or are unwilling to provide photographic evidence that the fire break was in breach.**

*The complainant was advised to make application with the Information Commission.*

#### **Five Officers gave misinformation that mail was sent registered post.**

*My enquiry found that misinformation had been provided to the complainant. The Director of BFNT advised that he was embarrassed about this issue and offered 50% off the cost of the land clearing bill. The complainant found this insulting, however the acknowledgement that the complainant was misinformed and an offer to reduce costs was a reasonable outcome and I took this issue no further.*

#### **Enforcement only seems to apply to the complainant and not others in the area.**

*There was nothing found to support the complainant's view. In relation to enforcement action, section 57A of the Bushfires Act appeared to be applicable. This section states: Territory may recover expenses - (1) The Chief Fire Control Officer may, in a court of competent jurisdiction, recover from a person an amount expended by the Territory as a result of the person's contravention of or failure to comply with a provision of this Act or the Regulations. (2) An amount recoverable under this section is a debt due to the Territory.*

**Trespass occurred at the property.**

*I did not agree that a trespass occurred. Section 47 of the Bushfires Act provided NRETAS staff with the power to enter upon the land, with contractors, with or without equipment and this information had been provided to the complainant prior to the entry occurring.*

**BFNT install and maintain fire breaks on (name withheld) Station at taxpayers expense as the owner of (name withheld) is a member of the Pastoral Board.**

*There was no evidence to support this allegation. The complainant was asked to provide further information but failed to do so.*

**Conclusion**

*Extensive enquiries were made and I was not satisfied that maladministration had occurred. The complainant was advised of the outcome.*

# Activity 2

## Improve the Delivery of Services

ACTIVITY 2: IMPROVE THE DELIVERY OF SERVICES.....	88
OUTPUTS.....	88
HIGHLIGHTS .....	88

## ACTIVITY 2: IMPROVE THE DELIVERY OF SERVICES

### OUTPUTS

The below statistics relate to the Office's levels of success in achieving these output targets.

#### OUR OUTPUTS

1. Recommendations made to agencies and other appropriate bodies.
2. Follow-up on implementation of recommendations.

### HIGHLIGHTS

During the year, the Ombudsman made 37 recommendations to government agencies and the NT Police of which 34 were adopted and implemented in some form.

**Table 45: Recommendations**

	2009/10	2010/11
Recommendation made	18	37
Recommendation adopted	18	34

## Activity 3

### Inspection of Police Records

ACTIVITY 3: INSPECTION OF NT POLICE RECORDS .....	90
OUTPUTS .....	90
OVERSIGHT FUNCTION.....	90
Telecommunications (Interception) Northern Territory Act .....	90
Surveillance Devices Act 2007 .....	90

## ACTIVITY 3: INSPECTION OF NT POLICE RECORDS

### OUTPUTS

The below statistics relate to the Office's levels of success in achieving these output targets.

#### OUR OUTPUTS

1. Inspections undertaken pursuant to the *Telecommunications (Interception) Northern Territory Act* and the *Surveillance Devices Act 2007*.
2. Reports to the appropriate Minister.
3. Notification to the Commonwealth Attorney Generals Department

### OVERSIGHT FUNCTION

#### Telecommunications (Interception) Northern Territory Act

Section 10 of the *Telecommunications (Interception) Northern Territory Act*, requires that I report to the Police Minister the results of inspections carried out under Section 9. Since the inception of the Act these inspections are of the records held by the Northern Territory Police Force.

I am required to ascertain and report to the Minister the extent to which the officers of the Northern Territory Police complied with the requirements of Part 2 of the Act. Two inspections 5 July 2010 and 21 April 2011 were undertaken in the financial year.

The Act does not allow the result of these inspections to be made public; as such my inspections have not been released except to the Minister who is then required to report to the Attorney General (Section 17 *Ombudsman Act*).

#### Surveillance Devices ACT 2007

The *Surveillance Devices Act 2007* (the Act) came into operation on 1 January 2008. It provides a legislative basis for the use of surveillance devices by law enforcement agencies (LEA) where such use would ordinarily be prohibited under Northern Territory law.

The Act restricts the use, communication and publication of information obtained through the use of surveillance devices, establishes procedures to obtain permission to use such devices in relation to criminal investigations, prescribes reporting requirements and imposes requirements for the secure storage and destruction of records in connection with surveillance device operations.

Pursuant to Section 63(1) of the Act, the Ombudsman is required to inspect the records of the Northern Territory Police Force, to determine the extent of compliance with the Act by the agency and its law enforcement officers (LEOs). Section 63(2)(a) requires the

Ombudsman to notify the Chief Officer (Commissioner of Police) of the intention to inspect records. Two inspections were carried out 20 October 2010 and 21 April 2011.

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

The results of inspections carried out under Section 63(1) of the Act have been tabled.



# Ombudsman

# Ombudsman

## Activity 4

### Access and Awareness

ACTIVITY 4: ACCESS AND AWARENESS .....	93
OUTPUTS .....	93
HIGHLIGHTS .....	93
Meetings and Conferences .....	93

## ACTIVITY 4: ACCESS AND AWARENESS

### OUTPUTS

The below statistics relate to the Office's levels of success in achieving these output targets.

#### OUR OUTPUTS

1. Distribute Ombudsman brochures.
2. Provide a brochure in 10 different ethnic languages.
3. Give presentations on the Ombudsman's role and functions.
4. Utilise the media (radio, television and newspaper) to educate the public and increase awareness about the Ombudsman.
5. Visit rural and remote communities.

### HIGHLIGHTS

The program has two distinct objectives:

1. raising public awareness about the Ombudsman's role and functions; and
2. facilitating a complainant's access to the Ombudsman's services.

A detailed breakdown of community access and awareness visits is provided at Appendix A.

Access and awareness visits for 2010/11 have decreased when compared to last financial year due to lack of staff availability and financial resources.

**Table 46:** Access and awareness visits/activities – 3 year comparison

	2007/08	2008/09	2009/10	2010/11
3 Year Comparison	19	16	11	2

### Meetings and Conferences

The Office relies heavily on education and training resources that have been developed and created by similar offices across Australia, the Pacific region and the International Ombudsman Institute.

I express my thanks to the Commonwealth Ombudsman, the New South Wales, Queensland, Victorian, Tasmanian, Western Australian and South Australian Ombudsmen, and the members of the Australian New Zealand Ombudsmen Association (ANZOA). The ANZOA comprises the various industry Ombudsmen such as the Banking and Financial Services Ombudsman, Insurance Ombudsman and Electricity and Water Ombudsman.

Opportunities were taken to enhance these invaluable collaborative relationships with officers attending the following conferences and meetings:

## Access and Awareness at a National level

### **Ombudsman**

- Women in the Professions, Refugees and Immigrants (seminar)

### **Deputy Ombudsman**

- Nil

### **Assistant Ombudsman**

- Nil

### **Other Ombudsman Staff**

- Prison Officers Training x 2
- NTPS Machinery of Government x 2
- Police Recruit Training x 3
- NT Law Society, Legal Information Fair
- Barrunga & Beswick Communities

## National and International Collaboration

### **Ombudsman**

- Investigations of Deaths Associated with Police Contact (Melbourne)

### **Deputy Ombudsman**

- Deputy Ombudsman conference (Melbourne)

### **Assistant Ombudsman**

- Nil

### **Other Ombudsman Staff**

- Dealing with Unreasonable Complainants focus group (Sydney)

### **Staff Training**

- Certificate IV in Government Investigations (x2)
- Mediation Skills Training

### **Written Material**

Pamphlets, posters and cards are under review.

## Community Newsletters

Information concerning the Office has appeared in some newsletters produced for and by some community groups. This method reaches the Territory's diverse population at minimum cost.

## Advertising

None (other than employment) conducted this financial year.

## Website

People throughout the Northern Territory, and indeed worldwide, can access the Ombudsman through our website [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au). By logging onto the site people can make a complaint, access information (including the latest Annual Report), review our legislation or ask questions without the need to contact the Office.

# Ombudsman

# Ombudsman

## Activity 5

### Management of the Office of the Ombudsman

ACTIVITY 5: MANAGEMENT OF THE OFFICE OF THE OMBUDSMAN .....	96
OUTPUTS .....	96
STRATEGIC DIRECTION .....	96
HIGHLIGHTS .....	97
Corporate Governance.....	97
Equal Opportunity .....	97
Training and Development .....	97
Occupational Health and Safety.....	98
Annual Insurance reporting requirements .....	98
Information Act Annual Reporting Requirements .....	99
Records Management .....	99

Ombudsman

## ACTIVITY 5: MANAGEMENT OF THE OFFICE OF THE OMBUDSMAN

### OUTPUTS

The below statistics relate to the Office's levels of success in achieving these output targets.

#### OUR OUTPUTS

1. Production of an Annual Report.
2. Compliance with the *Ombudsman Act 2009*.
3. Compliance with the *Financial Management Act* and *Public Sector Employment and Management Act*.
4. Compliance with policies and procedures associated with:
  - Equal Employment; and
  - Occupational Health and Safety.
  - Compliance with the *Information Act*.
  - Management of resources.
  - Continuous review cycle.
  - Strategic Plan.
  - Annual Business Plan.

### STRATEGIC DIRECTION

Our strategic plan's four core objectives are to:

- Promote administrative justice by providing an independent, fair and effective investigative service.
- Contribute to improving the quality of administrative practice in Northern Territory public sector agencies.
- Ensure all sections of the community are aware of and have reasonable access to our services.
- Promote organisational excellence and a skilled, committed workforce.

The current strategic challenges are:

- Devising cost-effective ways of discharging the Ombudsman's role to help public agencies improve administrative practices while continuing to independently investigate complaints about decisions made by those agencies.
- Liaising with other complaint agencies to avoid duplication of investigative resources.
- Servicing the Northern Territories diverse and remote communities.
- Meeting the expectations of the community to deliver services efficiently, effectively and in a timely manner.

## HIGHLIGHTS

---

### Corporate Governance

As the accountable officer for the Office of the Ombudsman, the Ombudsman has the responsibility under the Financial Management Act for the efficient, effective and economic conduct of the Office.

Under the *Ombudsman Act 2009*, the Ombudsman is independent of the Government and is not accountable to a Minister, but rather to the Legislative Assembly as a whole. However, under the Administrative Arrangements Orders, where relevant, the *Ombudsman Act 2009* is the administrative responsibility of the Chief Minister.

### Equal Opportunity

The Ombudsman for the NT has an Equal Opportunity Management Plan with the following objectives:

- Foster an understanding and commitment to equity and diversity principles, activities and outcomes by all employees in the agency.
- Equity and diversity in all Human Resource Management policies and practices.
- Eliminate workplace discrimination and harassment.
- Balancing work, family and cultural responsibilities.
- Through its Equity and Merit Plan the Office of the Ombudsman aims to ensure best and fairest employment practices by:
  - Providing an opportunity for all staff to contribute to and benefit from the achievement of the Agency's objectives.
  - Establishing and maintaining a work environment free from discrimination and harassment in which all individuals are guaranteed equitable access and treatment in all aspects of employment including conditions of service, recruitment, staff development and training.
  - In addition, the Office of the Ombudsman has a Career Development Plan and continues to examine how to best utilise the skills of those it employs to improve the Ombudsman's ability to provide culturally appropriate services to Aboriginal people.

### Training and Development

This financial year we have sought the assistance of a professional human resources expert to assess the staff performance appraisal framework. The major objective was to ensure that staff development continues in the most cost efficient manner.

Expenditure on staff training and development during 2010/11 amounted to \$15,537 (\$15,537 in 2009/10, \$27,186 in 2008/09 and \$32,530 in 2007/08). The reason for the continued downslide in training funds spent is an overall deficiency in agency funding and no other cost that can be reduced.

Delivery of a Certificate IV in Government Investigations course by Ombudsman staff was held 19-30 July 2010. In delivering the training Ombudsman staff may have two (2) employees attend free of charge, a saving of \$3000.00. It is hoped that a course will be run in the 2011/12 period.

The key areas of focus for training activities were: technical skills and professional training such as investigation skills, mediation skills, conflict management and resolution and finance training.

The Ombudsman for the NT is committed to the government's apprentice program. In 2010/11 one apprentice was placed in this office to undertake a Certificate III in Business.

## Occupational Health and Safety

Staff safety and well-being in the Office continued to be promoted and monitored throughout the year in line with the Northern Territory Public Service and Work Health OH&S Policy and legislation. Any potential hazards identified during the year were attended to and resolved. The Occupational Health and Safety Officer conducted regular inspections to identify and address any potential risks and hazards. Monthly reports on any OH&S issues identified during the month are prepared and distributed. OH&S is an agenda item on each monthly staff meeting. During the year there were no reported days lost as a result of reported injuries.

