Annual Report 2017–18

Guide to the report

This report provides information on the activities, achievements and performance of the NSW Ombudsman for the 2017–18 financial year. The report addresses our obligations under the *Ombudsman Act 1974* and the *Annual Reports (Departments) Act 1985*. This and earlier annual reports are available on our website – www.ombo.nsw.gov.au.

Our year in review

We provide details about the range of work we did including statistics on complaints and notifications which we received and dealt with. We discuss how we engage with our stakeholders including the community and NSW Parliament.

Our office

We provide details on our structure, our senior staff, and our governance and accountability arrangements. We discuss our people, how we support our business areas and our environmental programs. We also provide details on our budget and finances to support the audited financial statements.

What we do

We provide details about our work. This fulfils our reporting obligations under s 30 of the Ombudsman Act.

Appendices and references

This contains our audited financial statements, compliance statement, mandatory diversity reporting, access to information reporting, index and glossary.

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Letter to the Legislative Assembly and Legislative Council

The Hon John Ajaka MLC
President
Legislative Council
Parliament House
SYDNEY NSW 2000

The Hon Shelley E Hancock MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Madam Speaker

NSW Ombudsman annual report 2017–18

I am pleased to present my annual report for 2017–18, outlining the work done by my office over the 12 months ending 30 June 2018. This is the 43rd annual report to the NSW Parliament and is made under s 30 of the *Ombudsman Act 1974*.

The report also provides information that is required under the *Annual Reports (Departments) Act 1985*, Annual Reports (Departments) Regulation 2005, *Government Information (Public Access) Act 2009*, the *Public Interest Disclosures Act 1994* and the *Disability Inclusion Act 2014*. The report includes updated material on developments and issues current at the time of writing.

Under s 31AA(2) of the Ombudsman Act, I recommend that this report be made public immediately.

Yours sincerely

Michael Barnes
Ombudsman

22 October 2018

Contents

About us .... d
Ombudsman's message 1
Our year in review 3
Our office 20
What we do 45
Handling enquiries 48
Working with Aboriginal communities 50
Departments and authorities 60
Public interest disclosures 73
Local government 76
Custodial Services 80
Operation Prospect 92
Children and young people 93
People with disability 116
Appendix A – Financials 140
Appendix B – Access and equity programs 163
Appendix C – Compliance with annual reporting requirements 169
Appendix D – NSW Ombudsman GIPA report 171
Index 175
Glossary 181

About us

The NSW Ombudsman is an integrity agency that keeps government agencies and certain non-government organisations accountable. We are independent of the government of the day and answer directly to the community through the NSW Parliament.

Our vision and aim

Through our work we will improve the standard of accountability, integrity, fairness and service delivery to the citizens of NSW.

We want to see fair, accountable and responsive administrative practice and service delivery in NSW. In our own organisation and those we oversight, we work to promote:

- good conduct
- fair decision-making
- the protection of rights
- the provision of quality services.

Our key stakeholders

Our key stakeholders are the community, the NSW Parliament, the government, government agencies, non-government organisations and peak bodies, as well as other oversight bodies.

Our corporate purpose

Our purpose is to:

- help organisations to identify areas for improvement in service delivery, and ensure they are acting fairly, with integrity and in the public interest.
- deal effectively and fairly with complaints and work with organisations to improve their complaint handling systems.
- be a leading integrity agency.
- be an effective organisation.

Critical success factors

These critical success factors inform everything we do, and are aimed at helping to ensure we work efficiently and effectively. We will:

- engage effectively with partners and stakeholders
- be flexible and responsive
- develop our workforce
- develop best practice processes.

Ombudsman's message

It is a privilege to present this annual report - my first as Ombudsman. My term commenced in December 2017 when Professor John McMillan AO finished his term as Acting Ombudsman.

When I appeared before the Parliamentary Committee with oversight of the office three months into my term, I told the committee that before I started in the role, I had a general understanding of what the Ombudsman did, but that the number and breadth of the activities undertaken by the office surprised me.

Since that time, I have had an opportunity to review and reflect on what the NSW Ombudsman's office does, and I continue to be impressed by the diverse ways in which the office contributes to public administration in NSW.

First, as this report shows, in 2017–18 we received over 40,000 contacts from people seeking our assistance, not including the 32,000 contacts to our online complaint form that were redirected to other agencies. Requests for assistance come from a wide range of individuals and cover a broad range of problems. Numerous examples are outlined in this report.

Apart from the assistance we provide to individuals in resolving specific problems, we also provide value through the practical recommendations we make for changes to agencies' processes and policies. As part of our ongoing work on effective complaint handling and complaint management systems, we made suggestions for improving how agencies value and deal with complaints. We also continued to advise, train and assist agencies with their obligations in relation to public interest disclosures.

Our understanding of the complex environment in which we operate enables us to take the initiative on matters of public interest. This year we continued our standing inquiry into allegations of abuse and neglect of adults with disability in the community. We also examined and reported on the legal and policy gaps affecting homeless children following concerns that neither the Department of Family and Community Services nor specialist homelessness services were legally empowered to make decisions for these children. Following this report, the Minister for Family and Community Services announced that the NSW Government would invest $4.3 million over three years for services to better support these children. We also continued our contribution to developing the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework and establishing the NDIS Commission, as part of supporting the transition of our functions. This included working with the Department of Social Services on developing legislation, guidelines and related resources and providing feedback on proposed communications with people with disability and their families about the NDIS Commission and its functions.

This year, we responded to the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse by establishing a standing 'child safety' committee of key religious leaders, survivor groups and former police. The purpose of this group is to provide governance arrangements to help drive the response to the Royal Commission recommendations. The inaugural meeting of this committee was held at the NSW Parliament on 12 September 2018. We also helped establish a legal community of practice between members of the NSW Coalition of Aboriginal Regional Alliances and leading law firms. In addition, we facilitated a roundtable on the Aboriginal Procurement Policy.

We investigate and report to Parliament on matters of public interest. This year, in addition to our annual reports, we reported to Parliament on issues relating to the administration of water compliance and enforcement in NSW; weaknesses in the home building licensing scheme; specialist homelessness services; and behaviour management in schools. A Legislative Council inquiry conducted into the provision of education to students with

disability or special needs following this last report adopted our recommendations, which have subsequently been supported, in principle, by the NSW Government.

In my review of the work of the office, I have also considered the current structure and staff who have achieved these outcomes and the corporate strategy that supports them. As the current strategic plan finishes in 2018, I have commenced a review of the office to develop a strategy for the next five years. Internal and external stakeholders have been consulted and, at the time of writing, a draft strategic plan has been developed. I will be considering any structural changes that may be needed to support any new strategic direction the office may take.

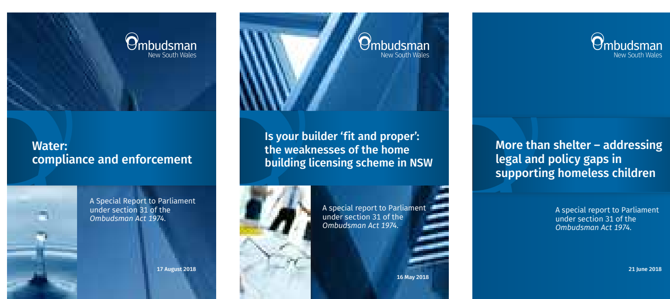
I am mindful of the legacy that I inherited and the responsibility I have to continue and build upon the contributions this office has made to improving public administration and service delivery in NSW.

Professor John McMillan AO

I want to take this opportunity to acknowledge John's work as Acting Ombudsman in the period August 2015 – December 2017. John led the office at a critical time. Among other things, he finished the long-running complex Operation Prospect investigation and managed the transfer of the police function to a new agency. John also secured additional funding for the office in 2017–18, recognising the substantial workload increases the office has experienced in recent years.

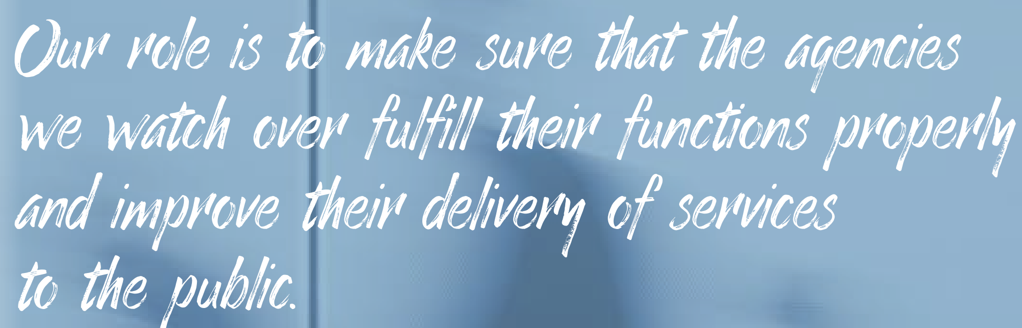
I know that the staff would join me in thanking John for his contribution.

Michael Barnes
Ombudsman



Renewing our corporate brand

This year we revitalised our brand, making it more modern and relevant. Our corporate colour has been changed to a strong blue and we introduced a secondary colour palette, new imagery and an accessible font. Our new look reinforces our role – to provide clarity, focus and scrutiny and to be seen as trustworthy, strong, responsible, secure and dependable.



Our year in review

In this Part, we provide details about the number of complaints and notifications that we received and finalised this year and report on how we performed against our key performance indicators.

We highlight the range of work we have done – around the complaints and notifications we received and our review and oversight work.

Our publicly available reports, fact sheets, guidelines or other resources mentioned in this Part or throughout this report, can be accessed on our website – www.ombo.nsw.gov.au.

More details are in 'Our office' and 'What we do'.

Statistics about the work we do

Throughout this report, we provide statistics about complaints and notifications and the other work we do. There is analysis of the numbers highlighting trends or issues. For some of the complaints, notifications and enquiries data, we provide figures for the reporting year and the four years prior.

Historically, we have included in our report either more detailed complaint statistics at the agency level or more information about complaint issues. This year, we have not included these detailed statistics but have published them on our website www.ombo.nsw.gov.au.

Formal v informal

'Formal' matters are commonly written and we have a statutory responsibility to respond in writing. However, we consider contacts from vulnerable people in a formal way if they raise concerns of sufficient seriousness.

We classify matters as 'informal' if we can answer the person's questions, address their concerns, or give them information without needing to take any formal steps. We commonly categorise phone calls and visits to our office as informal. We are also often sent copies of complaint letters directed to other agencies, which we categorise as informal matters.

How this part is structured

This Part is has the following sections:

- Complaints and notifications
- Engaging with partners and stakeholders
- Sharing our knowledge and expertise.

Complaints and notifications

Overall, about 71% of all contact about complaints and notifications is by telephone, followed by 8.84% by email and 7.32% through our online complaint form. Not all contact is from the public as we include notifications from agencies that we receive in our employment related child protection and disability reportable incident areas in these figures. See table 3.

Not included in these figures are the contacts made through our online complaints form that are referred to other agencies. This year, 32,204 referrals were made in this way.

On average, we received 772 formal matters each month – with December 2017 having the lowest number received (594 matters) and May 2018 the highest (861 matters).

In 2017–18, we had a decrease in formal and informal matters received and finalised – see table 1. This is because complaints about police were no longer notified to the Ombudsman following the transfer of responsibility for the oversight of complaints about police to the Law Enforcement Conduct Commission (LECC) on 1 July 2017. Table 2 shows the formal and informal matters received and finalised over the last five years excluding police matters.

Table 1: Formal and informal matters received and finalised – five year comparison

	2013-14	2014-15	2015-16	2016-17	2017–18
Formal received	9,505	11,109	11,358	11,915	9,260
Formal finalised	9,108	10,694	10,807	12,633	9,464
Informal received	29,725	29,197	30,177	34,177	31,427
Informal finalised	29,717	29,266	30,205	34,132	31,601

Table 2: Formal and informal matters received and finalised – excluding police matters – five year comparison

	2013-14	2014-15	2015-16	2016-17	2017–18
Formal received	6,115	7,675	8,049	8,923	9,260
Formal finalised	5,679	7,059	7,567	8,555	9,464
Informal received	27,424	26,873	27,803	32,011	31,427
Informal finalised	29,717	29,266	30,205	34,132	31,601

Table 3: Formal and informal matters – how received

Table 4: Formal and informal matters received – by areas of work

Area at work	Formal	Informal	Total
Departments and authorities	2,406	5,673	8,079
Local government	1,130	1,953	3,083
Correctional centres and Justice Health	709	4,435	5,144
Juvenile Justice	57	189	246
Child and family services	439	590	1,029
Disability services	512	440	952
Other community services	34	121	155
Employment related child protection	2,106	1,131	3,237
Disability reportable Incidents	914	461	1,375
Outside our jurisdiction	953	11,945	12,898
Requests for information (General Enquiries)	0	4,489	4,489
Total	**9,260**	**31,427**	**40,687**

Table 5: Formal matters finalised – five year comparison

Subject	2013-14	2014-15	2015-16	2016-17	2017–18
Departments and authorities	1,807	2,274	2,335	2,459	2,357
Local government	872	959	936	1,007	1,127
Custodial services and justice health	576	681	651	623	692
Juvenile justice	55	55	38	42	51
Child and family services	395	409	424	463	450
Disability services	152	237	312	331	523
Other community services	19	35	65	54	36
Employment related child protection	1,063	1,298	1,367	1,827	2,105
Police	3,249	3,635	3,240	4,078	0
Disability reportable incidents	0	39	437	739	1,150
Agency outside our jurisdiction	920	1,072	1,002	1,010	973
Total	**9,108**	**10,694**	**10,807**	**12,633**	**9,464**

Table 6: Number of formal investigations finalised by division – five year comparison

Division	2013-14	2014-15	2015-16	2016-17	2017–18
Community services	1	3	9	1	3
Employment related child protection	1	2	0	0	0
Public administration	11	4	3	3	5
Disability reportable incidents	0	0	0	0	0
Police	1	2	1	1	N/A
Total	**14**	**11**	**13**	**5**	**8**

When we exclude police matters, we had a 3.78% increase in formal matters and a 1.82% decrease in informal matters in 2017–18.

To help manage our workload of reportable conduct matters, we can negotiate what are called 'class or kind' agreements with various agencies who have demonstrated their competency in these matters.

These agreements exempt those agencies from having to notify less serious forms of alleged reportable conduct. By using 'class and kind' agreements, we have been able to reduce the number of less serious matters notified to us. Without having these agreements in place, the number of matters received would be higher.

Table 4 shows the breakdown of formal and informal matters we received this year by areas of work and Table 5 shows the formal matters finalised by areas of work. We discuss this work in 'What we do'. Table 6 shows the number of formal investigations finalised by division.

Key performance indicators

We monitor our performance against a range of indicators (KPIs) - assessing our timeliness as well as the types of outcome we achieve. We have set benchmarks for most of our indicators. We regularly review our data collection and reporting.

We mostly report our KPIs by our internal divisions and around dealing with complaints or our oversight roles. See tables 7–12.

It should be noted that in our oversight work, we factor into our averages the time taken by an agency to deal with a matter as well as the time we take. This means that the average time to finalise a matter is significantly higher in oversight matters compared to complaint matters.

Table 7: Initial assessment and acknowledgement within 10 days – complaints – benchmark 80%

Division	%
Community services	86.48
Employment related child protection	86.57
Public administration	95.61
Disability reportable incidents	54.55
All divisions	**93.54**

Table 8: Initial assessment and acknowledgement within 10 days – oversight – benchmark 80%

Division	%
Employment related child protection	87.86
Disability reportable incidents	97.25
All divisions	**90.66**

Table 9: Complaints finalised within 12 months – benchmark 95%

Division	%
Community services	91.16
Employment related child protection	79.23
Public administration	99.19
Disability reportable incidents	82.35
All divisions	**97.35**

Table 10: Average time – finalisation of complaints

Division	no weeks
Community services	27.99
Employment related child protection	35.05
Public administration	8.94
Disability reportable incidents	82.91
All divisions	**14.38**

Table 11: Average time – finalisation of oversight matters

Division	no weeks
Employment related child protection	87.86
Disability reportable incidents	97.25
All divisions	**90.66**

Table 12: Matters where inquiries have resulted in an improved outcome for the individual or the community

Division	%
Community services	81.25
Employment related child protection	34.80
Public administration	88.29
Disability reportable incidents	53.29
All divisions	**64.28**

Responding to requests for review

If a complainant disagrees with our decision not to investigate their complaint, they can ask us to review that decision. A senior member of staff not involved with the original decision handles this review. They advise the Ombudsman, who considers the matter and decides how to proceed. This year we revised our 'request for a review of a decision' policy, streamlining the process and providing better clarity for staff.

We received 77 requests for review, representing 1.2% of all the complaints we finalised this year. See table 13. In 96.10% of the reviews, the original outcome was affirmed after a review of the file or after making further inquiries. We re-opened the original complaint in three cases. See table 14.

Table 13: Requests for a review of our decision as a percentage of formal complaints finalised

Division	No of requests	no of formal complaints	%
Community services	7	1,009	0.69
Employment related child protection	1	130	0.77
Public administration	69	4,227	1.63
Disability reportable incidents	0	68	0.00
Not in jurisdiction	0	973	0.00
All divisions	**77**	**6,407**	**1.20**

Table 14: Outcome of reviews

Division	Original outcome affirmed after				
	Reviewing	Further inquiries	Resolved	Re-opened	Total
Community services	7	0	0	0	7
Employment related child protection	0	1	0	0	1
Public administration	48	18	0	3	69
Disability reportable incidents	0	0	0	0	0
Not in jurisdiction	0	0	0	0	0
All divisions	**55**	**19**	**0**	**3**	**77**
Percentage of total reviews	**71.43**	**24.67**	**0.00**	**3.90**	**100**

Receiving feedback, compliments and complaints

As we are in the business of complaints, we take any complaints about our own service and decisions very seriously. Complaints give us an opportunity to look at the quality of our service and identify areas for improvement.

This year we updated our feedback, compliments and complaints policy to ensure consistency with the model policy we provide to agencies. We are also reviewing our internal systems for capturing and monitoring feedback, compliments and complaints.

This year we received 11 complaints about us. See table 15. The complaints raised a range of issues from failing to deal appropriately with a matter to poor customer service and delays.

Table 15: Complaints about us

Issue	Total
Confidentiality/privacy related	1
Delays	2
Failure to deal appropriately with complaint	4
Lack of feedback/response	1
Faulty procedures	1
Poor customer service	2
Total complaints	**11**
Percentage of formal matters finalised	**0.12**

We found that six of the complaints about us were unjustified but five had some substance. We provided an apology to the complainant and discussed the matter with the staff involved and reviewed our internal practices, particularly around delays. See table 16.

Table 16: Outcomes of complaints about us

Outcome	Total
Unjustified	6
Justified or partly justified	3
Some substance and resolved by remedial action	2
Total	**11**

Engaging effectively with partners and stakeholders

Our aim is to engage effectively with our partners and stakeholders, both through our everyday work and our large scale projects and investigations. Our stakeholders and partners include the NSW Parliament and agencies and organisations within our jurisdiction, as well as the public.

NSW Parliament

The Ombudsman reports to the NSW Parliament. He does this by making various reports on the work of the office, and through the oversight of the Parliamentary Joint Committee on the Ombudsman, Law Enforcement Conduct Commission and Crime Commission (the PJC). The Ombudsman appeared

before the PJC on 12 March 2018. This was a public hearing for the Committee's 2018 review of the annual reports of oversighted bodies. In a separate hearing on the same day, the Ombudsman appeared before the PJC in his capacity as convenor of the Child Death Review Team (CDRT). The hearing transcript and the committee's reports are both available on the NSW Parliament website: www.parliament.nsw.gov.au.

Contributing to Parliamentary Inquiries

Often our work directly informs inquiries being undertaken by the NSW Parliament.

For example, following the tabling of our report on behaviour management in schools, our Deputy Ombudsman and Community and Disability Services Commissioner and our Director Disability appeared before a Legislative Council inquiry into the provision of education to students with disability or special needs in schools in NSW.

In November 2017, the CDRT provided a submission to the Parliamentary Inquiry into support for new parents and babies in NSW.

In February 2018, after making a submission to the Inquiry into Prevention of Youth Suicide in NSW, the Ombudsman and Professor Philip Hazell, a member of the CDRT, gave evidence before the Committee for Children and Young People.

Reporting to Parliament

We are required to make regular reports about our specialised functions. Most of these are made annually and relate to a preceding 12 month period. Some reports are presented to the Presiding Officers of the Houses of Parliament, who then table them in Parliament, while others are given to the Premier or a Minister and they are responsible for tabling. The following reports were tabled during 2017–18:

- *NSW Ombudsman Annual Report 2016-17*
- *Public Interest Disclosure Steering Committee Annual Report 2016-17*
- *Oversight of the Public Interest Disclosures Act 1994 Annual Report 2016-17*
- *Official Community Visitors Annual Report 2016-17*
- *NSW Child Death Review Team Annual Report 2016-17*

We also reported on the following public interest issues:

- *Inquiry into behaviour management in schools* – 9 August 2018
- *Investigation into water compliance and enforcement 2007-17* – 15 November 2017
- *Operation Prospect - Second report on developments* – 1 December 2017
- *Correcting the record: Investigation into water compliance and enforcement 2007-17* – 8 March 2018
- *Is your builder 'fit and proper' - the weaknesses of the home building licensing scheme in NSW* – 16 May 2018
- *More than shelter – addressing legal and policy gaps in supporting homeless children* – 21 June 2018

Our reports about public interest issues often contain recommendations, suggestions or proposals for reform or improvements to agency policies or practices and we actively monitor what action, if any, is taken in response. In 2017–18, we made 62 recommendations. Table 17 summarises the current status of those recommendations.

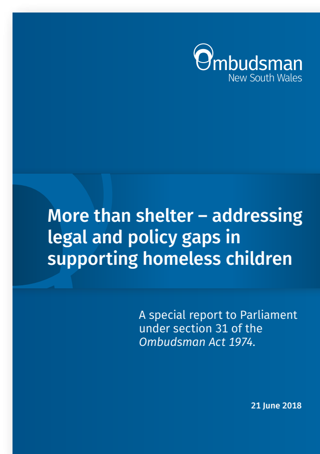
The Ombudsman, as convenor of the CDRT, tabled the following two reports:

- *Childhood injury prevention - Strategic directions for coordination in New South Wales* – 15 November 2017
- *Spatial analysis of child deaths in New South Wales* – 12 April 2018

Table 17: Status of recommendations made in reports to Parliament

Report

More than shelter – addressing legal and policy gaps in supporting homeless children

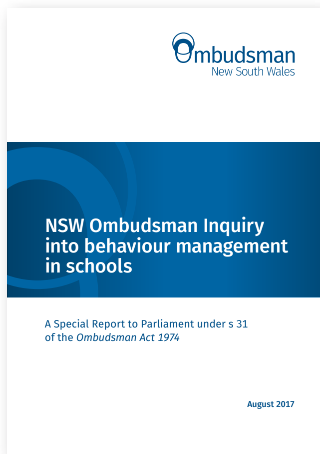


9 Recommendations

Current status: All recommendations accepted

Report

Inquiry into behaviour management in schools



39 proposals

Current status: *The Parliamentary Inquiry into the provision of education to students with a disability or special needs in schools, made a recommendation that our 39 proposals be adopted. The Government has given its 'in principle' support to this.*

Report

Investigation into water compliance and enforcement 2007–17 and correcting the record – (two reports)

1 recommendation

Current status: *Recommendation accepted*

Report

Operation Prospect - Second report on developments

nil recommendations

Current status: *Although there were no recommendations, the report prompted recommendations in a previous report to be accepted*

Report

Is your builder 'fit and proper' - the weaknesses of the home building licensing scheme in NSW

13 recommendations

Current status: *Awaiting agency response*

Improving public sector practices

We have previously reported our work to improve the standard of complaint handling across the NSW public sector. This includes agencies adopting and implementing six Commitments (the Commitments) to effective complaint handling. This year, we completed a formal review of the implementation of the Commitments to effective complaint handling by agencies. The review involved 44 agencies from across the public sector. The review showed that there have been some very positive developments since the Commitments were introduced. In fact, a large number of public sector agencies have reviewed their complaint handling policies and procedures to incorporate the Commitments. We have seen training in customer service and complaint handling increase, and agencies have reviewed their websites making changes to the way they provide information about making a complaint – as well as ensuring their complaint handling systems are as accessible as possible. See p 62.

We conducted an unusually high number of formal investigations this year. Some were large and complex matters that were carried over from the last reporting year. We also started several formal investigations after assessing the related complaints and deciding that a formal investigation was the best approach to take. For example, we completed our investigation into water compliance and enforcement in NSW, tabling our report to Parliament in August 2018. This investigation included two other reports to Parliament – a progress report in November 2017 and a report in March 2018 correcting statistical information that we had provided in the earlier report. See p 70 for details of our investigations about departments and authorities.

We continued to have concerns that tenants in properties managed by community housing providers (CHP) do not have access to our office to raise complaints in the same way as tenants in Department of Family and Community Services (FACS) housing managed properties do. See p 66.

We continued to raise concerns about the use of force by Corrective Services NSW (CSNSW) and Juvenile Justice. We have provided our earlier reports to inform CSNSW's current review of use of force and associated matters. See pp 87 and 89.

Monitoring Aboriginal programs

It is four years since we were given legislative authority to monitor and assess the delivery and impact of the NSW Government Aboriginal Affairs strategy - OCHRE. To inform any review of OCHRE, we are preparing a report about our work and observations, which we expect to table in Parliament in late 2018.

This year, we went to Bowraville to speak to representatives of a whole-of-government task force and separate community reference group about the place-based approach that is being progressed under the solution brokerage function to aid community resilience. We also visited other communities and regions and directly engaged with all the Opportunity Hubs and Aboriginal Language and Culture Nests to hear about their achievements and challenges.

We facilitated a roundtable on the NSW Government's draft Aboriginal Procurement Policy (APP) and established a committee to provide ongoing advice about the progress of the APP and the Aboriginal Participation in Construction policy (APIC) towards achieving their intended outcomes. We helped establish a legal 'community of practice' between members of the NSW Coalition of Aboriginal Regional Alliances (NCARA) and leading law firms. See p 50 for more about our monitoring role and our work with Aboriginal communities.

Improving outcomes for vulnerable children

This year, we worked with FACS to develop and jointly publish a 'report card' that provides a high level overview of the types of issues that have been identified by our office and addressed by FACS – as well as issues where ongoing work by FACS is being monitored through the Integrated Governance Framework (IGF). The main purpose of the report card is to provide our key stakeholders and the public with greater visibility of our oversight. See p 99.

In June 2018, we tabled a special report in Parliament following our inquiry into the legal and policy gaps affecting homeless children. FACS acknowledged that it needed to address the issues raised in our report, and said that it is committed to working with the homelessness sector to strengthen the legal, policy and practice frameworks that guide its work and that of its non-government organisation (NGO) partners in supporting homeless children. See p 100.

In August 2017, we released the final report on our inquiry into the operation of the Joint Investigation Response Team (JIRT) program to the partner agencies (FACS, the NSW Police Force (NSWPF) and NSW Health). The report contained 67 recommendations aimed at improving joint agency practice and consolidating and enhancing the performance of the individual agencies. Given the considerable public interest in the operation of the JIRT program, we tabled a report in Parliament in October on the progress made by the three agencies in implementing our recommendations. See p 101.

We held discussions with key religious leaders, survivor groups and a number of former police and royal commissioners about establishing a standing

‘child safety’ committee for survivors and faith groups to provide governance arrangements to help drive the response to the Royal Commission recommendations. The inaugural meeting of the standing committee was held at NSW Parliament House on 12 September 2018. See p 110.

We completed a number of audits in collaboration with the Office of the Children's Guardian (OCG) – where we have identified concerns about compliance with reportable conduct and complaint handling practice. See p 113.

Improving outcomes for people with disability

We handled a range of complaints that raised concerns about the actions of some newly registered NDIS providers. This involved a significant investment by our office and Official Community Visitors (OCVs) to help support providers understand quality standards and improve their practices. We have also done substantial work to provide relevant information to the National Disability Insurance Agency (NDIA) to inform its actions, including its fraud investigation and registration functions. See p 122.

Our handling of disability reportable incident notifications underscored the importance of the work that is underway to establish an NDIS worker screening system. In a range of matters, we identified disability support workers with sustained findings of abuse and/or neglect of clients who had moved between providers. These matters also highlighted the need for information exchange provisions to enable providers to share information relevant to the safety of their clients. See p 128.

We continued our standing inquiry into allegations of abuse and neglect of adults with disability in the community – such as the family home – receiving allegations of abuse and neglect involving family members or other people in the community. See p 129.

We promoted and monitored the implementation of the Joint Protocol for disability providers and police to reduce the contact of people with disability in supported accommodation with the criminal justice system. This included holding forums, developing training resources and analysing data to identify issues. See p 131.

We completed our three-year Rights Project. This project helped people with disability to understand and exercise their rights in the transition to the NDIS and promoted accessible complaint systems and practices among NSW Government agencies and disability service providers. It also strengthened systems to prevent, identify and respond to the abuse, neglect and exploitation of people with disability. See p 132.

Connecting with the community

It is important that we are accessible to all members of the NSW community, especially those who are disadvantaged or experiencing hardship. We are committed to raising awareness of our office by participating in community events, visiting community groups to talk about our work, and ensuring that information about our services is readily available to everyone in an accessible form.

This year, we reviewed and updated our access and equity policy which sets out the framework for a range of access and equity programs including our Disability Inclusion Action plan (DIAP), Multicultural Policies and Services Program (MPSP) Action plan, Aboriginal policy and Carers Recognition policy. Our report on our DIAP, MPSP and Carers recognition activities is in Appendix B.

In other sections in this report, especially the Working with Aboriginal communities section (see p 50), the Children and young people section (see p 93) and the People with disability section (see p 116), we further discuss our community engagement.

Reviewing how we connect to the community

Our website is one way we provide information to the community about what we do. It is essential that this information is current and presented in a clear and logical way. This year, we started redeveloping our website to make navigation easier, to optimise the look on mobile devices, to improve accessibility and to link to our social media platforms – Facebook, Twitter and YouTube. As part of this project, we are reviewing our online complaint form and our content.

The new website will reflect the changes we have made to our brand, reinforcing the message of our new look – displaying clarity, focus and scrutiny and being trustworthy, strong, responsible, secure and dependable.

Recognising that social media is becoming an increasingly important communication channel, we developed and implemented a social media strategy. This year, our Twitter presence has grown and we are actively promoting our work, including our reports, on Twitter and Facebook. We have a YouTube channel where videos about our work can we viewed.

Connecting with Aboriginal communities

We have always focused on communication and consultation as the best way to achieve outcomes for Aboriginal people in NSW. This involves working closely with government and non-government service providers, Aboriginal community leaders and community workers in both metropolitan and regional areas.

This year we visited remote and regional areas to meet face-to-face with communities, as part of our role in monitoring and assessing the delivery of the NSW Government's OCHRE initiatives. In particular, we visited and followed up on issues raised by communities in Bourke, Enngonia, Singleton, Grafton, Cobar, Eden, Bowraville, Nambucca Heads, Coffs Harbour, Orange, Campbelltown and the South Coast.

A highlight this year was our stall at the Yabun Festival on 26 January 2018, held at Camperdown on the traditional lands of the Gadigal people. The event was attended by thousands of Aboriginal people and provided an excellent opportunity for us to promote our work and help Aboriginal people to resolve their concerns about a range of issues.

Similarly, our stall at the Koori Knockout in October 2017 was also a great success. We sponsored the match balls for the event and gave away 3,000 mini rugby balls to children and young people from all over NSW. We also sponsored the annual PCYC Nations of Origin in July 2017, supplying 50 match balls for the Port Stephens event. Like the Koori Knockout, it attracted thousands of Aboriginal people from throughout NSW.

In August 2017, we met with members of an Aboriginal community in Northern NSW to discuss concerns about local child protection practices. Almost 50 community members attended the meeting. We received ten complaints on the day and several more after the meeting.

During the year, we also:

- Attended the launch of the Dhiiyaan Aboriginal Centre. After a complaint to our office in 2012, we have been involved in helping to support the transition of the Dhiiyaan collection – one of the largest Aboriginal culture and history collections in Australia – to an independent, Aboriginal-controlled organisation.
- Participated in four Aboriginal NDIS forums in Tamworth, Nambucca Heads, Bellingen and Miller – speaking with Aboriginal people with disability, service providers, Ability Linkers and NDIS engagement staff.
- Coordinated a community lunch at Peak Hill and spent two days helping community members resolve concerns about various agencies.
- Visited carer support groups in Newcastle and Wagga Wagga to listen to full-time grandparent carers and help with a range of enquiries and complaints.
- Held a stall at the Narromine Youth Week event and attended an interagency meeting in nearby Nyngan to learn about issues affecting local young people.
- Participated in a NAIDOC Week event organised by Campbelltown City Council.
- Attended and observed an OCHRE Healing Forum in Orange hosted by Aboriginal Affairs (AA), the National Healing Foundation and the Three Rivers Regional Assembly Local Decision-Making Alliance.
- Participated in the 'Good Service Mob' initiative – a partnership between complaint handling agencies aimed at providing joint community engagement activities and other resources to Aboriginal communities.

We celebrate National Reconciliation Week and NAIDOC. This year, we invited a guest speaker, Ray Ingrey, to speak about the Dharawal Language Program.

New staff attend our Aboriginal cultural appreciation training as part of our mandatory induction program.

Connecting with people with disability

We are committed to improving the circumstances of people with disability, their families and carers. We look for practical ways to break down barriers and promote access to our services, information and employment opportunities. We support the rights of people with disability through our day to day work.

During the year, we:

- Distributed two editions of our Disability e-News, providing information about our work in relation to people with disability and the broader disability sector.

- Continued our project that promotes the rights of people with disability in the lead-up to the full roll out of the NDIS, delivering 45 Speak Up workshops to 547 people with disability and their supporters.
- Delivered presentations about disability awareness and the role of our office as well as presenting to disability advocacy and other organisations about the NDIS Quality and Safeguards Commission (NDIS Commission).
- Developed fact sheets, videos and other resources to support our work.
- In partnership with Department of Social Services (DSS), developed and consulted stakeholders on a range of resources for the NDIS Commission.
- Participated in the NDIS Commission's Advocacy Forums to raise awareness about the Commission's functions.
- Participated in community events such as conferences, forums and expos to raise awareness of the role of the Ombudsman in community services and the rights of people receiving these services.
- Sponsored three self-advocates and people with disability to attend the Victorian Advocacy League for Individuals with Disability (VALID) 'Having a Say' Conference in Victoria.
- Promoted and monitored the implementation of the Joint Protocol for disability providers and police to reduce the contact of people with disability in supported accommodation with the criminal justice system. This included holding forums, developing training resources and analysing data to identify issues.

New staff attend our disability awareness training as part of our mandatory induction program.

Connecting with culturally, linguistically and religiously diverse society

Under the MPSP, all NSW Government agencies are required to report on how they conduct their business within a culturally, linguistically and religiously diverse society. See Appendix B.

As we did a comprehensive review of our multilingual resources in 2016–17, this year's focus was on making these resources accessible. We provide general information in 48 community languages, checked for language and cultural appropriateness, on our website.

This year, we developed an information sheet in Plain English, Easy English, Arabic, Italian and Spanish to support a project we had commenced about the transfer process for people with disability in Ageing, Disability and Homecare (ADHC) accommodation services who have complex support needs.

We continued to provide, interpreter and translation services as needed. Our front line staff are trained in how to use these services.

This year we consulted extensively with key religious leaders to develop strategies to progress recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse, including establishing a standing 'child safety' committee for survivors and faith groups. See p 110.

New staff attend our cultural intelligence training as part of our mandatory induction program.

Connecting with young people

We have a dedicated youth liaison officer (YLO) who focuses on increasing awareness of the role of the Ombudsman and how we can assist young people and their advocates. Talking to young people in our community assists her to gauge how we can improve their access to our services.

Our YLO also undertakes a community education program focused on raising awareness about how to access the Ombudsman's services.

This year the YLO:

- Delivered tailored information sessions for agencies including the CREATE Foundation, Mission Australia, Mt Druitt Ethnic Communities Agency and YES Unlimited.
- Visited various youth services in the Riverina region, Northern NSW and Western Sydney.
- Hosted several information stalls – including at the Koori Knockout, EWON's anti-poverty week forum, Anglicare's inaugural Social Cohesion Housing Hub in Burwood, a Harmony Day Expo in Eastwood, the Cobham Juvenile Justice Services Expo, and Youth Week events in Narromine and Gunnedah.
- Delivered two workshops for young parents participating in the Red Cross Young Parents Program.
- Worked with Carers NSW to promote our services to young people who are carers.
- Delivered a presentation to the NSW Youth Parliament.
- Visited four juvenile justice centres, together with our custodial services unit, to promote our services and help resolve young people's complaints.
- Networked with key stakeholders at several conferences – including Youth Action's Youth Work conference and the Multicultural Youth Advocacy Network conference.

The YLO and other staff also worked with the CREATE Foundation to support a number of their initiatives. We provided training about supporting young people to make complaints, and advice to support the development and distribution of CREATE's 'Go your own way' kit – a resource for young people transitioning from care in Australia. We also participated in workshops for young people with a disability hosted by CREATE.

To celebrate Youth Week, our YLO invited a guest speaker – Lou Imoges, Practice Lead, Youth and Homelessness at Uniting – to speak to our office about Uniting's involvement in the development of Foyer51, a learning and accommodation centre to support young people leaving out-of-home-care (OOHC).

Connecting with rural and regional communities

We do our best with our limited resources to reach people in rural and regional NSW. People can ring us using our 1800 toll-free number or lodge a complaint online.

This year our staff travelled outside the Sydney metropolitan area to:

- provide training for agencies delivering community services to children and people with disability
- consult with community groups and government agencies, especially about OCHRE programs
- visit correctional and juvenile justice centres
- attend community events to promote the work of the Ombudsman.

The connecting with Aboriginal people, people with disability and young people sections have more information on our community engagement in rural and regional areas.

Community events

We also connected with thousands of people this year through attending community events, including:

- senior's day at the Royal Easter Show
- the NSW Koori Rugby League Knockout
- the Sydney Gay and Lesbian Mardi Gras Fair Day.

Sharing our knowledge and expertise

We actively share our knowledge and experience by developing and delivering education and training programs, and by releasing a range of publications – including guidelines and fact sheets – to support agencies and organisations we oversight perform their functions. Our aim is to give agencies the tools they need to identify areas for improvement in both their service delivery and their complaint handling systems.

We also contribute to public inquiries and reviews by making written and verbal submissions, participate in working groups, and build relationships with other Ombudsman offices and like organisations both at home and overseas.

Delivering training programs

Thank you!

This was the most engaging, meaningful, honest and helpful cultural training I have experienced. I endeavour to do better as a leader for our Aboriginal staff and young people.

Excellent having a wise Aboriginal woman to deliver historical/cultural information from which she has personal experience.

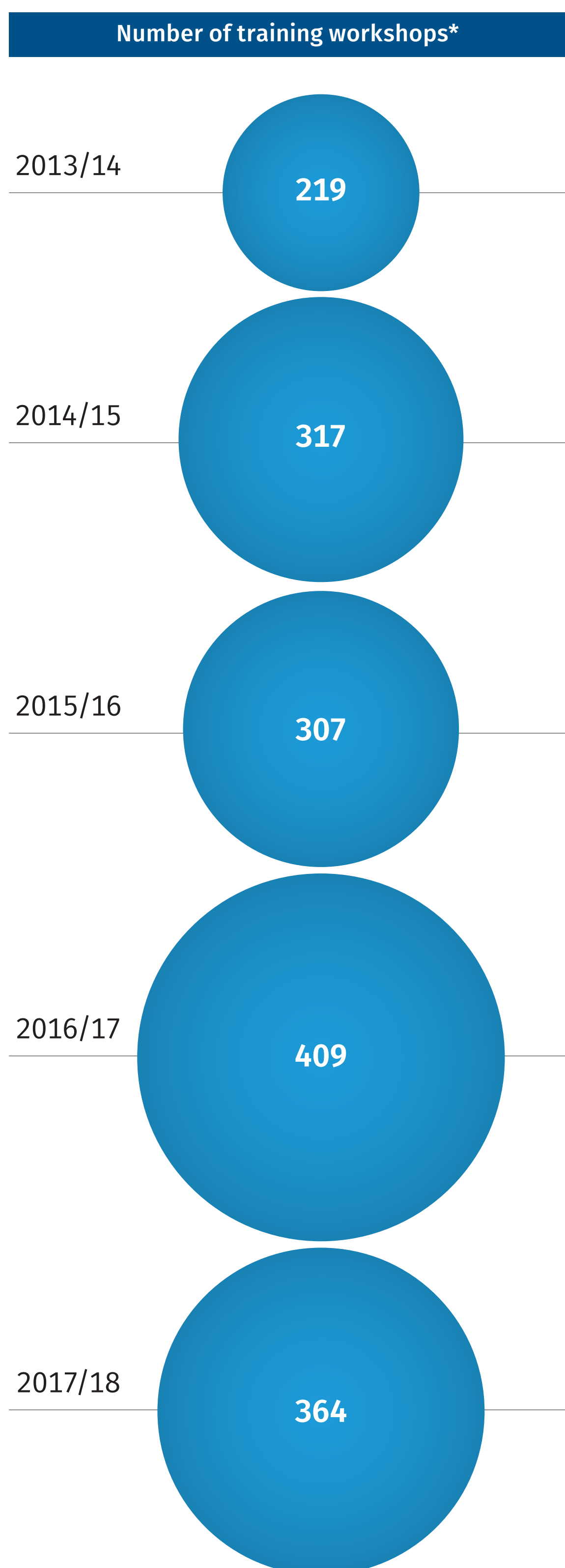
a participant - Aboriginal cultural appreciation workshop

We provide cost effective, professional development and training services to a wide range of individuals and organisations. Our participants include employees of public sector agencies and NGOs, as well as consumers of community services and representatives of community groups across NSW. We also provide training to federal government agencies and other oversight bodies in Australia and overseas.