When necessary, the OH&S officer consults with and seeks advice from the OH&S DBE Consultant and NT WorkSafe Officers on any important OH&S issues that may arise. Staff are encouraged and supported to participate in sporting activities to promote team spirit and the well being of staff.

My Office has a contract with the Employee Assistance Service of the Northern Territory (EAS) to provide Employee Assistance Program services including counselling and other advisory and training services to staff on an as needs basis. The availability of this service is actively promoted to all staff.

## Annual Insurance reporting requirements

Under Treasurers Directions (R2.1 – Insurance Arrangements) each agency and Government Business Division is required to report insurance related information in their annual report. Details of the Office's insurance arrangements are discussed below.

During OH&S assessments risks of physical injury of staff within the Office are consistently being assessed as low. This risk is further mitigated through the implementation and adherence to an agency level Security and Risk Management policy. 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 leased motor vehicles.

Risk to motor vehicles is mitigated through commercial vehicle insurance with TIO which costs this office approximately \$2,000 per year and covers both of the agency's leased vehicles.

## Information Act Annual Reporting Requirements

Section 11 of the *Information Act* sets out the information a public sector organisation must publish annually in relation to its process and procedures for accessing information.

A detailed description of the Office's obligations under Section 11 of the Act are provided at Appendix C.

## Records Management

Part 9 of the *Information Act* relates to Records and Archives Management. This section sets out the obligations, standards and management of records and archives to be complied with.

In accordance with Section 134 of the *Information Act*, the Ombudsman for the Northern Territory:

- Keeps full and accurate records of its activities and operations; and
- Implements practices and procedures for managing its records necessary for compliance with the standards applicable to the organisation through the implementation of a Records Management Plan.

The Records Management Plan for the Ombudsman's Office is designed to achieve the following objectives:

- records management staff fully trained;
- adopt new methods and technologies for keeping and managing records; and
- ensure compliance with the Information Act and the NTG Standards for Records Management.

The Ombudsman's Office is fully compliant with the *Information Act* and the NTG Standards for Records Management.



# Ombudsman

# Ombudsman

## Appendices

APPENDIX A – ACCESS AND AWARENESS.....	101
APPENDIX B – FREEDOM OF INFORMATION .....	102
APPENDIX C – SERVICE STANDARDS.....	106
APPENDIX D – AGREEMENTS WITH OTHER JURISDICTIONS .....	109
MOU BETWEEN THE COMMONWEALTH OMBUDSMAN AND OMBUDSMAN FOR THE NORTHERN TERRITORY .....	109
MOU BETWEEN THE OMBUDSMAN NT & COMMISSIONER FOR PUBLIC INTEREST DISCLOSURES .....	114
AGREEMENT BETWEEN COMMISSIONER OF POLICE & OMBUDSMAN... ..	117
APPENDIX E – FINANCIAL STATEMENTS.....	141
CERTIFICATION OF THE FINANCIAL STATEMENTS .....	142

# Ombudsman

## 4. APPENDICIES

### APPENDIX A – ACCESS AND AWARENESS

As part of the Office's public awareness program the following community visits occurred:

Regional Centre Visited	Details
Barrunga	Remote outreach
Beswick	Remote outreach

## APPENDIX B – FREEDOM OF INFORMATION

---

### INTRODUCTION

The object of the *Information Act* (the Act) is to extend, as far as possible, the right of a person to access government and personal information held by government, and to have personal information corrected if inaccurate. Some information is exempt from this process.

Section 49A-49C of the Act states that information is exempt under section 44 if:

- it is obtained or created in the course of an action that is in the nature of an investigation, audit or inquiry;
- taken by the Health and Community Services Complaints Commissioner
- contained in a complaint under the *Ombudsman Act*

Under Section 11 of the Act, a public sector organisation must publish a statement about its structure and functions, kinds of government information usually held, a description of the organisation's procedures for providing access and a description of the organisation's procedures for correcting information.

Information concerning the organisation and functions of the Ombudsman can be found as follows:

- functions (refer page 19 of this Annual Report)
- organisation (refer page 19 of this Annual Report)

### INFORMATION HELD BY THE OFFICE OF THE OMBUDSMAN

The Ombudsman holds information in the following categories:

- information relating to inquiries and investigations into complaints against any Northern Territory Government Agency, Local Government Council or the actions of a member of the NT Police Force. This information includes: complaints; correspondence and consultations with complainants and agencies; and 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 actions, 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 'Procedures for Providing Access to Information' below).

### Complaint files

The Ombudsman keeps files of documents relating to each written complaint made under the *Ombudsman Act 2009*. The files are indexed in several ways, including the complainant's name, the agency complained about and the subject of the complaint.

The Ombudsman maintains a computer-based register of all complaints. The Office also keeps records on special forms for some oral complaints received. A paper based file is also maintained.

On completion of inquiries, complaint files or documents are stored in the Darwin office.

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 it has been provided with. These opinions cover issues arising during the investigation of complaints and issues involving the Ombudsman's functions and powers.

### 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). Some printed copies of the current Annual Report are available free of charge soon after publication (subject to availability).

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

### Manuals and guidelines

The Ombudsman has the following manuals:

- **Procedures Manual:** This sets out general information about the role and functions of the Ombudsman and the policies and procedures applicable to officers dealing with complaints.

- **Accounting and Property Manual:** provides relevant, current and accurate information on the accounting systems, practices and procedures to be used by employees.
- **Employment and Training Policy and Procedures Manual:** provides a consolidated statement of policies, standards, procedures relating to employment and training.

Access to information contained in these manuals may be provided depending on the content of the relevant documents. Charges may also apply (see 'Procedures for Providing Access to Information' below).

### 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 at [www.ombudsman.nt.gov.au](http://www.ombudsman.nt.gov.au). Charges may apply where a hard copy is requested (see access arrangements below).

### **DISCLOSURE OF INFORMATION**

The information the Ombudsman holds may be disclosed:

- As required by law (although the relevant legislation prevents disclosure of information obtained for the purpose of an investigation); or
- On request, for example, in relation to information sought by a complainant about the investigation of his or her own complaint, where the documents are routine, an ongoing investigation will not be prejudiced and there is no other interest likely to be adversely affected by disclosure, and the information is not personal information as defined in the *Information Act*.

### **PROCEDURES FOR PROVIDING ACCESS TO INFORMATION**

#### Documents available

The following documents are available for inspection or purchase on request:

**Brochures:** No charge

**Annual Report:** \$20.00 for the purchase of a hard copy of the report

**Service Standards:** No charge

**Procedures Manual:** \$75.00 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 is free for a complainants' or respondents' own complaint generated information.

#### Access under the Information Act

Commencing 1 July 2006 by amendment to the *Information Act* documents and information held by the Ombudsman in connection with an investigation are exempt from release.

Applications will be transferred to the appropriate organisation from whom information in the control or custody of the Ombudsman was sourced.

### **Procedures for Correcting Information**

Inquiries about correcting personal information should be directed to the relevant case officer, or to the Business Manager.

## APPENDIX C – SERVICE STANDARDS



### SERVICE STANDARDS FOR THE OFFICE OF THE OMBUDSMAN

#### Those We Serve:

##### The Ombudsman's clients are:

Community members of the Northern Territory  
Government Agencies and Statutory Authorities  
Local Government and Shire Councils  
The Northern Territory Police Fire & Emergency Services  
The Legislative Assembly of the Northern Territory

#### Our Commitment:

##### The Ombudsman and staff are committed to the following core values:

- Fairness
- Independence
- Professionalism
- Accountability
- Accessibility
- Timeliness
- Courtesy and Sensitivity

#### Fairness

##### We promise that:

- You will be treated fairly and with respect.
- You will be given the right to be heard during the complaint process.
- Our decisions will be balanced, taking into account all available evidence and points of view.
- We will explain our decision and reasons to you.
- You can request a review of any decision or conclusion we have reached about your complaint.

#### Independence

- We promise to be independent, objective and impartial.

#### Professionalism

##### We will:

- Be ethical, honest and will respect your confidentiality.
- Act with integrity and consistency.
- Be courteous, helpful and approachable.
- Be trained and competent and will provide information about our role and processes.
- Declare any interest which conflicts with our duty to properly determine complaints.

- Assist you by providing appropriate referrals to another organisation if your complaint is beyond our jurisdiction.
- Work together as a team to provide you with the highest standard of service possible.

#### Accountability

##### We will strive to:

- Act lawfully and in accordance with the *Ombudsman Act 2009*.
- Treat complaints against this Office seriously and with integrity.
- Be open and transparent in all our dealings.
- Be responsible for the appropriate use of our resources and will act on a complaint according to the nature and seriousness of the grievance and the reasonable needs of other complainants.
- Give you the opportunity to comment and provide feedback on our services by completing and returning anonymous survey forms.

#### Accessibility

- Our Office hours are 8.00 am to 4.30 pm Monday to Friday (except public holidays).
- We will visit regional centres on a regular basis.

- Toll free telephone access within the Northern Territory will be maintained.
- Information material about our work will be freely available.
- We are trained in the use of translation and interpreter services and can arrange these services if required.
- We will use plain language in communicating with you in our letters and during interviews.
- You are welcome to bring a friend or mentor with you to talk with us, or to assist you in lodging your complaint.
- You can have someone else lodge a complaint on your behalf. However, you will need to authorise that person to act for you.
- Wheelchair access is provided.
- We will give you the name of a contact officer from our Office whom you can contact to check on progress of your complaint at any time.
- You can lodge a complaint in person, in writing, by telephone or fax, or via the Internet. However, you will need to consider the risks of disclosing personal or confidential information on the Internet.

### **Timeliness**

#### **Where possible:**

- Your complaint will be acknowledged within 7 days and you will be promptly informed of the action to be taken.

- Telephone, facsimile and email messages will be answered promptly, usually within 24 hours.
- Letters will be acknowledged within 7 days of receipt.
- You will be informed of the progress of the complaint regularly and usually every 6-8 weeks.
- We will be flexible in our approach and try to achieve a conciliated resolution of the complaint when appropriate.
- We will respond promptly to requests for information.
- If we cannot meet these benchmarks in your case you will be informed.

### **Courtesy and Sensitivity**

#### **We will always strive to:**

- Identify ourselves to all people who contact us.
- Include in our correspondence your correct name, contact details and a file reference number.
- Respect your privacy.
- Seek your permission before obtaining any necessary information.
- Provide you with high quality information and advice.
- Explain complex information to you in clear and simple language.
- Give you reasons for our decisions and recommendations.

### **Our Expectations of You**

#### **We ask that you:**

- Treat us with respect and courtesy.
- Be clear and frank in your dealings with us.
- Provide us with as much relevant information when requested so that we can serve you better.
- Keep us informed of any new developments that have a bearing on your complaint.

### **Our Commitment to Continuous Improvement**

We are fully committed to providing the best service we possibly can and are always looking for opportunities to improve our services to the highest standard. We will monitor and review our services periodically in order to provide the optimum service to you. As your views and opinions are important to us, we are open to comments or suggestions for improving our services and will try and resolve any grievance you may have about the quality of our services. You can telephone, write or make an appointment to see us to discuss your concerns. We will also conduct client feedback and satisfaction surveys and report our activities in our annual report.

### **How We Will Respond to Your Complaint**

The Ombudsman's Office is an office of last resort. Our legislation requires a person to, wherever possible, refer their complaint back to the agency complained about, to try and resolve the matter quickly. However, if you still remain dissatisfied with that approach, you can contact us with your complaint for further assistance. We will first assess your complaint to decide whether or not it is within the Ombudsman's power to investigate. If it is not, we will assist you in referring your complaint to the appropriate agency or other organisation.



When considering whether to investigate a matter ourselves or refer it to another agency, we are obliged to consider the public interest and the capacity of the agency to deal with the matter. We also do not determine guilt. Only a court or tribunal can decide if someone is guilty or not guilty.

If we accept your complaint, it will be assigned to a case officer who, depending on the complexity or seriousness of the complaint, will make informal inquiries with the agency to try and resolve it expeditiously. In certain cases, a formal investigation may be necessary. We will keep you regularly informed of the progress of your inquiry or investigation. At the end of our investigation, we will report our findings to you and the agency. Where appropriate, we may make recommendations to improve the agency's administrative practices and/or policies or even seek an apology from the agency if appropriate.

### What the Ombudsman Cannot Do

The Ombudsman must comply with the terms of the *Ombudsman Act*.

The Act states that the Ombudsman cannot:

- Provide legal advice or representation;
- Act as an advocate; or
- Look into complaints about politicians, most employment disputes, racial vilification, decisions of the Courts, the Coroner, the Director of Public Prosecutions, the Territory Insurance Office or actions of private individuals or businesses.