Delivered by experienced practitioners, our workshops are highly interactive and provide practical tools and tips to help improve participants' skills and knowledge in a range of areas where our office has specialist expertise. Participants consistently rate our training workshops very highly on the quality and relevance of the content and supporting materials, and our trainers' expertise and delivery.

Details of our courses, including how to register, are on our website – www.ombo.nsw.gov.au.

Table 18: Training and education activities - five year comparison



Note: Our training numbers were higher in 2016–17 due to the demand by ADHC for our handling and responding to disability incidents workshops before the handover of disability services to the Commonwealth.

Table 19: Sectors we trained – % of all training

Sector	%
NSW public sector agencies	37
Non-government community service providers	30
Oversight agencies (including international ombudsman)	9
Private organisations	8
Federal public sector agencies	7
Local government	5
Interstate public sector agencies	4

This year we delivered 364 training workshops to 7,478 people across Australia and overseas including:

- Providing Speak Up training to 547 people at 45 workshops – including 366 people with disability, 15 family members/other carers/advocates, and 166 disability services support staff.
- Developing and delivering a new training workshop for employees of youth homelessness services that provide accommodation. The training provides an overview of the reportable conduct scheme and the obligations it imposes on agencies and their employees. We delivered seven workshops reaching 107 employees.
- Delivering 23 tailored workshops on initial and early response to abuse and neglect and handling serious incidents in the disability sector to 438 ADHC staff in the lead up to the full transition to the NDIS. We also delivered 14 workshops to

Table 20: Number of training workshops delivered - by category of training

Category of training	Workshops	Participants
Complaint handling and negotiation skills	138	2,872
Public interest disclosures	61	1,506
Speak Up – for people with disability and their supporters	45	547
Community and disability services	39	764
Access and equity	33	575
Employment related child protection	34	913
Investigation skills	14	301
Total	**364**	**7,478**

7 non-government disability service providers about responding to abuse and neglect and handling serious incidents in the disability sector.

- Delivering 20 responding to child protection allegations workshops and seven handling serious child protection allegations workshops to 806 people. We also delivered three public information sessions on notifying and reporting allegations of workplace abuse, reaching 240 participants.
- Presenting 22 Aboriginal cultural appreciation workshops to 13 agencies – including Juvenile Justice, St Vincent de Paul, Transport NSW, the State Library, the Australian Bureau of Statistics (ABS), the LECC and the NSW Audit Office.
- Delivering complaint handling training for a range of other oversight bodies – including the LECC, the Commonwealth Ombudsman, and the NSW Health Care Complaints Commission (HCCC).

We developed a new workshop on investigating serious incidents in the disability sector. This workshop builds on our handling serious incidents workshop, and has a stronger emphasis on how to conduct investigations into matters involving criminal allegations.

National Investigations Symposium

We worked with our partners – the Independent Commission Against Corruption (ICAC) and the Institute of Public Administration Australia NSW (IPAA) – to organise the 12th biennial National Investigations Symposium (NIS). It will be held in Sydney on 14 and 15 November 2018, with pre-symposium interactive workshops running on 13 November 2018.

The NIS aims to enhance investigative and complaint handling knowledge and skills across the public and private sectors, the non-government sector, and the wider community. Over 500 Australian and international delegates from a wide range of professional backgrounds are expected to participate.

Everything was great – examples, delivery, real experiences provided by the trainer which is rare in some short courses.

Thanks to the trainer – it takes a lot of energy to deliver two full days of training with such authority.

a participant – Investigating misconduct in the public sector workshop

Preparing guidelines and other resources

This year we published a new edition to our complaint handling resources – Applying the Commitments to effective complaint handling – guidance for agencies – to assist agencies implement the effective complaint handling Commitments. It has been very popular with thousands of downloads from our website.

We released 11 new fact sheets. Two provide practical guidance on disability reportable incident investigations and another outlines changes to safeguarding arrangements in relation to the NDIS in NSW. An information sheet on our project to look at the transfer process for people with disability in ADHC accommodation services who have complex support needs was made available in Plain English, Easy English, Arabic, Italian and Spanish. All our fact sheets are available on our website.

We released several videos on our YouTube channel – two of which are animated video resources for disability support workers and managers. These short videos are designed to help staff to quickly understand the joint protocol to reduce the contact of people with disability in supported accommodation with the criminal justice system. The videos were uploaded to our YouTube channel in March 2018 and had 3,000 views by the end of June 2018. See our YouTube channel for all available videos.

Making submissions

We made submissions on a wide range of topics, including:

- seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities - see p 131
- draft proposals from the NSW Law Reform Commission (NSWLRC) review of the *Guardianship Act 1987* - see p 130
- protections for residents of long-term supported group accommodation in NSW - see p 135
- enhancing whistleblower protections legislation
- the scope and adequacy of special care offences - see p 114.

Participating in working groups

We participated in working groups and facilitated roundtable discussions about a range of issues including:

- The Guiding Principles Yarning Circle (GPYC) – which oversees the implementation of the Guiding Principles for strengthening the participation of local Aboriginal communities in child protection decision-making. See p 53.
- The Strengthening Aboriginal OOHC Providers Governance Group – which advises the Aboriginal OOHC agency capacity building project led by the Aboriginal, Child, Family and Community Care State Secretariat (AbSec).
- The Bourke Cross Sector Leadership Group – bringing together Bourke community leaders, Just Reinvest representatives and key senior regional agency representatives to explore and drive service sector reforms in Bourke. See p 56.
- The Best Practice Working Group – to support and inform our work and the disability sector in relation to the disability reportable incident scheme, and to obtain expert advice on critical issues relating to the abuse and neglect of people with disability. See p 129.
- Establishing a statewide steering committee (SCC) following our release of the Joint Protocol to reduce the contact of people with disability in supported accommodation with the criminal justice system. See p 131.

Responding to requests for our training from overseas

As a leading oversight agency, our cost effective training continues to be sought after by other Ombudsman offices in our local region and across the world.

This year we were invited back to the United States to present two Managing unreasonable complainant conduct workshops at the United States Ombudsman Association's 2017 gathering in San Antonio, Texas. The workshops were attended by senior staff representing various Ombudsman offices from across the United States. We also delivered a further 10 of these workshops in the US and Canada – to 280 participants from 72 different agencies.

Participants rated the workshops very highly. We have been invited back to present at the 2018 United States Ombudsman Association conference in Portland, Oregon. We will also deliver a further seven workshops to other Ombudsman offices across the US and Canada.

Source: October 2017, Ontario Ombudsman, Canada

- Facilitating a roundtable for representatives of the Aboriginal business sector to provide direct feedback to Ministers on the NSW Government's draft APP. See p 57.
- Establishing a committee to provide advice to the NSW Government about the progress of the APP and APIC towards achieving their intended outcomes. See p 58.
- Hosting a roundtable with Aboriginal entrepreneurs and the NSW Indigenous Chamber of Commerce (NSWICC) to discuss the state of the Aboriginal business sector in NSW and ideas for strengthening relevant policy – including the APP. See p 58.
- Facilitating a roundtable with Aboriginal business owners and the NSWICC for the Minister for Finance, Services and Property and the Minister for Aboriginal Affairs to hear directly from the sector on the operation of existing policies and ideas for the development of the APP. See p 58.
- Establishing a standing 'child safety' committee for survivors and faith groups to provide governance arrangements to help drive the response to the Royal Commission's recommendations. See p 110.

Very engaging and informative, and relevant to workplace. Complex topic presented in a user friendly and interesting way.

a participant - Responding to child protection allegations against employees workshop

Giving speeches and presentations

Our staff gave presentations to a wide range of community groups, professional conferences and agencies.

The Ombudsman presented at the Association of Children's Welfare Agencies (ACWA) Board Meeting, speaking about the key priorities for the office and the impact of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) on work. He also presented at the Australian and New Zealand Policing Advisory Agency on the use of lethal force against terrorists.

The Deputy Ombudsman and Community and Disability Services Commissioner presented at a range of events focused on child safety and wellbeing including the NSW/ACT Interdenominational Professional Standards Network and the Child Abuse Prevention Service's Safe Children conference.

Our Deputy Ombudsman (Public Administration) presented at the Australian Public Sector Anti-Corruption Conference conference on the judicial review of administrative decisions.

Working with other Ombudsman and integrity agencies

As a leading watchdog agency, our training program continues to be sought after by other Ombudsman offices. For example, this year one of our Deputy Ombudsman travelled to Vanuatu to deliver training to staff at the Vanuatu Ombudsman's office, as part of the Pacific Governance and Anti-Corruption Program run through the Commonwealth Ombudsman. We were also invited to conduct workshops at the United States Ombudsman Association's annual gathering and for a number of Ombudsman offices across the USA and Canada.

We also:

- continued to provide substantial information and guidance to the NSW and Commonwealth Governments about the establishment of the NDIS Commission and the intended operation of its functions – see p 136
- established a joint project team with the DSS to support the effective transition to the NDIS Commission – see p 136
- in partnership with the Victorian Office of the Disability Services Commissioner, prepared complaint handling guidelines for the NDIS Commission – see p 137
- liaised with the NDIS Commissioner, the Complaints Commissioner and the Registrar on a number of transitional issues before the Commission assumed its functions
- continued to work with Victoria and the ACT to establish their reportable conduct schemes and move towards harmonisation – see p 111
- developed and conducted training on best practice in investigations on behalf of the Victorian Commission for Children and Young People (VCCYP) – see p 111
- met with the VCCYP and the Department of Health and Human Services to discuss a range of issues of mutual interest including working with the education and early childhood sector regulators, engaging religious bodies and integrating child safe standards with reportable conduct schemes.

The Ombudsman is a member of the Australian and New Zealand Ombudsman Association (ANZOA) and attended, with a Deputy Ombudsman, its conference in New Zealand. He is also a member of the International Ombudsman Institute and its Australasia and Pacific Region group.

Our office

In this Part we discuss our office, statutory officers and the people, systems and governance arrangements that support what we do. This Part addresses many of our Annual Reporting (Departments) Act obligations.

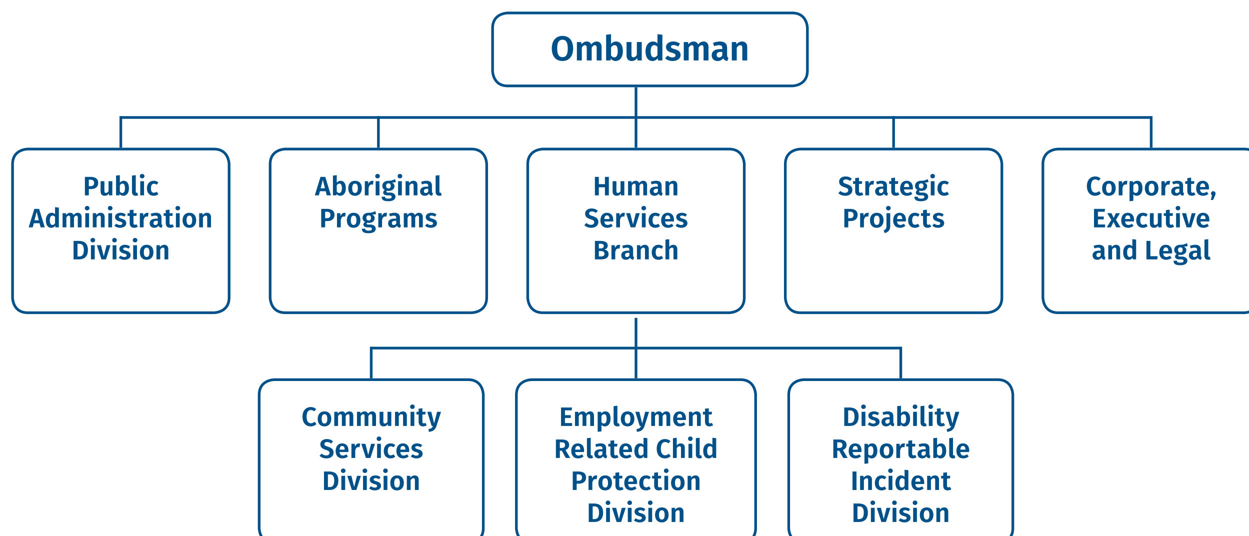
We work hard to ensure that staff have effective and efficient systems and processes support the work that they do and that these systems and keep pace with changes and developments in technology. We also work hard to ensure that the office is open and inclusive, and provide training and support to our staff to achieve this.

Most of our funding is spent on employing staff. We provide details on this expenditure, along with other information about budget and finances – that support the figures in the audited financial statements.

Our structure

We are structured around the work that we do. Each of our business units as well as our corporate area is headed by either a Deputy Ombudsman or Assistant Ombudsman – all reporting to the Ombudsman. See below.

We provide details of the work undertaken by our business units on our website – www.ombo.nsw.gov.au.



Our statutory officers

Michael Barnes

Ombudsman

Bachelor of Arts
Bachelor of Laws
Master of Laws

Michael was appointed NSW Ombudsman in December 2017. He has been the NSW State Coroner as well as the inaugural Queensland State Coroner, and has presided over many high profile and contentious inquests – including the deaths arising from the sinking in the Torres Strait of the Department of Immigration vessel the Malu Sara, the deaths connected with the Pink Batts program, and the deaths resulting from the Lindt Café siege.

Michael specialised in criminal and administrative law and has undertaken research and teaching in criminal justice, health law, and the investigation of corruption and organised crime. He was an adjunct professor of the Faculty of Law at the Queensland University of Technology and of the Australian Institute of Suicide Research and Prevention at Griffith University.

Michael joined the office in a period of significant change. He has taken the opportunity to refresh the strategic direction and priorities of the office, including evaluating existing structures and processes to meet ongoing demands. His priority is to increase the number of formal investigations we do. He has tabled four reports to Parliament on public interest issues in his first seven months as Ombudsman.

Chris Wheeler

Deputy Ombudsman

Bachelor of Town and Regional Planning
Masters of Town and Country Planning
Bachelor of Laws (Hons)

Chris was appointed Deputy Ombudsman in 1994, bringing to the role his extensive experience in state and local government in both NSW and Victoria.

Chris has operational responsibility for the traditional Ombudsman role – dealing with complaints about the public sector and local government. He has worked with agencies to improve their processes, developing guidelines and other resources on good complaint handling and administrative practice. His priority is to provide practical advice and training.

Chris leads the Ombudsman's involvement in the whole-of-government complaint handling improvement project (CHIP), the 'Managing Unreasonable Complainant Conduct' project, and the Ombudsman's public interest disclosure (PID) function.

(L-R): Anita Whittaker, Chris Wheeler, Michael Barnes, Danny Lester, Julianna Demetrius and Steve Kinmond.

He has also been on the research team for two major internationally recognised research projects into the management of whistleblowing within organisations (known as WWTW 1 and WWTW 2).

Steve Kinmond

Deputy Ombudsman
Community and Disability Services Commissioner

Bachelor of Arts
Bachelor of Laws
Diploma of Education
Diploma of Criminology

Steve was appointed Deputy Ombudsman and Community and Disability Services Commissioner in 2004, after eight years as the Assistant Ombudsman (Police). He has extensive experience in complaint handling and investigating public interest issues.

Steve has operational responsibility for the Ombudsman's human services functions, including the oversight of the delivery of services to children and to people with disability. He has worked with both NSW and federal agencies as well as with advocacy groups and NGOs in the transition of disability services to the Commonwealth. He was also consulted on the development of the NDIS National Quality and Safeguarding Framework and the establishment of the new NDIS Commission.

Steve worked on the office's response to the Royal Commission including giving evidence. He is currently working with agencies across the country to establish, where possible, harmonised reportable conduct schemes.

Danny Lester

Deputy Ombudsman

Bachelor Adult Education
Diploma Business

A proud Wonnarua man, Danny was appointed Deputy Ombudsman in 2014.

Danny has worked in frontline positions in Commonwealth and NSW agencies, moving to the non-government sector to work with the Aboriginal Employment Strategy (AES) – including being its CEO for eight years – and with the Australian Employment Covenant. He has served on boards and advisory committees, including being a member of the advisory council for the Centre for Social Impact.

Danny is passionate about improving educational outcomes, employment opportunities and economic sustainability for Aboriginal people. In 2011 he was a member of the Aboriginal Ministerial Taskforce, established to inform a new plan – OCHRE – to improve education and employment outcomes for Aboriginal people in NSW.

Danny has operational responsibility for the Ombudsman's monitoring of OCHRE initiatives, including providing strategic and timely feedback to agencies to enable them to address any shortcomings or gaps that may limit the capacity of OCHRE to meet its objectives.

Danny was voted by an independent panel as a True Leader with vision for the BOSS magazine list of 2012.

Julianna Demetrius

Assistant Ombudsman

Diploma of Law

Appointed as an Assistant Ombudsman in July 2015, Julianna has led the strategic projects division for over 10 years. She has extensive experience in complaint handling, investigations and delivering major systemic projects.

Julianna has led several major reviews, inquiries and investigations. Recently, these have included an examination of legal and policy gaps in supporting homeless children, and a comprehensive inquiry into the operation of the tri-agency JIRT program for responding to criminal child abuse and neglect. Between 2010 and 2012, Julianna led the Ombudsman's audit of Aboriginal child sexual assault. She works with the Deputy Ombudsman (Aboriginal Programs) to oversight the implementation of designated Aboriginal programs, and is currently preparing our first major report into the implementation of OCHRE – four years on.

Julianna worked on the office's response during the five years of the Royal Commission. She currently represents the Ombudsman in discussions about implementing the Royal Commission recommendations, including the impact on our reportable conduct scheme.

Anita Whittaker PSM

Assistant Ombudsman

Bachelor Commerce

Appointed Assistant Ombudsman (Corporate) in July 2015, Anita has led the corporate division for 23 years. She has extensive experience in public administration and has worked in the public sector for nearly 40 years.

Anita leads and manages all aspects of the Ombudsman's corporate functions including overseeing financial, human, physical and technological resources. She has responsibility for implementing government programs and legislative changes as well as delivering a responsive corporate service.

Anita has a key role in the governance of the office and has been continuously improving our governance systems – including compliance, risk management, internal audit, and policy development and review. She is the office's chief audit executive and provides advice to our audit and risk committee (ARC) on all aspects of the Ombudsman's operations.

Anita is a qualified leadership coach and a member of the Institute of Internal Auditors. She was awarded the Public Service Medal in 2000 in recognition of her outstanding service to the NSW public sector.

Note: Professor John McMillan AO was Acting Ombudsman to 1 December 2017.

Michael Gleeson was Acting Deputy Ombudsman to 4 July 2017.

Corporate governance

Reviewing our corporate purpose and strategic direction

Our statement of corporate purpose outlines our purpose, functions and values as well as the critical success factors we use to measure our performance.

The current statement expires in 2018, so – with recent changes to our jurisdiction – the Ombudsman decided to review the strategic direction and supporting structure of our office to make sure that we can meet both current and future needs. He wanted to provide a guide for our performance over the next five years – and make sure that our internal structure supports us achieving our goals and discharging our statutory responsibilities.

As part of this review, interviews were held with key internal and external stakeholders. As well, staff had the opportunity to provide their thoughts through an online survey. After consultations about the discussion paper, a strategic directions document has now been prepared. We will consider options for structural change once the Ombudsman has endorsed the new strategic direction.

Being accountable

As an independent statutory body, we are accountable to the people of NSW through the NSW Parliament – not to the government of the day. The work of the Ombudsman is scrutinised by the PJC. For example, the PJC examines our annual report and other reports to Parliament and may report to Parliament on any matter relating to our work. This includes any changes they consider desirable to our functions, structures or procedures. However, the PJC cannot review our decisions about individual complaints.

We appeared before the PJC twice on 12 March 2018 – to answer questions about the 2016–17 annual reports for the Ombudsman and for the CDRT.

From time to time, the Ombudsman is invited to provide submissions or evidence to parliamentary inquiries. For example, in August 2017 our Deputy Ombudsman and Community and Disability Services Commissioner and our Director Disability gave evidence at the NSW Parliamentary inquiry into the provision of education to students with disability or special needs in schools in NSW.

Measuring our performance

We track our performance across all areas of our work. This includes individual case management and our systems and processes. We use data from our case management system to monitor and identify where there may be backlogs, delays or issues. Some of our internal audits this year have focused on how we manage complaint and review cases end-to-end, and have made suggestions about how we could work more efficiently to meet our objectives.

Our statutory officers meet quarterly to review how we are performing and identify any actions required to ensure we are meeting our objectives.

Updating our policies

Our policies are a key component of the governance of our office. They inform staff and stakeholders of the Ombudsman's position on certain issues and specify staff roles and responsibilities – as well as the work practices and conduct required of them. Our policies enable staff to work effectively and consistently in accordance with our strategic direction and compliance obligations.

We have comprehensively updated a number of policies this year. Both content and style were reviewed to ensure relevance, consistency and accessibility. This work will continue to be a focus into 2018–19.

Managing risk

Our risk management framework provides the principles and processes for all risk management activities across the office, and complies with the core requirements of NSW Treasury's Internal Audit and Risk Management Policy for the public sector.

This year we identified some strategies to mature our approach to risk management. However, implementing these strategies within existing resources has been challenging. We are currently revising priorities in the risk and governance area to better position ourselves to make improvements to our risk management system in the coming reporting year. Staff with specific responsibilities in this area have also completed accredited training in risk management.

Our Risk, Information and Security Committee (RISC) is responsible for ensuring we have appropriate systems to identify and effectively manage risk. The RISC meets regularly and has representatives from across the office.

Attestation of compliance

The Ombudsman, following advice from the ARC, attests to compliance with eight core requirements of the NSW Treasury Policy. The attestation statement is below.

Internal audit and Risk Management Attestation for the 2017–18 Financial Year for the Ombudsman's Office

I, Michael Barnes, am of the opinion that the Ombudsman's Office has internal audit and risk management processes in operation that are compliant with the eight (8) core requirements set out in the Internal Audit and Risk Management Policy for the NSW Public Sector, specifically:

Risk Management Framework core requirements compliant

1.1 The agency head is ultimately responsible and accountable for risk management in the agency.

Compliant

1.2 A risk management framework that is appropriate to the agency has been established and maintained and the framework is consistent with AS/NZS ISO 31000:2009.

Compliant

Internal Audit Function core requirements compliant

2.1 An internal audit function has been established and maintained.

Compliant

2.2 The operation of the internal audit function is consistent with the International Standards for the Professional Practice of Internal Auditing.

Compliant

2.3 The agency has an Internal Audit Charter that is consistent with the content of the 'model charter'.

Compliant

Audit and Risk Committee core requirements compliant

3.1 An independent and Audit and Risk Committee with appropriate expertise has been established.

Compliant

3.2 The Audit and Risk Committee is an advisory committee providing assistance to the agency head on the agency's governance processes, risk management and control frameworks, and its external accountability obligations.

Compliant

3.3 The Audit and Risk Committee has a Charter that is consistent with the content of the 'model charter'.

Compliant

Membership

The chair and members of the ARC are:

- Independent Chair – Ms Christine Feldmanis, start term date 24 May 2017, finish term date 23 May 2022.
- Independent Member – Mr David Roden, (re-appointed) start term date 27 June 2016, finish term date 26 June 2021.
- Independent Member – Ms Vicki Allen, start term date 23 August 2017, finish term date 22 August 2022.

Michael Barnes
Ombudsman

31 July 2018

Our ARC provides us with independent assurance about our risk management practices. Although both the RISC and ARC have different responsibilities, they work closely together to ensure that our risk management framework meets our ongoing requirements.

Completing internal audits

We finalised the following audit reports during 2017–18 and provided them (with management responses) to the Ombudsman for approval:

- Payroll processes – one low-rated issue identified around documentation of sign-off and processes in place to ensure accuracy of calculations.
- Compliance with whole-of-government legislation – two medium rated issues identified around the selection of contractors and the declaration of supplier relationship processes.
- Quality and efficiency of the handling of complaint and review files (Phase 1 employment related child protection) – five medium-rated issues identified around criteria for and documentation of monitoring and oversight decisions, the mix of powers we apply and how we can best use our resources, and time frames for communicating advice to agencies.

The quality and efficiency audit of the handling of complaint and review files is actually four related audits. We will complete the remaining three phases, which will examine practices in our other divisions, next year.

We report the results and outcomes of all audits to our executive. The ARC then monitors our progress in implementing any recommendations.

Our audit and risk committee

Our ARC provides independent assistance to the Ombudsman by monitoring, reviewing and providing advice about our governance, risk and control framework as well as our external accountability obligations. In accordance with NSW Treasury requirements, all members of our ARC are independent.

This year, the ARC asked for specific briefings on a range of matters including:

- the Operation Prospect investigation, report and litigation
- the changes in the disability sector and the transfer of the Ombudsman's disability role to the NDIS Commission
- the water investigation.

Committee members discussed the risks and opportunities of these activities with senior staff and were able to provide insights and suggestions.

The ARC also continued their focus on improving compliance systems within our office, particularly as they relate to financial reporting. For example, they reviewed the early close process as well as the year-end financial statements.

The ARC met five times during 2017–18, with members working well together and bringing significant skills and experience to their role.

Details of committee membership are in the internal audit and risk management attestation statement.

Public interest disclosures

Our staff can make a PID about our organisation under the PID Act. Our internal reporting policy encourages staff to raise their concerns directly with the Ombudsman or other designated senior officers if they witness or have suspicions about corruption, maladministration or other wrong conduct covered by the scheme. During 2017–18, we received no PIDs from staff. Table 21 is our formal report about this.

Our people

At 30 June 2018, we had 215 people working for us on either a full-time or part-time basis. Our staff have diverse skills and experience and come from a range of backgrounds – including community and social work, legal, planning, investigative, law enforcement and child protection.

During the year, 63 of our staff worked part-time. As some of those staff continued to be part-time on 30 June 2018, the 215 people working for us equates to 192.78 full-time equivalent (FTE) staff. Table 22 shows the FTE number of staff as at 30 June for the last five years, grouped by the type of work that they do.

Personnel policies and practices

Our staff are employed under the provisions of the *Government Sector Employment Act 2013* (GSE Act), which – along with associated rules and regulations and the Crown Employees (Public Service Conditions of Employment) Award 2009 – sets their working conditions and entitlements.

The relevant industrial agreements were varied to increase salaries and salary-based allowances for our staff by 2.5%, effective 14 July 2017. Our statutory officers, as well as our senior executive

Table 21: Public interest disclosures received from Ombudsman staff

	Made by public officials performing their day to day functions	Under a statutory or other legal obligation	All other public interest disclosures
Number of public officials who made public interest disclosures directly	0	0	0
Number of public interest disclosures received	0	0	0
Of public interest disclosures received, number primarily about:			
Corrupt conduct	0	0	0
Maladministration	0	0	0
Serious and substantial waste	0	0	0
Government information contravention	0	0	0
Local government pecuniary interest contravention	0	0	0
Number of public interest disclosures finalised	0	0	0

Table 22: Full time equivalent staff levels – five year comparison

	As at 30 June				
Category of staff	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017–18**
Statutory officer	5.00	7.00	8.00	7.00	6.00
Investigative, systemic review, project, research and legal	122.46	118.62	135.96	114.23	129.94
Inquiries and assessment	9.76	12.00	11.00	12.14	11.07
Investigative and administrative support	35.77	42.23	41.56	30.97	22.97
Community engagement and training	4.00	4.50	4.00	4.10	4.20
Corporate – Human resources, finance, information technology and governance	16.00	14.00	14.14	15.20	18.60
Total full-time equivalent	**192.99**	**198.35**	**214.66**	**183.64**	**192.78**

staff, are paid in accordance with the determinations of the Statutory and Other Offices Remuneration Tribunal (SOORT). Effective 1 July 2017, the remuneration levels for our senior staff were increased by 2.5%.

We promote flexible work arrangements to enable staff to balance work and their personal commitments. As well as part-time work, we offer flexible working hours, working at home arrangements, and a range of leave options – including purchasing leave and personal carers leave.

We have two main consultative forums – our work, health and safety (WHS) committee, and our joint consultative committee (JCC). The JCC met three times during the year to discuss a range of issues affecting staff, including the transition of disability functions to the NDIS Commission and the strategic review of our office.

Our small human resources (HR) team implemented some of the recommendations from the system health check that we reported on last year, including the automation and review of a number of processes. They also introduced a qualification verification process to strengthen our recruitment practices.

The team has been preparing for the start of 'single touch payroll'. This means we have to report payments such as salaries and wages, pay as you go withholding tax and superannuation information to the Australian Taxation Office (ATO) each time we pay staff. We have also begun a project to

implement a Human Capital Management (HCM) system, with an initial focus on performance management and staff development.

Our senior executives

As at 30 June 2018, we had 12 senior executives – 58% of whom were women. Six were statutory officers, employed under the *Ombudsman Act 1974*. Except for the Ombudsman, the remuneration of statutory officers is aligned to the public service senior executive remuneration framework.

We had seven statutory officer roles for part of the year, deleting one role when our police function transferred to the LECC from July 2017.

See table 23 for details of the levels of our senior positions and table 24 for their remuneration. We have included the Ombudsman in these tables to make the information complete.

Table 23: Senior Executive Levels

	2017		2018	
Band	**Female**	**Male**	**Female**	**Male**
Band 4	0	1	0	1
Band 3	0	0	0	0
Band 2	0	3	0	2
Band 1	7	2	7	2
Total	**7**	**6**	**7**	**5**
Total both male and female		**13**		**12**

Table 24: Senior Executive Remuneration

	Range	Average range $	
Band		**2016-17**	**2017–18**
Band 4	463,551–535,550	466,440	478,100
Band 3	328,901–463,550	0	0
Band 2	261,451–328,900	295,455	328,900
Band 1	183, 300–261,450	206,207	219,451

Of our employee related expenditure in the reporting period, 12.19% was related to senior executives, compared to 13.19% in the 2016–17 reporting period. We noted an error in our reporting last year and have amended the figures for 2016–17.

People matter employee survey and action plan

The People Matter Employee Survey (PMES) captures perceptions of how well the public sector values are applied across the sector, as well as employee views on – and experiences in – their workplaces.

During the year, we continued to respond to the results of the 2016 survey as well as to any new matters raised in the 2017 survey. At the time of writing, we had received the results of the 2018 survey but had not analysed it.

Our division managers (DMs) developed a PMES action plan, which focused on our lowest positive aggregated scores for key theme areas such as 'performance framework and development', 'senior managers' and 'employee value proposition'. It is worth noting that although these themes received our lowest positive aggregated scores, they still achieved higher positive scores than the public sector as a whole.

We discuss how we are responding to the PMES, including actions taken, throughout 'Our people'.

Performance management

This year we completed an audit of our compliance with our performance management obligations. Although there was only one medium-rated finding, this finding identified process and documentation deficiencies throughout the office. This was also reflected in the 2016 and 2017 PMES results, and has been addressed in our PMES and DMs action plans.

We therefore started a review of our policy, agreed to mandatory training for supervisors and managers, and reported compliance to our ARC. We are also implementing a HCM system – a software solution – to support the embedding of performance management.

Building a positive workplace culture

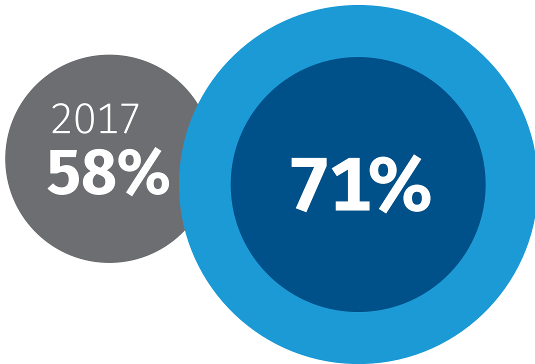
We implemented a range of strategies to make sure that our workplace is free of harassment and bullying, and staff respect and value each other. This includes participating in 'Respect. Reflect. Reset.' – the Public Service Commission's (PSC) campaign for positive and productive workplaces.

Although we had a low response rate to the PMES questions about bullying in the workplace, we decided that all supervisors and managers would attend training on preventing bullying and harassment. As at 30 June 2018, 77 staff had attended this training – with one further session scheduled.

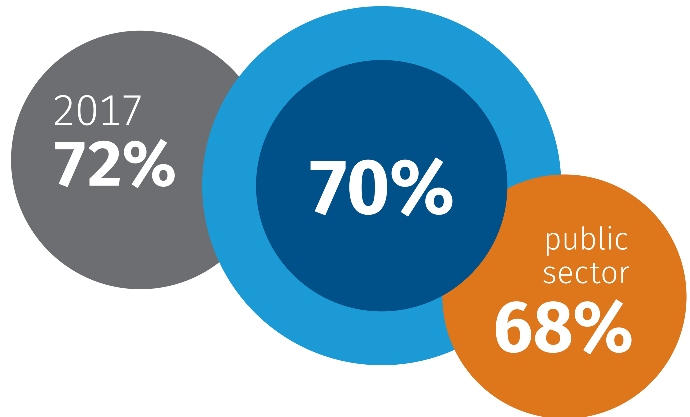
We had one formal grievance lodged during the reporting year.

Table 25: 2018 People matter employee survey statistics – comparison to public sector and 2017 results

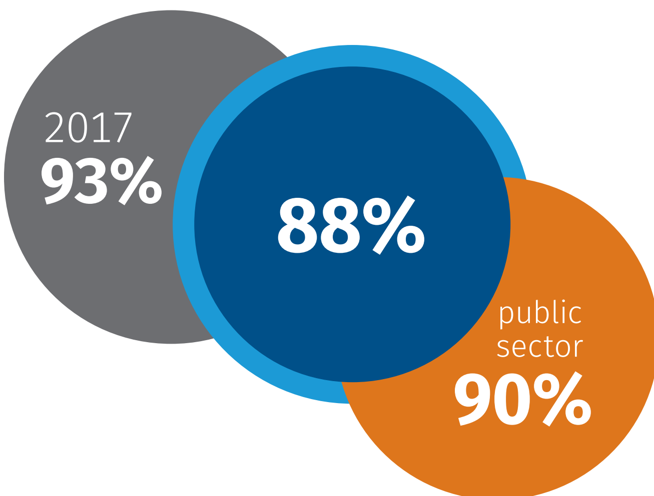
There was a participation rate of 71% of staff in the people matter employee survey (58% in 2017)



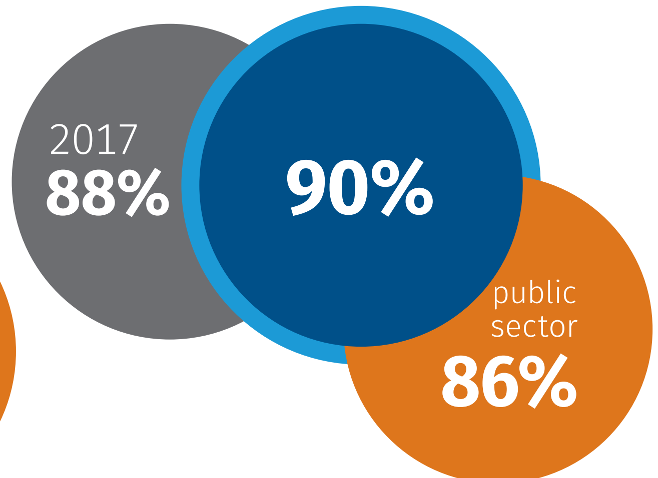
Our employee engagement is 70% (72% in 2017), while the public sector employee engagement was 68%.



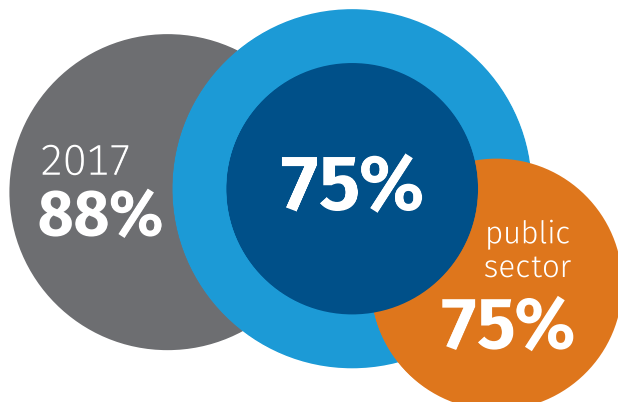
Of all staff surveyed 88% said that they understand what is expected of them to do well in their role (93% in 2017) public sector 90%



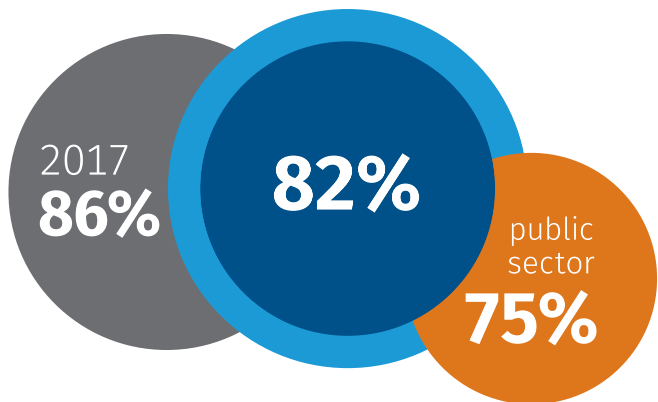
Of all staff surveyed 90% said that their workgroup strives to achieve customer/client satisfaction (88% in 2017), while the public sector employee level was 86%.



Of all staff surveyed 75% said that people in their workgroup treat each other with respect (88% in 2017), while the public sector employee level was 75%.



Of all staff surveyed 82% of staff said that personal background is not a barrier (86% in 2017), while the public sector employee level was 75%.



Workforce diversity

The GSE Act makes diversity a priority area for all public sector agencies. It focuses on existing groups (Aboriginal people, women, people from culturally and linguistically diverse backgrounds, and people with disability), but also provides flexibility to include other groups – including mature workers, young people and carers. A key goal is for all public sector agencies to reflect the diversity of the wider community.

Our diversity program aims to ensure fair practices and behaviour in the workplace, including:

- recruitment, selection and promotion practices that are open, competitive and based on merit
- access for all staff to training and development
- flexible work arrangements that meet the needs of all staff and create a productive work environment
- procedures for handling grievances that are accessible to all staff and deal with workplace complaints promptly, confidentially and fairly
- clear and strong communication channels to give staff information and allow their views to be heard
- management decisions made without bias
- no unlawful discrimination or harassment in the workplace
- respect for the social and cultural backgrounds of all staff.

The NSW Government has set targets for employing people from various diversity groups. These targets are a useful measure of the effectiveness of our diversity program - see tables 26 and 27. In 2016–17 and again in 2017–18 some targets changed. For the second year, we have not met the target for Aboriginal and Torres Strait Islander staff, and staff who are from a culturally and linguistically diverse background. We exceeded the target in the representation of women and people with disability. There is no target for people with disability requiring adjustment.

All public sector agencies must consider diversity policies, outcomes and priorities when they are recruiting and supporting staff. We make sure that we have a diverse and skilled workforce, fair work practices and behaviours, and employment access and participation by diversity groups. For example, this year we filled an administrative support role targeting a person with intellectual disability. The field for this role was very competitive with 66 applications received. Table 28 shows the gender and diversity target groups of staff by salary level.

We promote flexible work options to enable staff to balance work and their personal commitments. We offer part-time work, flexible working hours, working at home arrangements and a range of leave options. During the year 63 of our staff worked part-time. To promote respect for the social and cultural backgrounds of others, we run our in-house training on Aboriginal cultural appreciation and disability awareness as well as training on cultural intelligence and mental health awareness. We also

Division managers action plan

In addition to the PMES action plan mentioned above, the DMs met in August 2017 to discuss a number of people and culture-related matters – including capabilities, role descriptions, performance management, induction and the results of the 2017 PMES. They initiated a number of projects to improve or better align our practices, ensuring consistency across the office. Projects include:

- Moving to generic roles descriptions for most of our business roles, requiring a review of the key accountabilities and capabilities for each role at each grade. Generic role descriptions for each grade were developed and consultation undertaken to ensure that the role descriptions were appropriate.
- Reviewing performance management practices following a compliance audit. Templates were reviewed; mandatory training rolled out; standardised reporting on compliance implemented; and funding provided for an online HCM system.
- Improving formal supervision and induction policies and processes.
- Focusing on learning and development particularly for leadership roles and technical skills.
- Developing across office criteria for measuring staff against capabilities and developing learning and development strategies to develop capability levels.

Many of the projects are well advanced, with the DMs reporting to the Ombudsman on progress.

Table 26: Trends in the representation of diversity groups – five year comparison

Workforce Diversity Group	Benchmark	2016	2017	2018
Women	100	97	100	99
Aboriginal and/or Torres Strait Islander People	100	N/A	N/A	N/A
People whose First Language Spoken as a Child was not English	100	91	92	90
People with Disability	100	104	100	92
People with Disability Requiring Work-Related Adjustment	100	N/A	N/A	N/A

Note 1: A Distribution Index score of 100 indicates that the distribution of members of the Workforce Diversity group across salary bands is equivalent to that of the rest of the workforce. A score less than 100 means that members of the Workforce Diversity group tend to be more concentrated at lower salary bands than is the case for other staff. The more pronounced this tendency is, the lower the score will be. In some cases, the index may be more than 100, indicating that members of the Workforce Diversity group tend to be more concentrated at higher salary bands than is the case for other staff.

Table 27: Trends in the distribution of diversity groups – five year comparison

Workforce Diversity Group	Benchmark	2016	2017	2018
Women	50%	73.73%	74.15%	76.50%
Aboriginal and/or Torres Strait Islander People	3.3%	2.98%	2.45%	2.30%
People whose First Language Spoken as a Child was not English	23.2%	19.26%	19.62%	21.20%
People with Disability	5.6%	11.09%	9.80%	10.14%
People with Disability Requiring Work-Related Adjustment	N/A	5.54%	1.48%	1.38%

Note 1: The benchmark of 50% for representation of women across the sector is intended to reflect the gender composition of the NSW community.

Note 2: The NSW Public Sector Aboriginal Employment Strategy 2014–17 introduced an aspirational target of 1.8% by 2021 for each of the sector's salary bands. If the aspirational target of 1.8% is achieved in salary bands not currently at or above 1.8%, the cumulative representation of Aboriginal employees in the sector is expected to reach 3.3%.

Note 3: A benchmark from the ABS Census of Population and Housing has been included for People whose First Language Spoken as a Child was not English. The ABS Census does not provide information about first language, but does provide information about country of birth. The benchmark of 23.2% is the percentage of the NSW general population born in a country where English is not the predominant language.

Note 4: In December 2017 the NSW Government announced the target of doubling the representation of people with disability in the NSW public sector from an estimated 2.7% to 5.6% by 2027. More information can be found at: Jobs for People with Disability: A plan for the NSW public sector. The benchmark for 'People with Disability Requiring Work-Related Adjustment' was not updated.

Table 28: Number of total staff by level and diversity group

Remuneration Level of Substantive Position	Total Staff	Respondents	Men	Women	Aboriginal and/ or Torres Strait Islander People	People from Racial, Ethnic, Ethno-Religious Minority Groups	People whose Language First Spoken as a Child was not English	People with a Disability	People with a Disability requiring Work-Related Adjustment
$0 - $46,945	0	0	0	0	0	0	0	0	0
$46,945 - $61,658	1	1	0	1	1	0	0	0	0
$61,658 - $68,929	14	14	1	13	0	5	6	5	1
$68,929 - $87,225	36	36	13	23	0	8	11	3	0
$87,225 - $112,797	93	93	22	71	1	21	20	8	2
$112,797 - $140,996	60	60	9	51	2	11	9	5	0
$140,996 > (Non SES)	7	7	5	2	1	0	0	1	0
$140,996 > (SES)	6	6	1	5	0	0	0	0	0
Total	**217**	**217**	**51**	**166**	**5**	**45**	**46**	**22**	**3**

celebrate events such as NAIDOC, Reconciliation and Youth Weeks as well as Harmony Day and International Day for People with Disability.

This year, we reviewed and updated our access and equity policy – reinforcing our commitment to not only a diverse workforce but providing appropriate levels of service to the diverse NSW community. This updated policy will inform our work and priorities during 2018–19.

The year ahead

In 2018–19, our focus will be on reviewing our diversity employment and workforce strategy.

Keeping our people safe

We are committed to providing the best possible standards of WHS for all staff and visitors to our office.

We are subject to the provisions and responsibilities of the *Work, Health and Safety Act 2011* and Regulations as well as public sector WHS policies.

We base our WHS activities on effectively identifying and managing our risks, supported by policies and programs that provide guidance to all staff.

This year we completed an internal audit of our compliance with our obligations under the WHS legislation, focusing on the level of awareness of WHS across the office. Two low level rated issues were identified and are being addressed through our WHS committee. Table 29 provides more details of our WHS activities this year.

Our WHS committee

We have a WHS committee, made up of elected staff and nominated management representatives, who actively work to identify and resolve safety concerns. The committee reviews and actions the results of internal audits and inspections, identifies WHS hazards and risks, and understands the impact of operational and business requirements on the safety and wellbeing of our staff. This proactive approach ensures the office complies with, and actively supports, our overarching WHS Framework.

Table 29: WHS activity by category

Category	Initiative
Consultation	WHS committee met six times. WHS committee actively consulted and engaged with all workgroups throughout the year.
Ergonomics	Provided reasonable adjustments, including installation of sit to stand workstations. Our workstation self-assessments checklist was reviewed and updated and issued to staff for completion.
Information, education and training	Preventing bullying and harassment training was rolled out for supervisors and managers. Two new members completed WHS committee training. Thirteen new supervisors and managers attended 'Work health and safety for managers' training. Wardens attended training about their role in an emergency. Information was provided to statutory officers about their responsibilities as 'persons conducting a business or undertaking'.
Policies and procedures	Continued our program of continuously reviewing WHS policies and procedures.
Safety alerts	Participated in the emergency evaluation drill. Safety alerts routinely communicated to staff.
Electrical	Annual check done to ensure all electrical equipment is tested and tagged.
Physical	The WHS committee did one workplace inspection and reported the results to our ARC.
Programs	Flu vaccination (four strain) offered to staff. Reviewed the wellbeing programs offered to staff dealing with sensitive and distressing material. Employee Assistance Program (EAP) available to all staff. EAP details formally communicated twice, and information updated and made available on our intranet.

Staff wellbeing

We continued to explore options on how best to support staff. We have implemented wellcheck programs – a structured program to provide a psychological wellcheck for staff who are potentially at risk of being exposed to known risk factors that can lead to the development of traumatic stress or adjustment difficulties.

For example, during the year our Employment related child protection Division (ERCPD) engaged a company to deliver a professional and formal clinical supervision service with psychologists to debrief, develop and monitor awareness of the risks of vicarious trauma and reduce secondary risk and burnout.

Emergency evacuation procedures

We participate in our building's emergency evacuation drills and training program. All our nominated wardens are required to attend training at least twice a year. We reviewed the personal emergency evacuation plans for a number of staff who were deemed to be mobility impaired for a prolonged period of time and we re-tested these plans during the emergency evacuation drills.

Workers compensation

We are part of icare TMF, a self-insurance scheme for the NSW public sector. There was one claim reported to our insurer during the reporting period. However, this was from an OCV and not a staff member. As at 30 June 2018, this claim was still open. See tables 30 and 31.

The year ahead

In 2018-19, we plan to focus on:

- safety awareness and communication strategies on WHS initiatives
- consolidating the work already done by the WHS committee around hazard identification, risks, consultation and staff wellbeing
- reviewing WHS policies and procedures
- ensuring all new supervisors complete WHS training.

Learning and development

Providing staff with learning and development opportunities ensures we have a skilled, flexible, responsive and committed workforce. Our staff are encouraged to participate in a diverse range of training to help them work more effectively and to gain skills to assist their personal and professional development.

Leadership Training Program

We engaged an external company to develop and facilitate a leadership program for two identified senior manager groups – the Statutory Officers and our Human Services Branch directors. Although not considered senior managers, we are also running a third program for DMs and our senior legal officers. We tailored the program for each group and included a range of activities – such as assessment tools, coaching sessions, team building and leadership development workshops.

Table 30: Workers compensation - five year comparison

	2013-14	2014-15	2015-16	2016-17	2017–18
Claims brought forward	3	3	0	1	0
New claims	2	2	1	0	1
Claims closed	2	5	0	1	0
Open claims 30 June	3	0	1	0	1

Table 31: Workers compensation incidence rate – five year comparison

	2013-14	2014-15	2015-16	2016-17	2017–18
Number of submitted claims	2	2	1	0	1
FTE staff number	192.99	198.35	214.66	183.64	192.78
Incidence rate (%)	1.04	1.01	0.46	0	0

The incidence rate is recorded as 0% as the new claim relates to an OCV who is not included in our FTE staff numbers. OCVs are statutory appointments and the OCV scheme is administered by the Ombudsman.

We have also participated in programs run through the NSW Leadership Academy, a whole-of-government approach to developing current and future leaders of the NSW public sector. Programs differ from generalised leadership development programs in that they focus on high performing and high potential leaders. Each program targets the specific capabilities required to succeed at the next level of NSW public sector leadership. Currently, five staff are participating in four programs offered by the Academy – two of whom are senior managers.

For our middle managers, we considered a number of options for leadership development training including two courses conducted by the IPAA – the great managers program and the Diploma of Leadership and Management. Feedback on the training that has been done was very positive and we will be looking to roll out a program to all of our middle managers over the next few years.

Accredited qualifications for investigators

We continued to rollout the accredited certificate IV and Diploma in Government Investigations Training that we reported on last year. These nationally recognised qualifications develops skills in conducting investigations in a public sector environment. This year, 46 staff attended the certificate IV course and 19 staff attended the diploma course.

Table 32: Time spent on training – two year comparison

Number of	2016-17	2017–18
Courses attended	106	101
Full time equivalent staff	183.64	192.78
Total time spent – hours	6575	6312
Total time spent – days	939.29	901.71
Days spent per staff member	5.1	4.68
Training $ per staff member	1,769	2,204

Developing professional skills

Our staff attended a range of conferences and forums, including the Corruption prevention and integrity conference, the National forum on child protection, the Homelessness NSW conference, the Having a Say conference and the National Disability Service (NDS) conference. These events are an opportunity to learn from industry experts, improve understanding of contemporary issues affecting our work, and network with people who have similar roles, experience and skills.

Staff also attended a range of internal and external training courses including:

- plain English two-day investigation writing workshops
- job application and interviewing training – primarily for staff affected by work changes
- a range of training specific to our complaint handling activities – training on understanding and managing high conflict people, root cause analysis, mediation skills and customer experience management
- customised internal Microsoft Excel training.

Raising awareness

Providing training aimed at raising awareness of contemporary issues in our society is an important part of our strategy to continually improve how we interact with the public. This year, we provided information and education sessions on disability awareness, Aboriginal cultural awareness, mental health and cultural intelligence.

Managing staff

We have a mandatory training program for supervisors and managers to ensure that they have the necessary skills and knowledge to effectively carry out their responsibilities. The program covers managing people effectively, fundamentals for supervisors and WHS responsibilities.

This year, we decided that bullying and harassment prevention training for supervisors and managers should be included as part of our mandatory training. All supervisors and managers – experienced and new – were required to attend the training. The tailored

Table 33: Training expenditure – five year comparison

Year	2013-14	2014-15	2015-16	2016-17	2017–18
Expenditure	$213,000	$158,000	$163,000	$325,000	$425,000

training program focused on the legal framework, building skills to manage and prevent bullying and harassment, communication styles and self-awareness. As at 30 June 2018, 77 staff had attended this training – with one further session scheduled.

New staff induction

Our induction program provides new staff with relevant, consistent and useful information about our office and our policies, processes and obligations. Within the first three months of joining our office, new staff attend training on our electronic document management and case management systems and security awareness. We also run 'Ombudsman: What, When, Where and Why' training sessions so new staff better understand our functions, jurisdictions and responsibilities.

Providing study leave

Staff development also means encouraging staff to do further study to enhance their skills. Two staff used study leave provisions to attend tertiary education courses in 2017–18.

Supporting our business

Our corporate branch supports our operational areas – providing HR, business improvement (BI), finance, information technology (IT), information management, digital communications and media, governance, project and administrative support. The work of our HR, finance, and governance teams are discussed elsewhere in this part. In this section, we highlight some other key projects of the corporate branch.

Designing branding to support the Commitments

Our digital communications area worked with the business to create a multi-channelled campaign to help promote the Commitments. They designed a brand for the Commitments and linked it across print collateral, social media and our website as well as promotional items. They created a resource page on the website where agencies can download posters and social media images in order to support and promote the Commitments in their own agencies.

Exchanging sensitive information

We receive a large amount of sensitive information from other agencies. To ensure the highest level of security and protection for the exchange of this information, we developed a secure information transfer portal (the portal). Although initially targeting the transfer of information between our child death review area and the NSW Coroner's Office, we plan to extend the use of the portal to other government agencies – such as for receiving agency notifications for our ERCPD.

Assisting the LECC

To assist the LECC in the initial period of its operation after the transfer of our police oversight function, we agreed to give LECC users remote access to our complaints management system Resolve via a secure private network. We also agreed to continue to receive and process complaint notifications from the NSWPF on their behalf. We have agreed to extend a modified arrangement for another 12 months. We will no longer process police complaints, but LECC users will continue to have read-only access to historical police complaint information on Resolve.

Protecting our digital information

We work to ensure our information systems are stable, secure and resilient to cyberattack. As well as maintaining robust cyber security controls, we conduct regular intrusion testing. For example, in July 2017, we presented the results of a social engineering (phishing) test that we had done to our ARC. The test sent a phishing email to staff inviting them to participate in an office sponsored health promotion. A small number of staff provided their network credentials, highlighting the need for ongoing staff awareness about the dangers of such practices.

Our project to bring our information security management system in line with the latest International Standard is ongoing. During the year, we updated our information security policy and our statement of applicability – and we will set priorities for reviewing our related security policies based on our information security risk assessment.

Our ARC regularly seeks advice on how we are addressing cyber security, as well as our progress in implementing the digital information security policy. The ARC recommended that the Ombudsman attests compliance with this policy, see below.

Digital information security annual attestation statement for the 2017–18 financial year for the NSW Ombudsman's Office.

I, Michael Barnes, am of the opinion that the Ombudsman's Office had an information security management system in place during the 2017–18 financial year that is consistent with the core requirements set out in the NSW Government digital information security policy.

The controls in place to mitigate identified risks to the digital information and digital information systems of the Ombudsman's Office are adequate.

There is no agency under the control of Ombudsman's Office which is required to develop an independent ISMS in accordance with the NSW Government digital information security policy.

Michael Barnes
Ombudsman

31 July 2018

Improving the Register of Child Deaths

Last year, we undertook a major design review of our RCD. The register records information about the deaths of all children that occur in NSW. Maintaining the register, and analysing the data it holds, are core functions of the CDRT. The database also supports the Ombudsman's separate role in reviewing certain child deaths.

The register is a Resolve based system. Resolve is the software solution that we also use for managing and recording complaints and enquiries. We started using the register in 2014 and, to our knowledge, it was the first system to provide for integrated and reliable recording of child death data while also supporting efficient data extraction for prevention research purposes.

In 2017, on behalf of the CDRT, we conducted a review of the system. This identified a significant number of improvements that could be made to the data capture and layout of the system. During the review, staff in our BI Unit (BIU) worked with the business to scope a major revision of the system.

Working closely with the business, the BIU developed a specification setting out the identified improvements and then engaged our IT staff to develop an enhanced standalone system on a new Resolve platform. One of the challenges was the need to manage the continuity of data capture for reporting purposes. There was a need to preserve the previous build for ongoing data capture and reporting.

The IT development work was done using an agile approach. The development was an iterative process with extensive testing conducted by the BIU and key business users as each part of the new system was released. If additional improvements were identified during testing they were incorporated into the project. All relevant staff were introduced to the newly designed system when they participated in the formal user acceptance testing.

The enhanced system was launched in June 2018 and will capture all child death data from 2018. The new system represents a significant improvement. It provides improved support for the work of the CDRT by better aligning data collection across all child deaths. The enhancements improve data quality and also better supports data comparison across jurisdictions. The new system also has improved integration with our document management system.

Improving our processes and use of data

We work with the business to improve the quality of the data we capture and make sure it is fit for purpose, including working with our community services division to implement a revised categorisation for complaint issues.

This year, our priority project was enhancing the data capture for our child death work. The enhancement better aligns data capture with the needs of the CDRT and will support data quality through greater use of auto population. The revised system has been renamed the Register of Child Deaths (RCD) and went live from July 2018. See Improving the Register of Child Deaths.

Updating our desktop computing and IT infrastructure

This year, we replaced all of our desktop computers and updated our software to Windows 10 and Microsoft Office 2016. This has meant increased efficiency, improved security, enhanced user experience and greater functionality.

We also replaced all our physical network servers, upgraded our VMWare virtual server platform to version 6.5, and introduced a new storage area network into our IT environment. The benefits achieved include improved system scalability, performance and robustness, strengthened system security, and better disaster resilience.

Upgrading our telecommunication system and implementing a mobile security platform

We upgraded our Cisco IP Telephony system to version 11.5 to improve flexibility, collaboration and operational efficiency – as well as reduce system complexity and overall costs.

Technology directly shapes how we work and conduct business, and the adoption of mobile technology has given our staff the ability to access data anywhere and at any time. However, this new technology also exposes the office to cyberattack by providing an alternative route to enter our internal network. To reduce mobile technology associated risks, we have implemented a new mobile device management platform to improve the security of our mobile phone and tablet environment.

Figure 2 – Phishing website sample.

Reducing our environmental impact

In July 2014, the NSW Government published its resource efficiency policy (GREP) which commits NSW public sector agencies to reducing operating costs as well as increasing the efficiency of the resources they use. The GREP contains strategies to improve energy, waste, water and clean air performance and sets interim and long-term targets. The 2013–14 data sets the benchmark for assessing progress in implementing the GREP strategies.

With our recent fit-out upgrade, we took the opportunity to install energy saving devices that would reduce our energy usage over time and improve our work environment. For example, our lights are fitted with energy saving motion sensors. We plan to conduct an audit of our tenancy to ensure we continue to meet and improve on the NSW Government NABERS target of 4.5 stars.

The GREP requires us to report on our top three waste streams by volume and by total cost, with 2013–14 data used as the baseline year. However, we participate in our building's recycling program and collecting data specific to the office is difficult, if not impossible. Our top three waste streams are clean waste paper and cardboard, general waste, and toner cartridges.

We lease premises in a building that is fitted with a range of water saving technologies – including low flow taps and showers, dual flush cisterns, waterless or low flow urinals, and grey water systems. The building has a 3 star NABERS water rating. We do not have any data on our tenancy's water usage.

There are two clean air targets under the GREP – the first is about air emission standards for mobile non-road diesel plant and equipment, which does not apply to our office. The second is using low-volatile organic compound surface coatings. We made sure that our fit-out work complied with this and the Australian paint approval scheme.

In 2017–18, we implemented a range of strategies to reduce our environmental footprint and improve our greenhouse rating. These included:

- recycling all toner bottles and cartridges, diverting over 196 kilograms from landfill
- using Australian 100% recycled content paper for our printers and copiers
- reducing our paper usage from 15.5 reams per person to 11.06 reams per person – however, we are still over the 2015 ICT Sustainability Plan's target of 9 reams per person
- recycling 5.4 tonnes or 100% of clean waste paper
- recycling cardboard through the building recycling program
- replacing our lights with more energy efficient models and installing additional motion sensors
- improving our workstation configuration to benefit from natural light and to further reduce the amount of lighting required
- publishing all our publicly available reports online only
- replacing paper forms with online forms
- moving from physical to electronic records
- purchasing 6% green electricity
- using timers on photocopiers, printers and computers
- improving the fuel efficiency of our motor vehicle fleet

Table 34: Fuel consumption

Year	2013-14	2014-15	2015-16	2016-17	2017–18
Fuel (l)	1,657	2,333	1,328	867	850
Distance travelled (km)	18,944	28,026	21,111	16,769	17,917

Table 35: Electricity consumption

Year	2013-14	2014-15	2015-16	2016-17	2017–18
Electricity (kWh)	267,789	384,186	312,417	240,780	212,861
Kilowatts converted to gigajoules	964	1,383	1,124	866	766
Occupancy (people)[†]	193	199	215	205	215
Area (m^2)	3,133	3,133	3,133	3,133	3,133
Gigajoules per person	4.99	6.95	5.23	4.22	3.56

*rounded to nearest whole number. Base year data set benchmark is 2013-14.

- monitoring our energy usage through auditing, preventive maintenance, staff education programs, and purchasing energy efficient equipment
- enabling power-management features when installing office equipment
- supporting our building's environmental programs – our building has achieved a 4 star NABERS Energy rating (5.5 stars with Green Power Assist).

Our financials

The financial statements in Appendix A provide an overview of our financial activities during 2017–18. These statements, our supporting documentation, and our systems and processes have been reviewed by the Audit Office of NSW. We received an unqualified report.

The Ombudsman receives funding from the NSW Government. Although we account for these funds on an office-wide basis – as reflected in our financials – internally we allocate them between our different divisions and business units. The NSW state budget reports expenses and allocations against program groups. We operate under the 'accountable and responsible government' program group, which also includes other independent oversight agencies such as the Audit Office and the ICAC.

We continued our work this year with NSW Treasury and the Department of Premier and Cabinet (DPC) on financial management transformation initiatives. These include the move to program-based budgeting and the re-write of the financial management legislation and supporting framework. We also continued to review and streamline our own processes as we became more familiar with the new NSW Treasury online reporting tool PRIME.

The implementation of Treasury's cash management reforms, which require all non-restricted cash and cash equivalents in excess of a readily assessable short-term level to be held within the Treasury Banking System, affected our financial position. It means we are required to use our own cash before funding is provided by the government. The influx of $1.5 million grant funding in late 2017–18 for the next financial year required us to negotiate with NSW Treasury so that we could retain this funding, rather than use the cash for our day-to-day expenses – as is required under the cash management policy. If these funds were used in that way, we would not have been able to meet our grant obligations in the 2018–19 financial year.

We continue to have 'saving' initiatives deducted from our budget allocation, and have a range of strategies to deal with our budget pressures – including cutting staff costs and generating revenue through fee-for-service training. The cutting of staff costs in particular has had an impact on the delivery of our services to the public.

Our ARC provides assurance to the Ombudsman that our financial processes comply with legislative and office requirements. For more details about our ARC, see p 26.

Revenue

Most of our revenue comes from the government in the form of a consolidated fund appropriation. This is used to meet both recurrent and capital expenditure. Appropriations are accounted for on the statement of comprehensive income as revenue, along with the provision that the government makes for certain employee entitlements such as long service leave.

Table 36: Financial performance - five year trend

	2013-14	2014-15	2015-16	2016-17	2017–18
	$'000	$'000	$'000	$'000	$'000
Total revenue	29,995	31,864	33,511	34,419	37,441
Total expenses	29,280	32,535	34,400	34,592	34,599
Loss on disposal	-10	-84	-41	-10	-20
Net result	705	-755	-930	-183	2,822
Total assets	5,347	9,066	6,479	5,761	8,111
Total liabilities	3,803	8,277	6,620	6,085	5,553
Total equity	1,544	789	-141	-324	2,558

Table 37: Total revenue 2017-18

	$'000
Appropriation	29,657
Acceptance of certain employee entitlements	1,334
Total government	30,991
From other sources	6,450
Total	**37,441**

Table 38: Revenue from other sources

	$'000
Workshops	1,070
Grants and contributions	5,340
Other revenue	40
Total	**6,450**

Table 39: Self-generating revenue – ten year trend

	$'000
2008–09	162
2009–10	317
2010–11	583
2011–12	608
2012–13	597
2013–14	677
2014–15	1,006
2015–16	1,063
2016–17	1,036
2017–18	1,070

The Ombudsman successfully argued for more funding in 2017–18, with our allocation being increased by $2.853 million. We also received temporary funding of $592,000 to support our disability work as it transitioned to new Commonwealth oversight arrangements. Our capital allocation was also higher than usual so we could replace our computer hardware, as we do every four years.

Our final appropriation for 2017–18 was $29.657 million, which included $1.773 million capital purchases. The government also provided $1.334 million for certain employee entitlements such as defined benefit superannuation and long service leave.

In August 2017, as part of the government's decision to transfer our police function to the newly created LECC, the Treasurer approved a transfer of funding from the Ombudsman to the LECC and to the DPC for the Office of the Inspector of the LECC. This transfer did not change the budget figures used in our financial statements, so it appears that at year end we had underspent our appropriation when compared to budget. Linked to this transfer is a reduction in our net cost of services (NCS) of $3.845 million. This consists of $3.8 million in employee related expenses, $35,000 in operating expenses, and $10,000 in depreciation expenses for asset transfers. Our Crown revenue reduced by $3.835 million – $3.71 million recurrent funding and $125,000 in Crown acceptance of certain employee entitlements.

In addition to our appropriation, we received a number of specific purpose grants totalling $5.34 million. This was higher than budget by $3.942 million. Over half of the additional funding was to support our disability reportable incident function, including $1.55 million for the 2018-19 financial year.

Other projects funded through grants include:

- Providing additional assurance in the transfer of ADHC clients with complex requirements – see p 135.
- Working with the DSS to develop resources, processes and other systems for the new NDIS Commission – see p 136.
- Paying redundancies, which were funded from the Crown Entity.

Although we budgeted $1.048 million for employee entitlements accepted by the Crown Entity, which is a non-cash revenue item, the annual actuarial review by NSW Treasury of our long service leave liability required us to increase this liability. We therefore had $286,000 more revenue recorded for our Crown Entity acceptance item than we had budgeted.

We generated $1.11 million of revenue, primarily through our fee-for-service training courses. By coordinating our activities and identifying training needs in agencies and the non-government sector, we have increased our revenue base and used these funds to support our core work – as well as enabling us to do more proactive project work.

Tables 37 and 38 give breakdowns of our revenue.

We made a number of requests totalling $2.825 million to carry forward unspent funds to 2018–19, including the grant funding provided in 2017–18 but for use in the following financial year. Our requests were approved.

Expenses

Our total expenses were $2.726 million less than budget for a range of reasons, including the transfer of funding to the LECC and DPC mentioned earlier.

Most of our revenue is spent on employee-related expenses such as salaries, superannuation entitlements, payroll tax and long service leave. Our statement of comprehensive income shows that we spent about $27.303 million – or 78.9% of our total expenses – on employee-related items.

Salary payments to staff were 2% lower than the previous year. We had a decrease in redundancy payments of about $1 million, as most of our former police division staff were made redundant and left the office in 2016–17. We transferred some of our employee related budget to other operating expenses, which allowed us to engage contractors and consultants to support our core work. For example, we engaged external experts to undertake specialised research to underpin our work for the CDRT and engaged expert advice to support our investigative work.

Table 40: Consultancies valued at less than $50,000

Category	Count	Cost $
Information technology	1	5,280
Legal	1	7,301
Management services	9	117,655
Environmental	1	4,312
Total	**12**	**134,548**

Table 41: Total expenses – five year trend

Category	2013-14	2014-15	2015-16	2016-17	2017–18
	$'000	$'000	$'000	$'000	$'000
Employee-related	23,376	25,482	28,565	27,868	27,303
Other operating expenses	5,199	6,428	4,903	5,818	5,826
Depreciation and amortisation	705	625	932	906	1,470
Total	**29,280**	**32,535**	**34,400**	**34,592**	**34,599**
Category as a percentage of total					
Employee-related	79.84%	78.32%	83.04%	80.56%	78.91%
Other operating expenses	17.75%	19.76%	14.25%	16.82%	16.84%
Depreciation and amortisation	2.41%	1.92%	2.71%	2.62%	4.25%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

Table 42: Consultancies valued at $50,000 or more

Category	Consultant	Nature	Cost$*
Organisational Review	ARTD Pty. Ltd.	Strategic review of NSW Ombudsman Office (services over two financial years – total cost $145,915)	30,000
Management services	Monash University	The role of alcohol and other drugs in abuse and neglect-related child deaths in NSW (services over two financial years – total cost $54,820)	27,410
		Total	**57,410**

*Figure rounded to whole dollars.

Our long service leave expenses increased by $1.027 million, offsetting the significant decrease in 2016-17 after the annual actuarial review of our long service leave liability. The actuarial review calculates the net present value of this liability.

The day-to-day running of our office costs us about $5.826 million, which was about 31% higher than we had budgeted. We transferred some of our employee related budget to other operating expenses as well as using grant and other revenue provided for this purpose.

Our significant operating items are rent ($2.055 million), fees ($890,000), contractors ($604,000), travel ($468,000), training ($425,000) and non-employee related maintenance ($381,000).

There were 12 consultants engaged during 2017–18 as shown in tables 40 and 42, with two consultancies over $50,000. The amounts reported include GST, but the amounts for consultants reported in our financial statements exclude GST. Some consultants provided services for capital projects and are therefore not included in the consultant expenses in note 2 in the financial statements, which reports recurrent expenses only.

The financial statements show that $1.47 million was expensed for depreciation and amortisation, which was lower than expected as some of our capital projects were delayed. Although capital funding is shown on the operating statement, capital expenditure is not treated as an expense – it is reflected on the balance sheet as non-current assets.

We have an accounts payable policy that requires us to pay accounts promptly and within the terms specified on the invoice. There are some instances however, where this may not be possible – for example, if we dispute an invoice or do not receive it with enough time to pay within the specified time frames. So, although we aim to pay all our accounts by the due date, our internal benchmark is to pay within the specified time frame 98% of the time.

We identify small business vendors to ensure that payment time frames are within the government's policy commitment. If agencies – including our office – fail to pay invoices to small businesses on time, a penalty fee is paid. Table 43 provides details of our accounts paid on time. As can be seen, we had seven invoices to a small business that were not paid on time. Short turnaround times of invoices can have an impact on our performance.

During 2017–18, we paid 98.57% of our accounts on time. We did not pay any penalty interest on outstanding accounts.

Assets

Our statement of financial position shows that we had $8.111 million in assets at 30 June 2018. The value of our current assets increased by $1.189 million from the previous year, while non-current assets increased by $1.161 million.

Over 55% of our assets are current assets, which are categorised as cash or receivables. Receivables are amounts owing to us and include fees for services that we have provided on a cost recovery basis, and GST to be recovered from the ATO. Our receivables also include lease incentive receivables of $379,000 and $709,000 of prepaid expenses – including maintenance renewals for our office equipment and software support.

Our cash assets as at 30 June 2018 were $1.922 million higher than the previous year. This was primarily due to the disability reportable incident grant funding we received in advance for the 2018–19 financial year.

Our non-current assets, which are valued at $3.61 million, are categorised as:

- Plant and equipment – including our network infrastructure, computers and laptops, fit-out and office equipment.
- Intangible assets – including our core network applications such as our case management and document management programs.

We budgeted to spend $3.152 million in 2017–18 for asset purchases, but only spent $2.651 million. We continued our fit-out refurbishment using both capital funding and our lease incentive, as well as replacing our laptops.

Liabilities

Our total liabilities at 30 June 2018 are $5.553 million, a decrease of $532,000 over the previous year. A decrease in the leave incentive liability was the primary cause of this change – as other liabilities such as payables (accrued salaries) and employee provisions increased. In fact, we have made provision of about $2.65 million for employee benefits and related on-costs, including untaken recreation (annual) leave. The Crown Entity accepts the liability for long service leave.

We owe about $434,000 for goods and services that we have received but not yet paid for. The value of accounts on hand (which excludes amounts we accrue) at 30 June 2018 was $226,129 – see table 44. We monitor the amounts owing on a regular basis to make sure we are paying accounts within terms.

Table 43: Performance indicator: Accounts paid on time – all suppliers

	September 2017	December 2017	March 2018	June 2018	Total
All suppliers					
Number of accounts due	475	594	453	709	2,231
Number of accounts paid on time	452	590	450	707	2,199
Percentage of accounts paid on time	95.16	99.33	99.34	99.72	98.57
Value of accounts due for payment ($)	2,228,503	3,865,533	2,230,342	3,649,232	11,973,610
Value of accounts paid on time ($)	2,197,601	3,859,712	2,189,822	3,648,978	11,896,113
Percentage of accounts paid on time	98.61	99.85	98.18	99.99	99.35
Number of payments for interest on overdue accounts	0	0	0	0	0
Interest paid on overdue accounts	0	0	0	0	0
Small business suppliers					
Number of accounts due	44	42	38	56	180
Number of accounts paid on time	37	42	38	56	173
Percentage of accounts paid on time	84.09	100.00	100.00	100.00	96.11
Value of accounts due for payment ($)	69,083	101,507	43,560	130,717	344,867
Value of accounts paid on time ($)	57,519	101,507	43,560	130,717	333,303
Percentage of accounts paid on time	83.26	100.00	100.00	100.00	96.65
Number of payments for interest on overdue accounts	0	0	0	0	0
Interest paid on overdue accounts	0	0	0	0	0

Note: This table does not include direct salary payments and other benefits paid through payroll.

Table 44: Analysis of accounts on hand at the end of each quarter

Quarter	Current (within due date)	< 30 days overdue	30–60 days overdue	61–90 days overdue	90 + days overdue	Total accounts on hand
All suppliers						
September 2017	$244,571	0	0	0	0	$244,571
December 2017	$98,699	0	0	0	0	$98,699
March 2018	$320,277	0	0	0	0	$320,277
June 2018	$225,929	$200	0	0	0	$226,129
Small business suppliers						
September 2017	$28,402	0	0	0	0	$28,402
December 2017	$4,273	0	0	0	0	$4,273
March 2018	$32,881	0	0	0	0	$32,881
June 2018	$795	0	0	0	0	$795

Note: This table does not include credit notes.

Financial statements

Our financial statements are prepared in accordance with legislative provisions and accounting standards. They are audited by the NSW Auditor-General, who is required to express an opinion as to whether the statements fairly represent the financial position of our office. The audit report and our financial statements are in Appendix A.

When changes to financial legislation can impact on the work we do

In previous reports we have mentioned the ongoing program to improve NSW public sector financial management, including the NSW Treasury's financial transformation initiatives. We have engaged fully with this program – providing comments on proposed changes, implementing new systems and attending briefings and training sessions.

This year the transformation work continued with the introduction of two pieces of legislation to change how finances are managed in the public sector.

We were invited to comment on each draft of the Bills. To effectively respond, we analysed what impact there would be for the office, including on the day to day work of our small finance team. We raised concerns about what we saw as some unintended consequences for independent agencies including the Ombudsman, which were changed in later drafts of Bills.

In addition to the impact these Bills may have on our finances, they also had the potential to affect the scope of the Ombudsman's jurisdiction by amending the definition of 'public authority' in s 5(1) of the Ombudsman Act. Although we were advised by NSW Treasury that amendments made by the Bills should not alter the Ombudsman's jurisdiction, we monitored the drafting of the Bills and provided advice on the implications, if any, to our jurisdiction.

What we do

Through our work, we assist agencies within our jurisdiction to improve the integrity and effectiveness of their operations. We use our experience and knowledge to make sure agencies are aware of their responsibilities and act reasonably as well as lawfully.

We respond to complaints and recommend improvements that agencies could make. We have the power to investigate conduct, laws or practices that are – for example – unreasonable, unjust, oppressive, based on improper motives, irrelevant grounds or considerations, or based on a mistake of law or fact.

We also focus on identifying areas for improvement and developing policy solutions around a range of issues. We have done this through our work in keeping complaint systems under scrutiny, monitoring the way agencies handle complaints and allegations, reviewing the delivery of services and the effectiveness of government programs, providing agencies with guidance material and training, and facilitating community discussions on a range of complaint handling and service delivery issues.

Our jurisdiction

We have jurisdiction over:

- NSW Government agencies – including departments, statutory authorities, correctional centres, public schools and universities
- local councils
- agencies providing services to children – including schools, child care centres, family day care, out-of-school-hours (OOSH) services, substitute residential services, community youth services and health programs
- agencies providing community services – including accommodation, child protection and family support services, and home and community care services.

Our legislation

Our principal governing legislation is:

- *Ombudsman Act 1974*
- *Community Services (Complaints, Reviews and Monitoring) Act 1993*
- *Public Interest Disclosures Act 1994*

We also have responsibilities under the following legislation:

- *Child Protection (Working with Children) Act 2012*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Government Information (Public Access) Act 2009*
- *Government Information (Information Commissioner) Act 2009*
- *Inspector of Custodial Services Act 2012.*

Ombudsman Act 1974

Under the Ombudsman Act we:

- handle complaints about government agencies and local councils
- investigate the conduct of government agencies and local councils, either in response to a complaint or of our own motion
- receive notifications of allegations of misconduct towards children by people working with children
- receive notifications of allegations of serious incidents involving people with disability living in supported group accommodation
- investigate these allegations and monitor the way agencies handle them
- keep under scrutiny the systems agencies have to prevent, handle and respond to these allegations
- monitor and assess prescribed government Aboriginal programs.

Community Services (Complaints, Reviews and Monitoring) Act 1993 (CS-CRAMA)

Under CS-CRAMA we:

- handle complaints about agencies authorised or funded by government to provide community services, in particular services provided to children and people with disability
- assist agencies to improve their complaints procedures
- provide information, education and training relating to the making, handling and resolution of complaints about community services
- review the causes and patterns of complaints to identify ways to remove or minimise those causes
- review standards for the delivery of community services
- monitor and review the delivery of community services and related programs
- inquire into major issues affecting people with disability and disability services
- review the situation of children and people with disability in care
- review the causes and patterns of deaths of children who were living in care or detention, or who died in circumstances of abuse or neglect
- review the causes and patterns of deaths of people with disability living in care

- convene the CDRT, which is a multidisciplinary cross-agency group responsible for reviewing the deaths of all children under 18 years old in NSW
- coordinate the OCV scheme.

Public Interest Disclosures Act 1994

Under the PID Act, we:

- promote the object of the Act and public awareness and understanding of the Act
- provide information, advice, assistance, training and guidelines to help government agencies meet their responsibilities
- monitor and audit compliance by government agencies with their obligations
- report and make recommendations to government on improvements to the Act and its administration.

Legal changes

Minor amendments were made to the Ombudsman Act by the *Statute Law (Miscellaneous Provisions) Act (No 2) 2017.*

Other annual reports

This Part satisfies our reporting obligations under s 30 of the Ombudsman Act. As the Ombudsman has reporting obligations under our other principal governing legislation, the following separate annual reports will also be published:

- Public Interest Disclosure Steering Committee – to be submitted to the Premier by the end of 2018
- Oversight of the PID Act – to be tabled in Parliament by the end of 2018
- Official Community Visitors – to be submitted to the Minister of Family and Community Services and the Minister for Disability Services by the end of 2018
- NSW Child Death Review Team annual report – tabled in Parliament in October 2018.

In addition, we prepare the following biennial reports:

- Reviewable Disability Deaths biennial report – tabled in August 2018
- Reviewable Child Deaths biennial report - expected to be tabled in Parliament in mid-2019
- NSW Child Death Review Team biennial report - expected to be tabled in Parliament in mid-2019

How this Part is structured

This Part, structured around the work that we do, has the following sections:

- Handling enquiries
- Working with Aboriginal communities
- Departments and authorities
- Public interest disclosures
- Local government
- Custodial services
- Operation Prospect
- Children and young people including employment related child protection
- People with disability including disability reportable incidents.

Examples of our work are included as 'case studies' or are highlighted as articles.

Our publicly available reports such as our reports to Parliament, and our fact sheets, guidelines or other resources mentioned in this Part, can be accessed on our website – www.ombo.nsw.gov.au.

Statistics about the work we do

Throughout this Part, we have provided statistics about complaints and notifications and the other work we do. There is also some analysis of these numbers, highlighting trends or issues. For complaints, notifications and enquiries we provide received and finalised information for the reporting year and the four years prior.

Historically, we have included in our report (in the appendices) complaint statistics at an agency level or more detailed information about complaint issues. This year, we have not included these detailed statistics but have published them on our website – www.ombo.nsw.gov.au.

Formal v informal

'Formal' matters are commonly written and we have a statutory responsibility to respond in writing. However, we consider contacts received from vulnerable people in a formal way if they raise concerns of sufficient severity.

We classify matters as 'informal' if we can answer the person's questions, address their concerns, or give them information without needing to take any formal steps. We commonly categorise phone calls and visits to our office as informal. We are also often sent copies of complaint letters directed to other agencies, which we categorise as informal matters.

Handling enquiries

We answered 31,425 phone calls during 2017–18 from members of the community who wanted to make a complaint or ask questions about a problem they were having with government agencies or community service providers. On average, this was about 600 calls every week. In addition, 187 people made a personal visit to our offices in the Sydney CBD.

When people call or visit, our goal is to understand their concerns and see if we can help them in some way. To do this well, we make sure we give people the time and help to explain their problem and to let them know they have been heard. This is the role of our public contact staff – and it is an important and often difficult one. Once we understand the reasons a person has contacted us, we can:

- give them information and explain the possible legitimate reasons that an agency might have made a decision or taken a particular action
- tell them what options they have to find a solution to their problem, which may or may not be to make a formal complaint
- explain how to lodge a formal complaint – either with the agency concerned or with our office – and what they can expect from that process
- refer them to another agency that can better help them with their problem.

Our knowledge of the functions and policies of the agencies within our jurisdiction enables us to give the most appropriate assistance to people who contact us.