## APPENDIX D – AGREEMENTS WITH OTHER JURISDICTIONS

---

### MEMORANDUM OF UNDERSTANDING between THE COMMONWEALTH OMBUDSMAN and OMBUDSMAN FOR THE NORTHERN TERRITORY November 2009

#### PARTIES

1. The Parties to this Memorandum of Understanding (MOU) are the Commonwealth Ombudsman and the Ombudsman for the Northern Territory (NT Ombudsman).
2. To the extent possible and relevant, this MOU is an arrangement for the purposes of s 8A of the *Ombudsman Act 1976* (Com) and ss 19 and 148(1)(b) of the *Ombudsman Act 2009* (NT).
3. The Commonwealth Ombudsman is an independent statutory office holder established pursuant to the *Ombudsman Act 1976* (Com). The Commonwealth Ombudsman's mission includes fostering good public administration that is accountable, lawful, fair, transparent and responsive. The Commonwealth Ombudsman is charged with a range of functions including investigating the administrative actions of Australian Government officials and agencies either on receipt of a complaint or on the Ombudsman's own motion.
4. The Commonwealth Ombudsman is a complaint entity as defined in s 34 of the *Ombudsman Act 2009* (NT).
5. The NT Ombudsman is an independent statutory office holder established pursuant to the *Ombudsman Act 2009* (NT) charged with a range of functions, including:
  - i. investigating and dealing with complaints about administrative actions of public authorities effectively, efficiently, independently, impartially, fairly and in a timely way
  - ii. improving the quality of decision-making and administrative practices of public authorities.

#### DEFINITION

6. In this Memorandum of Understanding

"**administrative action**" for the purposes of the NT Ombudsman, has the meaning provided for in s 6 of the *Ombudsman Act 2009* (NT). For the purposes of the Commonwealth Ombudsman, it has a similar meaning to that of "action related to a matter of administration" in s 5(1) of the *Ombudsman Act 1976* (Com), as expanded by s 3(7) of that Act and qualified by s 5(2).

"**agency**" includes public authority as defined in the *Ombudsman Act 2009* (NT) as well as department and prescribed authority as defined in the *Ombudsman Act 1976* (Com).

"**delegation**" means the delegation of the powers and functions of the NT Ombudsman under ss 147 and 148 of the *Ombudsman Act 2009* (NT) and the delegation of the powers of the Commonwealth Ombudsman under s 34 of the *Ombudsman Act 1976* (Com).

**"investigation"** includes an investigation commenced on the basis of a complaint, the referral of a complaint or on the own motion of the Parties, within the meaning of the *Ombudsman Act 1976 (Com)* and the *Ombudsman Act 2009 (NT)*, and includes preliminary enquiries under s 7A of the *Ombudsman Act 1976 (Com)* and under Part 6, division 1 of the *Ombudsman Act 2009 (NT)*.

**"systemic issue"** means a recurring or persistent issue, policy or practice that may affect more than one individual.

## PURPOSES

7. This MOU sets out the framework for cooperation between the Parties in areas of common interest where cooperation is required for the effective performance of their statutory roles in relation to the administrative actions of agencies that deliver programs in the Northern Territory. This MOU is not intended to be overly prescriptive, to legally bind or to override the Parties' existing statutory rights, duties or responsibilities.
8. The Parties are jointly committed to the effective investigation and review of the administrative actions of agencies that deliver programs in the Northern Territory. The Parties share the objectives of ensuring that agencies are accountable for their decisions and actions, administration is enhanced and public confidence in agencies is maintained.
9. The Parties will work together to:
  - i. communicate the role of each Party to agencies and the public, including joint outreach and promotion
  - ii. refer complaints to one another
  - iii. resolve complaints expeditiously, effectively and in good faith
  - iv. investigate and resolve systemic issues affecting the administrative actions of agencies that deliver programs in the Northern Territory
  - v. liaise with each other to avoid duplication of investigative or review activity.

## STATEMENT OF COOPERATION BETWEEN THE PARTIES

10. Recognising the complex framework within which government programs are delivered in the Northern Territory, which often involves all three tiers of government, the Parties acknowledge the importance of cooperation and, where appropriate, collaboration, in order to ensure effective investigation and avoid unnecessary duplication.

## Sharing information

11. To the extent that privacy, confidentiality and legislative requirements allow, the Parties agree that their officers will work together to share information and knowledge gained in the performance of their respective roles. Where appropriate, the Parties will invite each other to attend briefings.
12. To the extent relevant and necessary, the Parties will obtain authorisations from complainants to discuss matters of mutual interest.

13. The Parties agree to consult with each other as soon as an investigation reveals information that may lead to the criticism of an agency that is within the sole jurisdiction of the other Party.
14. As appropriate, the Parties may consult each other in relation to matters on which the other Party has specific expertise or qualifications that are likely to be relevant to an investigation.
15. The Parties agree to discuss relevant issues, including working arrangements, and to meet at least once each quarter.

#### Outreach

16. The Parties may undertake joint outreach activities to communities affected by the administrative actions of agencies that deliver programs in the Northern Territory. To that end, the Parties will regularly discuss opportunities for joint outreach activities.
17. The Parties will assist each other, wherever feasible, in the distribution of general material to target audiences and the community generally about how to make complaints and raise issues. They will, for example, include prominent links between their websites.

#### Referral of complaints

18. Where one of the Parties (the receiving Party) receives a complaint about an agency that is solely within the jurisdiction of the other Party, the receiving Party will liaise with the other Party and the complainant to determine the most appropriate way to manage the complaint, consistent with the legislative requirements applying to each Party, including, but not limited to:
  - i. providing the details of the complaint to the other Party
  - ii. referring the complaint
  - iii. directing the complaint to the other party and facilitating that process for the complainant. For example, where appropriate, the receiving Party will provide a copy of the complaint to the other Party.
19. When a Party accepts a referred complaint it will manage the complaint independently and shall notify the complainant accordingly. In those circumstances, regard shall be had to ss 18 and 19 of the *Ombudsman Act 2009* (NT).
20. As appropriate, where a matter of administration comes within the jurisdiction of both Parties, the Parties will liaise to determine whether the issue requires:
  - i. joint investigation with or without delegation
  - ii. management by the Commonwealth Ombudsman (requiring delegation from the NT Ombudsman)
  - iii. management by the NT Ombudsman (requiring delegation from the Commonwealth Ombudsman)
  - iv. separation of the complaint so that the Commonwealth Ombudsman and the NT Ombudsman manage those parts within their own jurisdiction.
  - v. management using any, some or all of the above options.

## Joint Investigation

21. Subject to s 8A of the *Ombudsman Act 1976* (Com) and s 19 and 148(1)(b) of the *Ombudsman Act 2009* (NT) and to the extent possible, where a joint investigation by both the Commonwealth Ombudsman and the NT Ombudsman is determined to be appropriate, the Parties shall cooperate as required to effectively and efficiently resolve or investigate the matter.
22. When a complaint is investigated jointly the Party which accepted the complaint initially will acknowledge the complaint and notify the complainant of the joint investigation.
23. In order to effectively conduct a joint investigation, a copy of the complaint or a summary of the systemic issue, as the case may be, will be provided to each Party. The Parties may make arrangements to brief each other and to attend joint briefings from third parties.
24. A joint investigation may either be conducted by:
  - i. each Party investigating matters within its jurisdiction and sharing the results of the investigation with the other party, or
  - ii. delegations from the NT Ombudsman to nominated officers of the Commonwealth Ombudsman and delegations from the Commonwealth Ombudsman to nominated officers of the NT Ombudsman.
25. A joint investigation may culminate in a joint report.

## Delegation

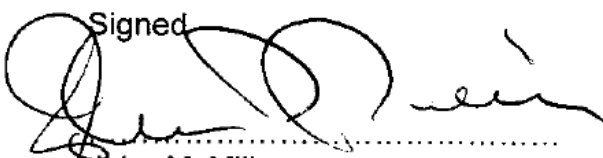
26. Where the Parties agree, the NT Ombudsman may make the required delegations to officers of the Commonwealth Ombudsman by an instrument of delegation. The delegated officers of the Commonwealth Ombudsman are required to sign Attachment A to this MOU.
27. Where the Parties agree, the Commonwealth Ombudsman may make the required delegations to officers of the NT Ombudsman by an instrument of delegation. The delegated officers of the NT Ombudsman are required to sign the Attachment B to this MOU.
28. The Parties will liaise in relation to any training, briefings or management issues that arise concerning delegates.
29. Where an investigation has been conducted by staff of one Party, but under or partly under, delegation issued by the other Party, the matter should not be finalised until:
  - i. The delegator has agreed to the final report and/or action
  - ii. The delegator has signed the final documentation/correspondence
  - iii. The Commonwealth Ombudsman and the NT Ombudsman have agreed to the final report and/or action and signed the final documentation/correspondence in those instances where delegations have been made by both Parties in order to conduct a joint investigation.

### Joint funding

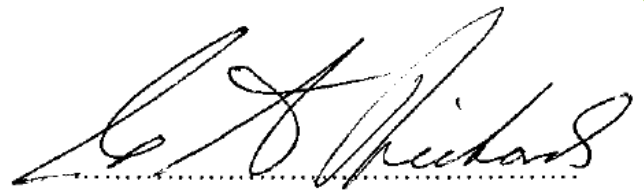
30. Where it is in the interests of both Parties, joint applications may be made for funding concerning the investigation and oversight of agencies that deliver programs relating to the Northern Territory.
31. The Parties will cooperate in order to meet any applicable financial accounting and reporting requirements.

### DURATION

32. This MOU operates until the Parties agree otherwise, or either Party informs the other that it wishes to replace, vary or terminate it.
33. The Parties shall meet annually to discuss the effectiveness of the MOU.

Signed   
John McMillan  
Commonwealth Ombudsman

dated  
3/12/09.

  
Carolyn Richards  
Ombudsman for the Northern Territory

dated  
3/12/09.

## PUBLIC INTEREST DISCLOSURES & OMBUDSMAN MOU

### Memorandum of Understanding

#### Between:

**The Ombudsman for the Northern Territory**  
(the Ombudsman)

#### And

**The Commissioner for Public Interest Disclosures**  
(the Commissioner)

The Ombudsman and the Commissioner (the parties) record their mutual understanding of their roles and duties under the *Public Interest Disclosure Act* in relation to public interest disclosures and their agreement regarding information sharing as follows:

### JURISDICTION

The parties recognise and acknowledge that:

- 1) The Ombudsman is an independent statutory office holder established pursuant to the *Ombudsman Act* charged with a range of functions including:
  - a) investigating and dealing with complaints about administrative actions of public authorities effectively, efficiently, independently, impartially, fairly and in a timely way; and
  - b) improving the quality of decision-making and administrative practices of public authorities.
- 2) The Commissioner is an independent statutory office holder established pursuant to the *Public Interest Disclosures Act* charged with a range of functions including:
  - a) providing for the disclosure and investigation of improper conduct of public officers and public bodies;
  - b) protecting persons making public interest disclosures and others from reprisal; and
  - c) ensuring that public interest information is properly investigated and any impropriety revealed by the investigation is properly dealt with.
- 3) To the extent possible and relevant, this MOU is an arrangement for the purposes of s19(1)(b) of the *Ombudsman Act* and is entered into to ensure that where there is a joint interest, matters are dealt with appropriately and expeditiously and that information is shared within the limits of the relevant legislation.

## DEFINITION

### 4) In this document:

- a) For the purposes of complaints to the Ombudsman, the terms 'complaints entity', 'administrative action', 'agency' and 'delegation' have the same meaning as in the *Ombudsman Act*.
- b) For the purposes of public interest disclosures, the terms 'public body,' 'public officers', 'acting in an official capacity', 'improper conduct', 'public interest disclosure', 'referral body', 'referred MLA disclosure' and 'reprisal' have the same meaning as in the *Public Interest Disclosure Act*.

## REFERRAL

- 5) Pursuant to s22 (1) (a) of the *Public Interest Disclosure Act* (and following consideration of any objection under s23 of the Act), the Commissioner may formally refer a public interest disclosure, other than a referred MLA disclosure, to the Ombudsman. Upon referral, the Ombudsman exercises his or her own powers of investigation and the *Public Interest Disclosure Act* does not apply to the investigation. The public interest disclosure does however retain its protection under the *Public Interest Disclosure Act*
- 6) An appropriate matter for formal referral to the Ombudsman might include:
  - a) a referral of a disclosure of 'improper conduct' where the identity of the discloser is generally known and a mediated settlement is preferred; or
  - b) a referral of a disclosure of 'improper conduct' where the Ombudsman is already conducting an investigation into the matter.
- 7) The Commissioner may also informally refer to the Ombudsman any complaint about a public body which is not 'improper conduct' under the *Public Interest Disclosure Act* but which deserves investigation.
- 8) The Ombudsman may informally refer a complainant to the Commissioner when the complaint relates to improper conduct by a public body or public officer and in particular when the complainant's continued anonymity or protection from reprisal is necessary.