Sometimes we will accept a complaint orally from people who need help to do so. This is usually because of the person's vulnerability – through poverty, homelessness, age, disability, imprisonment or a combination of these. Vulnerability can also be due to geographical factors, including differences in the level and nature of services available in city and rural areas. Vulnerable people often have complex lives and a greater need than other members of the public to access public and community services. Part of our responsibility is to empower them to make complaints if problems arise.

The day-to-day contact we have with the public also enables us to gauge when the community is experiencing particular issues or problems with certain government decisions or services. Further details of the work we did to address these issues at a systemic level are provided throughout the report. The following case studies are examples of the enquiries we receive.

Table 45: Informal complaints and notifications finalised – five year comparison

	2013–14	2014–15	2015–16	2016–17	2017–18
Formal					
Departments and authorities	4, 411	4,719	4,828	5,041	5,673
Local government	1,697	1,961	1,762	2,077	1,953
Custodial services and Justice Health	3,675	2,910	4,172	4,359	4,435
Juvenile justice	195	186	163	198	189
Community services	912	1,028	1,231	1,577	1,151
Employment related child protection	701	780	873	1,155	1,131
Police	2,301	2,324	2,374	2,166	0
Disability Reportable Incidents	0	75	158	307	461
Agency outside our jurisdiction	12,059	11,094	9,923	12,206	11,945
Requests for information (General Enquiries)	3,774	4,120	4,693	5,091	4,489
Total	**29,725**	**29,197**	**30,177**	**34,177**	**31,427**

Table 46: Action taken on informal matters – % of all matters – by division

Division	Advice %	Resolution %	Referred %	Total %
Community services	47.96	6.43	45.61	100
Employment related child protection	96.37	2.39	1.24	100
Public administration	40.90	0.83	58.27	100
Disability reportable incidents	89.37	0.00	10.63	100
All divisions	**43.86**	**1.08**	**55.06**	**100**

Case study 1. Receiving a refund

A man complained to us about the way in which Liquor and Gaming NSW had dealt with his application for a liquor licence. He had initially applied and paid the fee for the wrong licence. The agency told him to apply for the right licence and he would be refunded his first application fee. He applied for the refund, but received no response for four months. We made inquiries and his refund was processed the next day. Liquor and Gaming also apologised and sped up his second licence application so it would not affect his business.

Case study 2. Withdrawing unnecessary tribunal action

A public housing tenant complained to us after FACS Housing began tribunal proceedings against her for not allowing a property inspection. FACS Housing had initiated proceedings after trying to arrange an inspection, but the tenant had to work at the times suggested. The Client Service Officer then moved straight to tribunal proceedings to gain an order requiring the tenant to allow an inspection.

We made some inquiries, and suggested that taking the tenant to the tribunal was not reasonable. FACS Housing agreed and withdrew the proceedings.

Working with Aboriginal communities

We work with agencies and service providers to improve their relationships with Aboriginal communities and deliver better services to them. We regularly travel across the state to talk to communities about the quality of service provision and help to address their concerns.

Since 2005 we have prepared more than 20 major reports and submissions focused on systemic problems raised with us by Aboriginal communities. Since July 2014, we have also been responsible for monitoring and assessing the NSW Government's plan for Aboriginal affairs – OCHRE.

Engaging with stakeholders

We regularly engage with other agencies and peak bodies about issues and initiatives that affect Aboriginal communities. For example, we hold regular liaison meetings with AbSec – the peak body for Aboriginal OOHC agencies in NSW – to discuss issues affecting vulnerable Aboriginal children and young people and their communities.

The Deputy Ombudsman (Aboriginal Programs), the Deputy Ombudsman and Community and Disability Services Commissioner, and the Assistant Ombudsman (Strategic Projects) – represent the office on a range of committees and working groups. These include, for example:

- The Strengthening Aboriginal OOHC Providers Governance Group – which advises the Aboriginal OOHC agency capacity building project led by AbSec. We also delivered a presentation on observations from our oversight of Aboriginal OOHC agencies at the biennial AbSec sector and workers conference.
- The Family is Culture Reference Group – advising the independent review of Aboriginal children entering OOHC being done by Professor Megan Davis.
- The GPYC – which oversees the implementation of the *Guiding Principles for strengthening the participation of local Aboriginal communities in child protection decision-making* – see p 53.
- The Bourke Cross Sector Leadership Group – this group was formed in mid-2016 to bring together Bourke community leaders, Just Reinvest representatives and key senior regional agency representatives (as well as their local Bourke staff) to explore and drive service sector reforms in Bourke – see p 56.

Our Deputy Ombudsman (Aboriginal Programs) – along with representatives from other Ombudsman offices in Australia and New Zealand – is a member of the ANZOA Indigenous Engagement Interest Group.

The Manager of our Aboriginal Unit also attends quarterly meetings of the Aboriginal Communities Matter Advisory Group – which advises NSW Health's Education Centre Against Violence (ECAV). The ECAV plays a critical role in delivering statewide specialised training, consultancy and resource development relating to sexual assault, domestic and family violence, and emotional abuse and neglect.

Our Deputy Ombudsman (Aboriginal Programs) and the Manager of our Aboriginal Unit were also invited by the Minister for Aboriginal Affairs to attend the proceedings to mark the introduction of the Aboriginal Languages Bill into NSW Parliament. The *Aboriginal Languages Act 2017* came into effect in late 2017. We had previously provided feedback to inform the draft Bill.

Helping to resolve complaints

Depending on the issue, we can directly investigate a complaint, look into a complaint someone has already made, or take other steps to help people resolve their concerns with the agency or service provider.

Historically, a significant proportion of complaints to our office by Aboriginal people related to police. As the LECC became responsible on 1 July 2017 for oversighting complaints about the conduct of police officers, we are no longer able to handle such matters. We continue to provide information and referrals to the LECC when we are contacted by Aboriginal people about police matters.

Case studies 3–11 are examples of some of the outcomes we have achieved for Aboriginal people who complained to us during the year. Reflecting the over-representation of Aboriginal children and young people in the child protection system, many of the case studies are about the FACS and OOHC services.

Case study 3. Re-establishing contact between a father and daughter

OOHC agencies, caseworkers and carers are required by NSW law to uphold the right of children in care to have contact with their birth families. The Children and Young Persons (Care and Protection) Act also requires agencies, including FACS, to maintain records about each child's

development, history and identity. For Aboriginal children, the legislation emphasises the importance of enhancing and preserving their sense of Aboriginal identity.

An Aboriginal man complained that FACS had prevented him from seeing his daughter since she entered OOHC more than 13 years ago. A care plan provided to the Children's Court in 2003 stipulated that the two should have weekly contact, but the man told us that this had never happened. Their contacts had only ever been intermittent, and he had often gone for more than a year without seeing his daughter. When we tried to verify this, FACS told us it was unable to provide a full account because of gaps in its records. FACS acknowledged that it had been approached by the man a number of times seeking contact with his daughter, but it was not clear to the agency whether contact had occurred and, if not, why not. FACS said it was concerned about the case, and would conduct a review that would consider the impact that the lack of contact had on the man and his daughter – who had experienced deteriorating mental health, multiple placement changes, and contact with Juvenile Justice during her time in OOHC. FACS apologised to the father about the time it had taken to respond to his concerns, and committed to improving arrangements for future contact.

Case study 4. Helping a young carer

FACS supported a young Aboriginal woman to become the primary carer of her school-aged sister, arranged a supported care allowance, and began work on an application to give the young woman legal guardianship of her sister. The two sisters then moved interstate and FACS discontinued the application and cut off their financial support. However, FACS did refer the sisters to an interstate family support service. They contacted us after FACS advised the young woman that it would be up to her to pursue legal guardianship of her sister. When we made inquiries, FACS acknowledged that it could have better supported the sisters by pursuing court orders in NSW that would be transferable to the other jurisdiction. FACS decided to restart its court application and provide backdated carer payments after court proceedings began. In the interim, FACS provided extra financial support to the young woman.

Case study 5. Meeting the needs of a young person in residential care

An Aboriginal teenager with a history of significant trauma complained to us about the adequacy of the services and supports she was receiving from her residential OOHC provider. Although she said she was settled in her placement, she lacked access to adequate mental health supports and felt isolated – because she had no meaningful relationships with any of the staff in her home. She also complained that a worker had directed her to remove an Aboriginal flag from her room. This was one of several incidents raising questions about the cultural competence of staff at the service. The teenager also told us that she had difficulties at school, but was not getting support from the agency to help her with these problems. After we raised the young woman's concerns with the agency, they responded by providing cultural competence training for their staff and organising new supports for the young woman.

Case study 6. Bringing a family together

A woman complained that her contact visits with her daughter in OOHC had been changed from unsupervised to supervised and that her husband of five years (with whom she had two younger children) was not allowed to attend the visits. She said she had complained to the OOHC agency and asked for a review of the arrangements on several occasions since 2015.

The agency advised us that the woman's visits had been changed from unsupervised to supervised because she had brought her husband to a visit without authorisation. They said the husband was not allowed to visit because he was not an Australian citizen and they had concerns about his background. The agency also reported that it was agency policy to require family members to undergo a Working With Children Check (WWCC) before having contact with children in OOHC. We noted that there is no legal requirement for family members to have a WWCC before visiting children in OOHC, so asked the agency to provide us with the relevant policy – as well as advice about their risk assessment of the woman's husband. The agency acknowledged that it had not done any risk assessment. It subsequently did so and, as a result, allowed the man to start attending family visits.

Case study 7. Securing financial support for grandparent carers

FACS provides a payment known as the 'supported care allowance' to some relative or kin carers who have been granted full parental responsibility for a child by the Children's Court. We received a complaint from the grandparents of two children in OOHC after FACS cut off their supported care allowance because the family moved interstate. The couple told us that, before moving, they had checked with FACS that their plans would not

jeopardise the payment – which, as pensioners, they significantly relied on. The couple said they were initially told that there would be no problem, but received a letter after they moved to notify them that their payment had been stopped because they no longer lived in NSW. Although it is FACS' general policy to stop the supported care allowance after three months when kin and relative carers move interstate, it has discretion to continue the payment for as long as it thinks appropriate. In this case, after we intervened, FACS advised that it would continue paying the supported care allowance to the couple until the children reached 18 years of age. We have asked FACS for further advice about the criteria it uses in deciding on discretionary payments to carers.

Customer feedback

[We] cannot thank you enough for your help in bringing this to a conclusion. The amount of stress that this had placed on [us] has been enormous. We really appreciated that you understood the seriousness of this to us and all our futures ... Once again thank you so much.

Case study 8. Getting essential repairs done

During a visit to a community in Western NSW, two families told us about difficulties they were having in getting repairs and maintenance done to their public housing properties. Both families were long-term tenants in their respective homes. In one case, the defects included exposed insulation, an unsafe verandah and holes in internal walls that were present when the family took over the property in 2013. In the other case, the maintenance issues included a broken fence, a defective stove and water damage. FACS Housing told us that they had not been aware of the problems, but acted promptly to conduct inspections and organise the necessary repair work.

Case study 9. Helping members of the Stolen Generations to access reparations

Some Aboriginal community members raised concerns with us that the Stolen Generations Reparations Scheme – administered by AA since July 2017 – may not be very accessible to members of the Stolen Generations due to complicated forms, phone calls not being answered, or callers being referred to a website. We relayed the concerns to AA and sought advice about how the scheme is being administered to ensure that eligible survivors are made aware of it and supported to apply. We were satisfied that the issues reported to us were 'teething problems' and that AA is taking appropriate steps to make sure that the scheme is accessible. AA thanked us for bringing the concerns to their attention. We provided the community members who had contacted us with information about how to resolve their concerns, including details of extra support available from AA.

Case study 10. Referring serious allegations to appropriate authorities

Several Aboriginal community members made a detailed complaint about a local organisation receiving multiple sources of state and Commonwealth funding. They alleged that the organisation had engaged in serious misconduct, including fraud and financial mismanagement. They had already reported most of the allegations to the organisation's state funding agency and were unhappy with the progress of its response. With the group's consent, we referred the complaint to the agency and asked them to investigate the allegations. We also:

- referred one of the allegations to another relevant funding agency that had not been informed of the complaint
- brought the allegations to the attention of several Commonwealth agencies.

Although our own jurisdiction in this matter was limited, we were concerned to ensure that such serious allegations were brought to the prompt attention of other relevant authorities. As a result, a number of comprehensive investigative responses are now underway and we are monitoring their outcome.

Case study 11. Supporting a young victim of sexual abuse

During a visit to a regional town, we met a young Aboriginal woman who was unhappy about the support she had received from FACS during her childhood and since leaving care. Some years before, we had received a complaint about FACS' lack of involvement with the young woman who was then aged 12. We referred the matter to FACS for investigation, and they identified a number of shortcomings in their response to concerns that had been raised about the girl's safety. FACS subsequently initiated care proceedings.

In reviewing FACS' records in response to the recent complaint, we identified that the care proceedings had resulted in the girl being placed under the parental responsibility of a relative. However, the placement broke down less than two years later and from then on the girl was reported to be at risk of significant harm (ROSH) – including sexual abuse – on a number of occasions. Despite this, FACS did not seek to revoke or vary the court order to bring her under the care of the Minister. This meant that she was not automatically entitled to any financial or other support from FACS when she turned 18. After we referred the matter to FACS and suggested that they consider providing ongoing support to the young woman, FACS met with her and developed an after-care support package. The young woman will now receive support to access medical and psychological care as well as education and training, funding for legal assistance to make a victims compensation claim, and support to transition to independent living. FACS also told us that the relevant Director would meet with the young woman to apologise for their previous shortcomings.

Increasing Aboriginal participation in child protection decision-making

We have previously reported on the partnership between the Grandmothers Against Removals NSW (GMAR NSW), FACS and our office which resulted in the development of the *Guiding Principles for strengthening the participation of local Aboriginal communities in child protection decision-making*.

After the launch of the Guiding Principles in November 2015, the GPYC was formed to drive and oversee the implementation of the principles. We are an observer on the group – which has been meeting regularly since September 2016 and includes representatives from GMAR NSW, FACS, AbSec, the Aboriginal Legal Service and an Aboriginal child and family service.

Implementing the guiding principles

It has now been more than two and a half years since the Guiding Principles were launched and we intend to audit their implementation in 2019.

Helping a carer to obtain after-care support

For many years we have monitored FACS' processes for ensuring that appropriate leaving care planning occurs for young people, whether they are being case managed by FACS or a NGO. During the year, we were contacted by the carer of a young Aboriginal man with a disability who complained that the Aboriginal OOHC agency responsible for his case management had delayed finalising his leaving care plan. Despite the carer having raised concerns with the agency and FACS, and the young man having recently turned 18, he still did not have a plan. After we spoke to FACS, the leaving care plan was approved.

However, the carer then told us that the level of financial support she was receiving was not sufficient for her to continue to support the young man while he completes his education. If a young person in OOHC is still in full-time education when they turn 18, it is FACS' policy that their carer should continue to receive the same amount of financial support until they complete their studies. As the carer told us that she was now only receiving just over half of the allowance that she was previously given, we asked FACS how the payment had been calculated and whether it was consistent with their policy. We also asked about any work FACS had done with the OOHC agency to ensure that leaving care planning is on track for other children who are case managed by the agency. FACS told us that the carer should have been receiving more money, and that they had taken steps to fix the error and provide her with a back payment. They also said that the matter had highlighted a discrepancy in some of FACS' policies and procedures, which they are now taking steps to rectify. FACS has agreed to work with the OOHC agency to build their capacity to develop leaving care plans.

This matter highlights the ongoing limitations in FACS' capacity to track whether non-government agencies are completing leaving care planning on time. We will continue to liaise with FACS about how it can use its new database, ChildStory, and other mechanisms to address these limitations.

This year we provided advice to the GPYC relating to:

- Data – noting the importance of establishing robust data collection and analysis to understand how FACS districts are implementing the principles in practice.
- Governance – stressing that regular reporting of data through FACS' established quality business review process for districts is critical, together with continued strong buy-in from the Secretary and Deputy Secretary responsible for the performance of individual Community Services Centres (CSCs) and districts. We highlighted the success that the NSWPF achieved by adopting this governance approach in implementing its Aboriginal Strategic Direction.
- Complaints – highlighting the value of sharing and analysing data about complaint trends. Since the Guiding Principles were launched, there has been a significant increase in the number of Aboriginal people coming forward to complain to our office, and FACS has achieved a much higher resolution rate for these complaints compared to complaints about FACS generally. The increase in complaints about FACS should be seen as a positive at this stage – as it suggests Aboriginal people now have a greater awareness of their right to complain and more faith in the process.
- Connecting reforms – emphasising the need for the ongoing implementation of the Guiding Principles and related work to be well integrated. This includes the learnings from the case reviews being conducted through the 'Family is Culture' independent review of Aboriginal children in OOHC, the significant investment in earlier intervention via *Their Futures Matter* (TFM), the NSW Practice Framework and the Aboriginal Outcomes Strategy (AOS).

Working with the GPYC and FACS

In November 2017 we hosted the GPYC meeting attended by the FACS Minister. GMAR NSW relayed issues that community members have shared with them about guardianship orders. We highlighted the importance of dispute mechanisms focused on positive outcomes and suggested this could be an area for some collaborative work between GMAR NSW, FACS, the Children's Court and our office in the future.

We have played a strong role in urging that robust and meaningful data is captured and used in relevant decision-making. During the year, we provided feedback to guide the development of an 'indicator dashboard' by which FACS and the GPYC can monitor district-level progress to implement the Guiding Principles and the outcomes achieved.

We suggested capturing:

- Baseline data for 2014–15 – before the launch of the Guiding Principles in November 2015 – to allow changes to be tracked, where possible.
- Contextual information about the population of Aboriginal and non-Aboriginal children and young people in each district and by CSC if possible.
- More nuanced information on placement type and geographic location to better identify whether the Aboriginal Child Placement Principles are being appropriately applied – that is, whether placements are within or outside an Aboriginal child or young person's Aboriginal community – for both OOHC and guardianship placements.

As well as the quantitative data captured in the dashboard, we see it as critical for FACS to identify how it will monitor and assess the quality of Aboriginal cultural care plans and casework practice to determine how well staff know, and are working constructively with, their local Aboriginal community. The learnings from the 'Family is Culture' review will also provide valuable insights into this area of practice.

Strengthening restoration practices

In April 2018, GMAR NSW approached us to discuss strengthening the focus of FACS practice reforms on restoration or reunification. We arranged for the Office of the Senior Practitioner (OSP) within FACS to consult GMAR NSW to inform the restoration guidelines it was in the process of developing. The OSP identified that FACS's new state-wide practice framework identifies the capabilities that frontline staff need to engage positively with vulnerable families – including working towards the case plan goal of restoration as soon as the child has been removed.

The OSP has developed three resources specific to restoration. The first resource provides advice to practitioners on the issues to consider when contemplating restoration, along with suggestions on how to talk with parents, carers and children about the possibility of returning home.

As part of the implementation of the NSW Practice Framework, the OSP has also developed a suite of training packages designed to support practitioners to use the five evidence informed practice approaches outlined in the Framework. The restoration training module encourages practitioners to have one worker stay behind following the removal of a child to bring a network

of people around the parents and child immediately with the very clear purpose of FACS and the network doing all it can to bring the child back home.

We advised FACS that it will also be critical for the practice framework and related training to capture lessons from both the implementation of the Guiding Principles and the independent 'Family is Culture' review of Aboriginal children in OOHC.

FACS’ Aboriginal Outcomes Strategy

More recently, FACS has met with us to seek feedback on the implementation of the new AOS. The AOS sets five targets for achieving Aboriginal outcomes across the FACS cluster in the areas of child protection, social housing, disability services, and Aboriginal staff recruitment and retention. We once again emphasised the need for measurable outcomes to be built into agency business planning and reporting, and the importance of drawing on the implementation of the Guiding Principles and related data in tracking progress towards the AOS targets.

Place-based service delivery

It has now been eight years since we first advocated for a place-based service delivery approach in high-need communities in NSW as a result of our 2010 inquiry into service delivery to Bourke and Brewarrina. Subsequently, our 2011 report to Parliament about addressing Aboriginal disadvantage and our 2012 report on responding to child sexual abuse in Aboriginal communities, recommended that the DPC and other key stakeholders should develop and implement a strategy for delivering effective place-based planning and service delivery within high-need communities in rural and remote locations.

A strong focus of both our 2011 and 2012 reports was the need for a sufficiently senior individual to be given authority to drive service reform across agency boundaries, including pooling certain agency funding with a view to redirecting it to meet identified community need, in close collaboration with Aboriginal community leaders and clients. We stressed that local service systems should meet the needs of the most vulnerable children and their families in each location, and advocated for strong investment in education and economic development to provide greater opportunities for young people in regional and remote areas.

Since the NSW Government committed to developing and implementing place-based service delivery reforms in Aboriginal communities, we have continued to support and monitor progress.

Much of the progress in driving place-based service delivery has centred on Bourke and our continued work through the Maranguka Justice Reinvestment Project and the Bourke Aboriginal Employment Prosperity Strategy.

Supporting Aboriginal employment in Bourke

Last year, we reported that the Deputy Premier had announced $320,000 in funding for the Bourke Shire Council to hire an Aboriginal Employment Strategy Officer to work in partnership with the Aboriginal community and Maranguka Community Hub.

In February 2018 the Deputy Ombudsman (Aboriginal Programs) convened a workshop in Bourke with the DPC, the shire council, funded services, local employers and Aboriginal leaders to help kick-start key actions in the strategy.

With a new goat abattoir due to open by the end of the year, our focus has been on ensuring that a trained up workforce is in place to maximise local employment opportunities for Bourke people. The abattoir is aiming to recruit up to 200 FTE positions from the local community.

Since the February workshop, the Deputy Ombudsman (Aboriginal Programs) has:

- Established a partnership with the abattoir company and the two local employment service providers to identify and train local workers.
- Proposed a governance model to drive the implementation of the employment strategy – which includes a co-chairing arrangement shared by the Bourke Shire Council and an Aboriginal leader from Bourke, and representatives of local employers, job service providers, government agencies and local NGOs.
- Started discussions aimed at identifying the barriers preventing local people from being job ready, and developed a plan to transition them into the workforce by sourcing training courses which match local and regional employment opportunities.
- Facilitated improved connections between small to medium enterprises in Bourke with those leading the implementation of the economic prosperity strategy.
- Arranged a forum with leading Aboriginal organisations in the Bourke and surrounding area to stimulate discussions and collaboration around developing goals to support the economic prosperity strategy.

After some delays, and with our encouragement, an Aboriginal employment strategy officer was recruited at the end of May 2018 to drive the

Deputy Ombudsman (Aboriginal Programs) Danny Lester and Assistant Ombudsman (Strategic Projects) Julianna Demetrius at a workshop for the Bourke Aboriginal Economic Prosperity Strategy with community members and local employers in Bourke, 26 February 2018.

Source: Ian Cole The Western Herald

implementation of the economic prosperity strategy. Community leaders have also told us that the labour hire firm engaged by the new local abattoir has been actively engaging with job seekers in the Bourke Aboriginal community.

Participating in the Bourke Cross Sector Leadership Group

The Bourke Cross Sector Leadership Group was established to promote collaborative action between key government agencies, the community and philanthropic partners to achieve the project's main goals – reducing Aboriginal incarceration and creating a safer community – via the Maranguka Justice Reinvestment project. A number of our statutory officers are members of the group, which includes senior leaders from the community and government agencies. Through our role, we have stressed:

- Our longstanding view that service integration in Bourke should be driven by a senior leader with strong authority and influence over the service system, and that ongoing delays in having this role in place 'on the ground' undermines the reform effort.
- The need to review the efficiency and effectiveness of services, both within and across agencies.
- The importance of tracking outcomes achieved for individuals, and ensuring that data informs service design, commissioning and delivery.

In July 2018, the NSW Government Champion for Bourke – Minister Brad Hazzard – attended a gathering of the Cross Sector Leadership Group and members of the community to hear directly about progress made in the Maranguka Justice Reinvestment project.

Once again, community leaders called on government to ensure that its own governance is in order, and highlighted the importance of dedicating a senior leader to driving the necessary change. Consideration is now being given to the value of creating a senior position with responsibility to support place-based initiatives across a number of sites, equipped with authority to cut through silos in government and other barriers.

Other initiatives

There are a range of matters being progressed by the Cross Sector Leadership Group, details of which follow.

Consultants were engaged this year by DPC to conduct an analysis of the Bourke service system and develop an Integrated Services Plan. They will provide advice on how effectively service pathways are working to achieve outcomes and recommend how coordination of resources could be improved. The consultants sought our advice to understand the critical issues facing Bourke – given our longstanding work with the community.

The Maranguka Justice Reinvestment project team have developed a community-driven data dashboard to track outcomes for young people and vulnerable adults against targets nominated by the community – informed by data from agency holdings and community surveys.

We recently brought together the NSW Data Analytics Centre (DAC) and representatives of the TFM team to promote the benefits of using Bourke as a 'trial site' for developing performance indicators for agencies under new commissioning arrangements. These arrangements will involve 'commissioning for outcomes' and are intended to be a move away from measuring outputs/activities. Ideally, the new commissioning process should also involve meaningful reporting back to the community about the results.

Our meeting resulted in the DAC agreeing to explore with FACS and the TFM team how the Bourke data dashboard could be integrated with the NSW

Government's Human Services Outcomes Framework, which requires agencies to be accountable for delivering joint outcomes. The DAC foreshadowed that it could play a role in supporting the collection of cross-agency data in tracking a particular cohort to measure outcomes in key focus areas in Bourke – such as family violence or education.

We also suggested that results from the implementation of the Bourke Aboriginal Employment Strategy be included in any data collection process, so that employment opportunities can be tracked alongside measures relating to other wellbeing indicators.

It is hoped that the place-based approaches being trialled in Bourke will provide a strong platform for driving broader service sector reforms in other high needs communities.

Monitoring Aboriginal programs

It is now five years since the launch of OCHRE and four years since our office was given legislative authority to monitor and assess OCHRE's delivery and impact.

OCHRE includes the following key initiatives – Connected Communities, Local Decision Making, Aboriginal Language and Culture Nests, Opportunity Hubs, the Aboriginal Economic Prosperity Framework and Industry Based Agreements – underpinned by a 'solution broker' mandate for AA and a commitment to advance dialogue about trauma and healing.

Our role has involved providing strategic and timely feedback to agencies to enable them to address any shortcomings or gaps that may limit the capacity of OCHRE to meet its objectives. Our observations are informed by regular engagement with Aboriginal peak bodies and leaders, together with the agencies and partners responsible for implementing and coordinating its initiatives – particularly AA and the Department of Education.

A key priority is directly observing progress in locations where OCHRE initiatives are being implemented, so we regularly visit regional and remote communities to hear from Aboriginal community members and other stakeholders about how OCHRE is working 'on the ground'. Since we began monitoring OCHRE, we have made 66 visits to 35 different communities across NSW.

Although we can handle complaints and formally require agencies to provide us with information that we need to carry out our role, we aim to facilitate practical solutions before problems escalate. Another important aspect of our role is identifying, supporting and bringing forward information about good or promising practices that could be considered for wider implementation.

Each year we publish an assessment of OCHRE in our annual report. In May 2016 we also tabled a special report to Parliament, *Fostering economic development for Aboriginal people in NSW*, which informed *Growing NSW's First Economy – the final Aboriginal Economic Prosperity Framework*.

The first reports from the 10-year OCHRE evaluation were released in July and August 2018, and the final report on the evaluation of the Connected Communities initiative was released in August 2018. We plan to table our own comprehensive report to Parliament about OCHRE by the end of 2018 in time to inform any review of the strategy by the NSW Government.

Much of our stakeholder engagement during the year in connection with our OCHRE monitoring and assessment role related to Aboriginal economic development. For example:

- In December 2017, the Deputy Ombudsman (Aboriginal Programs) met with the CEO of the NSW Aboriginal Land Council (NSWALC) about the council's strategic plans to increase Aboriginal economic prosperity through developing land holdings, social housing and employment.
- In August 2017, the Deputy Ombudsman met with the NSW Chief Procurement Officer and provided advice to inform the NSW Government's 12-month review of the APIC. He also met with the Department of Industry about engaging Aboriginal small and medium enterprises and attended an Indigenous Business Forum at Parliament House, convened by the department, to raise awareness of relevant government initiatives and showcase successful Aboriginal businesses.
- In February 2018, the Deputy Ombudsman hosted a roundtable with Aboriginal entrepreneurs and the NSWICC to discuss the state of the Aboriginal business sector in NSW and ideas for strengthening relevant policy – including the APP. In March he facilitated a second roundtable with Aboriginal business owners and the NSWICC for the Minister for Finance, Services and Property and the Minister for Aboriginal Affairs to hear directly from the sector on the operation of existing policies and ideas for the development of the APP.
- In March 2018, the Deputy Ombudsman met with the Minister for Aboriginal Affairs and the NSWICC to discuss the NSW Government's efforts to support the Aboriginal business sector. He also met with the DPC's Deputy

Note: Danny Lester and Lulu Jarrett, Deputy Chair, Jaanymili Bawrunga Bowraville Community Reference Group at Bowraville.

Secretary for Regional NSW and relevant Executive Directors about place-based approaches to economic development, and agreed to regular liaison arrangements in the future.

- In March 2018, the Deputy Ombudsman met with the Department of Prime Minister and Cabinet about the implementation and monitoring of the Indigenous Business Sector Strategy and Indigenous Procurement Policy and opportunities for complementary implementation and monitoring in NSW. He also met with the PSC about the NSW Public Sector Aboriginal Employment Strategy.

In addition to work associated with preparing our forthcoming report to Parliament – including consulting agencies and requiring and analysing critical performance and evaluation data – we have:

- Made 14 visits to 12 communities or regions and directly engaged with all the Opportunity Hubs and Aboriginal Language and Culture Nests to hear about their achievements and challenges.
- At the request of the Minister for Finance, Services and Property, facilitated a roundtable for representatives of the Aboriginal business sector to provide direct feedback to Ministers on the NSW Government's draft APP. The feedback was reflected in the final APP – which was released in May 2018 and took effect from 1 July 2018.
- Established a committee that the Deputy Ombudsman will chair to provide advice to the NSW Government about the progress of the APP and APIC policy towards achieving their intended outcomes. Committee members will include the NSWICC, senior agency representatives from across government and rotating Aboriginal businesses. The first meeting will be held in the second half of 2018.
- Helped establish a legal 'community of practice' between members of the NCARA and leading law firms documented in a Memoranda of Understanding signed on 15 May 2018. This initiative will enable Regional Alliances to access independent pro bono legal advice in discharging their broad functions – including when negotiating with the NSW Government in Accords and other dealings.
- Visited Bowraville to speak to representatives of a whole-of-government task force and separate community reference group about the place-based approach that is being progressed under the solution brokerage function to aid community resilience. We

Note: Danny Lester, Anne Cregan and Aunty Jean Hand at NCARA MOU signing

also secured a commitment from the Commonwealth Government to practically support the approach underway in Bowraville. We also met separately with the National Healing Foundation and AA on the OCHRE healing forums and how the government will respond to the needs and priorities identified by participating communities.

- Held several consultations with seven Education Directors and all fifteen Executive Principals responsible for Connected Communities schools to identify the most effective elements of the strategy, and aspects that require further attention to support Aboriginal students in vulnerable communities. We have also closely liaised with the Centre for Evaluation and Education Statistics who conducted the evaluation of the Connected Communities strategy and considered key data on trends and outcomes for key indicators.

Departments and authorities

This section outlines our work with public sector departments and authorities providing a broad range of essential services to the community – including social housing, public transport, and primary, secondary and tertiary education. We try to resolve the complaints we receive as quickly and informally as we can, while always working to reach the best possible outcome in the public interest. In some cases, we have to use our royal commission powers to conduct a formal investigation. These powers are only used if we cannot resolve a matter another way, there is a serious public interest issue involved, or the matter could influence a larger group of people.

Responding to complaints will always be the core of what we do, but we are also able to improve service delivery through our proactive work. We have developed effective working relationships across the public sector, and use the information we collect through our wide range of contacts with agencies and the community to direct our project work. This can involve developing targeted guidance and advice either for a particular area or the entire public sector, or working with our community education and training staff to develop or refine the training we provide to agencies and their staff.

Complaint trends and outcomes

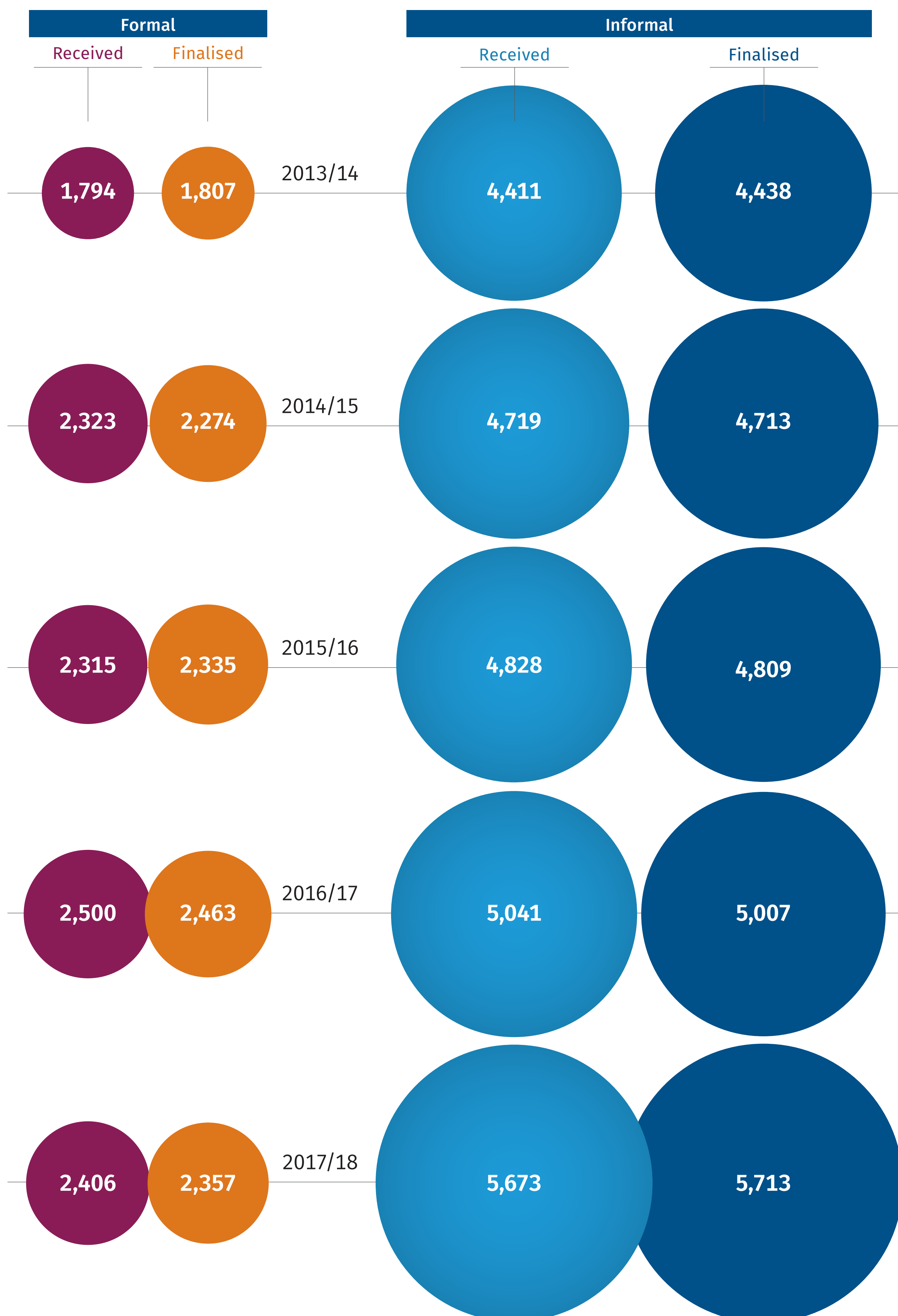
We continue to receive and deal with a high number of complaints relating to a wide range of departments and authorities. We have also had a 12% increase in the number of matters we have received informally. Many of these are dealt with when complainants contact us by telephone. We provide advice about where to get help or refer them to an appropriate agency to deal with their complaint or concern. Dealing with these matters still takes time and relies on the expertise and understanding of our staff. See table 48.

As Table 47 shows, almost 30% of complaints we receive relates to the level of customer service people receive from agencies. This has been a constant theme in our complaint numbers for

Table 47: What people complained about

Primary issue	Formal	Informal	Total	% of Total
Customer service	724	1,690	2,414	29.88
Complaint handling/investigation process	260	673	933	11.55
Charges and fees	300	559	859	10.63
Not in our jurisdiction	96	743	839	10.39
Object to merits of decision	319	506	825	10.21
Complaint/investigation outcome	155	308	463	5.73
Object to decision-making process	125	234	359	4.44
Other	14	253	267	3.30
Enforcement action	98	154	252	3.12
Policy/law	78	104	182	2.25
Duty of care	61	96	157	1.94
Misconduct	43	89	132	1.63
Management	41	83	124	1.54
Record-keeping	41	58	99	1.23
Contractual issues	16	50	66	0.82
Debt recovery action	24	40	64	0.79
Related to public interest disclosures	11	33	44	0.55
Total	**2,406**	**5,673**	**8,079**	**100**

Table 48: Formal and informal complaints received and finalised – five year comparison



some time. We also receive a high number of complaints about the processes to deal with complaint handling or investigation processes (11%). These numbers show why the work being done as part of the CHIP and broader customer service reforms is so important.

A detailed breakdown of the complaints we finalised by agency and by what action we took is on our website.

Improving complaint handling across the public sector

The CHIP is one of a number of initiatives aimed at meeting the Premier's priority of improving government services and customer satisfaction with those services. We have advocated for a more efficient and effective approach to complaint handling in the NSW public sector for almost 30 years. We view the CHIP as the best opportunity we have seen to achieve real change, and to develop a complaint handling framework for the entire public sector.

Our work as part of the CHIP has been based around six key Commitments to effective complaint handling. These are:

Respectful treatment

Information and accessibility

Good communication

Taking ownership

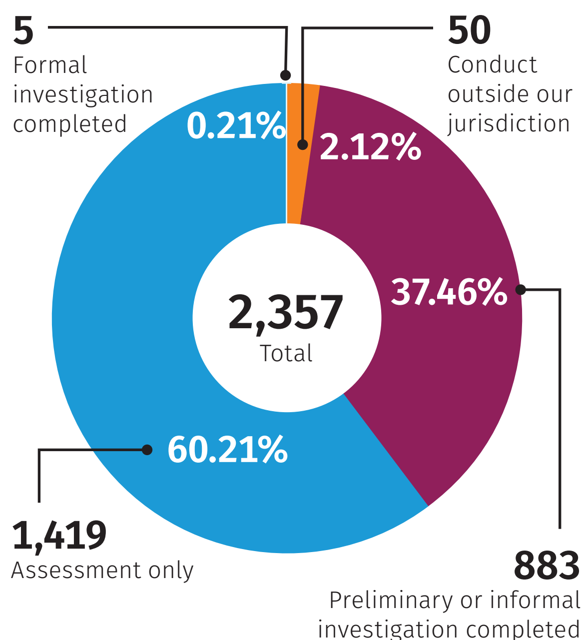
Timeliness

Transparency

Review of the Commitments

This year, we completed a formal review of the implementation of the Commitments and the work done by agencies to embed the Commitments in their complaint handling systems and processes.

Table 49: Action taken on formal complaints finalised



The review involved 44 agencies from across the public sector. To gain a good understanding of what was working well and what needed further attention, we:

- Reviewed agency websites to assess whether they have easily accessible complaint handling policies, information about the complaint process, and an online complaint form.
- Asked agencies a series of questions about their complaint handling policies, procedures, performance indicators, internal reporting, analysis of complaint data and quality assurance processes.
- Reviewed a random sample of complaints held by each agency. We looked at 280 complaint samples and assessed them against the criteria in the Commitments.
- Surveyed staff and managers with complaint handling responsibilities.
- Conducted follow up interviews with selected staff and managers to provide more detail on certain survey questions.

The review showed that there have been some very positive developments since the Commitments were introduced. In fact, a large number of public sector agencies have reviewed their complaint handling policies and procedures to incorporate the Commitments. We have seen training in customer service and complaint handling increase, and agencies have reviewed their websites making changes to the way they provide information about making a complaint – as well as ensuring their complaint handling systems are as accessible as possible.

Despite these positive developments, we also identified some areas and agencies where more work is needed. These include:

- Making sure workplaces have a culture that values complaints.
- Making sure all agencies have an approved complaints process in place that is clear and accessible for both their staff and those wanting to make a complaint.
- Improving and increasing communication with complainants.
- Providing more training, support and resources to deal with complaints appropriately and efficiently.
- Setting and monitoring time frames and KPIs for finalising complaints.
- Analysing and considering complaints to help identify when policies, procedures and practices can be improved.

In our whole-of-government report on this review, which was tabled in Parliament in August 2018, we made 86 suggestions to the departmental clusters to address these areas and help agencies to continue their excellent work to improve public sector complaint handling in NSW. Each of the clusters has responded to our suggestions, and we will continue to monitor the way in which agencies are implementing the Commitments.

Revenue NSW and the creation of a learning culture – how complaint information can improve business practices

Revenue NSW is the state's principal revenue management agency. In January 2017, Revenue NSW implemented MyCustomer – a single platform that centralised all customer feedback to the agency. This has helped to ensure transparency and accountability, as well helping to identify and analyse trends.

All complaint handling staff are trained in root cause analysis, which is done before each complaint is closed. Revenue has found this has been pivotal in helping to understand the common causes of problems across products and services and set priorities for improvements to address them. Revenue NSW also involves team leaders in the assessment and complaint handling process to help them develop a better understanding of the benefits of effective complaint handling.

MyCustomer has enabled Revenue NSW to regularly report to its Executive on trends across the organisation for the first time. 'Customer at heart' is a standing agenda item at the corporate management forum, which includes the Deputy Secretary and other senior managers. This group can review the data from all customer feedback – and business units are invited to talk about how they have applied the insights from MyCustomer and other activities to put the customer at the heart of all that they do.

A quarterly community of practice event is open to all Revenue staff to focus on sharing lessons learnt, best practice and the use of customer insights through feedback. Customer complaints are used at these forums as case studies for attendees to map the customer journey that led to the complaint. These collaborative sessions promote discussions on the importance of using customer feedback and understanding pain points in the customer's journey to help set priorities and deliver the right improvements.

Providing guidance and assistance

Our office has a long history of preparing clear, considered, practical and useful guidance to complaint handlers and agencies. However – as our review of the application of the complaint handling Commitments showed – there is still a need to increase awareness and understanding across the public sector about the importance of responding appropriately to complaints.

We have produced materials to raise awareness and understanding including a fact sheet and posters that will be distributed across the public sector.

Although much of our guidance is aimed at helping agency staff and particularly complaint handlers, we also have a role to provide advice and assistance to complainants. We have a new fact sheet aimed at helping complainants to make a 'smart' complaint – providing some tips on how to increase the chances of having a complaint understood and acted on. It suggests complaints be clear, polite, honest, realistic, cooperative and informed throughout the complaint process.

We are currently finalising a review of our Managing Unreasonable Conduct by Complainants Practice Manual. This will be the third edition of the manual, and it includes the lessons we have learnt through our work and through discussions and training sessions. It also includes additional considerations for frontline complaint handlers about the possible impact of different cultural communication styles and certain disabilities and mental illness.

The manual has been redesigned to be an online resource as agency staff have told us that although the current manual is very useful, they need to be able to 'jump in' and refer to the relevant section quickly and easily.

For several years, we have seen an increasing number of situations where a complainant and an agency reach a point of conflict during or as a result of a complaint. The complainant has not necessarily been unreasonable and, in some cases, both sides have fed the conflict. This can be particularly challenging when there is a need to maintain an effective relationship to allow ongoing essential services to be provided, for example in social housing. We have therefore been working with a behavioural specialist and others to develop guidance around recognising when conflict exists, seeing the signs it is escalating, and providing some tips on how to control it. We have also included information about how to come out the other side of a difficult complaint process and rebuild an effective working relationship. It is unlikely that any conflict will be forgotten and the relationship returned to its earlier state, but our aim is to help the parties past the conflict and develop a workable relationship.

Case study 12. Relying on an old restriction

We recognise that there are some situations where agencies have to restrict the access people have to their services when they act unreasonably and place an excessive strain on complaint handling resources or staff. When they do so, it is important any restrictions are applied properly and reviewed regularly. A man contacted us because the NSW Trustee and Guardian (T&G) had told him that he was limited in the number of emails he could send to the agency. The agency did this because the man repeatedly sent agency staff large numbers of emails about issues staff had already responded to.

The T&G had given the man clear instructions about how he could contact agency staff by email and the reason why they had imposed the restriction. However, the man told us he was also not allowed to speak with staff on the telephone. This was not included in written instructions the T&G had sent him.

Our inquiries showed that staff were relying on an email three years earlier stating that he could not contact staff by telephone. This restriction remained in place without being reviewed.

We recommended that the T&G write to the man to inform him of the ways he can contact agency staff and any limitations the agency has placed on that contact. We also recommended they review the contact the man has with agency staff every six months and decide if any restrictions are still necessary.

Hosting forums and meetings

Meeting with public sector complaint handling staff to discuss their questions, their concerns and the issues they face is an important part of our work. It helps us to tailor our guidance materials and training, as well as identify areas we may need to monitor more closely in our complaint and proactive work.

In addition to regular liaison meetings with various government agencies, our complaint handler practitioner forums are an excellent way to have this contact. We have held two forums this year, dealing with topics such as how best to measure complainant experiences and complainant journey mapping.

We have also given a presentation at the public sector customer experience community of practice. This group was created as part of the reforms to

customer service in NSW that also led to the CHIP. Discussing the importance of effective complaint handling and the work of our office with a broader group of customer service specialists is always positive. We hope to continue to have similar opportunities in the coming year.

Monitoring agencies and organisations

Much of our work is aimed at helping agencies to improve the services they provide to the community. We are able to do this through our traditional complaint handling work, achieving quick and effective outcomes in the public interest. These are often related to everyday issues – such as licensing, and issuing and enforcing fines. Case studies 1 (p 49), 13–15 are examples of some of these issues.

For the last 10 years, we have also worked to develop a stronger understanding of the practices, procedures and approaches of agencies to important service delivery areas. We now have direct online access to many agencies policies and procedures, allowing us to do a quick and effective analysis of decisions – as well as to monitor changes to how they do their work. Our aim is to help agencies move from closed, defensive or ad hoc approaches to complaint handling to establishing effective complaint handling systems that recognise complaints as opportunities to correct errors, identify system improvements, and promote fairness and integrity in their decision-making processes. This will ensure the community receives the best possible response when they make a complaint.

Although we will continue to work to achieve this aim within our current legislative structure, we believe there are very real benefits to amending the Ombudsman Act to allow us to monitor agency complaint handling systems and capability. This would bring the Ombudsman's public sector jurisdiction into line with our broader jurisdiction over areas such as the provision of community services, employment related child protection, and PID. It would allow us to keep systems under scrutiny without having to conduct formal investigations and use royal commission powers to do so. This would be more efficient and effective for our office and for public sector agencies, as they would have certainty around the statutory foundation on which they are providing our office with information.

We referred to this issue in our 2016–17 annual report and noted that we had sought assistance from the DPC to develop a proposal for legislative change. At that time, several other legislative changes were seen as having greater legislative priority. As this change will have a positive impact on our work, we will revisit the issue in the coming year.

Case study 13. A caution before a fine

A man was fined $1,318 for riding an unregistered and uninsured motor bike. He claimed that he had not received the registration or insurance reminder notices because Service NSW failed to change his address properly. At the time of the fine, he was regularly visiting his sick father overseas and then looking after his elderly mother after his father died.

Service NSW requested a review of his penalty notices by Revenue NSW on the grounds that they had not changed his address properly, but Revenue NSW refused the review request. They said he was still responsible for knowing when his vehicle registration and green slip insurance lapsed.

The man paid the fines but complained to our office and sought a refund. After we made inquiries, Revenue NSW agreed he should have received a caution instead of the penalty notices and the fine amounts were reimbursed.

Case study 14. Getting access to footage

A truck driver from Victoria received a penalty notice for a Safe-T-Cam driving offence five months after the alleged offence. He wanted to lodge a review request to Revenue NSW but was unable to obtain a copy of the Safe-T-Cam photograph – despite approaching Roads and Maritime Services (RMS), Service NSW and Revenue NSW.

By the time he complained to our office, the review period had expired. He still did not have a copy of the photo, although his mother had driven to Service NSW in Albury to lodge an application under the *Government Information (Public Access) Act 2009* (GIPA Act).

We asked RMS about the delay in issuing the penalty notice, how he could get the photo, whether he should have been required to lodge a formal application and pay for it, and if Revenue NSW could offer any remedy to him – given the review request period had expired.

RMS advised that they had previously agreed that customers did not need to make formal requests for Safe-T-Cam photos and should not be charged for them. They acknowledged that these changes had not been implemented properly.

They immediately put in place an interim measure allowing customers seeking Safe-T-Cam photos to apply to Service NSW for them. They agreed to consider other changes in the future – including

providing the photos online, altering the wording on penalty notices and relevant websites to provide information on how the photos could be obtained, and ensuring Revenue NSW and Service NSW are consulted about any proposed changes.

Revenue NSW provided the Safe-T-Cam photo, agreed to accept an out-of-time review request from the truck driver, and arranged for the $30 GIPA Act fee to be refunded.

Case study 15. Applying for a new licence number

A woman complained that RMS refused her request to replace her driver licence number. She had provided supporting evidence to show that her learner licence card had been stolen from her mail. The stolen licence had been used to apply for two mobile phone accounts and a loan of several thousand dollars.

RMS allocates driver licence numbers for the driving life of the licensee and generally will not change them. After we made inquiries, RMS acknowledged that – with the growing level of identity theft or serious crime – they needed a policy which would allow a new licence number to be issued in extraordinary circumstances. At that time, they had a draft policy dealing with the issue.

We told the complainant the requirements and the supporting documents she would need to produce for her application to be considered under the draft policy.

Education

The interaction between parents and carers and their children's school is a very important one. We are receiving an increase in complaints relating to the difficulties caused by ongoing conflict and challenging interactions between schools and families. These situations can be very difficult to manage, and we are careful to ensure our involvement is aimed at helping to rebuild a relationship between both parties.

Case study 16 shows how a challenging situation can be addressed with time and careful consideration.

Case study 16. Working hard to get a child back into school

A concerned relative of a nine-year-old boy contacted us about his circumstances. He had been regularly suspended from his former school due to behavioural issues. The suspensions began in kindergarten and had become more frequent each year. In the previous year, he had been given three long suspensions and one short suspension. His mother had moved to a new school catchment to try to give him a new start, as well as better extracurricular activities.

His new school was reluctant to enrol him due to his previous history, and wanted to put in place an exemption plan to reintegrate him to school one hour a day. His mother was concerned with this, as he had already missed three weeks of school.

After we made initial inquiries and spoke to both the school and the parent, the mother and a relative met with Department of Education staff. These discussions led to the boy starting at his new school without any conditions placed on his attendance.

The complainant contacted us a month after they had complained to tell us that the boy was doing well at his new school. He had made friends and was involved in a number of different school activities.

Social Housing

There have been a number of important changes to the way in which social housing is administered in the last five years. These have included a much greater private sector involvement in managing housing, as well as private sector contractors taking responsibility for the maintenance of public housing.

FACS Housing is in the process of transferring tenancy management for approximately 14,000 social housing tenancies to CHPs. This will take the percentage of properties managed by CHPs from 19% to 32%. The NSW Government will retain ownership of the properties and will lease them for a 20-year period to the CHPs. The December 2017 update on the government's *Future Directions for Social Housing in NSW* outlines the planned benefits to this change. These are:

- making the most of community networks to deliver better long-term outcomes for tenants and applicants
- making the social housing system stronger and more diverse
- accessing sources of funding available to CHPs
- building up the skills and size of the community housing sector.

The update states that the transfer is expected to be complete by 2019. This transfer is one of the cornerstones of the government's reforms to social housing.

We have some concerns that tenants in properties managed by CHPs do not have access to our office to continue to raise complaints with an independent and impartial external complaint handling body – in the same way as tenants in FACS Housing managed properties do. Although FACS Housing and the Registrar of Community Housing have both told us they receive complaints directly from CHP tenants, their focus differs from the complaint handling function of an Ombudsman. FACS Housing is in a contractual relationship with the CHPs, and the Registrar of Community Housing is the regulator of the community housing sector. Neither are focused on or responsible for dealing with individual tenant complaints about CHPs.

We have included case studies about our work with FACS Housing and the Land and Housing Corporation (LaHC) to demonstrate the importance of this jurisdiction – and highlight our concerns about the gap in the complaint handling and accountability framework for CHP tenants. For them, the third tier or external avenue for the |types of complaints we handle about FACS Housing is to seek relevant legal advice and assistance. In response to our concerns FACS has advised they are satisfied that CHP tenants have access to appropriate complaint mechanisms. We do not share that view and we will continue to raise this issue in the hope of finding a satisfactory legislative solution.

In addition to transferring management to CHPs, the LaHC has entered into a series of contracts for maintaining public housing. LaHC used to do this work themselves. Under the new arrangement, they ensure maintenance services are properly provided by reviewing the work of the contracting companies. As a result of putting this service to the market, there are five contracted maintenance providers for the state. Two of the larger companies do the majority of the work. This arrangement has created delay and unnecessary confusion in some cases – and, in turn, delayed essential works. We have dealt with an increasing number of complaints about the LaHC in the last five years. For example, in 2012–13 we finalised 52 matters and this year we finalised 163.

To address some of these changes, we have developed a fact sheet explaining our role in handling social housing complaints.

Case studies 2 (p 49), 17–22 show some of the practical issues facing tenants in public housing, as well as some of the challenges posed by the changes to the way public housing is administered and supported.

Case study 17. Keeping tenants informed

A woman contacted us after FACS Housing gave her 11 days' notice to leave her unit. She was three years into a five year lease.

When there is a shortage of social housing, FACS Housing can enter into a lease with a private landlord. These are called head leases and are usually only used to house short-term tenants. The tenant has an agreement with, and can only communicate with, FACS Housing.

We made inquiries and found FACS Housing had only negotiated a 12-month lease with the private landlord. After the year passed, the agreement between FACS Housing and the private owner continued on a week-to-week basis. The tenant did not know this.

We recommended FACS Housing tell any tenants living in a head lease property about the term and expiry date of the lease. We also recommended they give tenants at least one month's notice when the head lease was about to expire. FACS agreed with both recommendations and also relocated the tenant to a social housing unit in the same area.

Case study 18. Finally getting reimbursed

A woman living in public housing had been overcharged rent for 22 weeks. She contacted FACS Housing asking to be reimbursed, but did not receive a response. Her daughter complained twice on her behalf. The first complaint was about not receiving the reimbursement, while the second was about the lack of response to the first complaint. The daughter did not receive a response to either complaint, so contacted our office.

After we made inquiries, FACS Housing contacted the daughter to confirm the amount to be repaid and $5,565.70 was reimbursed to the woman by cheque. This happened six months after her initial complaint. FACS Housing told us the first complaint had been referred to a senior customer service officer, where the matter was unfortunately overlooked due to a heavy workload. FACS Housing acknowledged the delay was due to an oversight and agreed that the reimbursement should have happened earlier.

Case study 19. No oven, no walk-in shower and no grab rails

An elderly couple living in social housing complained after their oven became so hot when they used it that they could not safely touch the door.

The oven was installed as part of works during November 2017. The oven had been inspected and passed by a LaHC contractor. Two later tests

conducted by the oven manufacturer and an electrician found it was unsafe. One test showed that the oven handle reached a temperature of more than 110 degrees Celsius. The oven was replaced with the same model, but the new oven had similar overheating problems due to the size of the space it was fitted in. A different make of oven was then fitted and there were similar problems. During this time, the couple were cooking using their outdoor gas barbeque.

In addition to the oven, the work order stated that the renovations had included converting a cupboard to a walk-in shower. This work was not done. The elderly man had recently had a hip replacement and his wife was scheduled to have hip surgery as well. We made inquiries with FACS Housing and the LaHC about the grab rail, and were told that 'human error' led to it not being installed for more than four months. During that time, the man had his hip replaced and was unable to use the shower safely, as the shower was in his bath and he was unable to step into it easily without a rail.

The complainants were not comfortable pressing for more action, and the LaHC had told them they would not do anything further. If our office had not continued to seek updates, it is likely they would have continued to live without an oven and with a bathroom not suited to their needs.

Case study 20. Getting essential modifications

An occupational therapist contacted us because the LaHC had not acted on her advice to modify the bathroom of a client. The client had been living in the unit for more than 12 months without being able to shower independently or use toilet facilities without assistance because there were insufficient aids.

The occupational therapist had been complaining to FACS Housing for around eight months, but FACS Housing staff were unable to say when the modifications would take place.

When a tenant requests modifications to a property, FACS Housing assess whether the modifications should be done or if the tenant should be moved to a more suitable property. All requests must be supported by recommendations from an occupational therapist. If the modifications are approved, the LaHC normally speak with the occupational therapist to work out how to make the changes needed.

Our inquiries showed that LaHC staff had decided on the work to be done based purely on the occupational therapist's report. No one had spoken to the therapist or the tenant. We were told the modifications to the unit had not started because the LaHC and the contractor could not agree on the cost of the work involved.

After we got involved, the work was made a priority and the modifications were completed.

Case study 21. More than a calling card needed

A woman contacted us because contractors for the LaHC had not repaired damage to her unit after 12 months of her reporting the damage to them. The woman's unit was flooded when the contractors had tried to repair the kitchen taps but did not do the work properly.

FACS Housing tenants request repairs to their unit by calling a call centre staffed by one of the five contractors who repair properties owned by the LaHC. During this initial contact, call centre staff should arrange an appointment for the tradesperson to attend the unit.

We made inquiries and found the contractor had not made an appointment with the tenant, but just turned up to the unit when the tenant was not at home. They left a card asking the tenant to ring. After doing this twice, the contractor told FACS Housing their tradespeople could not get access to the unit and closed the request. However, FACS Housing had not apparently followed up this information. This situation had continued even though the tenant had submitted a complaint informing the LaHC that contractor staff were not turning up.

After we got involved, the contractor repaired the unit. We also provided the LaHC with feedback about the deficiencies in the system of leaving calling cards where no follow up is made with the tenant.

Case study 22. Fixing dangerous carpet

A woman contacted us because her carpet was damaged and it was causing her to fall over in her unit. The woman has a disability that makes it very difficult for her to lift her feet.

The woman had reported the damaged carpet for 12 months to FACS Housing and to the contractors for the LaHC. The woman also complained to the LaHC that the carpet was not repaired. However, when she complained, she would receive a letter telling her the carpet had been repaired.

When tenants complain about the quality of repairs, the LaHC review the information in the complaint and decide if staff from the LaHC should assess the quality of repairs or ask the contractor to inspect.

Our inquiries showed the contractor had been to the woman's unit and repaired the carpet. When she complained, the LaHC asked the same contractor to assess if the repairs had been done properly. The contractor was satisfied with the work that had been done.

Our involvement caused LaHC staff to inspect the unit. They found the repair work to be inadequate and directed the contractor to do it again.

Trustee and Guardian

The T&G comes into contact with people at some of the most difficult points in their lives. This could be after the death of a family member who appointed the T&G as the executor for their estate or their family member may have died without a will. They may also be dealing with the T&G because they or a family member are having their finances managed by the T&G after a court order. These challenging circumstances mean people are often already experiencing stress when they come into contact with the agency – so it is especially important that they receive clear and consistent advice and timely service.

There are a number of consistent issues in the complaints we have dealt with this year about the T&G. These have included delays, less than optimal customer service, and inconsistent advice to clients. We understand factors such as agency restructures and budgets can have an impact on service delivery. However, we will continue to raise these issues with the T&G and will monitor improvements in the coming year.

Case studies 23 and 24 are examples of the T&G complaints we have handled.

Case study 23. Delays in administering a simple estate

A man complained to us about the T&G taking more than two years to administer his late mother's estate. He was trying to get the estate finalised, but also wanted all of the T&G's fees reimbursed to the estate before it was finalised.

After we made inquiries, the T&G acknowledged the delay – they noted that his mother's estate was relatively straightforward, and apologised to the complainant and his family. They finalised the distribution of his mother's estate and also reimbursed almost a year of management fees, plus some of the other associated fees.

Case study 24. Confusion around genealogy checks

A complainant contacted us because he was concerned about the time the T&G was taking to finalise his brother's estate. He had been told the delay was due to genealogy searches overseas to confirm his brother did not have any children. His brother had moved to Australia when he was a young child.

We made inquiries and found out he had been given the wrong information. The Genealogy Unit at T&G had been conducting searches to confirm whether his brother had any other siblings, not any children. This is standard practice when a person dies without a valid will. In this case, it was taking longer than usual due to the challenges getting access to records in the country where the man's brother was born. We made sure the T&G apologised for giving the man the wrong information and offered to provide him with any further information he needed before the estate was finalised.

Service NSW

Reforms to the way in which certain public services are provided in NSW have meant that Service NSW centres are the primary point of contact for a wide range of complaints. This has presented challenges for Service NSW – as they are often not responsible for the area that the complainant is raising concerns about.

Service NSW is also increasingly the point of contact for complainants who are not satisfied with the outcome of their complaint. These complainants are often very persistent and dealing with them can take up a great deal of time and resources. We have been working with Service NSW this year to help respond to these complaints.

Higher education

We have dealt with a wide range of complaints relating to universities and TAFE NSW. These complaints are about issues that have a very real impact on the lives and opportunities of students. Case studies 25–28 are some examples of the issues we have dealt with.

We have continued our contact with complaint handlers at NSW universities. We held our annual university complaint handlers forum, with attendees discussing a broad range of topics – including procedural fairness, postgraduate students, persistent complainants and barriers to effective communication.

Case study 25. Reducing an administrative fee

An international student complained that she had been charged a $5,000 administrative fee when she withdrew from a Masters of Education degree. She said that she had had to return home as her mother was ill. She did not begin the course or attend any classes – and formally withdrew three days after it started. She also maintained that she would not have been able to begin the course on its starting date anyway, as she had not met the English language prerequisites and could not formally enrol in the course until she had.

The university maintained that the decision to charge the fee of $5,000 was in line with their written procedures but as a gesture of goodwill, agreed to refund all but $1,000 of it. They agreed to do this on the basis that the student had bought her airline ticket home before the course started.

Case study 26. Claiming a re-credit

A TAFE NSW student sought a refund of her VET Fee Help loan after withdrawing from the course when the course underwent significant changes. The changes meant that she would no longer be able to complete the requisite work placement hours as they clashed with her paid work hours. She presented a case for a re-credit under 'special circumstances', but TAFE kept asking her to submit additional supporting documentation.

At the time of her complaint to our office, her re-credit request was 18 months old.

We sought advice about the reasons for the delay and available avenues for review for the complainant if her request was refused. TAFE clarified the re-credit process with the complainant and agreed to make sure her application was considered and determined at the next available meeting of the relevant committee.

The complainant contacted us shortly after we finalised her complaint to advise that the matter had been resolved satisfactorily.

Case study 27. Receiving an apology and a refund

An overseas TAFE student who transferred between TAFE institutes over the course of his studies learnt that his new institute would not accept a graduate diploma that his previous institute issued. His efforts to resolve this situation made him frustrated, with each of the institutes involved referring him to the other. He told us he spent more than four months trying to move the matter forward before contacting us. The inquiries we made led to the student meeting with senior TAFE staff who offered him an apology and arranged a $8,223 refund for the extra semester he had had to take because of his second institute's decision.

Case study 28. Completing a final exam

A woman studying at university complained to us at the start of 2018 that the university had repeatedly deferred examinations from 2016 and 2017 were preventing her from finalising her degree. She felt her lengthy efforts to resolve the matter with the relevant faculty were being ignored. After she complained to us, the university's complaints resolution unit contacted her and apologised for the long delays she had experienced. The university arranged for her to complete a supplementary take-home examination. She passed the examination and was able to graduate.

Conducting formal investigations

Although we try to focus on achieving quick and informal results, we have been conducting a high number of formal investigations this year. Some of these have been large and complex matters that have carried over from the last reporting year. We have also started several formal investigations after assessing the related complaints and deciding that a formal investigation was the best approach to take.

All of the investigations currently underway or completed this year relate to issues of public importance. These include systemic failures in water compliance and enforcement, responding to issues about the management of asbestos, the regulatory process for the building industry, and decisions around the provision of legal aid.

Table 50: Current investigations at 30 June 2018

Current investigations	No.
Under preliminary or informal investigation	169
Under formal investigation	6
Total	**175**

Water compliance and enforcement

We have completed our investigation into water compliance and enforcement in NSW.

In November 2017, we tabled a report to Parliament called *Investigation into water compliance and enforcement 2007–17*. This was a progress report outlining the stage our investigation had reached, as well as noting the work our office and others had done relating to water compliance and enforcement in the past. The report also noted that a number of different reviews and reforms were taking place at the same time.

In March 2018, we tabled a report to Parliament titled *Correcting the record: Investigation into water compliance and enforcement 2007–2017*. This report outlines the findings of a related investigation into WaterNSW. Shortly after tabling the November 2017 progress report, we were provided with information indicating that statistical information we had been given by WaterNSW was incorrect. As the title of the report suggests, the Ombudsman chose to report publicly on this issue as the statistical information was referenced in the November report to Parliament, and had been quoted by the Minister for Primary Industries, Regional Water and Trade and Industry in an answer to a question without notice in the NSW Legislative Council.

WaterNSW recognised it had provided inaccurate information, but indicated this was an oversight. We found that the evidence suggested senior executives had failed to consider the statistical information they were providing as carefully as they should have. The Ombudsman found that this conduct constituted wrong conduct under the Ombudsman Act, but the evidence did not support a conclusion that the conduct was intentional. These actions therefore did not constitute an offence under the Ombudsman Act.

In August 2018, the Ombudsman tabled his final report about our investigation into the Department of Primary Industry (DPI) and WaterNSW – outlining his findings and recommendations. The central systemic issues addressed in the report include:

- The difficulties created by repeated agency restructures and transferring important responsibilities and staff.
- The challenges associated with trying to apply customer service principles to an enforcement environment.
- The importance of enforcement agency independence, adequate resourcing and the development and support of the right culture.

The report closely examines three case studies that clearly demonstrate how these organisational issues had a substantial impact on the proper administration of enforcement and compliance functions under the *Water Management Act 2000*.

The National Resources Access Regulator (NRAR) has now been established to increase public confidence in water regulation and improve the consistency, accountability and transparency of water compliance and enforcement. Many of the Ombudsman's recommendations were aimed at the NRAR to ensure the lessons learnt are incorporated in new policies, procedures and culture. This will help to ensure it has a strong foundation of independence.

The Ombudsman made 36 recommendations to ensure the NRAR is adequately resourced – and that its policies, procedures, staff training and selection are established to ensure that some of the investigative and management practices outlined in the report are not repeated. He also recommended that:

- The DPI and WaterNSW review their communication, record keeping and delegations policies and practices.
- The DPI assess whether the aims of its 'no meter no pump' could be achieved sooner than planned.

Finally, the Ombudsman recommended that a 1992 Premier's memorandum dealing with providing information to Members of Parliament (MPs) be updated to provide additional guidance to public sector staff about what to do when an MP approaches them as an advocate for a constituent.

SafeWork NSW

The safe and effective identification and management of asbestos, particularly in public buildings, is an important issue for the community. Our office has received complaints about the management of possible asbestos in public buildings in the Blue Mountains City Council area. The complaints were made by the Blue Mountains City Council about the conduct of SafeWork NSW. Having reviewed the information we have received and considered the overriding public interest, we started a formal investigation into a number of related issues. At the time of writing, this investigation is ongoing.

Fair Trading

In 2016–17, we started a formal investigation into a range of matters relating to the regulatory process for the building industry in NSW. In particular, that the information available on the public register does not meet the requirements of the regulatory scheme, and staff involved in licensing decisions cannot easily access the information they need to make an informed and correct decision.

We have now finalised this investigation, reporting to Parliament in May 2018 about a series of serious systemic problems – identified in several earlier inquiries and investigations by our office – that had not been addressed. These included systemic issues with both the public register and the home building licensing system.

We made a series of recommendations, including:

- changes to the public register
- improvements in intelligence sharing to inform the public register and improve Fair Trading's licence assessment processes
- changes to internal guidance for staff.

The Commissioner for Fair Trading and the Minister for Fair Trading have accepted our recommendations. We will be closely monitoring the implementation of these recommendations to try and ensure the same problems do not continue to happen.

Legal aid

We have completed our investigation into the administrative conduct and decision-making of Legal Aid NSW and the Legal Aid Review Committee (LARC). This related to a grant of legal aid in a long running legal dispute. We looked at how Legal Aid managed a particular grant of legal aid, the review decisions made by the LARC on the continuation of the grant, and the action that had to be taken in the relevant tribunal and the Supreme Court.

The grant of aid to a defendant in civil proceedings ultimately proved to be unmeritorious and caused the plaintiff to be denied his remedy for some years and to incur hundreds of thousands of dollars in costs.

The Ombudsman found that:

- The LARC's decisions on the tenant's appeals against their grant of legal aid being terminated or declined were wrong, as they did not implement lawful policy or meet acceptable standards for public administration.
- Legal Aid's management of the administration of the tenant's grant of legal aid did not meet acceptable standards of public administration.
- Legal Aid acted unreasonably by not implementing a LARC decision and by funding the tenant's case to hearing in the Supreme Court.

The Ombudsman made recommendations aimed at improving the record-keeping of both the LARC and Legal Aid. Legal Aid outlined the changes it has made since this matter to address some of the issues raised. The Ombudsman also recommended compensation be paid to the landlord to address the losses caused by Legal Aid and the LARC's conduct.

Public interest disclosures

The PID Act encourages public officials to report serious wrongdoing by providing them with certain legal protections if they do so. It also deters detrimental action from being taken in reprisal for a person making a PID – by providing that such action can be a criminal offence, grounds for disciplinary action, and grounds for seeking compensation for damages. The term 'public official' includes public sector staff, contractors of agencies, volunteers, and people performing statutory functions.

Our PID Unit coordinates the implementation of the Ombudsman's functions under the PID Act. These functions include:

- promoting public awareness and understanding of the PID Act
- providing information, advice, assistance and training to agencies, investigating authorities and public officials
- developing guidelines and other publications to assist agencies, investigating authorities and public officials
- auditing and monitoring agency compliance with the PID Act
- preparing reports and recommendations about proposals for legislative and administrative changes to the PID Act
- handling PIDs made to our office.

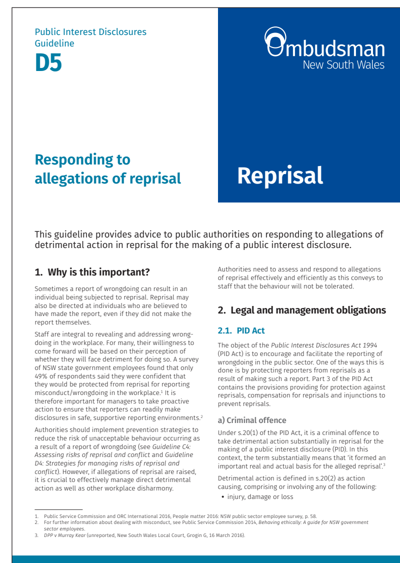
Working with PID practitioners

Developing and maintaining good professional relationships with PID practitioners in a range of agencies enables us to promote awareness of the PID Act, provide support and guidance, and identify and respond to any problems.

For example, this year we have:

- Delivered training to 1,506 public officials at 29 PID awareness sessions and 50 PID management sessions across metropolitan and rural NSW.
- Distributed two issues of the PID e-News to 1,295 subscribers.
- Held two PID practitioner forums – one focused on providing support to staff throughout the reporting process, while the other considered the benefits and practical realities of maintaining confidentiality about PIDs.
- Provided advice in response to 154 PID-related enquiries – 41 from staff who had reported wrongdoing or were thinking about doing so, 54 from agencies about managing a report, and 59 from agencies with a policy query.
- Set up information stands at the Corruption Prevention Network Forum and the Australian Public Sector Anti-Corruption Conference.
- Hosted a closed online community, the Whistling Wiki – in collaboration with the Queensland and Commonwealth Ombudsman's offices.
- Received 613 PID statistical reports from agencies for two reporting periods to inform our PID annual reporting.

We also released a guideline on responding to allegations of reprisal and a PID risk assessment template. These materials help agencies to identify, analyse, treat and monitor the risk of reprisals and any related workplace conflict, as well as respond to reprisal allegations when they are made. Responding to these allegations in an effective and efficient way clearly conveys to staff that the agency will not tolerate this sort of behaviour.



Public Interest Disclosures Guideline

D5

Responding to allegations of reprisal

Ombudsman New South Wales

Reprisal

This guideline provides advice to public authorities on responding to allegations of detrimental action in reprisal for the making of a public interest disclosure.

1. Why is this important?

Sometimes a report of wrongdoing can result in an individual being subjected to reprisal. Reprisal may also be directed at individuals who are believed to have made the report, even if they did not make the report themselves.

Staff are integral to revealing and addressing wrongdoing in the workplace. For many, their willingness to come forward will be based on their perception of whether they will face detriment for doing so. A survey of NSW state government employees found that only 49% of respondents said they were confident that they would be protected from reprisal for reporting misconduct/wrongdoing in the workplace.[1] It is therefore important for managers to take proactive action to ensure that reporters can readily make disclosures in safe, supportive reporting environments.[2]

Authorities should implement prevention strategies to reduce the risk of unacceptable behaviour occurring as a result of a report of wrongdoing (see *Guideline C4: Assessing risks of reprisal and conflict* and *Guideline D4: Strategies for managing risks of reprisal and conflict*). However, if allegations of reprisal are raised, it is crucial to effectively manage direct detrimental action as well as other workplace disharmony.

Authorities need to assess and respond to allegations of reprisal effectively and efficiently as this conveys to staff that the behaviour will not be tolerated.

2. Legal and management obligations

2.1. PID Act

The object of the *Public Interest Disclosures Act 1994* (PID Act) is to encourage and facilitate the reporting of wrongdoing in the public sector. One of the ways this is done is by protecting reporters from reprisals as a result of making such a report. Part 3 of the PID Act contains the provisions providing for protection against reprisals, compensation for reprisals and injunctions to prevent reprisals.

a) Criminal offence

Under s.20(1) of the PID Act, it is a criminal offence to take detrimental action substantially in reprisal for the making of a public interest disclosure (PID). In this context, the term substantially means that 'it formed an important real and actual basis for the alleged reprisal'.[3]

Detrimental action is defined in s.20(2) as action causing, comprising or involving any of the following:

- injury, damage or loss

1. Public Service Commission and ORC International 2016, People matter 2016: NSW public sector employee survey, p. 58.
2. For further information about dealing with misconduct, see Public Service Commission 2014, *Behaving ethically: A guide for NSW government sector employees*.
3. *DPP v Murray Kear* (unreported, New South Wales Local Court, Grogin G, 16 March 2016).

Auditing systems and handling complaints

We have a statutory function to audit how agencies exercise their functions under – and comply with – the PID Act. In 2017–18 we conducted face-to-face audits of the handling of PIDs at three agencies, which involved reviewing 124 files – 66 PIDs and 58 internal reports. This included two agencies, both of which we believed had received a relatively low number of PIDs given their size and functions. Our audits confirmed this to be the case, although for different reasons:

- One large agency only considered whether reports by staff were PIDs if the staff member requested this or raised concerns of reprisal. There were also inconsistencies in assessing whether witnesses providing information to investigators were making PIDs.

- The other agency revised their internal reporting policy when they were notified of the audit. However, before this, only five officers were nominated to receive PIDs and all were located at head office. Also, PID training had not been held across the cluster since 2015. We believed these factors may have contributed to the small number of PIDs received by this department.

We received 35 complaints this year:

- Twenty complaints were assessed as meeting the criteria to be a PID – we are formally investigating seven and made inquiries about eight. With the remaining five, we have either declined to investigate or are taking other action.
- Seven complaints were about the handling of a PID by an agency – we made inquiries about six, but took no action in the other one as the original complaint did not meet the criteria to be a PID.
- Eight complaints were assessed as not meeting at least one of the mandatory criteria set out in the PID Act.

Our office started more formal investigations than usual this year – and many of these were triggered because of the valuable information provided by public officials under the PID Act. For example, a number of PIDs informed our investigation into water compliance and enforcement in NSW – as well as prompting a related investigation into WaterNSW. Shortly after tabling our first water investigation progress report in Parliament, we received information – and subsequently took evidence – from a number of current and former DPI Water and WaterNSW staff indicating that some of the statistical information on enforcement outcomes provided by WaterNSW was inaccurate. These investigations are discussed earlier.

The information we receive through performing our functions under the PID Act has also led to the development of new resources, the revision of existing publications, and issues being flagged for legislative amendment.

Narrow reporting pathways need widening

It is important that we continue to highlight the complexities in the current PID Act – including inconsistencies and unnecessary restrictions in terms of who can receive PIDs depending on who the subjects of the allegations are and the type of conduct involved.

We received a referral from the ICAC about a PID made by a councillor at a local council.

The councillor lodged a PID with council's General Manager and General Counsel at a meeting. She alleged that a Minister tried to influence her and other councillors to vote against a development, and tied this to their future preselection as Liberal Party councillors.

We cannot investigate the conduct of a Minister, but the aspects that the ICAC referred to us concerned council's handling of the PID – including allegations that the PID was not acknowledged by council and no action was taken about the concerns. We reviewed the complaint and found that council had taken action – in that it had referred the matter to the ICAC to handle. However, it had not taken this action until the issue was the subject of media attention. The council had also not acknowledged receiving the PID.

We provided feedback to the council, explaining that they should have assessed whether the report from the councillor satisfied the criteria to be a PID when it was first received. We also noted that the councillor should have received this advice from council.

We also provided feedback to the council and the ICAC that the report by the councillor to the General Manager was not technically a PID. For the report to have satisfied the criteria set out in the PID Act, the Minister needed to be a 'public authority' as defined in the Act or an officer of the council. This means that PIDs about MPs can only be made to an investigating authority or to the principal officer of the Department of Parliamentary Services, the Department of the Legislative Assembly or the Department of the Legislative Council. This seems needlessly restrictive considering that reports about other public officials can be made to the principal officer of any public authority.

Responding to the parliamentary review

The PJC started a statutory review of the PID Act in June 2016. We prepared a background paper to assist the committee, and also made a formal submission to the review in August 2016.

In October 2017, the PJC tabled their report. While noting that overall the PID regime works well, the report made 38 recommendations to improve elements of the system. The recommendations focused on simplifying the disclosure process, improving remedies for detrimental action, refining reporting requirements, and clarifying the PID Act. We welcomed all of the recommendations, many of which were based on the evidence we had provided to the PJC.

The Ombudsman chairs the PID Steering Committee. This committee is made up of the heads of investigating authorities in the PID Act – as well as representatives from the DPC, the PSC and the NSWPF. One of the committee's key functions is to provide advice to the Premier on the operation of the PID Act and to make recommendations for reform. At one of their three meetings this year, the committee discussed the findings of the PID Act review and provided advice on each of the 38 recommendations to the Premier.

In April 2018, the NSW Government's response to the PID Act review was tabled in Parliament. It stated that the government will prepare a Bill to reform the PID system. That reform will be in accordance with the PJC's recommendations and the principles of:

- making it easier for public officials to make PIDs
- improving protections and remedies for those who suffer detrimental action in reprisal
- protecting the reputation of individuals against defamation and the public disclosure of confidential information.

On behalf of the Premier, the government formally requested that the PID Steering Committee examine in detail the implementation issues arising from the PJC's recommendations and consider the draft Bill prepared in response to the review. We expect this consultation to occur in 2018–19.

Conducting research and contributing to policy development

Another issue the PID Steering Committee considered was the application of the PID Act to local Aboriginal land councils (LALCs). There are 120 LALCs across NSW – established to improve, protect and foster the best interests of all Aboriginal people within the council's area. To clarify the status of LALCs under the PID Act, we issued a discussion paper to relevant stakeholders that:

- set out the relevant legislative interpretation issues
- considered whether LALC public officials should receive protection for making reports of serious wrongdoing
- sought feedback on whether LALCs should be exempt from the PID Act reporting requirements.

The PID Steering Committee considered the responses from stakeholders, recommending that – when reforming the PID Act – the government should amend the definition of a public authority to explicitly include LALCs.

More information about these and other PID activities will be included in our annual report on the *Oversight of the Public Interest Disclosures Act 1994*, which will be released later this year.

Local government

This section outlines our work with local government, the providers of many of the everyday services the community use. We have been overseeing complaints about councils for about 40 years, and in that time we have developed a good understanding of the unique issues and challenges for local government. Through our complaint work, we help make sure councils act fairly and reasonably. We can look at the conduct of councillors and council employees and the administrative conduct of the council itself. Our role is to make recommendations that promote fairness, integrity and practical reforms.

We have a memorandum of understanding with the Office of Local Government (OLG) that enables us to share information and refer complaints to each other. This is particularly important as our overlapping jurisdiction often means we receive the same complaints. To prevent duplication, we have agreed that our office will largely deal with complaints about enforcement, development and complaint handling, while complaints about rates, tendering, code of conduct, land management, swimming pools and companion animals will be referred to the OLG, unless there is a good reason why we should be involved. This is reflected in our complaint trends and outcomes.

Complaint trends and outcomes

Table 53 shows the number of matters we have received about councils in the last five years. This is the second year where the number of formal matters we have finalised has been over 1,000.

We also deal with informal enquiries and requests for information. This year, we have dealt with 1,982 matters informally. This means we have finalised a total of 3,109 local government matters.

Table 51 shows the range of issues raised in the local government complaints we have received this year and Table 52 shows what action we took on these complaints.

Several topics consistently come up in complaints. For example, customer service accounts for the largest single percentage of complaints (26%). Given the success of initiatives to improve customer service and complaint handling in the public sector, we believe there would be benefit in considering a similar approach across local government in NSW. We will discuss this possibility with a range of involved parties in the coming year.