## INFORMATION AND DOCUMENTS

- 9) To assist with investigations and to prevent avoid inappropriate duplication of investigative or review activity, the parties agree as follows:
  - a) The parties may from time to time seek from each other access to relevant documents and reports with respect to a current or past complaint or disclosure with one proviso. Where the Ombudsman is completing an inquiry or investigation under the repealed *Ombudsman Act*, the parties will not seek to access the relevant documents or reports of the other party.



- b) Requests for access will be in writing and accompanied by sufficient information (including the manner in which the documents will be used) to enable the other party to identify the relevant documents and reports and to consider whether there is good reason why access should not be granted or should be limited.
- c) In circumstances where the anonymity of the discloser is important, a request made by the Ombudsman for access to documents held by the Commissioner may be denied or limited. In all circumstances however, the parties will act reasonably to facilitate access to documents and reports where appropriate within the limits of the legislation.

## INFORMATION SECURITY

- 10) Prior to handling or accessing each other's information, staff of the parties will undergo full criminal history checks. Persons who have not passed the requisite security check should not be permitted to access this information.
- 11) Documents and reports provided by one party to the other party shall only be used for the purposes agreed between the parties and with due regard to the confidentiality provisions contained in the *Ombudsman Act* and the *Public Interest Disclosure Act*
- 12) Documents and reports provided by one party to the other party will be returned when they are no longer needed.

SIGNED IN RECOGNITION OF THE MUTUAL UNDERSTANDING BY:



**CAROLYN RICHARDS**  
Ombudsman for the Northern Territory  
10 August 2010



**BRENDA MONAGHAN**  
Commissioner for Public Interest Disclosures  
9 August 2010

THIS IS A DRAFT AGREEMENT AWAITING ENDORSEMENT BY THE OMBUDSMAN  
AND COMMISSIONER OF NT POLICE:



NORTHERN TERRITORY POLICE

**DRAFT**

## **POLICE COMPLAINTS AGREEMENT**

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

**2011**

This agreement is made pursuant to Section 150 of the *Ombudsman Act 2009*. It records the joint commitment of the Commissioner of Police NT and the Ombudsman for the NT to the open, accountable and fair resolution of complaints against Police and describes agreed administrative procedures to achieve that outcome.

## TABLE OF CONTENTS

<b>1.</b>	<b>SCOPE OF TERMS</b>	<b>4</b>
<b>2.</b>	<b>INTRODUCTION</b>	<b>5</b>
<b>3.</b>	<b>PURPOSE AND INTENT OF THE AGREEMENT</b>	<b>5</b>
<b>4.</b>	<b>OBLIGATIONS OF EPSC</b>	<b>5</b>
<b>5.</b>	<b>OBLIGATIONS OF POLICE OFFICER</b>	<b>6</b>
5.1	Receipt of a Complaint Against Police	6
5.2	Member complained about/witness	6
<b>6.</b>	<b>NOTIFICATION, REPORTING AND PROCESSING COMPLAINTS</b>	<b>6</b>
<b>7.</b>	<b>CLASSIFICATION OF COMPLAINTS</b>	<b>7</b>
7.1	Preliminary Enquiries	7
7.2	Declining a Complaint	8
7.3	Complaint Resolution Process (CRP)	9
7.3.1	<i>Criteria for CRP Complaint</i>	9
7.3.2	<i>CRP Process</i>	10
7.3.3	<i>CRP Reporting Requirements</i>	10
7.3.4	<i>Unsuccessful CRP</i>	11
7.4	Police Standards Command Investigations	12
7.4.1	<i>Category 2 Complaint - EPSC Investigate &amp; Report to Complainant</i>	12
7.4.2	<i>Category 1 Complaint - EPSC Investigate &amp; Report to Ombudsman</i>	14
7.5	Ombudsman Investigation	16
7.6	Conciliation	18
7.7	Ombudsman Review	20
<b>8.</b>	<b>COMPLAINT FINDINGS</b>	<b>21</b>
8.1	Unresolved	21
8.2	No evidence to support the Allegation	21
8.3	Insufficient Evidence to Sustain the Allegation	21
8.4	Action/conduct not unreasonable given circumstances	21
8.5	The police action/decision was reasonable	21
8.6	The allegation is sustained	21
8.7	Wilfully False Allegations	21
<b>9.</b>	<b>CONFIDENTIALITY AND IMMUNITY</b>	<b>22</b>
<b>10.</b>	<b>SUSPECTED CRIMINAL CONDUCT</b>	<b>22</b>
<b>11.</b>	<b>PROCEDURAL FAIRNESS</b>	<b>22</b>

<b>12.</b>	<b>OTHER</b>	<b>23</b>
	12.1. Non-Disclosure of Information	23
	12.2. Restricted Use of Information	23
	12.3. Register of Police Complaints	23
<b>13.</b>	<b>SCOPE OF THIS AGREEMENT</b>	<b>24</b>
<b>14.</b>	<b>REVIEW OF THIS AGREEMENT</b>	<b>24</b>

## 1. SCOPE OF TERMS

PSC	Police Standards Command as referred to in the <i>Ombudsman Act 2009</i> , is known as the EPSC within this Agreement.
EPSC	Ethical & Professional Standards Command of the Northern Territory Police. 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 all liaison with the staff of the Ombudsman on all complaints and investigations.
The Act	<i>Ombudsman Act 2009</i>
Ombudsman	Ombudsman or their delegate. 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.
Commissioner	Commissioner of Police (NT) or their delegate. Is charged with the general control and management of the Police Force. As such is responsible for taking appropriate action on complaints including the institution of both formal and informal disciplinary and criminal actions against Police members where necessary, having taken into account the views and recommendations of the Ombudsman. In this regard, the Commissioner has issued a General Order to members to clarify their obligations in this regard.
EPSC Commander	EPSC Commander or their delegate.

## **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 *Ombudsman Act 2009*.

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 a Police Standards Command report under Part 7, Division 6, Subdivision 1 is required.
- e. Other matters the Ombudsman and Commissioner consider appropriate for dealing with the complaints mentioned in paragraphs *a.* and *d.*

## **3. PURPOSE AND INTENT OF THE AGREEMENT**

The purpose of this Agreement is to facilitate the sound investigation and appropriate determination of complaints against Police 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 *Ombudsman Act 2009* and the *Police Administration Act*.

Bearing in mind the differing roles of the Ombudsman and Commissioner, this Agreement outlines how Police complaints will be actioned.

As a general rule the complaint, whether received by NT Police or the Ombudsman, will be assessed and classified by the Ombudsman (following liaison with EPSC). Once the complaint has been assessed, if the Ombudsman has not declined the complaint or decided to conduct an investigation under Division 5, it will be referred to EPSC for the required action. The results of that action and any proposed remedy will then be reported to the Ombudsman. If the complaint is a CRP the EPSC will report to the Ombudsman, however if the complaint is an investigation the report will be provided to the Ombudsman by the Commissioner. The Ombudsman will then review the process or investigation taken and recommendations to determine whether they agree or consider further action is necessary.

## **4. OBLIGATIONS OF ETHICAL & PROFESSIONAL STANDARDS COMMAND (EPSC)**

Section 34H(b) of the *Police Administration Act* authorises EPSC to deal with complaints against Police under Part 7 of the *Ombudsman Act 2009*. In so doing the EPSC will ensure that the Ombudsman's obligations in respect of complaints are met by the provision of timely and complete information in respect of each complaint.

The EPSC also has responsibility for investigations of breaches of discipline where the conduct does not constitute a complaint against Police. In addition, EPSC acts on behalf of the Commissioner in prosecuting disciplinary charges against members, arising from complaints against Police and discipline investigations.

## **5. OBLIGATIONS OF POLICE OFFICER**

### **5.1. RECEIPT OF A COMPLAINT AGAINST POLICE**

Police Officers who receive a complaint against Police report are required to record and immediately report that complaint to the Officer in Charge (OIC) of the EPSC (section 65(1)(a) of the Act) and comply with the General Order relevant to complaints against Police issued by the Commissioner.

### **5.2. MEMBER COMPLAINED ABOUT/WITNESS**

Members who are the subject of a complaint or who are witnesses to a complaint are to be directed to provide all assistance requested of them in the investigation and resolution of that complaint.

## **6. NOTIFICATION, REPORTING AND PROCESSING COMPLAINTS**

The Act requires the Ombudsman and the Commissioner to advise each other as soon as practicable of a complaint, but no later than 10 working days of receipt of the complaint. This mutual obligation on each party is intended to ensure that all complaints are efficiently recorded and resolved. The notice provided to the Ombudsman will, in accordance with section 65(2) be submitted in writing by EPSC and include:

- A copy of the complaint, if the complaint was made in writing; or
- A copy of the statement of particulars of the complaint prepared by the Police Officer to whom the complaint was made, if made orally.

In the written notice provided to the Ombudsman by EPSC a recommendation about the decision the Ombudsman should make under section 66 of the Act may be included for consideration.

There is an obligation on the EPSC and the Ombudsman's office to:

- consult and jointly consider complaints to ensure they are resolved thoroughly, impartially and according to law;

- facilitate the open exchange of information, materials and cooperation between the Northern Territory Police and the Ombudsman;
- monitor and review the operation of the Police complaints process; and
- provide accurate, thorough and timely reports on the outcome of complaints.
- comply with the rules of natural justice and fairness to both complainants and Police Officers.

Except where the Ombudsman states otherwise, the notification of a complaint by the Ombudsman to EPSC allows for preliminary inquiries by the Commissioner. The results of these inquiries and any proposed remedial action shall be reported to the Ombudsman.

The Ombudsman, following consultation and input from the Commander EPSC, will determine how the complaint against Police will be resolved.

It is recognised that there may be exceptional circumstances, on receipt of a complaint against Police, when the Commissioner is obliged to take immediate criminal, disciplinary or administrative action without the benefit of the Ombudsman's final report on the issue. In that event, the Commissioner will advise the Ombudsman of his intended action at the earliest possible time.

## **7. CLASSIFICATION OF COMPLAINTS**

Complaints shall be classified by the Ombudsman in consultation with the Commander EPSC, according to the level of response considered necessary to appropriately resolve the complaint. Careful consideration shall be 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, the classification may be changed according to the results of inquiries/investigations to hand. If a complaint is deemed by the Ombudsman to be declined under section 67 it will not progress to classification.

Complaints will be classified as follows:

- Preliminary Enquiries
- Complaints Resolution Process (CRP)
- Investigation or Category 2 Complaint (section 66(2)(d)(i)) - EPSC investigate and report to complainant
- Investigation or Category 1 Complaint (section 66(2)(d)(ii)) – EPSC investigate and report to Ombudsman
- Conciliation under Part 7 Division 3
- Section 86 Investigation – Ombudsman investigates (Part 7 Division 5)

### **7.1. PRELIMINARY ENQUIRIES**

On receipt of a complaint the Ombudsman has discretion to make informal/preliminary inquiries to determine whether to exercise jurisdiction or decline a complaint. The enquiries may extend to EPSC who will assist in providing any requested information or



material relevant to the complaint under consideration. These enquiries will be informal and are intended to assist in determining whether a matter will be declined or classified.

The EPSC Commander, on receipt of a complaint, may make informal inquiries and submissions to the Ombudsman if they believe there are grounds for the exercise of discretion for:

- a particular classification under section 66 of the Act or
- to decline a complaint or
- to decline further investigation.

The Ombudsman will consider each such submission.

## **7.2. DECLINING A COMPLAINT**

The grounds on which the Ombudsman may decline to investigate a complaint are:

- If the matter of complaint was known by the complainant for over 12 months and no reasonable explanation can be provided for the delay (Section 25).

Under section 67 the Ombudsman may decline a complaint, or decline to continue the investigation of a complaint if he/she is of the opinion that the matter is:

- trivial, frivolous, vexatious or not made in good faith;
- the complainant does not have sufficient interest in the conduct that is the subject of the complaint;
- disciplinary procedures have been started against the police officer whose conduct is the subject of the complaint;
- the Police Officer whose conduct is the subject of the complaint has been charged with an offence in relation to the conduct; or
- dealing with the complaint is not within the public interest.

In addition, the Ombudsman may decline to deal with a Police complaint if satisfied that:

- another complaints entity has, or will, investigate the conduct at substantially the level the Ombudsman would otherwise have investigated the complaint.
- if a proceeding before a court or tribunal has been or is to be started in relation to the conduct the subject of the Police complaint OR disciplinary procedures against a Police Officer whose conduct is the subject of a Police complaint have been or are to be started in relation to the conduct (section 107(1)). *However there is no presumption or rule that the complaint should be delayed if there are proceedings. Each case will be assessed on its facts and what is 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.

- **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 matter is declined by the Ombudsman it will be processed in the following manner:

1. If the complaint is submitted directly to the Ombudsman by the complainant or their representative:
  - the complainant or their representative will be notified by the Ombudsman that no further action will be taken on the matter; and
  - the file will be closed; and
  - the complaint will not be forwarded to EPSC.
2. If the complaint is submitted by EPSC to the Ombudsman:
  - the complainant or their representative will be notified by the Ombudsman that no further action will be taken on the matter; and
  - the file will be closed; and
  - EPSC will be notified that the Ombudsman will be taking no further action on the matter.

Where the Ombudsman determines not to take any further action and decline or discontinue a complaint reasons will be provided to the parties notified.

Following preliminary enquiries if the Ombudsman determines the complaint will not be declined then the Ombudsman will proceed to undertake an assessment for the classification of the complaint in accordance with section 66 of the Act and paragraph 6 of this Agreement.

### **7.3. COMPLAINTS RESOLUTION PROCESS (CRP) [PART 7, DIV 4, SUB DIV 1]**

This is an informal process undertaken by the Police where early personal contact between police members and complainants may lead to a quick and effective resolution. CRP may involve explaining to a person why a particular course of action was taken by Police, the legal and practical considerations surrounding the incident or a simple apology. Ideally the Police member and the complainant should be satisfied with the outcome but it is appreciated that this may not always be achievable. CRP is a means of dealing with common complaints about practice, procedures, attitudes and behaviours and is not intended to be an approach focused on fault-finding or punishment.

#### **7.3.1. Criteria for CRP Complaints**

The Complaints Resolution Process (CRP) is to be used wherever possible, subject to the complaint meeting the criteria set out below and in accordance with the General Order relevant to complaints against Police issued by the Commissioner. The following categories of complaints can usually be informally resolved:

- (a) Failure to act, but not limited to failing to:
  - take a complaint seriously,

- respond promptly during inquiries,
- promptly attend the scene of a minor complaint,
- return telephone calls,
- keep people informed of the progress of inquiries,
- charge (in minor cases only, eg motor vehicle disputes), and/or
- 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 nature, eg 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) Partiality, eg 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 mere 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.

(i) Such matters as the Ombudsman and the EPSC Commander determine should be subject to CRP.

### **7.3.2. CRP Process**

Once the Ombudsman determines that a complaint will be classified as a CRP, the EPSC Commander will be provided with details of the complaint and notification that the matter is to be dealt with as a CRP. The process to be followed by Northern Territory Police is detailed in the General Order relevant to complaints against Police issued by the Commissioner.

The CRP process should be completed as soon as possible but **must** be completed no later than 30 days of the complaint being made. The 30 days may only be exceeded with the agreement of the EPSC Commander and Ombudsman on a case by case basis.

Where a complaint is lodged directly with a Northern Territory Police Officer, if the complaint is not serious and can be immediately resolved through CRP, the Police Officer receiving the complaint or their superior will attempt to resolve the matter.

### **7.3.3. CRP Reporting Requirements**

A copy of the completed and signed CRP Form is to be forwarded by the EPSC Commander to the Ombudsman within 7 days of being finalised. Proof of the outcome agreed upon by the complainant must be provided eg signature, email or other form of proof.

In addition to resolving the complaint, the Police Officer performing the CRP must identify any issues of concern which arise from the inquiries made.

Where issues are within the responsibility of the Police Officer performing the CRP he/she must take the necessary steps to address those issues. Where the issues relate to the responsibilities of another member, the Police Officer performing the CRP must ensure those issues and his/her recommendations are sent to that member.

The issues identified and any recommendations or action taken to address issues are to be recorded on the CRP Form which is to be submitted to EPSC at the completion of the process. A copy of the completed CRP Form is also to be provided to the Ombudsman by the EPSC Commander.

The Ombudsman may ask for a progress report (including any documentation), ask to inspect documents and require arrangements to be made to interview a person and these requests will be complied with.

Where a complaint is lodged directly with a Northern Territory Police Officer, if the complaint is not serious and can be immediately resolved by the provision of information or an explanation, the Police Officer receiving the complaint will record details of the complaint, the action taken and a recommendation that no further action is required. These details will be submitted to EPSC within 24 hours of the complaint being received. The EPSC Commander will forward these details, on receipt, to the Ombudsman for assessment under section 66. If the Ombudsman determines the matter as a CRP and is satisfied that:

- the action taken was reasonable,
- there are no outstanding issues,
- the matter is resolved and
- no further action is required

the complaint will be classified as a CRP requiring no further action. The EPSC Commander will be notified of this classification by the Ombudsman. The date of notification of CRP classification will be recorded on Northern Territory Police documentation. For the sake of practicality, the initial recording requirements for Police i.e. complaint details, action taken, outcome and recommendation will be recorded on a CRP Form. If, however, the complaint is not determined to be a CRP on assessment by the Ombudsman the complaint will be classified appropriately and the EPSC Commander will be notified in accordance with the respective processes within this Agreement.

### **7.3.4. Unsuccessful CRP**

Where the complainant is dissatisfied with the outcome of the CRP process, or does not agree to continue with the process, the complainant must be advised by Police of their

right to ask the Ombudsman to decide to have the matter dealt with under investigation (section 109). EPSC must record the complainant's request and include this in their notification to the Ombudsman. This notification will be provided in the completed CRP Form (also advising unsuccessful resolution). The Ombudsman must refuse the request for investigation if satisfied the issues raised in the complaint are being, or have been, adequately dealt with in the CRP process.

If the Ombudsman accepts such a request the Ombudsman must then make a determination and assessment under section 66 as to how the complaint may be dealt with.

If during the CRP process inquiries reveal that the matter is more serious than first considered, or if evidence indicates that the complaint is not suitable for informal resolution, the Police Officer conducting the CRP must suspend the inquiries and forward all documents to EPSC. EPSC will then provide documentation to the Ombudsman with a recommendation on how to proceed.

If the review of the CRP Form and associated information by the Ombudsman reveals the matter is more serious than first considered the Ombudsman will reclassify the complaint in accordance with section 66 of the Act. Processes for the respective classification will then be applied in accordance with this Agreement.

Following review of the CRP Form and associated information for an unsuccessful CRP, the Ombudsman may determine the matter does not require any further action and may decline the complaint under section 67 (paragraph 6.2 of this Agreement) particularly on the following grounds:

- trivial, frivolous, vexatious or not made in good faith;
- dealing with the complaint is not within the public interest.

The Ombudsman will notify the EPSC Commander of the decision made following a review of CRP documentation submitted following an unsuccessful CRP outcome.

#### **7.4. POLICE STANDARDS COMMAND INVESTIGATIONS [PART 7, DIV 4, SUB DIV 2]**

The Ombudsman may determine that a complaint is to be investigated by EPSC in accordance with the following:

- Category 2 Complaint - EPSC undertake the investigation and report direct to the complainant (section 66(2)(d)(i)); or
- Category 1 Complaint - EPSC undertake the investigation and report to the Ombudsman (section 66(2)(d)(ii)).

##### **7.4.1. Category 2 Complaint - EPSC Investigate and Report to Complainant (Sections 91 and 66(2)(d)(i))**

##### ***Category 2 Complaints***

This is the category for complaints which do not fall within the guidelines for CRP complaints, but which are not considered sufficiently serious or of such a nature so as to

warrant a section 66(2)(d)(ii) Investigation or direct Ombudsman involvement (section 86).

The outcome for these complaints may include but are not limited to the need for:

- Training/education
- Coaching/mentoring
- Counselling
- Personal Improvement Plan
- Managerial Guidance
- Reprimand or warning
- Restricted duties
- Caution – verbal or written
- Transfer by agreement

These complaints will be managed, investigated and resolved directly by Police in the first instance.

Where, in the course of investigation, serious misconduct or maladministration is suspected to have occurred then the matter shall be immediately reported to the Ombudsman, through the EPSC. The Ombudsman in consultation with EPSC will then give further directions on the management of the complaint.

### ***Category 2 Complaint Procedures***

The procedures to be followed in relation to a Category 2 Complaint are as follows:

- (i) Ombudsman to notify EPSC of the Category 2 classification for the respective complaint.
- (ii) EPSC to undertake the investigation as per Part 7, Division 4, Subdivision 2.
- (iii) During the EPSC investigation, liaison and sharing of information in relation to the complaint may occur with the Ombudsman.
- (iv) The Commander EPSC will, upon completion of the EPSC Investigation provide the Commissioner (or delegate) with the investigation report inclusive of any recommendation made. The Commissioner (under section 93 of the Act) must provide a copy of the report and any comments he makes to the Ombudsman. Additionally the Commissioner, must at the time and in the way he considers appropriate, inform both the complainant and any police officers involved of the outcome of the investigation.
- (v) It is expected that the information provided to the complainant and any Police Officer involved, will detail the outcome of the complaint, giving reasons for the decision, and advising of any action to be taken as a consequence of the complaint. Such report should also advise the complainant of their right to request the Ombudsman to upgrade the investigation (refer to section 109). A copy of all such reports shall be sent to the Ombudsman

#### **7.4.2. Category 1 Complaint - EPSC Investigate and Report to Ombudsman (Sections 94 and 66(2)(d)(ii))**

##### ***Category 1 Complaints***

These investigations will normally be undertaken into complaints which are:

- considered to be of a serious or urgent nature, eg major assault, use of fire-arm or other perceived weapon, etc;
- threats or harassment considered to be of a serious nature eg threat to kill, threat to endanger life, threat to unlawfully harass, etc;
- likely to result in criminal or disciplinary proceedings;
- a matter of public interest; or
- likely to raise significant questions of Police practice or procedure.

##### ***Category 1 Complaint Procedures***

The procedures to be adhered to in relation to a Category 1 Complaint are as follows:

- (i) Ombudsman to notify EPSC of the Category 1 classification for the respective complaint.
- (ii) EPSC to undertake the investigation as per Part 7, Division 4, Subdivision 2. A Police Officer shall not be nominated to investigate a Category 1 complaint if there is any reason for a perceived or actual conflict of interest. In all cases, only suitably qualified, impartial and senior members shall be authorised to conduct investigations. The investigating officer is responsible to produce if requested, all original notes, files, records, interview tapes and the like and to ensure that all original evidence is preserved.
- (iii) During the EPSC investigation, liaison and sharing of information in relation to the complaint may occur with the Ombudsman.
- (iv) A copy of the draft investigation report, EPSC investigation file and requested supporting material will be provided by the EPSC Commander to the Ombudsman for preliminary assessment and comment before submission to the Commissioner. Where the EPSC Commander's view differs from that of the Ombudsman the investigation report will be submitted to the Commissioner, with reasons for the alternate views held for further consideration. Any issues that remain outstanding and are not in agreeance with the Ombudsman may be addressed by the Ombudsman more formally once the report has been received from the Commissioner.
- (v) The EPSC investigation report will then be given to the Commissioner and he must provide a copy of the EPSC report, together with his assessment of the conduct the subject of the complaint and any other comments the Commissioner considers appropriate, to the Ombudsman.

- (vi) On the Ombudsman receiving a copy of the EPSC investigation report and Commissioner's assessment, the EPSC Commander will be required on request to provide the Ombudsman with the EPSC investigation file and/or supporting material.
- (vii) On receipt of the report from the Commissioner, the Ombudsman must consider the report and comments and provide the Commissioner with a written assessment of the EPSC report.
- (viii) The Commissioner must then consider the Ombudsman's assessment and recommendations and give notice to the Ombudsman in writing whether or not he/she agrees with the findings and if not why.
- (ix) The Ombudsman must then consider the Commissioner's notice and advise him/her in writing whether the Ombudsman's initial recommendations are confirmed or provide a revised assessment or recommendation.
- (x) If the Commissioner does not accept the Ombudsman's final consideration and recommendation/s and take steps to have them implemented he/she must advise the Ombudsman in writing of the reasons for not doing so.
- (xi) If the Commissioner does not agree to implement the recommendations the Ombudsman may:
  - a. give the Police Minister a copy of the original Ombudsman's Report together with the Commissioner's response; and
  - b. give the Police Minister for tabling in the Legislative Assembly another report dealing with the matter.