Table 51: What people complained about

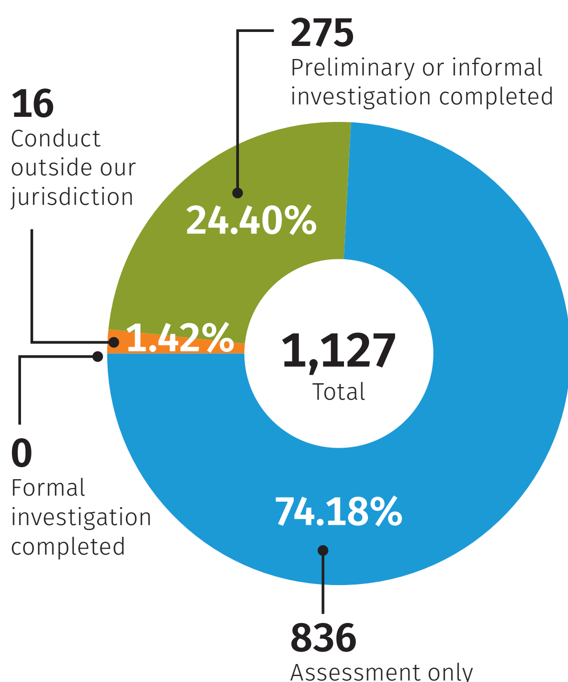
Issue	Formal	Informal	Total	% of Total
Corporate/customer services	258	551	809	26.24
Development	128	294	422	13.69
Enforcement	210	185	395	12.81
Rates, charges and fees	136	259	395	12.81
Environmental services	103	152	255	8.27
Engineering services	143	97	240	7.79
Object to decision	56	179	235	7.62
Misconduct	46	50	96	3.11
Uncategorised	7	69	76	2.47
Not in jurisdiction	19	38	57	1.85
Community services	10	39	49	1.59
Management	2	24	26	0.84
Strategic planning	10	14	24	0.78
Related to public interest disclosures	2	2	4	0.13
Total	**1,130**	**1,953**	**3,083**	**100**

We continue to receive a large number of complaints about development decisions and the processes surrounding them. We decline many of these matters, as there are other avenues for people to raise these issues. Areas where councils exercise powers such as rates, charges and fees (13%) – as well as when they take enforcement action (13%) – understandably generate a lot of complaints. We consider these complaints very carefully, and make contact with the council to request additional information when we feel it is appropriate. In many cases, we are able to access the information we need from council websites, and provide additional information to the complainant to help them better understand the decision the council made. Although they may not accept this, we will not take further action on a complaint if the council had a lawful reason for taking the action they did.

A detailed breakdown of the local government complaints we finalised by what action we took is on our website.

Case studies 29 – 32 are examples of some of the local government complaints we have dealt with

Table 52: Action taken on formal complaints finalised



Case study 29. Withdrawing an unfair parking fine

A man complained to us about a fine he received from a council for parking his scooter in a restricted area. He had regularly parked his scooter in the same place, but one night the parking restrictions were changed – meaning he was illegally parked.

We made inquiries with the council and found that it had not told residents that the parking in their area was changing. Council also did not note which vehicles were already parked in the zone when they put up the new signs. We suggested that someone who parked there the day before the signs were put up could not have known there would be a change. We asked council to consider making a representation to Revenue NSW to have the complainant's penalty withdrawn. They did this, Revenue NSW agreed, and the complainant received a refund. The council is also considering its process for installing signage and notifying residents about changes to parking conditions.

Case study 30. Fixing damage caused by a drainage easement

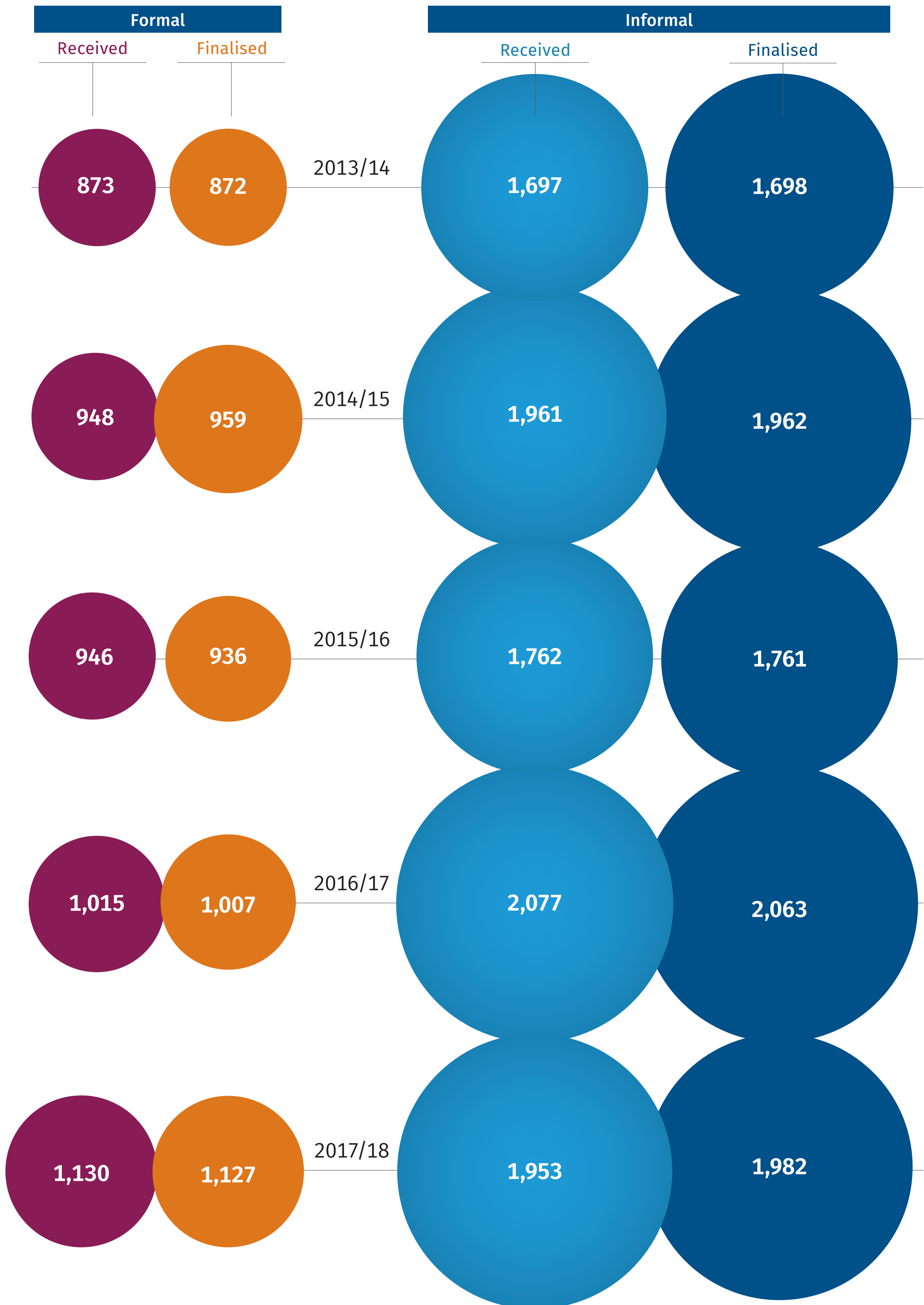
We received a complaint from a landowner about erosion on his property caused by a drainage easement council had created 10 years ago. The complainant told us that when council had bought the easement, they had agreed to take remediation action to ensure against erosion on his land – but this had not happened. He tried to raise this issue with the council a number of times but was unsuccessful.

When we contacted the council, they accepted that they were responsible for carrying out remediation work and that there was a failure to do so in a timely manner. They acknowledged they could have responded better to requests for information and complaints. They also engaged a private contractor to plan the required work to the complainant's property.

Case study 31. Addressing privacy concerns

A ratepayer had complained to a council that one of its staff members had been spreading rumours in the community that the ratepayer had stolen money from a community event to pay their outstanding rates. Although the council had conducted an investigation, it declined to disclose any details of the outcome to the complainant because the information was confidential. The complainant was not happy with this outcome and contacted us.

Table 53: Formal and informal complaints received and finalised – five year comparison



We understood that many of the details about the investigation and subsequent action might be confidential, but we contacted the council about its responsibility to still provide an adequate outcome in response to the complainant. After reviewing the matter, council agreed to confirm to the complainant that their allegation was substantiated, that disciplinary action had been taken, and that office-wide privacy training was arranged for all staff to reduce the risk of similar breaches from occurring in future.

Case study 32. Investigating noisy aeroplanes

A man who lives near a private airstrip used by a parachuting club complained to council that the club had operated for 14 hours straight on a Saturday. He wanted to know how council ensured the club had complied with its development consent – which limited the number of flights to 20 per day and limited the type of aircraft that could be used to planes which complied with the noise guidelines issued by the Environmental Protection Authority (EPA).

Council refused to investigate unless the man provided evidence of the breaches. He said that – rather than asking him to 'stake out' the club and take photographs for 14 hours (including photographs taken at night time of sufficient quality to be used in evidence) – council could simply check the flight logs that the club was required to keep. Council suggested he make an application to council under the GIPA Act for this information. We made some inquiries and found that council had not inspected the log books for that date, so any application under the GIPA Act would not have answered his questions.

We suggested council check the log books for the date in question, and that if complaints were made in the future that the club had exceeded the number of approved flights, council check the log books – rather than requiring the complainant to provide evidence. Council agreed.

We also suggested that council audit the log books after each night flight and ensure flights complied with the EPA's noise guidelines.

Formal investigations

This year, we started an investigation into Broken Hill City Council. In 2015, Broken Hill City Council was given funding of more than $5 million dollars to upgrade the Broken Hill Civic Centre, which was built in 1970 and is owned and operated by the council.

We received a complaint alleging that the civic centre was used for a series of functions before council had obtained the required occupation certificate. After requesting and analysing information from council, we decided to conduct a formal investigation. At the time of writing, we are currently drafting our preliminary findings and recommendations.

Table 54: Current investigations at 30 June 2018

Current investigations	No.
Under preliminary or informal investigation	27
Under formal investigation	1
Total	**28**

Custodial Services

Adults and young people in custody, as well as people who are supervised in the community, can call us to discuss issues of concern or make complaints. Our custodial services unit provides a frontline phone service – they identify matters that can be quickly resolved and those that might need formal investigation. We also give callers advice about how complaints can be raised internally, or which other agency might be better able to help them with their problem. The information we get from individuals also points us to systemic issues that might need attention.

Although the number of adults in custody rose to 13,500 by the end of June 2018, the number of children and young people in custody generally remained around 280 – occasionally rising over 300. The number of contacts made to us relating to all custodial services increased by 2.5%.

We have a program of visits to correctional and juvenile justice centres to talk with inmates, detainees and staff. This year we visited 30 correctional centres, and each of the six juvenile justice centres twice. Our visits help us resolve complaints and also learn more about how different centres operate and their physical layout. This assists us in better understanding issues when people call us.

Complaint trends and issues

This year we received 135 contacts more than the previous year, continuing an upward trend. In juvenile justice, the number of formal complaints rose slightly.

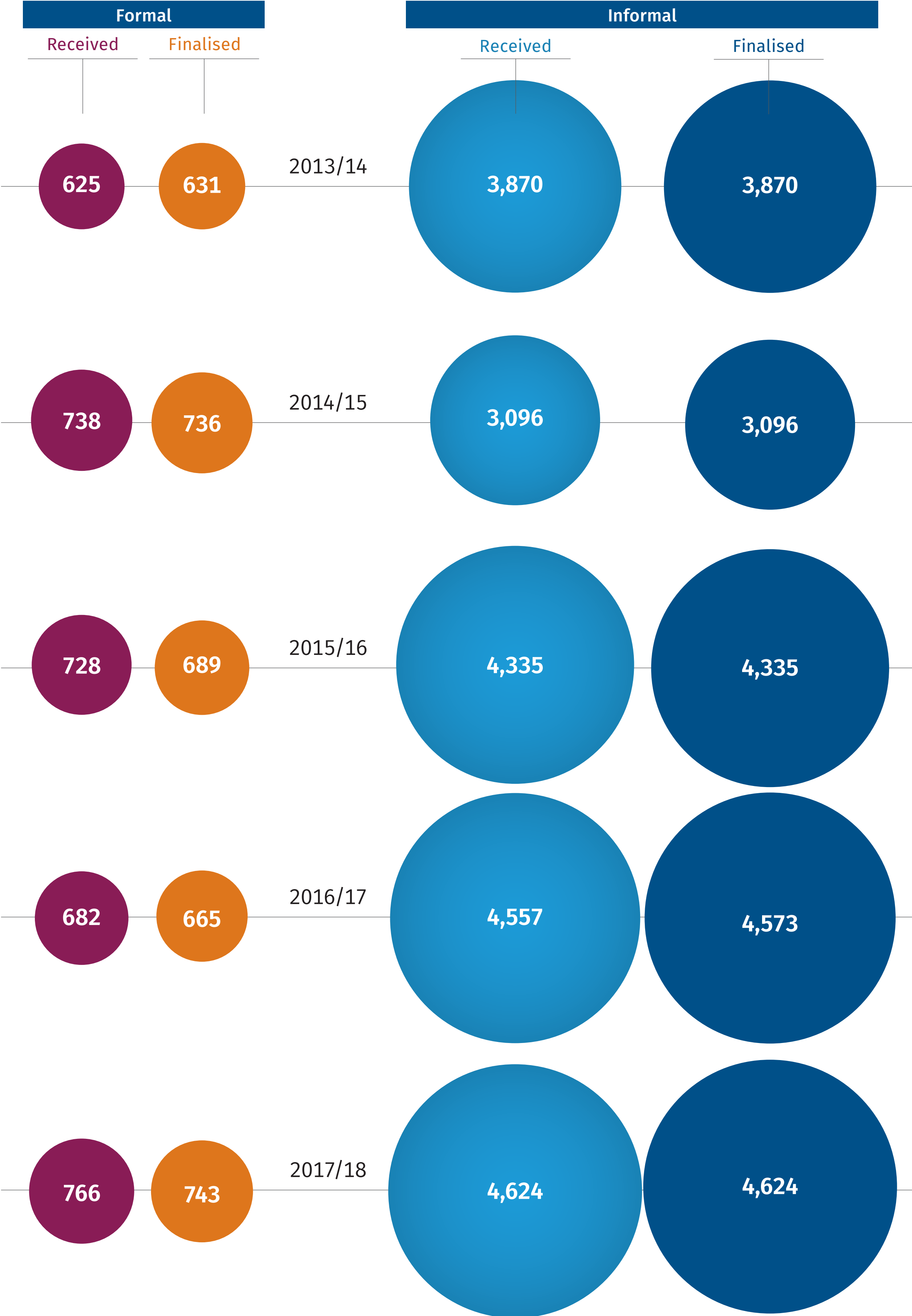
Contacts about the Justice Health & Forensic Health Network (Justice Health) rose from 643 to 876 this year, with most being received in the first half of the year. The number of contacts about Justice Health accepted as formal complaints started to decrease from January 2018 when the Justice Health Patient Health Inquiry Line went live. This line enables inmates to make enquiries about waiting lists and other issues relating to their access to health care. In most cases – if a complaint is about health-related issues – we are able to refer callers to the enquiry line or to the HCCC.

Table 57 shows the primary issues complained about in the correctional system and Table 58 shows those for juvenile justice. There has not been a significant increase in any area of complaint compared to previous years. Although daily routine is the highest area of complaint for both adults (18%) and young people (27%), complaints about food are much higher from young people (almost 10%) than adults (1%).

Table 55: Formal and informal matters received by agency – five year comparison

	2013-14	2014-15	2015-16	2016-17	2017–18
Formal					
Correctional centres, CSNSW and GEO	483	572	571	552	608
Justice Health	88	112	117	82	101
Juvenile Justice	54	54	40	48	57
Subtotal	**625**	**738**	**728**	**682**	**766**
Informal					
Correctional centres, CSNSW and GEO	3,286	2,636	3,662	3,814	3,660
Justice Health	389	274	510	561	775
Juvenile Justice	195	186	163	198	189
Subtotal	3,870	3,096	4,335	4,573	4,624
Total	**4,495**	**3,834**	**5,063**	**5,255**	**5,390**

Table 56: Formal and informal complaints received and finalised – five year comparison



	Formal		Informal	
	Received	Finalised	Received	Finalised
2013/14	625	631	3,870	3,870
2014/15	738	736	3,096	3,096
2015/16	728	689	4,335	4,335
2016/17	682	665	4,557	4,573
2017/18	766	743	4,624	4,624

Table 57: What people complained about – correctional centres and Justice Health

Primary issue	Formal	Informal	Total	% of Total
Daily routine	116	805	921	17.90
Medical	94	762	856	16.64
Property	102	375	477	9.27
Officer misconduct	66	310	376	7.31
Visits	33	239	272	5.29
Other	21	238	259	5.03
Transfers	22	216	238	4.63
Classification	20	167	187	3.64
Records/administration	32	139	171	3.32
Unfair discipline	26	139	165	3.21
Segregation	26	120	146	2.84
Fail to ensure safety	16	120	136	2.64
Probation/parole	12	105	117	2.27
Case management	14	100	114	2.22
Buy ups	9	104	113	2.20
All other issues	100	496	596	11.59
Total	**709**	**4,435**	**5,144**	**100**

Table 58: What people complained about – Juvenile Justice

Primary issue	Formal	Informal	Total	% of Total
Daily routine	8	60	68	27.64
Officer misconduct	17	31	48	19.51
Food and diet	3	21	24	9.76
Other	2	13	15	6.10
Unfair discipline	5	8	13	5.28
Security	4	5	9	3.66
Classification	1	7	8	3.25
Property	4	4	8	3.25
Transfers	2	6	8	3.25
Fail to ensure safety	3	4	7	2.85
Records/administration	1	5	6	2.44
All other issues	7	25	32	13.01
Total	**57**	**189**	**246**	**100**

Note: Expanded tables of all issues are on our website.

Table 59: Current investigations at 30 June 2018 – correctional centres and Justice Health

Current investigations	No.
Under preliminary or informal investigation	37
Under formal investigation	0
Total	**37**

Allegations of officer misconduct are also higher from young people (19.5%) than adults (7%). We do not believe there is a specific problem in juvenile justice – rather the contacts reflect different policies and procedures in the two systems, and a better understanding by adult inmates about why staff take certain action. Regardless, we make some form of inquiry into all allegations of officer misconduct by a detainee.

Over 5% of complaints from adults were about visits. This is similar to the previous year, and reflects the difficulties family and friends often face in attempting to book a visit at some centres – as well as the higher number of inmates whose classification requires additional approval for their visitors.

Complaints about unfair discipline are made at a similar rate by adults and by young people, at around 5% of all complaints in each system. Changes were made during the year to inmate discipline, which are discussed later, and we are monitoring the contacts in this area to see if there is any change as a result.

Table 60: Action taken on formal complaints finalised – correctional centres and Justice Health

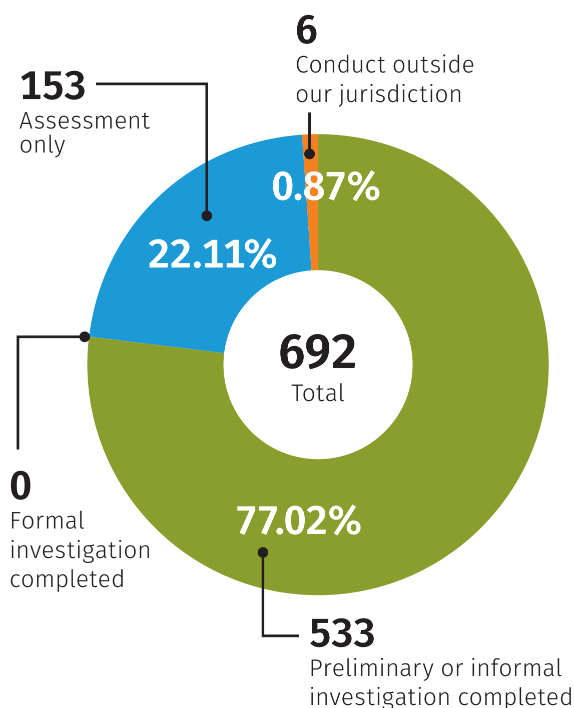


Table 61: Action taken on formal complaints finalised - juvenile justice centres

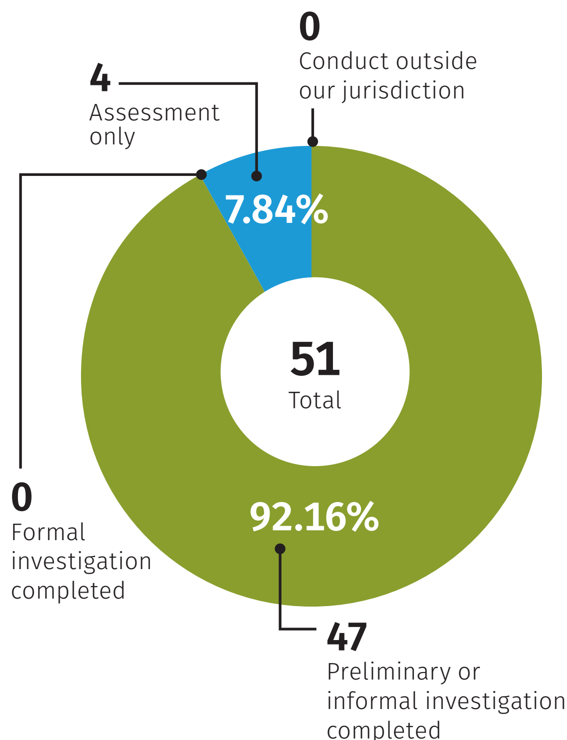


Table 62: Current investigations at 30 June 2018 – juvenile justice centres

Current investigations	No.
Under preliminary or informal investigation	4
Under formal investigation	0
Total	**4**

Adult correctional system

Accommodating the increased population

To manage the increasing adult inmate population and improve standards at all centres, CSNSW has undertaken the Better Prisons Program. This includes infrastructure projects, Rapid Build Prisons (RBPs), benchmarking, market testing and a new education and training model.

There are now 40 correctional centres (CC), including two RBPs that were opened this year and expansion projects at several existing centres.

With a significant increase in the number of female inmates, changes have been made at a number of centres to accommodate women – plus specific expansion work is happening at locations such as Dillwynia CC and Emu Plains CC. This year women were also accommodated in a pod at the maximum

security centre at Cessnock, a juvenile centre was repurposed as a women's remand centre in the metropolitan area, and Berrima CC has changed once again from a male centre to one for females. Women are most likely to contact our office if they are placed at a centre where it is difficult for their family, especially their children, to visit them. Many also require access to the facilities offered in large hospitals and become concerned if moved to regional centres. Their physical location is often a greater concern to women in custody then men.

Rapid Build Prisons

Two RBPs opened this year. These are the first centres in NSW to have 'dormitory' or 'open plan' style accommodation for inmates, including maximum security. The opening of Macquarie CC at Wellington in mid-December 2017 and Hunter CC at Cessnock at the end of January 2018 provided two different stories in terms of complaints.

When we were first invited to comment on the proposal for RBPs, we noted that the success of this new style of accommodation and program would rely on the careful selection of both inmates and staff. Inmates around the state were given promotional information about the centres and invited to express their interest. They were then to be interviewed so staff could carefully assess their suitability for the centre.

Preparation for the opening of Macquarie CC took place over many weeks. We received few complaints from inmates who moved there, with just a small number complaining about their treatment when they said they did not want to be transferred there – and these were resolved.

After the centre opened, we visited and spoke to inmates and most of their concerns were not related to Macquarie. Many told us they liked the centre – and the open accommodation was well compensated for with private bathroom facilities and a longer day to access phones and outside areas. They were also enthusiastic about the ability to earn some money at work and undertake programs to prepare for parole.

The opening of Hunter CC was done over a much shorter period – and we immediately received calls from inmates who had been transferred, but did not want to be there. Our inquiries revealed that many had simply been reviewed by 'head office' and a decision made to transfer them as they fitted the criteria on paper. This did not take account of their views or concerns about being accommodated in the open living arrangements, resulting in many calls and the segregation unit being filled with 'housing only' inmates who were not on segregation and just needed to be transferred out. We also visited Hunter CC soon after it became operational and received several complaints from inmates who were trying to be moved elsewhere. The inmates at Hunter were dissatisfied with the routine – many did not like the long days and complained there was not enough work for everyone to fill those days.

In the first six months of 2018 we received 36 contacts from Macquarie CC, including 8 during our visit in March 2018. Over the same period, we received 129 contacts from Hunter CC, including 19 from our visit in April.

We also noted a number of contacts from Hunter CC alleging excessive force and intimidation by officers if they asked to be transferred. Some were told no requests for transfer would be considered until the inmate had spent some months at the centre. We made inquiries with the Commissioner about the transfers, as many of those who complained to us were from Junee CC – which holds a large number of similarly vulnerable inmates as special management placements. The decision to move more than 80 Junee and almost 100 inmates from the South Coast CC to Hunter CC seemingly gave rise to the complaints to us. Given the large infrastructure projects being undertaken by CSNSW it appears inmates were moved to Hunter CC to enable work to be done at other centres, not necessarily because they were best suited to the centre.

The Commissioner wrote in response to our inquiries that CSNSW does not require the agreement of inmates to transfer them between correctional centres, and that the inmates were assessed for suitability based on the centre criteria, inmate classification, behaviour and conduct. He further noted that as Macquarie CC is a new type of centre, staff interviewed suitable inmates in an attempt to source those who were willing to go there. This did not happen with a large number of inmates transferred to the same type of centre at Hunter CC. The decision to simply transfer inmates to the RBPs who did not want to be there also appeared to be out of step with the earlier discussions on the proposal.

Since that time, some inmates have adapted and others have been transferred elsewhere. However, we continue to receive more contacts from Hunter CC than from Macquarie CC.

Benchmarking

CSNSW is in the process of reviewing every correctional centre and 'developing individual budgets within which performance targets must be met'. Information provided by CSNSW acknowledges the implementation of benchmarks may require centres to make improvements in operations. This is generally reflected in the staffing structure of the centre, and decisions about where those staff are deployed.

The process of benchmarking each centre takes time and the involvement of staff. We have noted that – as the process occurs in centres – there are often lock downs while meetings are held and people consulted. Naturally this then results in complaints being made to us. There are also some people in CSNSW who do not agree with benchmarking and the targets, and this has led to some significant industrial action over the past year. Once again, this has an impact on inmates who cannot be released from their cells and miss out on visits and other amenities.

On some of the larger complexes, the process has also had a wider impact over a period of time. While a centre is going through benchmarking, new staff cannot be appointed. This has often resulted in lock ins, which affect some inmates more than others. For example, the Additional Support Units at Long Bay – where inmates with intellectual disability are accommodated – had a large number of lock ins that we were told were the result of a lack of staff during the benchmarking process. Being locked in their cell for longer than their usual routine is especially distressing for many of these inmates and their families. We listened to each one who called us, talked with them about why this was happening, and made inquiries about individual cases that we believed needed some intervention.

Old centres

While the prison expansion program is underway, there are still correctional centres operating in NSW that were built more than 150 years ago. This means that inmates are living, and staff are working, in facilities that are no longer fit for purpose.

When we visited the Metropolitan Special Programs Centre in August 2017 we received many complaints about the physical conditions of some of the wings. On inspection, we found some of the ceilings of some cells were covered in black mould, the paint was peeling, there was nothing but a grille on the window vent so the elements – hot and cold – and vermin are free to enter. We contacted the Commissioner immediately after the visit with our concerns, which he addressed.

The need for the continued use of Grafton CC, especially to house women, is also a concern. Although the June Baker facility for women at the centre is adequate, women who are not sentenced or who have other behaviour or security needs are held in the same area as men. We did not consider that this area was fit for this purpose. We discussed with the Inspector of Custodial Services, who had also visited the centre, the view that women should generally not be accommodated in this unit for longer than seven-days as the facilities are comparable to those in court cells where the seven day limit applies. The new complex under development in the Grafton area will address these problems, but its completion is still several years away.

Supermax facilities

NSW requires any inmate who represents a special risk to national security to be classified as Category AA. All Category AA inmates, under current policy, must be held at the High Risk Management Correctional Centre (HRMCC) or 'supermax'. There has been considerable growth in the past few years in the number of inmates who require 'supermax' style accommodation.

Table 63: Formal and informal complaints and centre operating capacity

Institution	Formal	Informal	Total	Operational capacity (OC) at 30 June 2018	Complaints as % of OC
Maximum security	160	1,037	1,197	3,265	36.66
Maximum, medium and minimum security	17	133	150	646	23.22
Maximum and minimum security	169	1,111	1,280	4,693	27.27
Medium security	9	86	95	522	18.20
Medium and minimum security	90	556	646	2,302	28.06
Minimum security	42	281	323	2,134	15.14
Subtotal	**487**	**3,204**	**3,691**	**13,562**	**27.22**
Other	222	1,231	1,453		
Total	**709**	**4,435**	**5,144**		

Note: expanded table is on our website.

The HRMCC was built for 75 inmates, but it is not possible to hold that many inmates when additional security measures and operational programs are in place – and to also maintain amenities. During 2017–18, there were around 50 inmates at the centre – with more than half being Category AA. The inability of the HRMCC to be the only location able to manage this population has been documented in our past annual reports and has been reflected by the high number of contacts from that centre over many years.

When we visited the centre in May 2018, three quarters of the inmates asked for an interview. Most of them spoke about not being able to regularly make calls to family and legal representatives, and the difficulties faced by families trying to make visit bookings because of the limited number of spots available each week. They also complained they cannot participate in programs or in education, with some of them not being able to do so within the usual time frame for parole preparation. This was also amplified in May 2018 in the Inspector of Custodial Services's report on 'The management of radicalised inmates in NSW'.

With the increasing focus on the accommodation and management of sentenced and alleged terrorists – and the need to counter violent extremism across the system – CSNSW is now engaged in providing additional infrastructure and other facilities for this group. This should help provide access to education, programs and preparation for parole for some inmates while maintaining the necessary security. We feel it will also reduce the number of contacts we receive from this group.

Segregation housing unit

Not all of our work comes from complaints. In June 2018 the Sunday Telegraph ran an article, including photos, of a new Segregation Housing Unit (SHU) at Long Bay. The story made much of the possibility that the SHU would be used to accommodate terrorist inmates. Comparisons were made to the ill-fated Katingal, which was considered inhumane and closed many years ago. The article also claimed that the water misting system installed in the cells to dampen fires could also be used to subdue inmates. If an inmate needs to be subdued in their cell, this is usually done by a team of officers who use 'chemical munitions' under conditions controlled by policy. The notion that inmates could be subdued in their cell by a remote system dispensing any form of liquid or gas concerned us. Once inmates read the article they called us, describing the SHU as a torture chamber and threatening disobedience if they were transferred there.

We spoke with the team responsible for constructing the SHU and also inspected the unit at Long Bay. We were given assurances that the water misting system could not be used to dispense gas or chemical munitions.

During our inspection, we also noted the cells contained two cameras – with one placing the toilet and shower area of the cell under direct observation. We considered this inappropriate and unreasonable and a significant variation to the level of privacy inmates currently have.

We have written to the Commissioner asking him to remove the cameras by which staff can monitor (or record) inmates in the bathroom area of these cells. We also sought written assurance the water misting system cannot be used to dispense any gas or liquid to subdue inmates. At the time of writing we are awaiting his response.

Policy changes and complaints

Inmate discipline

The inmate discipline process causes a number of complaints to be made each year. In early 2018, CSNSW made changes to the policy and procedures around laying and adjudicating correctional charges. These are known as 'internal charges' and are not matters referred to the police. They include a range of offences such as not attending muster, damaging property, intimidating staff, fighting etc. Punishments include loss of amenities, confinement to cells, or payment of compensation. These offences form part of the inmate's record – which is considered in such things as their placement, classification and parole.

We are often consulted by CSNSW before the adoption of a new policy or procedures, but that did not happen on this occasion. We consider the new policy and procedures provide some greater clarity around the inmate discipline process, but some significant changes have caused inmates to complain. These changes are:

- The officer hearing the matter under delegation makes the determination, instead of recommending an outcome to the Governor.
- Inmates do not have a right to appeal to the Governor against a determination against them, or the penalty imposed – as they did before.

A number of inmates have alleged this new process is unfair – as they have no right to challenge findings made against them or penalties imposed. They also contend this has led to them being inappropriately 'targeted' by less senior staff in this process. We have also spoken to some senior staff who note it is generally necessary in an operational sense for governors to delegate this function. However, they

feel that a governor's understanding of the centre and the inmates, and sense of proportionality, is now missing from the process. We have written to the Commissioner about these concerns.

Separating inmates – a good outcome

Section 78A was inserted into the *Crimes (Administration of Sentences) Act 1999* (CAS Act) in June 2009 to enable the separation of inmates – as distinct from administrative segregation, confinement to cell or protection. Since that time, we have advocated for proper transparency and accountability around its use. Our experience from complaints and visits was that the provision was being used as another form of segregation, but one in which the inmate had no rights or protection.

In 2016–17 the Commissioner undertook to develop specific policy and procedures for the administration of s 78A. These were incorporated into the Custodial Operations Policy and Procedures in December 2017. We are now able to direct CSNSW staff to this document if there is any uncertainty about the management of individual inmates using this section, and we can also use the document to assess any complaints we receive.

The use of force

It is sometimes necessary in a custodial environment for officers to use force on inmates for safety and security reasons, and to ensure compliance. There has been significant media reporting this year around force being used inappropriately, being reported incorrectly and being excessive to the situation.

In July 2012 we tabled a report on 'Managing use of force in prisons: the need for better policy and practice'. This report drew on two investigations about using force – one a systemic review and the other an investigation of an individual incident. The recommendations that were adopted by CSNSW have led to an increased understanding of the need for each use of force to be properly reviewed – for both good and bad practices to be identified and addressed.

We also made recommendations about the use of force training, particularly around prohibited holds and other practices being included in this training. At that time, CSNSW's view was that officers should not be trained in holds they cannot use with the focus being on what is allowed. It remains our view that officers need to understand what constitutes bad practice – not so these holds and practices are used, but so they can be avoided.

We also made specific recommendations about Immediate Action Teams (IAT) and their use of force in our unpublished report to CSNSW about an investigation of an individual use of force.

Although our investigations and reports are not recent, our conclusions and recommendations remain relevant today. The inquest into the death of an inmate during a use of force and an ICAC inquiry about alleged corrupt behaviour involving the use of force have again highlighted this as an issue. As well, there has been an increase in serious complaints alleging that IAT have used excessive force, or assaulted inmates under the guise of using force. We have and will continue to raise the use of force with CSNSW. We have provided our earlier reports to inform their current review of the use of force and associated matters, and will provide any further assistance as requested.

Case study 33. Handcuffed to a pole

An inmate complained he had been handcuffed to a pole after some unrest in his pod. He said he felt he had been singled out and left on display in front of other inmates and staff, even though he had been complying with directions. Centre management told us he was cuffed to the pole while staff attended to another incident. We were also told the cuffing did not constitute a use of force as the inmate was complying with directions. It was confirmed the inmate was left cuffed to the pole for approximately an hour. We were still not satisfied after further inquiries that this action was permitted under regulation. We wrote to the Commissioner and suggested legal advice be sought. We were told the General Counsel's advice would be requested and we await further advice on this matter.

Case study 34. Paying for the fire engine

An inmate was required to pay $500 towards the call out fee for NSW Fire and Rescue after the alarm in his cell went off. He was found guilty of smoking in his cell, but there was no fire and no damage. The CAS Act allows compensation to be levied as a punishment for any loss of, or damage to, property and CSNSW interpreted this as including the call out fees for false alarms. We knew many inmates had been charged the maximum compensation of $500 for similar incidents. We suggested CSNSW seek advice from the Crown Solicitor and – if they agreed with our view – to then compensate affected inmates. The Acting Commissioner advised us that they had decided not to consult the Crown Solicitor, but accepted our view and would refund any affected inmate.

Case study 35. Constant moving stopped

A female inmate complained that – as a punishment – she was going to be moved cells every two days for three weeks. Cell moves are not an authorised punishment and are very disruptive to inmates, including the need to adjust to living with a new person each time. The woman said she had mental health and self-harm issues and moves affected her wellbeing. The manager of security told us the inmate was right – the functional manager had decided on this action to make the inmate feel uncomfortable, using it as a management tool. We considered this unreasonable and spoke with the Governor, who immediately had the practice stopped.

Case study 36. Shoes, glasses and a shower

An inmate who called us said his orthotic shoes – required for use with his prosthetic leg – and the prescription glasses that he needs to wear at all times had been confiscated when he was moved to segregation. He also did not have a chair to use for showering, making one legged showers difficult. It took a week of inquiries before we were told he would need to see a doctor to sign off on his orthotic shoes (thankfully an appointment had been arranged), his glasses had been located in the unit he was moved from and given to him, and he had a chair so he could shower properly.

Case study 37. Out for a day

Day leave is recognised as an important part of an eligible inmate's preparation to return to the community. One man called us because he had been waiting three months for a reply to his day leave application. He had used internal complaint processes to follow up his application, but there was still no decision – and he only had a short time left until his release. We contacted the centre on several occasions and eventually were told that the inmate's application had been approved and he would have his first day leave the following weekend.

The juvenile system

This year there were about 280 children and young people in custody at any given time, accommodated in six juvenile justice centres across the state. Although we refer to detainees as 'young people', they are mostly aged under 18 and so technically still children. More than 50% of them identify as Aboriginal or Torres Strait Islander and many are from families with siblings, parents or other relatives also in custody.

There are challenges in managing young people in custody – but it needs to happen without compromising security, the rights and needs of the young people, or staff safety. People working in this area must be mindful of the current environment, which has been informed by not only the Royal Commission, but by significant reviews, debate and media around various juvenile justice systems in NSW and in other states. It is essential that those who work in the juvenile justice system understand the impact of trauma on young people in custody and be willing to apply child safe policy and practices.

In undertaking our role, we also need to be mindful of the changing environment and the work being done to improve practices. With this in mind, we met with a consultant doing a review on behalf of Juvenile Justice, providing general observations and insights from our work in this area.

The issues that young people raise with us are varied, but most relate to them feeling that something is unfair or they are required to do something they do not like. At one centre, we received a few complaints from boys who claimed they were only allowed to prepare vegan food as the cooking teacher was vegan. It is important for young people to feel they have a choice in the few things available for them to choose, and that they are listened to and treated fairly – especially compared to other detainees.

Assessing notifications of segregation and separation

Juvenile Justice must notify the Ombudsman each time a young person is segregated for more than 24 hours. Under agreement, we are also notified when a young person in custody is separated for more than 24 hours. These notifications come to us directly from the Juvenile Justice database, he client information management system (CIMS). Each notification is assessed and any apparent anomalies or queries are followed up with relevant centre staff. For several years we were also receiving many erroneous notifications, usually due to staff not properly completing the records in CIMS. After we worked with Juvenile Justice on this issue, it appears to have been rectified.

This year we received 353 valid notifications from juvenile justice centres, compared to 307 the previous year.

The number of over 24-hour segregations notified dropped significantly from 151 to 116 this year. In particular, we noted the incidents of over 24-hour segregations had decreased at both of the centres managing higher classification detainees – Cobham was down from 71 to 48, while Frank Baxter dropped from 41 to 32.

The use of separation for a period of 24 hours has increased in the past year from 156 to 237, with increases most noticeable in regional centres. We are aware young people with a higher classification may be at these centres for family visits or court, or be a female at these all male centres. It is also sometimes necessary to separate young people for medical reasons to contain communicable diseases, such as chickenpox.

Reviewing detainee risk management plans

Another area where we have regular contact with the juvenile system is when a young person is placed on a Detainee Risk Management Plan (DRMP). These are put in place when a detainee behaves in a way that needs specific strategies to minimise or remove the risk to them, other detainees and staff. A DRMP often includes intermittent or ongoing segregation – and if this extends over 24 hours it is one of the areas of focus for our review of the notification.

Sometimes young people will contact us because they feel they are being managed under a DRMP as a form of punishment. As DRMPs often follow a security incident, it is not surprising young people feel this way. We have a significant amount of contact with centre staff about the DRMPs that come to our attention. If a young person contacts us, we will make inquiries to be sure it is in place to manage risk and not to punish bad behaviour.

Of the DRMPs we have reviewed this year, we have noticed that most are of good quality and clearly demonstrate that the provisions in place are for managing the behaviour of the young person.

Countering violent extremism

Juvenile Justice has started a program aimed at countering violent extremism (CVE) among young people in custody. There are several young people in this category who are either sentenced or awaiting trial, and the CVE team is designing programs to equip staff with appropriate skills to manage them. They are also coordinating the approach to identifying young people at risk of radicalisation and managing those who are already in custody. We have engaged with Juvenile Justice about their CVE activities to avert areas of unnecessary complaint, and – based on our experience in the adult system – have identified some potential pressure points.

Over the past year, we have received complaints from young people around issues of their religious conversion, staff attitudes to their offences (including those unconvicted), and issues with the provision of Ramadan meals. As well as increasing the capability of staff to recognise CVE behaviours, we anticipate the team's work should also help to minimise such complaints from young people by removing apprehension and uncertainty – and increasing the knowledge and experience of staff who work with them.