The complainant may, during the course of or after the investigation has been completed, ask for the Ombudsman to upgrade the investigation (refer to section 109).

### ***The Report to the Ombudsman***

When preparing the report to the Commissioner (refer to (v) above) the Ombudsman must consider and assess whether the conduct of the Police Officer:

- constituted an offence or breach of discipline or was contrary to law;
- was unreasonable, unjust, oppressive or improperly discriminatory;
- was in accordance with an Act or a practice, procedure or policy that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
- was based either wholly or partly on a mistake of law or of fact;
- was otherwise wrong in the circumstances; and
- evidenced the exercise of power for an improper purpose or irrelevant ground.

The Ombudsman may make recommendations regarding what action should or should not be taken in relation to the conduct the subject of the investigation and may include but is not limited to:

- a Police Officer be charged with an offence;
- disciplinary action be taken against the Police Officer;
- conciliation be conducted in relation to the conduct the subject of the investigation;



- a decision be reconsidered, varied or reversed or reasons be given for a decision;
- the effects of a decision, act or omission be rectified, mitigated or altered; or
- an Act, practice, procedure or policy on which a decision, act or omission was based be amended.

The Ombudsman will, after finalising his report, provide both the complainant and the Police Officer subject to the complaint a report advising of the outcome of the investigation. The complainant will also be advised if the Ombudsman has provided a copy of the report to the Police Minister.

### ***Disciplinary Outcomes***

The disciplinary outcome may include but is not limited to:

Reduction in seniority	Loss of increment (temporary)
Good behaviour bond	Loss of increment (permanent)
Suspension – paid/unpaid	Loss of salary
Fine	Demotion
Transfer	Dismissal

Where, as a result of a CRP or investigation, a Police Officer is charged with an offence or disciplinary procedures, or other steps the Commissioner considers necessary are taken, the Commissioner must advise the Ombudsman in writing within 5 working days of the following:

- the laying of the charge or the action taken; and
- the final outcome of the proceeding for the charge or disciplinary procedures.

***The Ombudsman must not disclose the final outcome of the disciplinary procedures to the complainant or anyone else.***

### **7.5. OMBUDSMAN INVESTIGATIONS [PART 7, DIV 5, SUB DIV 1]**

The Ombudsman may determine to investigate any Police complaint through their own resources (section 86), particularly matters:

- concerning the conduct of a Police Officer holding a rank equal or senior to the rank of EPSC Commander;
- concerning the conduct of a EPSC member; or
- concerning the practices, procedures or policies of NT Police Force; or
- for any other reason determined by the Ombudsman.

The Ombudsman may also decide that:

- the investigation be undertaken in conjunction with a EPSC member; or
- the investigation should not be undertaken by a EPSC member.

Prior to commencing the investigation, notice must be provided to the:

- Commissioner;
- responsible Minister; and
- if the investigation is conducted on a complaint – the complainant.

Following the completion of the investigation when preparing the report to the Commissioner, the Ombudsman must consider and assess whether the conduct of the Police Officer:

- constituted an offence or breach of discipline or was contrary to law;
- was unreasonable, unjust, oppressive or improperly discriminatory;
- was in accordance with an Act or a practice, procedure or policy that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
- was based either wholly or partly on a mistake of law or of fact;
- was otherwise wrong in the circumstances; and
- evidenced the exercise of power for an improper purpose or irrelevant ground.

The Ombudsman may make recommendations regarding what action should be taken, or not taken, in relation to the conduct the subject of the investigation. The recommendations the Ombudsman may make include:

- a Police Officer be charged with an offence;
- disciplinary action be taken against the Police Officer;
- conciliation be conducted in relation to the conduct the subject of the investigation;
- a decision be reconsidered, varied or reversed or reasons be given for a decision;
- the effects of a decision, act or omission be rectified, mitigated or altered; or
- an Act, procedure or policy on which a decision, act or omission was based be amended.

Before finalising the investigation report, the Ombudsman must give the:

- Commissioner,
- Police Force,
- Police Civil Employment Unit,
- EPSC Commander (if EPSC a subject of the complaint), or
- a Police Officer or other person

a reasonable opportunity to respond to any adverse comments made about them. Any comments must be taken into account and fairly represented in finalising the report. If EPSC were not a subject of the complaint then prior to forwarding the draft to the above persons for response on adverse comments a copy of the draft will be provided to the EPSC Commander for comment.

The Ombudsman must give the Commissioner a written report on completion of the investigation. On receipt of the report:

- The Commissioner must then consider the Ombudsman's assessment and recommendations and give notice to the Ombudsman in writing whether or not he/she agrees with the findings and if not why.
- The Ombudsman must then consider the Commissioner's notice and advise him/her in writing whether the Ombudsman's initial recommendations are confirmed or provide a revised assessment or recommendation.
- If the Commissioner does not accept the Ombudsman's final consideration and recommendation/s and take steps to have them implemented he/she must advise the Ombudsman in writing of the reasons for not doing so.
- If the Commissioner does not agree to implement the recommendations the Ombudsman may:
  - i. give the Police Minister a copy of the original Ombudsman's Report together with the Commissioner's response; and
  - ii. give the Police Minister for tabling in the Legislative Assembly another report dealing with the matter.

The Ombudsman will, after finalising his/her report, provide the complainant, the Police officer the subject of the complaint and the EPSC Commander a report advising of the outcome of the investigation. The complainant will also be advised if the Ombudsman has provided a copy of the report to the Police Minister.

#### **7.6. CONCILIATION [PART 7, DIV 3]**

The Ombudsman may decide under section 66 or at any time (section 69) that a complaint may be dealt with by conciliation as described in Part 7 Division 3 of the Act. The decision to conciliate a complaint at any time may be by the Ombudsman's own initiative or at the request of another party to a Police complaint, which includes:

- the complainant;
- the Police Officer the subject of the complaint;
- the EPSC; or the
- the Commissioner.

Conciliation will only be undertaken on agreement by all parties.

Conciliation is not intended to absolve Police Officers of any misconduct or action, the process is an alternative dispute resolution which is directed at reducing the need for civil matters proceeding to the courts.

The conciliator must be a person who in the opinion of the Ombudsman or the Commissioner (if conciliation is being dealt with by EPSC) is qualified to act in the capacity. However a party to the complaint can object to the person acting as conciliator and in such cases another conciliator may be appointed. If the conciliation ceases, the conciliator must not be further involved with the complaint.

Participation by the parties to the complaint in the conciliation process is voluntary and they may withdraw at any time. The conciliation can also be terminated by either the Ombudsman or Commissioner (if conciliation is being dealt with by EPSC) if they are satisfied that no agreement is going to be reached.

If conciliation is agreed and another process has started, eg Investigation, it will be suspended pending the results of the conciliation unless the Ombudsman decides otherwise.

The results of the conciliation process must be reported by the relevant official as follows:

- where the official is the Ombudsman then the results must be reported to the Commissioner; and
- where the official is the Commissioner the results must be reported to the Ombudsman.

Where the conciliation is unsuccessful, the complaint will be treated as if the conciliation had not taken place and the Ombudsman, in consultation with EPSC, will determine how to action the complaint. This may result in:

- continuing a process that had been suspended due to the conciliation; or
- reassessing the complaint under section 66 of the Act.

### ***Functions of the conciliator***

1. A conciliator is to encourage settlement of a complaint by:
  - a. explaining the conciliation process and the voluntary nature of the conciliation process;
  - b. explaining privilege and confidentiality as described within this Agreement;
  - 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.
2. A conciliator must not perform, or continue to perform, the functions of conciliation if a conflict of interest exists or arises, whether it is real or perceived.

### ***Representation at conciliation***

The parties to the conciliation may be supported during the process however in order for parties to be represented by another person permission must be sought from the Ombudsman or the Commissioner (if the conciliation is being handled by EPSC).

### ***Privilege and confidentiality***

Parties to the conciliation must not disclose information generated during the conciliation process to any person other than for the purpose of the conciliation. Evidence of anything said or admitted during the conciliation process and any document prepared for the process:

- a. cannot be in any later investigation of the complaint unless the person who said or admitted the thing, or to whom the document relates, consents to its use; and
- b. is not admissible in a proceeding for a breach of discipline or any proceeding in a court or tribunal.

Nothing in this Agreement or the Act prohibits the use of information obtained during the conciliation process for the purposes of a prosecution of a person for an offence against the Act.

### ***Enforceable Agreements***

If agreement is reached between the parties in the course of the conciliation process the agreement may be put in a document that is binding on the parties. The agreement must:

- a. be in writing;
- b. be signed by all parties to the agreement or their authorised representative;
- c. be entered into after the first 14 days after agreement was reached to allow for a cooling-off period;
- d. demonstrate consideration<sup>1</sup> by parties to the agreement.

A copy of the signed Agreement once binding will be provided to each of the parties to the agreement.

### **7.7. REVIEWS BY OMBUDSMAN**

The Ombudsman may review files relating to investigations into complaints against Police, however made or reported. Where a request for such a review is made by the Ombudsman, EPSC 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 of EPSC in the first instance.

---

<sup>1</sup> Consideration is expressed as the requirement that in order for parties to be able to enforce the agreement, they must have given something for it.

## **8. COMPLAINT FINDINGS**

In the interests of complainants and Police members the Ombudsman and Commissioner will strive to adopt a consistent approach to their respective findings on a complaint. Individual findings will be tailored to suit the specific factual and legal issues arising in each complaint.

The broad categories agreed below are intended to operate in a flexible manner

### **8.1. UNRESOLVED**

Given differing versions, the Ombudsman/EPSC is 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 Police or all witnesses provide a differing/inconsistent version.

### **8.2. 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 Police Officers present, to positively support the fact that it did or did not occur.

### **8.3. 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.

### **8.4. ACTION/CONDUCT WAS NOT FOUND UNREASONABLE GIVEN THE CIRCUMSTANCES**

This finding may be used in cases where a Police Officer 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 officer.

### **8.5. THE POLICE ACTION/DECISION WAS REASONABLE**

This is a positive finding to the effect that the Ombudsman/EPSC supports the action/decision by the Police.

### **8.6. THE ALLEGATION IS SUSTAINED**

Where there is sufficient evidence to sustain the allegation on the balance of probability.

### **8.7. 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 prosecution pursuant to the Act. Any criminal charges arising from a wilfully false allegation will be referred to EPSC for action.

## **9. CONFIDENTIALITY & IMMUNITY**

Sections 120, 122, 160 and 161 of the Act impose strict confidentiality and secrecy requirements for 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. The Act stipulates that persons administering the Act can not be compelled to give evidence or produce documents relating to the Ombudsman's statutory duties. That protection extends to inquiries or investigations being conducted by EPSC pursuant to this Agreement.

## **10. SUSPECTED CRIMINAL CONDUCT**

Where a complaint against Police discloses grounds to suspect that a member 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 that the Ombudsman is provided with regular briefings (at least every 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.

## **11. PROCEDURAL FAIRNESS**

Any person with responsibility for investigating a complaint against police shall ensure that all parties are afforded procedural fairness and courtesy during the process. The complainant shall 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 the subject of a complaint under investigation shall 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.

The Ombudsman to fulfil an obligation to afford natural justice to all affected parties before assessing the PSC report may seek comment from a complainant or the complainant's legal advisor. The Ombudsman expects that PSC will do the same to any Police Officer with an interest in the conclusion of a PSC report prepared under section 95 of the Act. In those cases where a complainant is represented by a legal practitioner comment will usually be sought. To enable meaningful comment the relevant parts of section 95 reports will be provided. In the event PSC has, in any particular case, grounds for not disclosing the report the Ombudsman will consider the 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 General Order Q2, are to be carefully considered by investigating officers during any interview process. This is particularly relevant when considering the use of interpreters generally, and in the case of indigenous complainants represented by a legal practitioner, any request for such complainants to have a legal representative present at interview.

## **12. OTHER**

### **12.1. 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 must advise the Commissioner of the decision and the reasons for refusal.

### **12.2. 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:

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

### **12.3. 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:

The particulars of the decision on how the complaint was dealt with or declined.

The particulars of the decision made by the Ombudsman when a CRP or EPSC investigation is referred back to the Commissioner for further investigation or to deal with in another way.

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 must be informed by the Ombudsman of the reasons for any refusal.

### **13. SCOPE OF THIS AGREEMENT**

Nothing in this Agreement will limit the powers of the Commissioner or Ombudsman contained within the Act.

### **REVIEW OF THIS AGREEMENT**

This Agreement is to be reviewed within two years of being signed.

CAROLYN RICHARDS  
Ombudsman  
Date: .....

JOHN McROBERTS  
Commissioner of Police  
Date:.....

## APPENDIX E – FINANCIAL STATEMENTS

### FINANCIAL STATEMENT OVERVIEW

For the Year Ended 30 June 2011

The Ombudsman's role is to receive, investigate and resolve complaints made by members of the public about any administrative action to which the Ombudsman Act 2009 applies and to foster excellence in public sector services.

The Health and Community Services Complaints Commission (HCSCC) separated from the Ombudsman's Office and transferred to Department of Justice during 2010-11, this accounts for the reduction in income and expenditure when compared to the 2009-10 financial year.

The Ombudsman's Office was provided additional funding in the last quarter of the financial year, primarily to fund additional staff. However, additional staff could not be sourced as a result of the HCSCC not relocating to other premises in the expected timeframe. Space constraints prevented accommodation of additional staff and left the office with a surplus of funds at the end of the financial year.

#### SUMMARISED OPERATING STATEMENT BY OUTPUT GROUP

	Ombudsman		Health and Community Services Complaints Commission		Total	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
<b>INCOME</b>						
Appropriation						
Output	1769	1782	-	462	1769	2244
Other Income	342	330	-	18	342	348
<b>TOTAL INCOME</b>	<b>2111</b>	<b>2112</b>	<b>-</b>	<b>480</b>	<b>2111</b>	<b>2592</b>
<b>EXPENSES</b>						
Employee Expenses	1491	1688(1)	-	361	1491	2049
Administrative Expenses						
Purchases of Goods and Services	215	225	-	82	215	307
Other Administrative Expenses	319	319		21	319	340
<b>TOTAL EXPENSES</b>	<b>2025</b>	<b>2232</b>	<b>-</b>	<b>464</b>	<b>2025</b>	<b>2696</b>
<b>COMPREHENSIVE RESULT</b>	<b>86</b>	<b>(120)</b>	<b>-</b>	<b>16</b>	<b>86</b>	<b>(104)</b>

1 includes shared employees of the Ombudsman's Office and HCSCC

## OMBUDSMAN FOR THE NT FINANCIAL REPORT

### CERTIFICATION OF THE FINANCIAL STATEMENTS

We certify that the attached financial statements for the Office of the Ombudsman for the Northern Territory 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 2011 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.



.....  
**BRENDAN SCHULTZ**  
A/Business Manager  
31/09/2011



.....  
**CAROLYN RICHARDS**  
Ombudsman for the NT  
31/09/2011

**OMBUDSMAN FOR THE NT**  
**COMPREHENSIVE OPERATING STATEMENT**  
For the year ended 30 June 2011

	NOTE	2011 \$'000	2010 \$'000
<b>INCOME</b>			
Appropriation			
Output		1769	2244
Sales of Goods and Services		59	46
Goods and Services Received Free of Charge	4	283	301
Other Income		-	1
<b>TOTAL INCOME</b>	3	<u>2111</u>	<u>2592</u>
<b>EXPENSES</b>			
Employee Expenses		1491	2049
<i>Administrative Expenses</i>			
Purchases of Goods and Services	5	215	307
Repairs and Maintenance		-	1
Property Management		10	12
Depreciation and Amortisation	8	25	26
Other Administrative Expenses <sup>(1)</sup>		283	301
<b>TOTAL EXPENSES</b>	3	<u>2025</u>	<u>2696</u>
<b>NET SURPLUS/(DEFICIT)</b>		<u>86</u>	<u>(104)</u>
<b>COMPREHENSIVE RESULT</b>		<u>86</u>	<u>(104)</u>

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

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

**OMBUDSMAN FOR THE NT**  
**BALANCE SHEET**  
**As at 30 June 2011**

	NOTE	2011 \$'000	2010 \$'000
<b>ASSETS</b>			
<b>Current Assets</b>			
Cash and Deposits	6	395	295
Receivables	7	15	20
Prepayments		2	-
Other Assets		-	-
<b>Total Current Assets</b>		412	312
<b>Non-Current Assets</b>			
Property, Plant and Equipment	8	34	50
<b>Total Non-Current Assets</b>		34	50
<b>TOTAL ASSETS</b>		446	362
<b>LIABILITIES</b>			
<b>Current Liabilities</b>			
Payables	9	(101)	(60)
Borrowings and Advances		-	-
Provisions	10	(201)	(243)
<b>Total Current Liabilities</b>		(302)	(303)
<b>Non-Current Liabilities</b>			
Provisions	10	(59)	(61)
<b>Total Non-Current Liabilities</b>		(59)	(61)
<b>TOTAL LIABILITIES</b>		(361)	(364)
<b>NET ASSETS</b>		84	(1)
<b>EQUITY</b>			
Capital		(50)	(50)
Accumulated Funds		(34)	52
<b>TOTAL EQUITY</b>		(84)	1

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

**OMBUDSMAN FOR THE NT**  
**STATEMENT OF CHANGES IN EQUITY**  
For the year ended 30 June 2011

	Equity at 1 July \$'000	Compre -hensive result \$'000	Transactions with owners in their capacity as owners \$'000	Equity at 30 June \$'000
<b>2010-11</b>				
<b>Accumulated Funds</b>	(52)	86	-	34
	<u>(52)</u>	<u>86</u>	<u>-</u>	<u>34</u>
<b>Capital - Transactions with Owners</b>	50			50
Equity Injections				
Capital Appropriation	-	-	-	-
Equity Transfers In	-	-	-	-
Other Equity Injections	-	-	-	-
Equity Withdrawals				
Capital Withdrawal	-	-	-	-
	<u>50</u>	<u>-</u>	<u>-</u>	<u>50</u>
<b>Total Equity at End of Financial Year</b>	<u>(1)</u>	<u>86</u>	<u>-</u>	<u>84</u>
<b>2009-10</b>				
<b>Accumulated Funds</b>	53	(104)	-	(52)
	<u>53</u>	<u>(104)</u>	<u>-</u>	<u>(52)</u>
<b>Capital - Transactions with Owners</b>				
Equity Injections				
Capital Appropriation	-	-	-	-
Equity Transfers In	-	-	-	-
Other Equity Injections	-	-	50	50
Equity Withdrawals				
Capital Withdrawal	-	-	-	-
	<u>-</u>	<u>-</u>	<u>50</u>	<u>50</u>
<b>Total Equity at End of Financial Year</b>	<u>53</u>	<u>(104)</u>	<u>50</u>	<u>(1)</u>

**OMBUDSMAN FOR THE NT**  
**CASH FLOW STATEMENT**  
For the year ended 30 June 2011

	NOTE	2011 \$'000	2010 \$'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
<b>Operating Receipts</b>			
Appropriation			
Output		1769	2244
Receipts From Sales of Goods And Services		88	59
<b>Total Operating Receipts</b>		1857	2303
<b>Operating Payments</b>			
Payments to Employees		(1537)	(1974)
Payments for Goods and Services		(208)	(366)
<b>Total Operating Payments</b>		(1746)	(2340)
<b>Net Cash From/(Used In) Operating Activities</b>	11	112	(37)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>			
<b>Investing Payments</b>			
Purchases of Assets		(9)	-
<b>Total Investing Payments</b>		(9)	-
<b>Net Cash From/(Used In) Investing Activities</b>		(9)	-
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
<b>Financing Receipts</b>			
Equity Injections			
Capital Appropriation		-	-
Other Equity Injections		-	50
<b>Total Financing Receipts</b>		-	50
<b>Financing Payments</b>			
Finance Lease Payments		-	-
Equity Withdrawals		-	-
<b>Total Financing Payments</b>		-	-
<b>Net Cash From/(Used In) Financing Activities</b>		-	50
Net Increase/(Decrease) in Cash Held		103	13
Cash at Beginning of Financial Year		292	280
<b>CASH AT END OF FINANCIAL YEAR</b>	6	395	292

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

**OMBUDSMAN FOR THE NT  
NOTES TO THE FINANCIAL STATEMENTS**

**For the year ended 30 June 2011**

**INDEX OF NOTES TO THE FINANCIAL STATEMENTS**

1. Objectives and Funding
2. Statement of Significant Accounting Policies
3. Comprehensive Operating Statement by Output Group

**INCOME**

4. Goods and Services Received Free of Charge

**EXPENSES**

5. Purchases of Goods and Services

**ASSETS**

6. Cash and Deposits
7. Receivables
8. Property, Plant and Equipment

**LIABILITIES**

9. Payables
10. Provisions

**OTHER DISCLOSURES**

11. Notes to the Cash Flow Statement
12. Financial Instruments
13. Commitments
14. Contingent Liabilities and Contingent Assets
15. Events Subsequent to Balance Date
16. Write-offs, Postponements, Waivers, Gifts and Ex Gratia Payments



# OMBUDSMAN FOR THE NT NOTES TO THE FINANCIAL STATEMENTS

For the year ended 30 June 2011

## 1. OBJECTIVES AND FUNDING

The Ombudsman's role is to receive, investigate and resolve complaints made by members of the public about any administrative action to which the *Ombudsman Act 2009* applies and to foster excellence in public sector services. The Health and Community Services Complaints Commission (HCSCC) was transferred to the administration of the Department of Justice on 1<sup>st</sup> January 2011.

The Department 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 allocated between two Output Groups, Ombudsman and Health and Community Services Complaints Commission. The inclusion of the HCSCC output is for the 2009-10 financial year comparison only. Note 3 provides summary financial information in the form of a Comprehensive Operating Statement by Output Group and provides the most accurate comparison of Ombudsman financials between the 2009-10 and 2010-11 financial years.

## 2. STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES

### a) Basis of Accounting

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 Office of the Ombudsman for the NT 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.

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

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

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

# OMBUDSMAN FOR THE NT NOTES TO THE FINANCIAL STATEMENTS

For the year ended 30 June 2011

## b) Agency and Territory Items

The financial statements of the Office of the Ombudsman for the NT include income, expenses, assets, liabilities and equity over which the Office of the Ombudsman for the NT 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.

## c) Comparatives

Where necessary, comparative information for the 2009-10 financial year has been reclassified to provide consistency with current year disclosures.

## d) 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.

## e) Changes in Accounting Policies

There have been no changes to accounting policies adopted in 2010-11 as a result of management decisions.

## f) Accounting Judgements and Estimates

The preparation of the financial report requires the making of judgements 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 judgements 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.

Judgements and estimates that have significant effects on the financial statements are disclosed in the relevant notes to the financial statements. Notes that include significant judgements and estimates are:

- Employee Benefits – Note 2(r) and Note 10: Non-current liabilities in respect of employee benefits are measured as the present value of estimated future cash outflows based on the appropriate Government bond rate, estimates of future salary and wage levels and employee periods of service.
- Depreciation and Amortisation – Note 2(k), Note 10: Property, Plant and Equipment.

# OMBUDSMAN FOR THE NT

## NOTES TO THE FINANCIAL STATEMENTS

For the year ended 30 June 2011

### g) 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.

### h) Income Recognition

Income encompasses both revenue and gains.

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

#### ***Grants and Other Contributions***

Grants, donations, gifts and other non-reciprocal contributions are recognised as revenue when the Agency obtains control over the assets comprising the contributions. Control is normally obtained upon receipt.

Contributions are recognised at their fair value. Contributions of services are only recognised when a fair value can be reliably determined and the services would be purchased if not donated.

#### ***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.

#### ***Interest Revenue***

Interest revenue is recognised as it accrues, taking into account the effective yield on the financial asset.

# OMBUDSMAN FOR THE NT NOTES TO THE FINANCIAL STATEMENTS

For the year ended 30 June 2011

## ***Goods and Services Received Free of Charge***

Goods and services received free of charge are recognised as revenue when a fair value can be reliably determined and the resource would have been purchased if it had not been donated. Use of the resource is recognised as an expense.

## ***Disposal of Assets***

A gain or loss on disposal of assets is included as a gain or loss on the date control of the asset passes to the buyer, usually when an unconditional contract of sale is signed. The gain or loss on disposal is calculated as the difference between the carrying amount of the asset at the time of disposal and the net proceeds on disposal.

## ***Contributions of Assets***

Contributions of assets and contributions to assist in the acquisition of assets, being non-reciprocal transfers, are recognised, unless otherwise determined by Government, as gains when the Agency obtains control of the asset or contribution. Contributions are recognised at the fair value received or receivable.

### **i) Repairs and Maintenance Expense**

Funding is received for repairs and maintenance works associated with Agency assets as part of Output Revenue. Costs associated with repairs and maintenance works on Agency assets are expensed as incurred.

### **j) 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:

	<u>2011</u>	<u>2010</u>
Plant and Equipment	10 Years	10 Years
Intangibles	3 Years	3 Years

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

### **k) Interest Expense**

Interest expenses include interest and finance lease charges. Interest expenses are expensed in the period in which they are incurred.