Monitoring the use of force

We received several complaints this year from young people about force being used on them. Inevitably, situations may arise when force is needed – usually to stop a young person hurting themselves or others. When a young person complains to us about a use of force being excessive or they claim to have been assaulted, we will always take some form of action. In such cases, we often work alongside our ERCPD, which is responsible for the oversight of any allegations of reportable conduct that may arise from the same incident.

Table 64: Formal and informal matters received by juvenile justice centre

Institution	Formal	Informal	Total
Acmena Juvenile Justice Centre	4	22	26
Cobham Juvenile Justice Centre	10	45	55
Frank Baxter Juvenile Justice Centre	23	60	83
Juvenile Justice NSW	2	8	10
Orana Juvenile Justice Centre	4	12	16
Reiby Juvenile Justice Centre	14	30	44
Riverina Juvenile Justice Centre	0	12	12
Total	**57**	**189**	**246**

Our focus in these matters is to work with Juvenile Justice to achieve a custodial environment where de-escalation is the first resort and force is the last. We are always conscious of the large number of young people in custody who have a history of trauma, and will ask Juvenile Justice to review policies or practices that possibly contribute to further traumatisation.

Case study 38. Confusion, not a complaint

A 16-year-old who was in custody for the first time called us because he was confused about his situation. He had no previous contact with the community service or criminal justice systems. He also could not go back home because of his offence, and he said he had not had any legal advice. Although he was calm when he started the conversation, he became quite down and it was clear he was upset. We spoke with the client services manager at his centre who said he had seen a psychologist that day – but it was quite possible he may have become overwhelmed again by his circumstances. She arranged for a juvenile justice officer to sit down with him and run through everything he needed to know. In this case it was not that the centre had done anything wrong, but often we can help callers make the right connection to get their needs met. The manager called us a few days later to say the boy had accessed the services he needed and would hopefully be released on bail that day.

Case study 39. Giving consistent advice

No one enjoys being isolated from people they feel most comfortable with, particularly young people. Being in custody can intensify this aloneness. One detainee told us he was in a unit where there were no other Aboriginal detainees. He said he was feeling alone and separated from the others. He had been asking for a few months to transfer to another unit, but said he was getting inconsistent messages from staff. Some told him he needed to demonstrate good behaviour for a longer period, and others said there were already too many Aboriginal detainees in the other units. We spoke with centre management about the reasons why the young person needed to be in his current unit, and found that it was largely a result of his previous behaviour in other units. However, his behaviour had improved in the current unit and it was not intentional that he was the only Aboriginal detainee there. Centre management had identified another Aboriginal detainee who was due to move units, and he would join the young man that week. Importantly, the manager said she and other staff would continue to give him consistent advice and explanations in the future, aiming to be open and honest with him.

Case study 40. Making progress with an issue

We encourage young people in custody to use the internal complaint system at their centre. Sometimes we then have to ensure that system operates properly. A detainee told us he was having issues with a particular worker, who had expressed a view that the detainee should not be in his unit. The unit is one where young people earn their place by ongoing good behaviour. He felt he was being treated unfairly and had made a complaint, but nothing had happened. The centre manager told us the complaint had been lodged but no action taken yet. However they would look at the issues he had raised. We were told a few days later the worker had swapped units while the matter was ongoing, and an assistant manager was meeting with him and the detainee to facilitate a resolution.

Case study 41. Bringing a family together

Some detainees have parents and other family members in adult custody, and their ongoing contact is often considered important. One young

Table 65: Segregation and separation notifications

Centre	Segregation	Separation	Total
Acmena	10	70	80
Cobham	48	47	95
Frank Baxter	32	24	56
Orana	15	42	57
Reiby	9	16	25
Riverina	2	38	40
Total	**116**	**237**	**353**

woman had been trying to speak with her father who was in a correctional centre. Her centre had approved the call but been unable to get a response from her father's centre. We contacted his centre and were informed he had been moved to another one. We then facilitated the application process, starting again at his next centre. After a month of making inquiries, we were told the call had taken place. We also reviewed any opportunities for improving the system for future calls that have been approved.

Justice Health

Most inmates and all young people in custody receive medical care and treatment from the Justice Health and Forensic Mental Health Network, which is still referred to as Justice Health by their patients. Junee CC is privately managed and provide their own health care for inmates. As well as custodial patients, Justice Health are involved in community based care in a range of criminal justice settings.

Many people in custody have poor health. In 2015, Justice Health conducted patient health surveys and reported the results this year. These results demonstrate the significant number of people in both the adult and juvenile systems who experience poor health at higher rates than the rest of the community, particularly in the area of mental health. This provides significant challenges for Justice Health in meeting their needs during the periods they are in custody. The large number of people currently in custody also means there are even more needs to be met.

For many years, we have followed up on some complaints where it seemed an inmate patient was unable to express the urgency of their situation, or may have fallen through a crack in the appointment system. While we can and still do this, the introduction in January 2018 of the Justice Health Patient Inquiry Line as a free call on the inmate phone system has already reduced the number of contacts we need to make with Justice Health's client liaison. In most cases, we can now refer the inmate to the line to follow up their own issue. We acknowledge this initiative of Justice Health to take ownership of issues about their service provision.

Case studies 42 and 43 are examples of the type of matters we have followed up with Justice Health over the year.

Case study 42. Waiting for results

An inmate at a high security centre told us he had been waiting three months for the result of a scan on his head. He had asked about it, but not received any further information. This was before the enquiry line came into operation, so we made inquiries. Justice Health checked the heath system and identified that results from the scan – which were done at a major hospital – had not been loaded into the system. The hospital then sent them the results, showing there was no problem, and arranged for the images to be loaded into the system. The inmate patient was booked as a priority at the next GP clinic to be held at his centre and the local nursing unit manager spoke to him about the results to alleviate his concern.

Case study 43. Concerns about strip searches

One patient at the Forensic Hospital, which is run by Justice Health, complained to us that they were strip searched too often. Although the hospital is not a correctional centre, it is a secure facility and maintains a very high level of security. We asked Justice Health for their searching procedures and policy, and about the training provided to staff who do the searches. After we assessed the information, we spoke again to the patient and told him we believed the searches were properly authorised and had adequate accountability. Although he remained unhappy that searches could be done, he did agree that those searches were being done in accordance with the protocols that had been sent to us. We encouraged him to speak with the staff at the hospital if he had any remaining concerns about the searches.

Working with the Inspector of Custodial Services

We collaborate regularly with the Inspector of Custodial Services – including providing insights from our complaint database and visits to centres – to help inform their preparation for inspections. We meet bi-monthly and discuss general issues affecting both the adult and juvenile systems, as well as specific areas of complaint or review. We have a memorandum of understanding so we can share information and provide comprehensive oversight of custodial services in the state. This year we have continued to provide information to assist the Inspector's broader review work.

Operation Prospect

Our report on Operation Prospect was tabled in Parliament in December 2016. This was an Ombudsman investigation into 'Operation Mascot' – the police corruption investigations between 1999 and 2001.

Operation Prospect was the largest single investigation undertaken by an Ombudsman in Australia. It involved handling more than 330 complaints, enquiries and PIDs and conducting 107 hearings and 67 interviews with 131 witnesses. The six-volume report totalled almost 1,000 pages.

The Ombudsman's report on Operation Prospect recorded 93 findings against the NSWPF, the NSW Crime Commission (NSWCC) and individual officers of both agencies – and made 38 recommendations. The recommendations included making apologies to certain individuals affected by the Mascot investigations and associated events.

In March 2017, we tabled a second report on Operation Prospect in Parliament. On 1 December 2017, we tabled a third report to Parliament about the outstanding apologies by the NSWCC to certain individuals – as recommended in our original final report. On 6 December 2017, the NSWCC issued the outstanding apologies to the affected parties.

The Director of Public Prosecutions (DPP) has declined to commence criminal proceedings, due to discretionary factors, in relation to six Operation Prospect matters that we had sent them for advice. This leaves one matter still awaiting advice from the DPP.

We mentioned in our 2016–17 annual report that a person – who was investigated in the course of Operation Prospect – sought an injunction in the NSW Supreme Court to restrain the Ombudsman from making public any findings against him. The court declined to grant the injunction: *Kaldas v Barbour* [2016] NSWSC 1880. Further litigation ensued that raised issues about the Ombudsman's powers and the scope and conduct of the Operation Prospect investigation.

In 2017, the matter was considered by the NSW Court of Appeal – which answered each of the separate questions in the Ombudsman's favour. The Court ordered that the plaintiff, Mr Kaldas, pay the Ombudsman's costs of the proceedings: *Kaldas v Barbour* [2017] NSWCA 275.

The Plaintiff subsequently filed an application for special leave to appeal to the High Court of Australia on one of the questions determined by the Court of Appeal – whether s 35A of the Ombudsman Act is unconstitutional. The Plaintiff subsequently discontinued his application for special leave and filed consent orders providing for the dismissal of the original Supreme Court proceedings. The *Kaldas v Barbour* litigation has now been brought to an end.

Children and young people

This section outlines the broad range of work we do to improve the provision of services to children and young people. We do this by:

- monitoring and reviewing the delivery of community services
- conducting inquiries into individual complaints and broader systemic issues arising from our community services and reportable conduct functions
- reviewing the deaths of children who die as a result of abuse or neglect or in suspicious circumstances or who die in care or detention.

We also discuss our work relating to the reportable conduct scheme that applies to certain agencies providing care for children in NSW. The Ombudsman is required to keep their systems for preventing reportable conduct and handling reportable allegations under scrutiny.

We stay abreast of key issues facing through our regular engagement with a broad range of stakeholders – including government and non-government agencies, peak bodies, advocacy groups and community representatives. We are active in identifying and responding to emerging issues and, where possible, look for opportunities to work collaboratively with stakeholders to develop solutions.

A separate annual report on the work of the Child Death Review Team is tabled in Parliament.

Handling complaints about child and family services

We received 1,029 formal and informal complaints about child and family services – a decrease of 432 complaints or 29.5% compared to last year. We received 439 formal complaints and finalised 450 formal complaints. Complaints about disability services are discussed in the People with disability section.

Almost 50% of formal complaints were about child protection. Complaints about OOHC made up 44% of the formal complaints received – of these, 33% were about services provided by the FACS and 46% were about services provided by non-government providers.

With the changes to our disability complaints jurisdiction, we have reviewed our complaint issues and made significant changes to how we categorise complaints. This will enable us to collect more meaningful data about child and family complaints in 2018–19 – for example, separating out complaints received about services provided to children in foster care from complaints about residential care.

As we are in the midst of changing our data fields, we have reported the outcome of complaints for 2017–18 by identifying the top six issues complained about and then referencing the specific complaint sub-issues to provide further context. See table 66.

The top six issues complained about this year are:

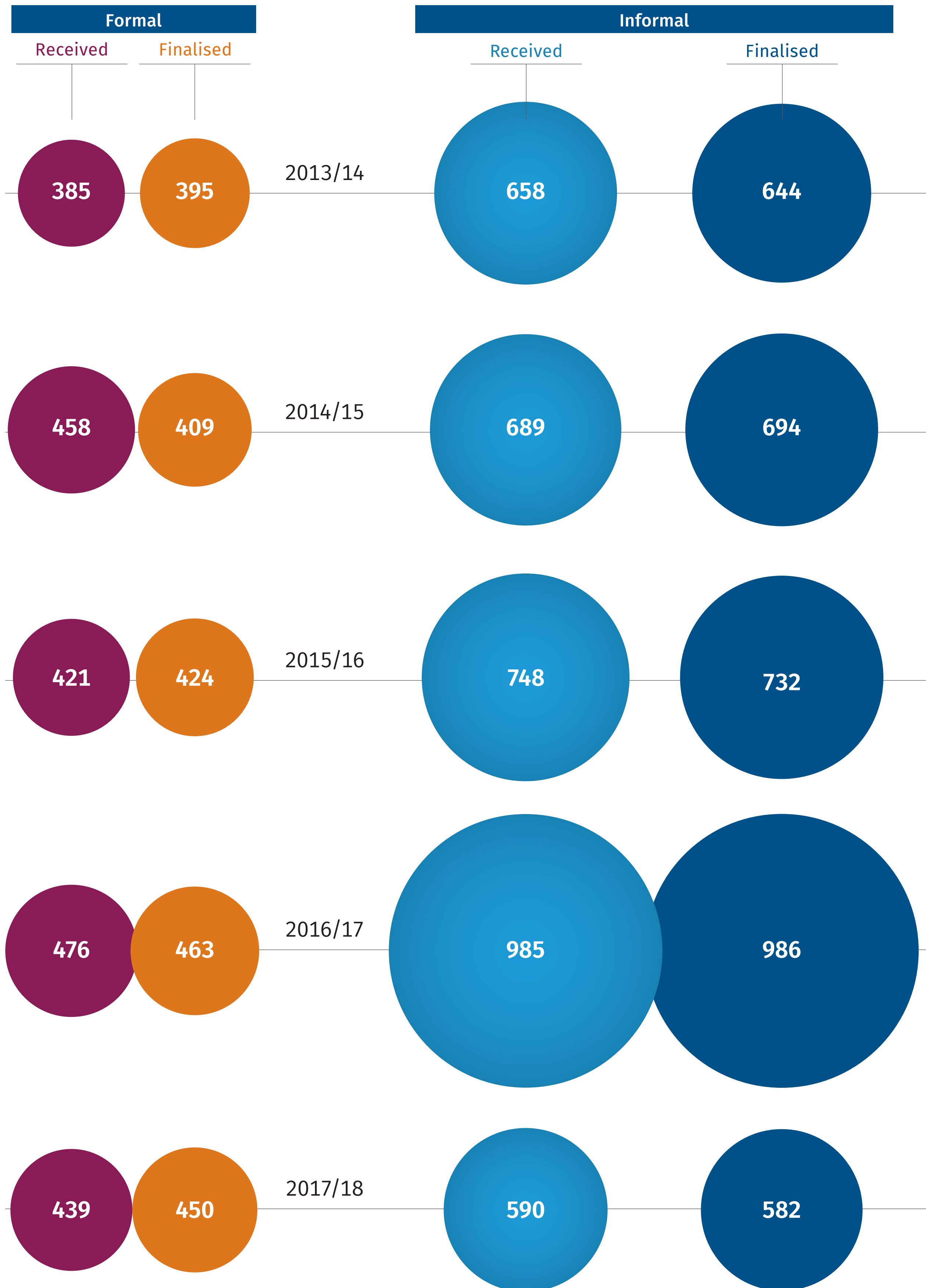
- Casework – includes issues about inadequate casework, foster carer training and support, and assessment of significant risk of harm reports.

Table 66: What people complained about

Primary issue	Formal	Informal	Total	% of Total
Casework	90	78	168	16.33
Customer service	42	109	151	14.67
Complaint management	44	97	141	13.70
Objections to decision	45	65	110	10.69
Case management	29	46	75	7.29
Meeting individual needs	35	35	70	6.80
All other issues	154	160	314	30.52
Total	**439**	**590**	**1,029**	**100**

Note: expanded table is on our website.

Table 67: Formal and informal complaints received and finalised – child and family – five-year comparison



- Customer service – includes issues about poor or inadequate service, failure to reply to enquiries, and rudeness or inappropriate behaviour by staff.
- Complaint management – includes issues about failing to take action in response to complaints, the wrong decision being taken in response to complaints, and the adequacy of advice in response to complaints.
- Objections to decisions – includes issues about failure to give reasons for decisions and making decisions based on the wrong facts.
- Case management – includes issues about access to specialist staff or programs, inadequate care plans, failing to assess children's needs, permanency planning, and restoration planning.
- Meeting individual needs – includes issues about access by children in OOHC to family and/or friends, inadequate care placements, and access to medical care.

The data presented in this section includes complaints and enquiries received by or on behalf of Aboriginal people. However, details of our work with Aboriginal communities is in the Working with Aboriginal communities section.

Case study 44. Reducing contact with the police

For several years, our office has been monitoring the use of a joint protocol between police and residential OOHC agencies that aims to reduce the contact of young people in care with the criminal justice system.

An OCV complained to us about police allegedly using excessive force when they responded to an incident involving a teenage girl living in residential care. Her history included significant cognitive disabilities, self-harming and violent behaviours. FACS had complained to police about the incident, but had not asked them to consider whether their actions needed further scrutiny – or if a victims compensation claim for the young person was warranted.

In response to the complaint, FACS raised these issues with the LLP and separately sought legal advice about the merits of pursuing a victims compensation claim and a civil action on behalf of the young person. The OOHC agency moved the girl to another location and arranged a meeting with her psychologist, FACS and police to discuss ways to better manage her behaviour – and offer her more effective support to help reduce her contact with police in line with the objectives of the joint protocol.

Case study 45. Improving placement matching for adoptions

The current OOHC reform agenda places a strong emphasis on increasing the use of adoptions as one strategy to provide permanency for non-Aboriginal children who have been removed from their birth families. Making sure children are well matched with carers is critical to achieving placement permanency.

A family complained to us that the two children who had been placed with them did not meet the criteria they had specified for potential adoption. They told us that they had advised the placement agency that their circumstances, combined with a limited support network, meant that they would not be able to manage children with significant challenging behaviours. When the children in their care displayed challenging behaviours, the family asked the agency for support – but they were unhappy with the response they received and the placement ultimately broke down. Although the children's specific behaviours had not been identified in the past, we were concerned that the agency had not adequately considered their child protection history, and the likelihood that past trauma could be a predictor of future challenging behaviours.

Given the importance of adoption as a method of achieving a permanent placement, we asked the agency for detailed information about their placement matching policy and practice. We also met with senior managers to discuss a review they commissioned of this case and a number of other adoption cases. As a result, the agency made changes to its adoption program – including improving their placement matching process. They also provided training to staff to improve their work with prospective adoptive families.

Case study 46. Delays in handling a compensation claim

OOHC providers, including FACS, are required to identify whether children in OOHC may be eligible for victims compensation and to do so in a timely manner. After our 2009 investigation into FACS' systems for identifying and processing victims compensation claims, we have been monitoring the way FACS and the non-government OOHC sector handle these claims on behalf of children in care and for young people who have left care. During that time, FACS has addressed a range of deficiencies – including responding to matters as they arise.

A former foster carer complained to us that, due to FACS' delay in handling her foster child's compensation claim in 2012, her foster child had suffered financial loss.

In the months before the young woman left OOHC, FACS had identified that she might be eligible for a victims compensation claim. However, the agency did not advise her about her eligibility until 2014. By then, a new and less financially generous victims compensation scheme had come into operation. As a result, the young woman received a smaller compensation amount than she would have done if FACS had lodged her claim in 2012.

In response to our inquiries, FACS acknowledged that the young woman might have been financially disadvantaged as a result of their delay. In recognition of this, FACS offered to pay for the young woman's legal costs so that she could seek advice about whether she might have a claim against FACS.

Case study 47. Protecting the identity of reporters

It is unlawful to reveal the identity of a person who makes a child protection report unless specific exceptions apply. We received a complaint from a man who alleged that FACS had breached his privacy by disclosing his role in a child protection response to another family. As part of the related Children's Court proceedings, a parent of the children received un-redacted information from FACS that revealed the identity of the man and his then partner and their involvement in the case. The man told us that they were subsequently threatened and abused because of their disclosure.

The man complained about this to FACS, but told us he had not received an adequate response. Nearly three months after he complained to FACS, a manager contacted him to arrange a meeting. This meeting never occurred – and when he next contacted FACS he learnt that his complaint had been closed. After we made inquiries, FACS acknowledged the privacy breach, apologised for the delay in responding to the man's complaint, and offered to pay him and his former partner compensation.

Case study 48. Helping to address trauma

A man who had spent most of his childhood and teenage years in OOHC, complained that when he was 12 years old he was abused when living in a foster care placement. He said that he had disclosed the abuse to his caseworker but no action had been taken. We asked the OOHC agency to review their records. We also suggested to the complainant that he consider meeting with the agency, but he declined due to his ongoing trauma resulting from the abuse and his previous experience with the agency.

In response, the agency wrote to the man acknowledging that he had raised important issues about his treatment as a child in OOHC. They apologised and offered to support him in addressing any trauma he had experienced. The agency's CEO also invited him to meet with her. He was satisfied with the outcome of his complaint, and told us that he was considering contacting the CEO for support.

Case study 49. Apologising and reinstating payments

A foster carer complained that her carer allowance payments had stopped when her foster son turned 18, despite the fact that she had made arrangements for the allowance to continue until he finished school at the end of the year. She told us that she had signed paperwork to this effect with the OOHC agency that supervised the placement. After we made inquiries, FACS reinstated the payment.

However, we were concerned that the carer had to pursue her allowance at a time when her foster son was completing his final year of school, and she was supporting him through this significant period. We wrote to FACS for an explanation. They told us that there had been delays in processing foster care payments as a result of staffing issues in the relevant unit, and acknowledged that their staff had failed to comply with policy for providing financial support in this case. FACS advised us that they have since employed a manager and a caseworker to provide consistent oversight and responses to leaving care planning in the unit. They also gave the foster carer a written apology.

Case study 50. Reviewing policies for withdrawing support

A woman with two young children complained to us that a homelessness service had evicted her with very little notice and without helping her to obtain alternative housing, rendering the family homeless. The complainant alleged that the service had evicted her because she complained about how they were treating other clients. The service told us that they evicted the woman because of her behaviour during a meeting, where she had raised her voice.

We identified that the service had not complied with their own policy on evictions – the woman's behaviour did not meet the threshold stipulated in the policy, she received no warnings, and efforts were not made to avoid the eviction. We suggested that the service review and improve their policies and procedures on withdrawing support and provide staff with training. We also suggested that they apologise to the complainant and let her know about the work they would be doing to improve performance in this area.

Case study 51. Keeping a vulnerable young person safe

We made inquiries about a matter that originally came to our attention via our reportable disability incidents function. It seemed from our review of the FACS information system that they had repeatedly assessed a highly vulnerable young person as safe at home – despite an ongoing pattern of reports that identified concerns about unexplained injuries, domestic violence, and isolation of the young person from service providers. We sought information from FACS about the young person's circumstances. This revealed that she had significant disabilities, including limited mobility, was non-verbal and completely dependent on her mother.

Over a period of about 18 months, various service providers contacted FACS to report concerns about unexplained bruising on the young woman, neglect, and abusive and intimidating behaviour by her mother's new partner. We also raised concerns with FACS about information we identified about the new partner's criminal history, including a conviction for assault. During this period, FACS did a number of safety assessments, which concluded that the young woman was not at risk.

Concerns for the young woman were escalating, so we asked FACS to urgently review the case. After doing so, FACS acknowledged that its risk assessments were flawed in certain areas – and applied to the NSW Civil and Administrative Tribunal (NCAT) to appoint a guardian for her.

NCAT subsequently appointed a guardian for her. She has since moved to supported independent living and her physical and mental wellbeing has reportedly improved. On our suggestion, FACS' OSP reviewed the case and identified a number of practice issues for the CSC involved. The CSC has now implemented a number of training, monitoring and other staff development initiatives for the caseworkers and CSC.

Monitoring the Child Protection system

Engaging with stakeholders

During the year, we met regularly with the FACS Secretary and executive to progress a range of specific issues and broader systemic reforms.

We also met with the Children's Guardian and her senior staff to work on issues of common interest and identify areas where we need to be working in close collaboration. This includes, for example, ensuring our office shares relevant information with the OCG to inform their WWCCs and OOHC accreditation functions.

This year, we also:

- Invited FACS to join our regular meetings with the OCG to share information on practice concerns about individual OOHC agencies, as part of executing our respective oversight, regulatory and commissioning functions.
- Continued as observers on the advisory group for the Pathways of Care longitudinal study of children in OOHC.
- Arranged a joint planning workshop with the OCG and the Advocate for Children and Young People (ACYP) to identify and discuss ways our agencies can more strategically progress shared priorities and complement each other's work.

Our work with Aboriginal communities, discussed earlier, outlines how we engage with Aboriginal communities about child protection. This includes being an observer member on the reference group for the Family is Culture review of Aboriginal children in OOHC and participating on AbSec's committee for steering its project aimed at strengthening the capacity of Aboriginal OOHC agencies.

In addition, we continued to provide advice as an observer member of the SSC overseeing the implementation of the Joint Protocol to reduce the contact of young people in residential OOHC with the criminal justice system (see p 100).

Our statutory officers are regularly asked to deliver presentations at conferences and board meetings held by the two leading peak child and family bodies – the ACWA and AbSec – as well as a range of other agencies.

For example, in 2017–18, the Deputy Ombudsman and Community and Disability Services Commissioner presented at the following events focused on child safety and wellbeing:

- The NSW/ACT Interdenominational Professional Standards Network.
- The Child Abuse Prevention Service's Safe Children conference.
- Early childhood provider, Big Fat Smile's forum on understanding the outcomes and implications of the Royal Commission recommendations.
- The Department of Education's Holroyd Network Principals' meeting which brings together principals, and its Employee Performance and Conduct Unit's training day on handling reportable conduct allegations.
- The Office of Sport's Child Safe Sport forum to discuss the implications of the Royal Commission's recommendations for the sporting sector.
- Criterion's Creating Child Safe organisations conference.

He also presented at other forums hosted by agencies within our reportable conduct scheme – including the Association of Independent Schools, the Parramatta Catholic Dioceses' Professional Standards Advisory Committee, and the Christian Schools National Policy forum.

We hold regular liaison meetings with representatives from the government and independent schools sector (including a dedicated Catholic systemic school sector liaison meeting), the early childhood sector, and Juvenile Justice to discuss issues relevant to the reportable conduct scheme. Key topics canvassed this year included notification trend data, the Royal Commission recommendations about reportable conduct schemes, and practical issues associated with sharing information about reportable conduct investigations with parents, carers and children. We have also used these forums to obtain feedback on a range of resources – including training videos and fact sheets – tailored to suit the needs of individual sectors.

During the year, our staff also engaged with other peak bodies – including CREATE, Homelessness NSW, Domestic Violence NSW and Yfoundations – about a variety of issues affecting vulnerable children and young people. For example, we liaised closely with Yfoundations and Homelessness NSW to inform our inquiry into legal and policy gaps affecting homeless children. We also worked with CREATE to help promote our office's services to young people who either are, or have been, in OOHC so we can hear directly from them about issues that affect their health, safety and wellbeing.

The current reform agenda – Their Futures Matter

Over the past year, FACS and its partner agencies have been working to implement the NSW Government's response to the Tune review of OOHC – a reform agenda known as Their Futures Matter (TFM). Together with a number of earlier initiatives, TFM aims to reduce entries to OOHC and improve outcomes for children and young people who are removed from their birth families. To achieve these goals, the government has established an interagency board chaired by the FACS Secretary, as well as an implementation unit and separate commissioning unit.

The main reforms include the:

- Gradual replacement of residential OOHC with an intensive therapeutic model of care that aims to better identify and meet the complex needs of children and young people, and to transition them into less intensive care arrangements.
- Ongoing development of a statewide system to collect comprehensive outcomes data on the safety, permanency and wellbeing of every child and young person in statutory OOHC.
- Use of data analytics and research to identify cohorts of vulnerable children and families, design targeted supports, evaluate outcomes, and set priorities for investments in support programs.
- Provision of 900 packages per year for intensive family preservation and restoration services – with the aim of reducing entries into OOHC and increasing exits from that system.
- Introduction of new outcomes based contracts with non-government service providers of foster care and Aboriginal foster care.
- Implementation of My Forever Family program to recruit and better support more foster carers across NSW.

We arranged for the TFM implementation team to provide our office and the OCG with a briefing about the work they are doing – and agreed to establish a schedule of regular joint briefings to enable us to track progress and provide feedback as the reforms progress.

At our initial meeting, we stressed the need for service design and the targeting of service delivery to be driven by an 'intelligence-driven' approach – that is, one which seeks to identify the cohorts of children and their families most at risk in individual locations.

We have been advocating for the adoption of an intelligence-driven child protection system for the last decade. Although FACS has made some progress in recent years in lifting the proportion

of children who are reported at ROSH and receive a face-to-face response, the response rate in 2017 (according to the FACS Caseworker Dashboard, December 2017 quarter) was still only 32%.

Against the background of unmet ROSH demand, our ongoing monitoring of the implementation of TFM will focus strongly on whether the reforms are delivering a robust system for systematically collecting and analysing critical holdings of lead government agencies and NGOs to identify those most vulnerable – along with ensuring that services are being provided to these individuals and positive outcomes are being achieved.

FACS' new approach to commissioning

Together with providers from the child and family services sector, we participated in two workshops this year on regulatory reform in the human services sector hosted by FACS and KPMG.

The aim of the workshops was for FACS to engage partners and stakeholders to inform the development of their new human services commissioning model. The workshops allowed participants to discuss the challenges associated with commissioning and how to optimise the strengths of both the government and non-government sectors in delivering a strong commissioning model – one which places client outcomes, rather than outputs, at the centre of service design and delivery.

During the workshops, we stressed the need to rethink current governance arrangements for delivering services to vulnerable children and families – and ensure that FACS' new 'commissioning for outcomes' approach is closely aligned with the work being done under TFM.

Tracking and reporting on systemic reforms

In 2015, we implemented the FACS/Ombudsman IGF to track FACS' progress towards addressing discrete issues and areas requiring systemic reform arising from our oversight. Senior staff from our office and FACS are responsible for progressing items on the IGF, and those requiring escalation are tabled at our quarterly meetings with the FACS Secretary – and in other forums as needed.

Since the IGF was created, FACS has taken action to address 25 items – we monitor practice on these areas to ensure that the substantive issues have been resolved – and are progressing work on a further 13 items. A number of items being monitored through the framework are discussed throughout this section.

The rollout of the ChildStory database

In November 2017, FACS began rolling out 'ChildStory'. This new data platform replaces the existing database (KiDS) used by child protection workers in NSW, and is intended to provide FACS with a better and more efficient system for recording their casework activities.

It was envisaged that the development of ChildStory would also address several systemic problems, including a number that we had identified through our oversight. For example, our work had highlighted the need for the new database to have the capability to readily identify risk-related information about adults of concern, deliver improved data collection and reporting capabilities, and facilitate more effective information exchange with NGOs delivering child protection services.

Towards the end of 2017, a range of concerns about the rollout of ChildStory were raised with the FACS executive by frontline staff and the Public Service Association (PSA).

We were also contacted by the PSA, and we met with them to listen to their concerns. These included that:

- The transition to ChildStory had significantly affected Helpline staff in particular, leading to lengthy wait times for people contacting the Helpline to make child protection reports.
- The training provided to staff was not sufficient to enable them to confidently use the new system, and the IT support available to frontline staff was inadequate.

There were limitations to the search and other functionality during the ChildStory rollout.

We agreed to raise these issues with the FACS executive and monitor the response. By the end of February 2018, FACS had released a 'program action plan' outlining the issues that had been identified with the new system and the planned actions to resolve them. We will monitor FACS' work to address a number of the remaining critical issues relating to ChildStory.

We recently added two new issues to the IGF. They are:

- improving FACS' performance in the JIRT program
- strengthening information sharing and governance arrangements between FACS, the OCG, the ACYP and the Ombudsman.

This year, we also worked with FACS to develop and jointly publish a 'report card' that provides a high level overview of the types of issues that have been identified by our office and addressed by FACS – as well as issues where ongoing work by FACS is being monitored through the IGF. The main purpose of the report card is to provide our key stakeholders and the public with greater visibility of our oversight.

The report card is available on both our websites and will be updated each year.

Improving the response to homeless children

In 2016–17, just over 5,000 unaccompanied children and young people aged 12–18 presented to a homelessness service to access support and a place to stay. More than one third of these children were under 16, and about 700 of them were specifically seeking accommodation.

In June 2018, we tabled a report in Parliament called, *More than shelter – addressing legal and policy gaps in supporting homeless children*. The report followed our inquiry into the legal and policy gaps affecting children experiencing homelessness.

The inquiry found that:

- In the absence of a care and protection order, authority to make decisions about a child experiencing homelessness remains with their parents – despite these children usually having no, or very minimal contact, with their parents. This means that, unless consent is obtained from a parent to exercise parental responsibility, neither FACS nor the homelessness service is legally empowered to make decisions for these children – for example, about medical treatment and school enrolment.
- Although FACS released a policy on children experiencing homelessness in 2015, it has not yet settled effective operational arrangements with homelessness services in all districts, clearly spelling out roles and responsibilities. This includes, for example, how FACS envisages exercising its lead case management responsibility for children experiencing homelessness reported to be at ROSH if – due to other demands – it is unable to respond.
- Basic data on children experiencing homelessness – including those who are also in OOHC – is either not being captured or is unreliable.
- There are no regulatory standards governing the quality of care provided to children experiencing homelessness in NSW.

In response to issues raised in our report, the Minister for Family and Community Services said the NSW Government would invest $4.3 million over three years to introduce nine mobile therapeutic caseworkers to work with unaccompanied children who present to homelessness services. The Minister said FACS would also consider how to provide a more comprehensive therapeutic response to these children.

Separately, FACS acknowledged that the issues raised in our report need to be resolved, and said that it is committed to reducing youth homelessness and working to strengthen the legal, policy and practice frameworks that guide its work and that of its NGO partners in supporting children experiencing homelessness. FACS has confirmed that it supports all of the recommendations made in our report, and work is underway and planned to address the recommendations.

The report was also welcomed by peak bodies such as Yfoundations and Homelessness NSW. Yfoundations and their members have asked us to convene a forum to identify critical implementation issues, and facilitate a subsequent meeting with FACS to develop an implementation plan.

Reducing the contact of young people in residential OOHC with police

Our Assistant Ombudsman (Strategic Projects) provides advice as an observer member of the SSC overseeing the implementation of the Joint Protocol to reduce the contact of young people in residential OOHC with the criminal justice system.

Detailed feedback provided to us by Legal Aid this year reflected mainly positive examples stemming from the joint protocol – including improved relationships between residential care services and police across the state. However, a number of stakeholders have also identified problems in certain locations. If local problems are raised with us, we try to resolve them quickly by bringing the parties together.

Since receiving training about the protocol, our OCVs have also been actively monitoring implementation and raising any issues they identify with services directly. We regularly review relevant complaints and OCV reports and provide feedback about common trends and issues to the SSC.

This year the SSC formed a separate operational group to discuss individual complaints and feedback related to how specific services implemented the joint protocol, and to exchange information where appropriate.

At the most recent meeting of the SSC, we presented a draft audit framework we had developed to monitor the implementation of the joint protocol. The SSC endorsed the framework and our suggested 'action research' approach, which would involve ongoing reporting on trends to the committee as the audit program unfolds. It was agreed that auditing would not start until the nine new providers had at least 12 months to bed down their operations. However, early visibility over the audit approach was encouraged – to help promote ongoing data analysis and sharing best practice.

We presented on the joint protocol (and the companion protocol to reduce the contact of people with disability in supported accommodation) to the Premier's Priority Domestic Violence Regional Strategy Groups, and arranged for the Department of Justice to share 'Premier's Priority data' about re-offending and young people in residential OOHC with the SSC.

Word about the joint protocol has spread to other jurisdictions. Following an approach by Victoria last year, the Queensland Family and Child Commission approached us for information about the protocol this year.

Reviewing the operation of the JIRT program

In August 2017, we released the final report on our inquiry into the operation of the JIRT program to the partner agencies (FACS, the NSWPF and NSW Health). The report contained 67 recommendations aimed at improving joint agency practice and consolidating and enhancing the performance of the individual agencies.

A year later, we asked the agencies to provide us with a formal response to our recommendations, and a progress report. The responses demonstrate that the agencies have made significant progress, both individually and collectively, in implementing our recommendations. Key results achieved during the year include:

- Significant strengthening of the program's governance structure, including the establishment of mechanisms for direct oversight of the program by the heads of each agency.
- Progress in reframing the agreement that underpins the partnership, with a focus on ongoing performance monitoring and reporting.
- Enhancing the capacity of the JIRT Referral Unit through an extension of its business hours, and an associated increase in staffing.
- Changes to systems and governance within FACS and NSW Health, to better enable them to measure their performance in the partnership, in line with past improvements made by Police.
- Increased funding for both FACS and NSW Health, to ensure that they are able to 'keep up' with Police, including when a response is required outside of business hours.
- Improving the availability and accessibility of services for young people who engage in sexually harmful behaviour, with the allocation of an additional $1.6 million annually to establish two additional New Street services in regional NSW.
- The roll-out of a new interagency training model, which includes a simulated child protection exercise.
- Strengthening the local police command response to child abuse through the Child Abuse Referral trial, which involves commands working in close collaboration with the Child Abuse and Sex Crimes Squad to handle a greater number of matters that meet certain criteria.
- Progressing planning of property arrangements for the next five to ten years, in a way that supports agencies to work in close proximity to one another and have shared space for working with clients.

Given the considerable public interest in the operation of the JIRT program, we decided to release a public report on the agencies' response to-date (incorporating our inquiry report). Our report, which was tabled in October 2018, reflects on the progress made by the three agencies one year on, and stresses the need for the future direction of the program to have an enhanced focus on those children who do not end up being the subject of a criminal prosecution – but who nonetheless remain highly vulnerable.

Protecting vulnerable teenagers from sexual exploitation

For many years, we have highlighted the challenges associated with providing a comprehensive, integrated and coordinated response to vulnerable teenagers. Sexual exploitation is a complex issue that cannot be addressed by FACS alone. More recently, during our 2017 inquiry into the operation of the JIRT program, we noted that there was scope for improved collaborative work in responding specifically to children and young people who are at risk of sexual exploitation.

During our JIRT inquiry, FACS advised us that the Director of the five Intensive Support Service (ISS) teams had initiated some good work with local police to target children and young people who are at risk of sexual exploitation. FACS also advised that they had recently established a 'virtual team' of specialist caseworkers located across FACS districts and other business units (including the JIRT and ISS), coordinated by its Cross Cluster Operations and Business Support Directorate. The purpose of this team is to ensure that children and young people who are in residential care receive a holistic assessment for any ROSH reports that are associated with their residential placement.

Although this work is positive, our JIRT inquiry recognised the critical role of proactive policing in responding to this issue, and the need for the NSWPF to consider how police area commands – together with the Child Abuse and Sex Crimes Squad – can play an enhanced role in delivering proactive policing strategies targeted towards the sexual exploitation of children and young people, particularly those in OOHC.

We recommended that FACS, police and the OOHC sector work together to develop and implement a statewide framework or model for responding to child sexual exploitation. A number of other jurisdictions have successfully implemented interagency models to better identify and respond to this vulnerable cohort. In Victoria, for example, an enhanced response model is being piloted by Victoria Police and the Department of Health and Human Services in five locations. As part of the model, the agencies have run a number of joint operations across the state targeting sexual exploitation of young people in care. They have also jointly conducted training with internal agency staff, as well as with OOHC providers.

Case study 52 is an example of FACS acknowledging that its engagement, casework and planning with two vulnerable adolescents was lacking.

If implemented, the relevant recommendations in our JIRT inquiry report – together with the recommendations from the OSP review – will be critical to providing an improved response to children and young people who are exposed to the risk of sexual exploitation.

Case study 52. Not providing an adequate response

In 2016, a non-government OOHC agency notified the Ombudsman of reportable allegations of sexual misconduct under Part 3A of the Ombudsman Act, which identified a young person in OOHC as an alleged victim. At that time, the young person was in a residential placement with the agency under the case management of FACS.

During our initial intelligence checks on the reportable conduct notification, we reviewed FACS and police holdings about the young person and identified concerns about her circumstances. In particular, we were concerned about the adequacy of FACS' response to reports about the alleged sexual exploitation of the young person. Our inquiries revealed that another young person was also at risk of sexual exploitation.

We decided to investigate FACS' response to reports about the alleged sexual exploitation of the two girls.

Our investigation was concerned with:

- The adequacy of the actions taken by Helpline and CSC staff to assess and respond to the allegations of child sexual exploitation involving both girls (the alleged perpetrator was a relative of one of the girls), and the risks posed to the alleged perpetrator's children.
- The adequacy of the JIRT Referral Unit's attempts to obtain information about the alleged sexual exploitation of the second girl.
- The adequacy of FACS' collaboration with police in relation to the allegations about the adult.
- An assessment of the advice provided by Helpline staff to police in late 2015.
- The adequacy of FACS' response to allegations that another adult relative of the young person had been giving her drugs while she was in residential care under FACS' case management.

In their initial response to our request for information, FACS told us that the OSP would conduct a 'further and thorough review into this matter, with the purpose of considering the Ombudsman's concerns, [the young people's] current situations and what further actions FACS can take to keep these young women safe'.

The OSP made the following findings:

- There was poor engagement, assessment and case planning which resulted in a lack of safety for [the young people].
- Supervision and oversight were not always evident. The quality of supervisory support meant that predictable errors were not recognised or mitigated.

The OSP made numerous recommendations to address the identified issues at a systemic, district and case-specific level – which have been accepted by FACS. We are in the process of finalising our investigation report.

Dealing with employee misconduct in community services

Through our review and oversight work across our child protection and disability functions, we have identified concerns about probity in employment practices and reporting requirements in government and NGOs caring for vulnerable people – including children in OOHC and people with disability.

We started an inquiry examining relevant law, policy and practice in NSW to identify areas for strengthening the safeguards that agencies dealing with children, people with disabilities and other vulnerable adults have in place.