### **l) Cash and Deposits**

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.

### **m) Receivables**

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.

# OMBUDSMAN FOR THE NT

## NOTES TO THE FINANCIAL STATEMENTS

For the year ended 30 June 2011

### n) Property, Plant and Equipment

#### **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 Construction and Infrastructure is responsible for managing general government capital works projects on a whole of Government basis. Therefore appropriation for the Department's capital works is provided directly to the Department of Construction and 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.

### o) Revaluations and Impairment

#### **Revaluation of Assets**

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

- Land;
- Buildings;
- Infrastructure Assets;
- Heritage and Cultural Assets;
- Biological Assets; and
- Intangibles.

Fair value is the amount for which an asset could be exchanged, or liability settled, between knowledgeable, willing parties in an arms length transaction.

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. 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.

# OMBUDSMAN FOR THE NT

## NOTES TO THE FINANCIAL STATEMENTS

For the year ended 30 June 2011

Impairment losses are recognised in the Comprehensive Operating Statement. They are disclosed as an expense unless the asset is carried at a revalued amount. Where the asset is measured at a revalued amount, the impairment loss is offset against the Asset Revaluation Surplus for that class of asset to the extent that an available balance exists in the Asset Revaluation Surplus.

In certain situations, an impairment loss may subsequently be reversed. Where an impairment loss is subsequently reversed, the carrying amount of the asset is increased to the revised estimate of its recoverable amount. A reversal of an impairment loss is recognised in the Comprehensive Operating Statement as income, unless the asset is carried at a revalued amount, in which case the impairment reversal results in an increase in the Asset Revaluation Surplus.

### p) 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 leased asset and a lease liability equal to the present value of the minimum lease payments are recognised at the inception of the lease.

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.

### q) Payables

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.

### r) 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 and 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.

As part of the financial management framework, the Central Holding Authority assumes the long service leave liabilities of Government Agencies, including the Office of the Ombudsman for the NT and as such no long service leave liability is recognised in Agency financial statements.

# OMBUDSMAN FOR THE NT NOTES TO THE FINANCIAL STATEMENTS

For the year ended 30 June 2011

## s) Superannuation

Employees' superannuation entitlements are provided through the:

- NT 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.

## t) Contributions by and Distributions to Government

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

The Statement of Changes in Equity provides additional information in relation to contributions by, and distributions to, Government.

## u) Commitments

Disclosures in relation to capital and other commitments, including lease commitments are shown at note 13 and are consistent with the requirements contained in AASB 101, AASB 116 and AASB 117.

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

# **OMBUDSMAN FOR THE NT** **NOTES TO THE FINANCIAL STATEMENTS**

**For the year ended 30 June 2011**

## **3. COMPREHENSIVE OPERATING STATEMENT BY OUTPUT GROUP**

	Note	Ombudsman		Health and Community Services Complaints Commission		Total	
		2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
<b>INCOME</b>							
Appropriation Output		1769	1782	-	462	1769	2244
Sales of Goods and Services		59	46	-	-	59	46
Goods and Services Received Free of Charge	4	283	283	-	18	283	301
Other Income		-	1	-	-	-	1
<b>TOTAL INCOME</b>		<b>2111</b>	<b>2112</b>	<b>-</b>	<b>480</b>	<b>2111</b>	<b>2592</b>
<b>EXPENSES</b>							
Employee Expenses		1491	1688	-	361	1491	2049
Administrative Expenses							
Purchases of Goods and Services	5	215	224	-	82	215	306
Repairs and Maintenance		-	1	-	-	-	1
Property Management		10	10	-	3	10	13
Depreciation and Amortisation	8	25	26	-	-	25	26
Other Administrative Expenses <sup>(1)</sup>		283	283	-	18	283	301
<b>TOTAL EXPENSES</b>		<b>2025</b>	<b>2232</b>	<b>-</b>	<b>464</b>	<b>2025</b>	<b>2696</b>
<b>NET SURPLUS/(DEFICIT)</b>		<b>86</b>	<b>(196)</b>	<b>-</b>	<b>92</b>	<b>86</b>	<b>(104)</b>
<b>TOTAL OTHER COMPREHENSIVE INCOME</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>COMPREHENSIVE RESULT</b>		<b>86</b>	<b>(120)</b>	<b>-</b>	<b>16</b>	<b>86</b>	<b>(104)</b>

<sup>(1)</sup> Includes DBE service charges.

This Comprehensive Operating Statement by Output Group is to be read in conjunction with the notes to the financial statements.



**OMBUDSMAN FOR THE NT  
NOTES TO THE FINANCIAL STATEMENTS**

**For the year ended 30 June 2011**

	2011 \$'000	2010 \$'000
<b>4. GOODS AND SERVICES RECEIVED FREE OF CHARGE</b>		
Corporate and Information Services	283	301
Internal Audits and Reviews	-	-
	<u>283</u>	<u>301</u>
<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>	8	5
Advertising <sup>(2)</sup>	3	9
Marketing and Promotion <sup>(3)</sup>	2	11
Document Production	17	15
Legal Expenses <sup>(4)</sup>	8	4
Recruitment <sup>(5)</sup>	1	3
Training and Study	24	16
Official Duty Fares	14	11
Travelling Allowance	1	9
(1) Includes marketing, promotion and IT consultants.		
(2) Does not include recruitment advertising or marketing and promotion advertising.		
(3) Includes advertising for marketing and promotion but excludes marketing and promotion consultants' expenses, which are incorporated in the consultants' category.		
(4) Includes legal fees, claim and settlement costs.		
(5) Includes recruitment related advertising costs.		
<b>6. CASH AND DEPOSITS</b>		
Cash on Hand	1	1
Cash at Bank	<u>395</u>	<u>292</u>
	<u>395</u>	<u>292</u>

**OMBUDSMAN FOR THE NT  
NOTES TO THE FINANCIAL STATEMENTS**

**For the year ended 30 June 2011**

	2011 \$'000	2010 \$'000
<b>7. RECEIVABLES</b>		
<b>Current</b>		
Accounts Receivable	9	18
Less: Allowance for Impairment Losses	-	-
	<hr/>	<hr/>
Interest Receivables	-	-
GST Receivables	5	2
Other Receivables	-	-
	<hr/>	<hr/>
<b>Non-Current</b>		
Other Receivables	-	-
	<hr/>	<hr/>
<b>Total Receivables</b>	<hr/> <b>15</b> <hr/>	<hr/> <b>20</b> <hr/>

	2011 \$'000	2010 \$'000
<b>8. PROPERTY, PLANT AND EQUIPMENT</b>		
<b>Plant and Equipment</b>		
At Fair Value	81	72
Less: Accumulated Depreciation	(53)	(46)
	<hr/> <b>28</b>	<hr/> <b>25</b>
<b>Computer Software</b>		
At Cost	126	126
Less: Accumulated Depreciation	(120)	(101)
	<hr/> <b>6</b>	<hr/> <b>25</b>
<b>Total Property, Plant and Equipment</b>	<hr/> <b>34</b> <hr/>	<hr/> <b>50</b> <hr/>

## 8. PROPERTY, PLANT AND EQUIPMENT (Continued)

### 2011 Property, Plant and Equipment Reconciliations

A reconciliation of the carrying amount of property, plant and equipment at the beginning and end of 2010-11 is set out below:

	Plant & Equipment	Computer Software	Total
	\$'000	\$'000	\$'000
<b>Carrying Amount as at 1 July 2010</b>	<b>25</b>	<b>25</b>	<b>50</b>
Additions	9	-	9
Disposals	-	-	-
Depreciation	(7)	(19)	(25)
Additions/(Disposals) from Administrative Restructuring	-	-	-
Additions/(Disposals) from Asset Transfers	-	-	-
Revaluation Increments/(Decrements)	-	-	-
Impairment Losses	-	-	-
Impairment Losses Reversed	-	-	-
<b>Carrying Amount as at 30 June 2011</b>	<b>28</b>	<b>6</b>	<b>34</b>

### 2010 Property, Plant and Equipment Reconciliations

A reconciliation of the carrying amount of property, plant and equipment at the beginning and end of 2009-10 is set out below:

	Plant & Equipment	Computer Software	Total
	\$'000	\$'000	\$'000
<b>Carrying Amount as at 1 July 2009</b>	<b>32</b>	<b>44</b>	<b>76</b>
Additions	-	-	-
Disposals	-	-	-
Depreciation	(7)	(19)	(26)
Additions/(Disposals) from Administrative Restructuring	-	-	-
Additions/(Disposals) from Asset Transfers	-	-	-
Revaluation Increments/(Decrements)	-	-	-
Impairment Losses	-	-	-
Impairment Losses Reversed	-	-	-
<b>Carrying Amount as at 30 June 2010</b>	<b>25</b>	<b>25</b>	<b>50</b>

**OMBUDSMAN FOR THE NT  
NOTES TO THE FINANCIAL STATEMENTS**

**For the year ended 30 June 2011**

	2011 \$'000	2010 \$'000
<b>9. PAYABLES</b>		
Accounts Payable	41	23
Accrued Expenses	60	37
Other Payables	-	-
<b>Total Payables</b>	<b>101</b>	<b>60</b>
<b>10. PROVISIONS</b>		
<b>Current</b>		
<i>Employee Benefits</i>		
Recreation Leave	124	172
Leave Loading	14	18
Other Employee Benefits	-	-
<i>Other Current Provisions</i>		
Other Provisions ( <i>FBT, Payroll Tax, Superannuation</i> )	62	54
	<b>201</b>	<b>243</b>
<b>Non-Current</b>		
<i>Employee Benefits</i>		
Recreation Leave	59	61
<i>Other Non-Current Provisions</i>	-	-
	<b>59</b>	<b>61</b>
<b>Total Provisions</b>	<b>260</b>	<b>304</b>

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

**Reconciliation of Cash**

The total of Agency Cash and Deposits of \$395 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>	<b>86</b>	<b>(104)</b>
<i>Non-Cash Items:</i>		
Depreciation and Amortisation	25	26
<i>Changes in Assets and Liabilities:</i>		
Decrease/(Increase) in Receivables	5	(16)
Decrease/(Increase) in Prepayments	(2)	-
Decrease/(Increase) in Other Assets	-	-
(Decrease)/Increase in Payables	42	(9)
(Decrease)/Increase in Provision for Employee Benefits	(53)	44
(Decrease)/Increase in Other Provisions	8	23
<b>Net Cash From Operating Activities</b>	<b>112</b>	<b>(37)</b>

# OMBUDSMAN FOR THE NT NOTES TO THE FINANCIAL STATEMENTS

**For the year ended 30 June 2011**

## 12. 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 for the NT* include cash and deposits, receivables, payables and finance leases. The *Ombudsman for the NT* 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.

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

### (b) Net Fair Value

The carrying amount of financial assets and financial liabilities recorded in the financial statements approximates their respective values. Where differences exist, these are not material.

### (c) Interest Rate Risk

The Ombudsman for the NT is not exposed to interest rate risk as Agency financial assets and financial liabilities are non-interest bearing.

## 13. COMMITMENTS

### (iii) Operating Lease Commitments

The Agency leases property under non-cancellable operating leases expiring from 2 to 4 years. Leases generally provide the Agency with a right of renewal at which time all lease terms are renegotiated. The Agency also leases items of plant and equipment under non-cancellable operating leases. Future operating lease commitments not recognised as liabilities are payable as follows:

	2011 \$'000	2010 \$'000
Within one year	9	2
Later than one year and not later than five years	14	0
Later than five years	0	0
	23	2

## 14. CONTINGENT LIABILITIES AND CONTINGENT ASSETS

*The Ombudsman for the NT had no contingent liabilities or contingent assets as at 30 June 2011 or 30 June 2010*

## 15. 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.*

## 16. WRITE-OFFS, POSTPONEMENTS AND WAIVERS

*The Ombudsman for the NT received an approval in principle for a Treasurers Advance of \$250,000 for the procurement of a new case management system; the procurement has been postponed until the 2011-12 financial year. The Ombudsman for the NT had no other write-offs, postponements or waivers in 2010-11 or 2009-10*

Ombudsman  
Ombudsman

**How to contact the  
Ombudsman**

Ombudsman

## 5. HOW TO CONTACT THE OMBUDSMAN

### IN PERSON

12th Floor  
NT House  
22 Mitchell Street  
Darwin, NT



### BY E-MAIL

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



### BY TELEPHONE

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



### BY MAIL

GPO Box 1344  
DARWIN, NT 0801



### ONLINE

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



### Obtaining copies of the Annual Report

An electronic copy of this report is available on our website at  
<http://www.ombudsman.nt.gov.au>

Printed copies are also available upon request.