Focus areas include:

- Probity checking, service agreements and standards relating to third party entities who supply labour to community services agencies.
- Provisions within employment contracts and codes of conduct about obligations on employees to report alleged abuse against vulnerable people and cooperate with internal and external investigations, including with police.
- Supports provided by agencies to their employees when they disclose alleged abuse and are required to cooperate with internal and external investigations.
- Information sharing between community services agencies and other relevant agencies about employees of concern.

Our final report will have case examples and evidence drawn from the NSW context, but will also include relevant developments, legislation and oversight arrangements in other Australian jurisdictions.

Employment related child protection

The Ombudsman's employment related child protection function is outlined in Part 3A of the Ombudsman Act and Schedule 1 of the Child Protection (Working with Children) Act.

Under Part 3A, heads of government agencies and some non-government agencies are required to notify the Ombudsman of 'reportable allegations' as soon as practicable, and not later than 30 days of becoming aware of them.

When carrying out our reportable conduct functions, we consider the extent to which our direct involvement can help promote the safety of individual children and/or improve the child protection system more generally.

Some examples of the way we do this include:

- Guiding agencies through complex investigations.
- Sharing or facilitating the sharing of information – our unparalleled access to a range of information sources allows us to identify relevant information holdings and work with agencies to promote good outcomes. See case studies 55 and 57.
- Making own motion inquiries – we do this to improve the circumstances of an individual child, or if we have identified broader child protection concerns or systemic issues. See case study 54.

Case study 53. Checking WCCC requirements

We had monitored a school's investigation into reportable allegations that a teacher had engaged in multiple incidents of sexual misconduct against a number of students over a period of years. The school sustained a finding of reportable conduct and terminated the teacher's employment. We finalised our involvement, aware that the teacher did not hold a WWCC clearance.

Sometime later, we received information that the teacher was privately tutoring children. Private tutors are not within our reportable conduct jurisdiction and are largely unregulated. However, they do need to have a WWCC. We alerted the OCG to the likely breach of the WWCC legislation, which they subsequently confirmed. Police prosecuted the teacher for non-compliance with the WWCC requirements and he received an 18-month sections 10 bond. The OCG also took action to require the teacher to apply for a WWCC, then interim-barred him pending its formal risk assessment to consider his ongoing suitability to work with children. After completion of the risk assessment, the individual is barred from working with children.

Case study 54. Ensuring children were protected

We were notified that an employee had been charged with child pornography offences. He was subsequently convicted and became a registrable person. In the course of finalising our oversight of the notification, we identified that the man was the subject of other significant intelligence of a child protection nature.

The man's two children lived with their mothers in separate locations. They were both known to FACS and the subject of ongoing casework by two different FACS districts. We started our own motion

inquiries with FACS about the safety of the man's children and the adequacy of the casework for them. At the same time, with the consent of police, we gave FACS an outline of concerning police intelligence on the man.

FACS made a Helpline report based on the information we provided, deeming both children to be at ROSH. Soon after, the man had unsupervised contact with one of the children. As part of their child protection response, FACS informed the child's mother about the man's history and the mother withdrew her support for the unsupervised contact. Any contact between the man and his children is now being supervised, and strategies have been put in place to support the long-term safety of the children. After completion of the risk assessment, the individual is barred from working with children.

FACS' OSP did a review of both children's circumstances. The review identified the very complex and challenging nature of the risks these children faced from their father and areas in which the casework response could have been improved. Positively, the OSP scheduled a reflective case practice discussion with the involved practitioners and focused on ensuring a coordinated approach to case planning for the children in the future. The OSP also identified missed opportunities (by a range of agencies) for information-sharing about the risks to these children as well as practice gaps – and recommended action to address these issues.

Notifications, complaints and enquiries

We received 3,237 matters made up of 1,972 notifications, 134 complaints and 1,131 enquiries or informal complaints. This is an overall increase of 3.72% compared to last year. See table 68.

Notifications

This year, we received 1,972 notifications about employment related child protection. This was a 12% increase in notifications received in 2016–17, and 42% more notifications than in 2015–16. The majority of notifications related to allegations of assault of a child (34%) or allegations of a sexual nature (32%). See table 72.

The most significant increase in notifications was in the education sector, with 41.5% more notifications than last year – following a 63% increase the previous year. Over the past five years we have also received a 66% increase in notifications from the OOHC sector.

Notification types vary by sector, with the breakdown similar to last year:

- 58% of physical force allegations were from the OOHC sector, and constituted 44% of the sector's notifications.
- 65% of neglect allegations were from the OOHC sector, and constituted 24% of the sector's notifications.
- 48% of sexual offence allegations involved education sector employees, and these constituted 14% of the sector's notifications.
- 78% of all notifications that involved sexual misconduct allegations were from the education sector, and this type of allegation made up 36% of that sector's notifications.
- Sexual offences and sexual misconduct taken together constituted 50% of all notifications from the education sector and 15% from the OOHC sector.

In the education sector, the improved awareness relates specifically to matters falling within the 'sexual misconduct' category of reportable allegations. Sexual misconduct notifications from schools have increased by 63% in the past two years, while notifications of sexual offences from schools have increased by 24% over the same period.

Notifications involving criminal offences

For the notifications we finalised this year:

- 44% were also reported to police.
- 28% were the subject of some level of inquiry by police (64% of all matters reported to police).
- 22% were the subject of an active formal criminal investigation (50% of all matters reported to police).
- 7% were the subject of criminal charges (31% of all matters criminally investigated).

In many of the matters in which police were involved, we worked collaboratively with the NSWPF, FACS and other stakeholders to provide an effective multi-agency response. Case study 55 provides an example of this kind of work.

Case study 55. Investigating a disclosure and providing support

We received a notification from a school that an employee had engaged in sexual misconduct with a student. After accessing our holdings and police and FACS databases, we identified a significant history of untested child protection concerns about the employee – which were unknown to the employer. The intelligence indicated that a child had made multiple disclosures about being sexually assaulted by the employee to several

Table 68: Formal and informal notifications and complaints received and finalised – five-year comparison

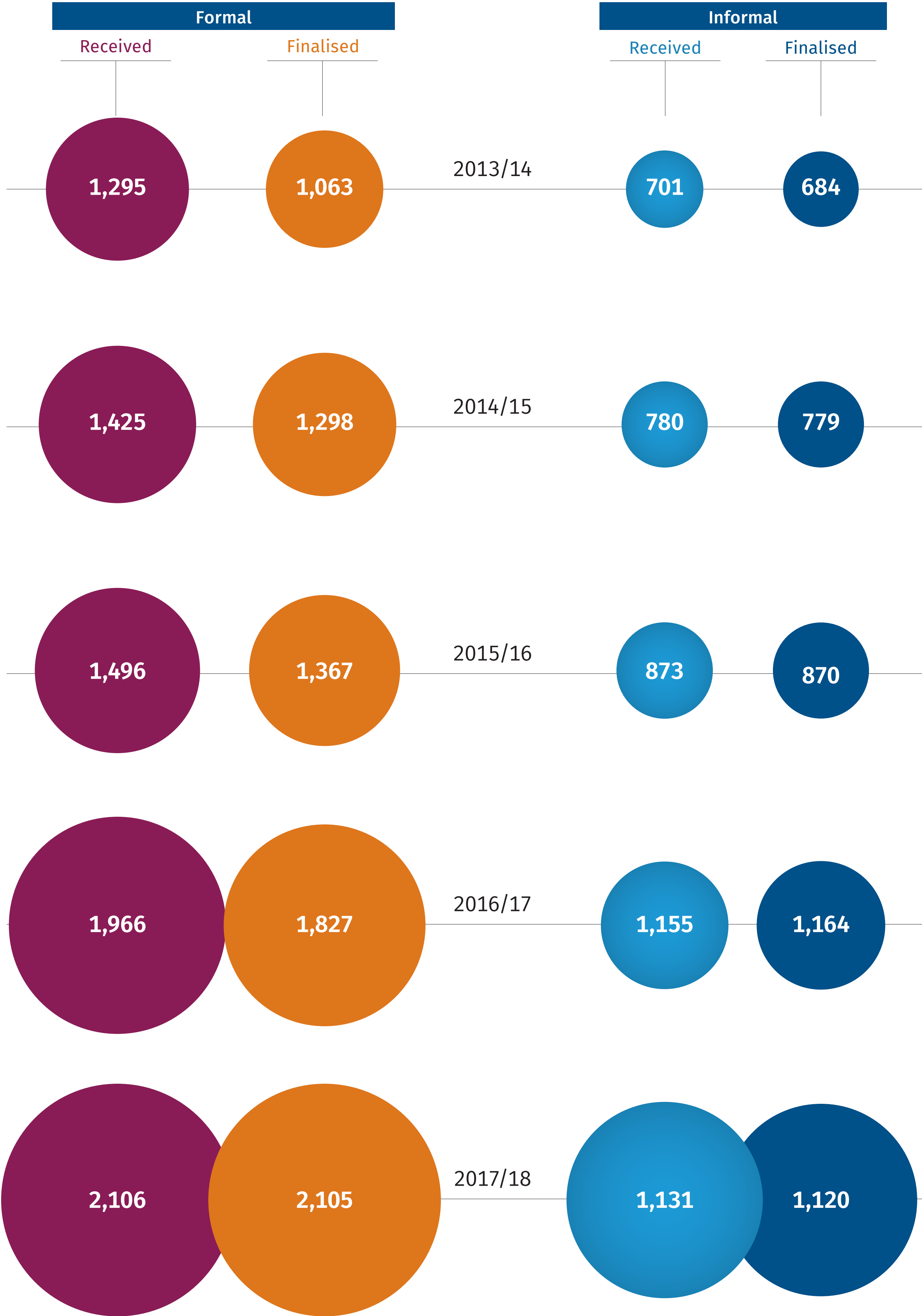
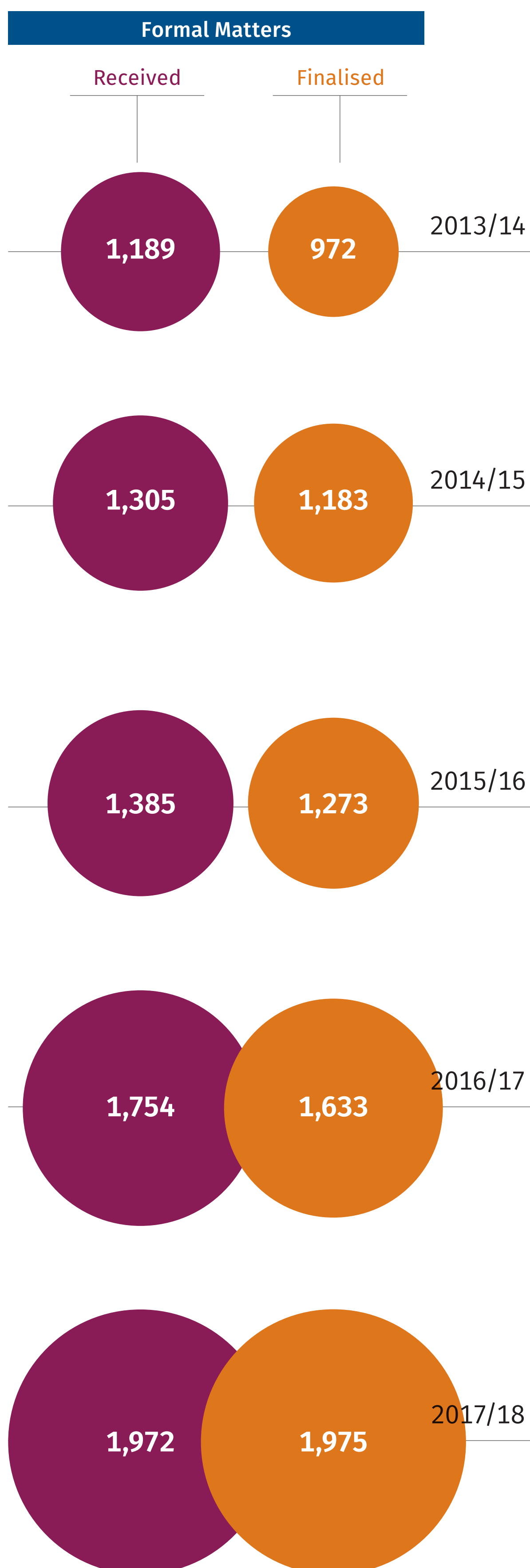


Table 69: Notifications received and finalised – five-year comparison



separate adults over a period of time, but the allegations had never been investigated. When we collated the relevant information, it was clear that no other agency held all the information about the alleged historical sexual assault of the child (now a young adult). Importantly, information held in two separate databases about the child's disclosures and an account of a witness were corroborative.

As part of our response to this matter, we provided a brief of information to the Child Abuse Squad (CAS). Although now an adult, available information indicated that the alleged victim was still highly vulnerable – and was more likely to engage with officers from the CAS than with detectives from a Local Area Command (LAC).

After receiving our brief, the CAS started an investigation during which the alleged victim repeated the disclosures that she made as a child. The CAS also supported the alleged victim in obtaining counselling, as well as providing her with other supports to help her in giving a formal statement. Although the alleged victim chose not to pursue criminal charges at this time, her willingness to engage in the reportable conduct investigation – and make detailed disclosures to the agency conducting it – allowed important risk-related information to be considered by the investigating agency and the OCG as part of the WWCC screening process.

The agency's investigation was complex and protracted. However, the agency provided outstanding support to the alleged victim throughout the investigation, as well as liaising extensively with our office, the OCG, police and FACS. Our Aboriginal Unit also worked collaboratively with the agency to ensure that appropriate cultural support was provided to the alleged victim, including linking them with legal advisers to help them pursue a victims' compensation claim and other supports.

Complaints

We received 134 complaints relating to reportable allegations from a range of sources – including employees who were the subject of the allegations (see case study 56), alleged victims, their families and other interested parties.

Case study 56. Changing a finding and apologising

We assessed an investigation about reportable allegations against a school learning support officer. The agency sustained a finding that the employee had ill-treated a child with disability. We identified

Notifications about sexual misconduct and sexual offences

Sexual misconduct and sexual offence allegations in the education sector continue to feature in the notifications that we receive. For notifications about the alleged 'on duty' conduct of school employees:

- 71% of these notifications that we finalised this year involved allegations of a sexual nature.
- 27% of these notifications were the subject of criminal investigation – 29% were the subject of criminal charges and 78% of these resulted in convictions.

Sexual offences in the education environment often occur after a process referred to as ‘grooming’. Employees crossing professional boundaries with students can be an early warning sign that they may be grooming a child.

When an allegation of crossing boundaries is raised, a rigorous investigation is often required to identify whether the alleged conduct is part of a more concerning pattern. We always emphasise to schools the importance of promptly identifying – and comprehensively addressing – signs that an employee could be breaching boundaries with students.

This approach is supported by the data. It shows that, of finalised notifications from the school sector involving crossing professional boundaries:

- the investigation found that the employee allegedly engaged in multiple forms of boundary breaches in 75% of cases
- in 70% of cases the boundary breaching extended beyond the workplace
- social media and other communication technology was a medium for crossing professional boundaries in 45% of these matters
- other predominant forms of boundary crossing included inappropriate comments, inappropriate touching, the provision of gifts/money/drugs/alcohol, enabling or condoning rule-breaking, and unauthorised transportation.

Of work-related sexual misconduct or sexual offence notifications from schools that were sustained over the year:

- in 46% of the cases, the employee had been the subject of previous similar concerns
- in more than half of these matters, the previous similar concerns had not been notified to the Ombudsman.

a number of deficiencies with the investigation – including a lack of fairness to the employee – and formed the view that the finding was not supported by the evidence. We provided detailed feedback to the agency about our concerns and asked them to inform us if they amended their finding.

We subsequently received a complaint from the employee about the agency’s handling of the allegations against her. With the employee’s consent, we referred the complaint to the agency and asked that they consider the complaint along with our earlier feedback. The agency did an independent review and amended their finding to ‘not sustained’. They formally advised the employee of the amended finding and also issued an apology for other aspects of their handling of the matter. In their formal advice to our office, the agency also outlined the actions they were taking to improve their systems more broadly.

Enquiries

The majority of the 1,131 informal enquiries we received were from agencies. However, we also receive enquiries from employees who are the subject of reportable allegations, employee representatives, victims and members of the public who may have information that warrants action (see case study 57).

Case study 57. Following up on allegations

We received information from a community source that an employee of a sporting organisation had engaged in sexual misconduct with a 15-year-old trainee coach. We had not received any notifications from the organisation.

We contacted the organisation – they were aware of the allegation but unaware of their reporting obligations or how to respond. With guidance, the organisation investigated the sexual misconduct allegation. Finding that the conduct

Table 70: Formal notifications received by agency or agency type — a five-year comparison

Agency	2013-14	2014-15	2015-16	2016-17	2017–18
Education and communities	330	226	276	450	637
Designated agency – Children and Young Persons (Care and Protection) Act	255	373	467	588	582
Community services	276	223	232	274	300
Approved children's service	76	135	114	128	115
Non-government school – independent	97	105	69	80	112
Non-government school – catholic	63	81	76	66	84
Agency providing substitute residential care	0	24	35	44	36
Juvenile justice	24	24	34	50	32
Health	6	27	28	18	29
Out-of-school-hours (OOSH) care	11	19	9	12	11
Family day care	13	14	13	10	8
Ageing, disability and home care	8	13	7	11	7
Other public authority – local government	0	0	4	4	7
Other public authority	21	32	20	5	5
TAFE	0	0	0	3	4
Corrective services	3	7	0	6	3
Sport and recreation	2	0	0	1	0
Outside our jurisdiction	4	2	1	4	0
Total	**1,189**	**1,305**	**1,385**	**1,754**	**1,972**

Table 71: What the finalised notifications were about - breakdown by allegation and gender of the alleged offender

Issue	Female	Male	Unknown	Total
Assault	316	304	2	622
Sexual misconduct	100	339	1	440
Neglect	229	108	3	340
Sexual offence	34	173	0	207
Ill-treatment	124	51	1	176
Outside our jurisdiction	75	68	2	145
Psychological harm	18	24	0	42
Reportable Conviction	0	3	0	3
Total	**896**	**1,070**	**9**	**1,975**

Table 72: What the received notifications were about — breakdown by allegation

Issue	No.	% of total
Assault	666	33.77
Sexual misconduct	385	19.52
Neglect	331	16.79
Sexual offence	238	12.07
Ill-treatment	170	8.62
Outside our jurisdiction	128	6.49
Psychological harm	50	2.54
Reportable conviction	4	0.20
Total	**1,972**	**100**

had occurred, they then placed restrictions on the employee holding any child-related roles within the organisation. As the organisation is not a 'reporting body', we referred information about the sustained sexual misconduct finding to the OCG, who is now assessing the person's suitability to work with children.

Meanwhile, we learnt that the employee was also working with children at a school. We facilitated information sharing between the sporting organisation and the school under Chapter 16A, so the school could manage any ongoing risks pending the OCG's assessment of the employee's WWCC. After reviewing the information provided, the school stood the employee down from his role working with children.

Responding to the outcomes of the Royal Commission

The Royal Commission released its Criminal Justice report in August 2017 and its final report in December 2017. Over the preceding five years, we made a significant contribution to the Commission's work by providing information about individual cases, taking part in hearings and roundtables, and making submissions in response to discussion papers. Our draft report on our inquiry into the JIRT program also informed the Commission's findings and recommendations in connection with multi-agency child abuse responses.

Table 73: Action taken on notifications finalised

Action	No.	% of total
Oversight	666	33.72
Monitor	645	32.66
No ongoing oversight	507	25.67
Outside our jurisdiction	146	7.39
Class or kind	11	0.56
Total	**1,975**	**100**

Strengthening offences to protect children

In a range of our submissions to inform the Criminal Justice case study, we highlighted our views on areas where we believed law reform was needed to better protect children. These included strengthening the offence of persistent sexual abuse of a child, broadening the scope of the offence of grooming a child, and introducing a similar age defence in peer sex matters. The NSW Government has now introduced a range of reforms to strengthen child sexual abuse laws.

In response to evidence about the past failings of many institutions to report child sexual abuse, the Royal Commission canvassed whether legislative reform was needed to create an offence relating to a failure to report. In our submissions on this issue, we suggested that there would be a benefit in a specific provision that relates to the failure by individuals connected with particular institutions to report child sexual offence allegations to police.

In its Criminal Justice report, the Royal Commission subsequently recommended that all states and territories should introduce specific offences for failing to report child sexual abuse and failing to protect a child from sexual abuse.

As part of the NSW Government's response to the Royal Commission's criminal justice recommendations, the Department of Justice sought our advice to inform the Commission's recommendation. In June 2018, the Criminal Legislation Amendment (Child Sexual Abuse) Bill 2018 was introduced in the NSW Parliament to establish new offences of failure to report and failure to protect. Reflecting feedback we provided, the Bill:

- Establishes that the offences apply to a failure to report and a failure to protect a child under 18 years (rather than a child under 16 years as originally proposed).

- Clarifies beyond any doubt that the reasonable excuses listed in s 316A(2) are not meant to be an exhaustive list.
- Includes a consequential amendment of s 25A of the Ombudsman Act to clarify that the new offences amount to reportable conduct for agencies covered by the scheme.

The Commission's final report recommendations

In its December 2017 final report, the Royal Commission endorsed the NSW reportable conduct scheme and recommended that it should form the model for establishing schemes in all other states and territories. They made important recommendations about the scope of reportable conduct schemes – which aligned with the views in our 2016 report to Parliament, Strengthening the oversight of workplace child abuse allegations.

The Commission's recommendations for the establishment and oversight of Child Safe Standards are also significant and directly relate to a number of our existing functions. The Commission observed that the oversight body for a reportable conduct scheme in each state should be responsible for monitoring and enforcing the standards.

After the release of the Commission's report, we provided ongoing advice to the DPC on the impact of the Commission's recommendations and related implementation issues to inform the NSW Government's response. In providing advice to inform the NSW Government's consideration of the Commission's recommendations about reportable conduct schemes, we expressed a view that if NSW is to remain the national leader in this area, the recommendations must be implemented.

The NSW Government response

The NSW Government publicly responded to the Royal Commission in June 2018, accepting the vast majority of its recommendations. For example, they:

- Accepted the recommendation that state and territory governments should establish nationally consistent reportable conduct schemes based on the approach adopted in NSW.
- Agreed 'in principle' to expanding the NSW scheme to explicitly include housing or homelessness services that provide overnight beds for children and young people, and activities or services of any kind – under the auspices of a particularly religious denomination or faith – through which adults have contact with children.
- Indicated that they will work with our office to consider options for expanding the scheme to include providers of overnight camps and to ensure that this expansion keeps children safe while not imposing a 'disproportionate regulatory burden' on affected organisations.

The NSW Government also accepted the Commission's recommendation that reportable conduct schemes should include a capacity building function. Although there is no specific legislative mandate under the Ombudsman Act at present for capacity building, we have performed these activities – to the extent that we have been able to from within existing resources – over many years. However, against a background where there has been a doubling of reportable conduct notifications over recent years, we have advised the NSW Government that any expansion to the scheme will have significant implications for our future capacity in this area.

Establishing a child safety standing committee

With the completion of the Royal Commission and the release of government responses, a critical challenge is ensuring that survivors and their advocates are meaningfully engaged in the resulting reform process – in a way that rebuilds trust and confidence in key institutions.

We held discussions with key religious leaders, survivor groups and a number of former police and royal commissioners about establishing a standing committee for survivors and faith groups to provide governance arrangements to help drive the response to the Royal Commission's recommendations.

The committee will provide a forum for members to identify opportunities to jointly commission resources and expert advice. It will also be

critically important for religious denominations to be transparent about the progress made in implementing the Commission's recommendations. The committee will play an important role in helping to track and report on the collective efforts of survivor and faith groups.

The inaugural meeting of the standing committee was held at NSW Parliament House on 12 September 2018 and was opened by the Minister for Family and Community Services. We asked the Children's Guardian, Janet Schorer, to chair the meeting. It is envisaged that the committee will continue to meet several times a year to discuss and drive progress of the implementation of the Royal Commission's recommendations as they apply to faith-based institutions. We will continue to play a secretariat role to support the committee's work.

Supporting the WWCC scheme

The OCG is responsible for conducting WWCCs, which are a requirement for people who are employed or volunteer in child-related work. This year marks the end of the five-year phase-in schedule for the new scheme introduced in 2013. As of 30 June 2018, workers and volunteers in child-related work across all sectors are now required to comply with the scheme.

The Ombudsman may make a 'notification of concern' to the OCG if information we obtain indicates that the OCG may – on a risk assessment – be satisfied that a person poses a risk to children. If an agency is not a reporting body for referring sustained findings to the OCG, we might also refer information about their findings to the OCG. Case study 57 is an example of where we exercised our role this way and case study 53 illustrates how our role can fill other 'gaps'.

Collaborating with other jurisdictions

In July 2017, the ACT and Victoria began their own reportable conduct schemes. Since then, we have continued to work with both jurisdictions to help them establish their schemes and move towards harmonisation. To facilitate these ongoing collaborative efforts, we have established a practitioner forum.

After the launch of the Victorian scheme in July 2017, the VCCYP asked us to develop and conduct training on best practice in investigations, which was delivered over a week in October 2017. This training targeted religious organisations and early childhood carers.

In November 2017, we attended the first practitioner forum in Canberra – hosted by the Commonwealth Ombudsman's office – where participants exchanged information about key developments across the three schemes and committed to developing a common research and data agenda.

Following the release of the Royal Commission's final report, in February 2018 we met with the VCCYP and the Department of Health and Human Services to discuss a range of issues of mutual interest including working with the education and early childhood sector regulators, engaging religious bodies and integrating child safe standards with reportable conduct schemes.

At the second practitioner forum in June 2018, we reached a number of agreements – including forming a number of tri-agency working groups to:

- consider any legislative changes needed to bring about greater harmonisation of reportable conduct schemes
- settle a core data set through which comparative data for the schemes could be produced – this will involve mapping relative data fields, establishing counting rules and consulting sector representatives and peak groups
- develop a shared policy for handling matters that are covered by more than one jurisdiction
- establish a shared research agenda in partnership with leading child protection researchers.

We will lead a number of the working groups.

The jurisdictions also undertook to share relevant internal policies and procedures to identify good practice and avoid agencies reinventing the wheel, as well as promoting consistency across schemes.

To support other jurisdictions yet to implement reportable conduct schemes, we are working closely with Victoria and the ACT to organise a national reportable conduct forum, which will be held in Canberra in late 2018. We have also provided advice about the operation of our scheme to government and oversight representatives from Queensland and Western Australia.

We also handle complaints about the OCG's administration of the WWCC scheme. In 2017–18, we received 56 related complaints and enquiries – down from 94 in 2016–17 and 91 in 2015–16. The majority of complaints continue to relate to the time taken to process applications that require a risk assessment, but the decrease in complaints to us is consistent with the maturation of the new scheme and the ongoing work by the OCG to ensure that risk assessments are done as efficiently as possible.

Last year, we provided feedback to the OCG on its statutory review of the Child Protection (Working with Children) Act. The OCG's subsequent report was finalised in August 2017 and resulted in a number of amendments to the Act, which were assented to in April 2018.

Sharing child protection information

We meet regularly with the OCG to share information that is relevant to both our reportable conduct work and the OCG's role for accrediting OOHC providers. This year, we also started separate joint liaison meetings between our office, FACS and the OCG. While there are some issues that warrant discussion between our office and the OCG or FACS separately, there is also considerable value in all three agencies regularly having the opportunity to discuss the 'health' of individual OOHC agencies.

During the year, we regularly exchanged data with FACS and the OCG to track the number of children in OOHC placements (organised by providers and FACS districts) and the number of related reportable conduct notifications received by our office. The information supports the complementary functions of the OCG and our office in oversighting the provision of OOHC as well as the related commissioning role of FACS. The data has also informed the development of our 'keep under scrutiny' audit program.

We also worked with FACS during the year to consider how the information about reportable conduct matters that we hold can be used as part of the Quality Assurance Framework (QAF) that is being trialled by FACS with four OOHC services. The QAF is designed to enable FACS and OOHC agencies to track the progress of children in OOHC against the types of measurable outcomes that achieve the three main goals of the child protection system – safety, permanency and wellbeing.

The proactive exchange of information provides all parties with a better understanding of issues for individual services within the OOHC sector. It also promotes more streamlined and efficient oversight and regulation of OOHC services.

Case study 58. Improving information sharing

An employee of an agency delivering disability and OOHC services was charged with a child sexual abuse offence relating to her own child. The alleged offence came to light through reports received by the Helpline and was referred to the relevant district responsible for managing the OOHC agency's contract. However, FACS delayed notifying her employer, the OCG and our office. We learnt of the matter from the employing agency several weeks after the allegations were initially raised with FACS. This was despite the fact that our office, the OCG and FACS had been working together to do a comprehensive review of the agency – as a result of us having identified a range of serious practice issues.

We immediately started an investigation into the adequacy of FACS' systems for identifying and sharing risk-related information across its key business units, as well as with relevant external agencies. In response, FACS acknowledged that their response was too slow and indicated that they were committed to 'building a more robust information exchange system that will deliver critical risk-related information both internally and to external partners in a timely and comprehensive manner'.

We have since met with FACS and have jointly identified how they could make the enhancements needed. For example, FACS agreed to update relevant directions to staff on when and how to share risk-related information with employers, the OCG and our office. We are also working with FACS to formalise an agreement under which they will share with our office relevant risk-related information about non-FACS employees that they become aware of.

Case study 59. Responding to interstate child protection alerts

A person who had been living interstate moved to NSW and was employed by a labour hire agency, on behalf of FACS, to work in a residential care facility in NSW. This occurred even though FACS had earlier received a child protection alert from an interstate police force indicating that the person posed a risk to children and was not suitable to be in child-related employment. At the time they received the alert, FACS did not notify the OCG to find out if the person was in child-related employment in NSW. It was only when the individual concerned made an unrelated report to the Helpline in her capacity as a residential care

worker, that FACS decided to notify the OCG about the earlier alert it had received – leading to the worker being interim-barred.

After we became aware of the matter through our reportable conduct function, we initiated inquiries with FACS about its original handling of the alert about the person – and their systems for proactively sharing information with the OCG when they receive interstate child protection alerts with evidence to suggest the person is in child-related employment.

In response to our inquiries, FACS has agreed to update their procedures for responding to interstate child protection alerts. The updated procedure will require FACS to proactively share information in alerts with the OCG if they receive information to suggest that the subject of an alert is working, has recently worked, or is highly likely to engage in child-related employment.

Keeping systems under scrutiny

One of our reportable conduct functions is to keep under scrutiny the systems that agencies have for preventing, detecting and responding to reportable conduct. We do this in a variety of ways – including providing feedback on individual notifications, delivering training and capacity building activities, and conducting audits of agency systems and related governance frameworks.

We regularly analyse our reportable conduct information holdings and obtain feedback via our ongoing liaison with regulatory bodies such as the OCG, the NSW Education Standards Authority (NESA) and the Department of Education's Early Childhood Directorate (ECD) – as well as FACS in their capacity as a commissioner of OOHC services – to identify which agencies we should target for our auditing activities.

We also use our information holdings to determine which agencies or sectors can be the subject of new or extended 'class or kind determinations'. These determinations exempt agencies from having to notify less serious matters to our office – on the basis that they have mature and competent systems and investigative practices for preventing and responding to reportable conduct. We already have over 20 such class or kind determinations in place, resulting in efficiency gains for both our office and the agencies in question. They also enable us to focus our resources on the most serious allegations of reportable conduct and on sectors with less experience.

We have been conducting a range of activities under our 'keep under scrutiny' program with the early childhood sector regulator, the ECD. The sector includes over 5,000 centre-based and family day care services, including many small owner-operators – all of whom fall within our jurisdiction. By virtue of their very young age, the children cared for by these services are especially vulnerable. Given the size and diversity of this sector in terms of its capacity to effectively prevent and respond to reportable conduct, it is essential that we work closely with the regulator – as we do in the schools and OOHC spheres – to identify and manage risks and strengthen practice.

We have been working with the ECD to improve the understanding of those applying to become approved providers of education and care services about their reporting obligations under the reportable conduct scheme. We have produced a tailored video explaining the scheme and provider obligations, and this forms part of the ECD's twice monthly briefing sessions. We will be attending the upcoming roadshow being organised by the ECD, which aims to raise awareness among providers about their reportable conduct responsibilities. They have also agreed to help us distribute a range of educational materials to providers, including our tailored videos aimed at frontline educators and those with investigative responsibility.

This year, we have completed a number of audits in collaboration with the OCG – where we have identified concerns about compliance with reportable conduct and complaint handling practice. Both areas are covered by Standard 3 of the OCG's 'Child Safe Standards for Permanent Care – Child protection and child safety'.

We identified a need to raise awareness of the reportable conduct scheme among specialist homelessness services that provide accommodation to children and young people under the age of 18, given the low reporting from this sector. We therefore developed and started rolling out a tailored training workshop for youth homelessness services, which provides an overview of the reportable conduct scheme and the obligations it places on agencies and their employees.

Ten training workshops have been delivered by our YLO reaching 109 employees. Participants have indicated that they have a better understanding of reportable conduct and are more likely to access our office, and a number of agencies have also been prompted to develop or update key policies and procedures. We will continue to deliver the training, working with the peak body, Yfoundations, to ensure that reportable conduct responsibilities are promoted in this sector.

Producing resources for agencies

This year we produced and released two short videos about reportable conduct, targeting the early childhood education and Aboriginal OOHC sectors. In the videos, we provide an overview of the reportable conduct scheme and the types of conduct that should be reported. Some agency staff then talk about the importance of reporting, potential challenges in making reports, and how their agency responds when an allegation is made. The response to the videos has been very positive. Agencies have consistently indicated that they are a valuable resource and a useful complement to our existing text-based resources. Notifications from both sectors are also increasing.

We are finalising another version of the video targeted at people in management roles in the approved children's services sector. Work to complete tailored videos for FACS staff and the schools sector is underway.

Protecting young people in residential care and homelessness services from abuse

It is a criminal offence for a person to have sexual intercourse with a 16 or 17-year-old child who is under their special care. Special care relationships are defined by s 73 of the *Crimes Act 1900*.

In February 2018, after a referral by the Attorney General, the NSW Legislative Council's Standing Committee on Law and Justice established an inquiry into the scope and adequacy of special care offences. The inquiry is considering whether the existing special care relationships covered by the provision are adequate – including whether workers in youth residential care settings and in homelessness services should be recognised as having special care of any 16 or 17-year-old young person receiving those services.

Our submission to the inquiry highlighted the heightened vulnerability of young people in residential care and homelessness services to sexual exploitation and abuse by those in positions of authority over them. We noted that although young people in residential care make up only about 3% of the entire OOHC population, they were the alleged victims in about 20% of sexual offence and sexual misconduct notifications we received from the OOHC sector. We also noted that young people accessing homelessness services have, in many respects, similar characteristics to those placed in residential care. There is strong evidence to support the proposition that both of these cohorts of young people are more at risk of sexual exploitation than their peers.

We therefore expressed support for an amendment that would bring adults working with young people in residential OOHC and homelessness services within the scope of the s 73 offence.

Reviewing the deaths of children

The Ombudsman is responsible for two independent statutory functions for reviewing the deaths of children (0 – 17 years) in NSW.

The NSW CDRT was established under Part 5A of CS-CRAMA to prevent and reduce the deaths of children in NSW. The Ombudsman is Convenor of the team, and Ombudsman staff provide administration and support – including research and reviews. The CDRT has representatives of key government agencies and independent experts in child health, welfare and research.

Under Part 6 of CS-CRAMA, the Ombudsman is responsible for reviewing the deaths of children and young people who die as a result of abuse or neglect, or in suspicious circumstances, and children who die in care or in detention (referred to as 'reviewable' deaths).

The focus of both functions is to help prevent the deaths of children. The legislation describes how we should do this:

- We maintain a RCD and reviewable deaths in NSW. The register holds a range of information about each child who has died – including demographic, health, and cause and circumstances of death.
- From the information held in the register, we identify trends and patterns in relation to child deaths. We report trends and other issues in biennial reports to the NSW Parliament and release the reports publicly.
- We undertake research – either alone or with others – that aims to help prevent or reduce the likelihood of child deaths. We report our research to the NSW Parliament and release reports publicly.
- We make recommendations about legislation, policies, practices and services that can be implemented by government and non-government agencies and the community to prevent or reduce the likelihood of child deaths. We also monitor and report on agency progress with the implementation of our recommendations.

Working with the CDRT

Between July 2017 and June 2018, we registered the deaths of 493 children that occurred in NSW.

The CDRT is required to prepare its own annual report to Parliament – and further information about our work is detailed in that report. The CDRT also has to provide a biennial report to Parliament consisting of data collected and analysed in relation to child deaths.

Reporting on our reviewable deaths

We are required to provide a biennial report to Parliament on our work and activities in relation to reviewable deaths in the previous two calendar years. The next report will examine the reviewable deaths of children that occurred in 2016 and 2017.

Between July 2017 and June 2018, we found that the deaths of 20 children met the criteria for a reviewable death:

- three children died as a result of abuse
- one child died as a result of neglect
- five children died in suspicious circumstances
- eleven children died while in care.

A number of other deaths are undecided, pending additional information on the cause and circumstances of death.

Making recommendations

One of our main functions is to formulate recommendations that can be implemented by government and service providers to prevent or reduce reviewable deaths of children. As at June 2018, we had three open recommendations:

- We asked FACS to consider issues raised in our 2017 report about the suicide and risk taking deaths of children who were in care at the time they died, and to provide advice on proposed strategies to respond to these issues. Our report raised particular concerns about the response to ROSH reports for children in care, especially reports relating to suicide risk. The outcomes of this recommendation are included in the CDRT annual report.
- We proposed that NSW Health should establish a process of comprehensive review in cases where a child who died in suspicious circumstances had been presented to a NSW public health facility with physical injury within the 12 months before their death. Our review of abuse-related deaths of children had identified that some children had presented to hospitals with injury in close proximity to their death. We considered that close review of these cases could provide a significant learning opportunity for health personnel. In April 2018, NSW Health advised us that the Ministry of Health and the Clinical Excellence Commission had agreed to a methodology and process for implementing these internal reviews. We will refer relevant matters to the Ministry.
- We identified the need to recognise and respond to the potential risks to children of parents with mental illness, so we asked NSW Health to provide advice on a proposed review of this issue. The outcomes of this recommendation are included in the CDRT annual report.

Doing research

One of our functions is to undertake – alone or with others – research or other projects that may help develop strategies to reduce or prevent reviewable deaths.

This year, we started research on the role of alcohol and other drugs in the abuse and neglect-related deaths of children. We are working with Turning Point at Monash University to identify the impact of these issues on the families of children who died.

Implementing changes to our work

In 2016 we tabled 'Reporting of fatal neglect in NSW', a review of our work prepared by the Australian Institute of Family Studies. The report proposed changes to optimise the reporting of both the CDRT and reviewable child deaths. It noted the CDRT's capacity to focus on preventability across all deaths, including those occurring in the context of neglect. In that context, the review proposed that reporting of reviewable deaths would be best focusing on abuse and neglect that would reach the threshold of 'maltreatment'.

In 2017, we developed a proposal to change the threshold for determining the death of a child being due to neglect 'if a reasonable person would conclude that the actions or inactions of a carer exposed the child to a high risk of death or serious injury'.

We also suggested combining the CDRT biennial report and the Ombudsman's reviewable child deaths biennial report. In that way, deaths resulting from abuse and neglect and the deaths of children in care could be considered within a public health approach and in context.

In late 2017, we consulted with the Minister for Family and Community Services, the Chair of our Parliamentary Committee, the FACS Secretary, and the CDRT on the proposed changes. As there were no objections, we will move forward on these changes.

People with disability

Under CS-CRAMA, we have a range of functions relating to people with disability and disability services. These functions include:

- handling and investigating complaints about disability services
- inquiring into major issues affecting people with disability and disability services
- reviewing the care, circumstances and deaths of people with disability in residential care
- coordinating OCVs in their visits to people with disability in supported accommodation and assisted boarding houses.

Since 3 December 2014, we have also had responsibility for operating the disability reportable incidents scheme under Part 3C of the Ombudsman Act. As part of this work, we oversight the actions of disability services to prevent and effectively respond to serious incidents – including abuse and neglect – involving people with disability living in supported group accommodation in NSW.

This section outlines our work in relation to these functions.

On 1 July 2018, responsibility for receiving and responding to complaints and reportable incidents involving NDIS providers moved from the Ombudsman's office to the NDIS Commission. These changes, and our work during the past year to prepare for the start of the operation of the NDIS Commission, are discussed in this section.

Handling complaints about disability services and supports

CS-CRAMA has a strong emphasis on resolving complaints locally and informally. An important part of our work is helping people with disability, their supporters and disability services to work together to resolve issues as early as possible. We also make inquiries into and investigate complaints that raise significant issues or that are not appropriate for local resolution.

Table 74: What people complained about

Primary issue	Formal	Informal	Total	% of Total
Customer service	46	76	122	12.82
Meeting individual needs	44	40	84	8.82
Complaint management	27	39	66	6.93
Staff to client abuse/neglect	46	20	66	6.93
Access to service	38	21	59	6.20
All other issues	311	244	555	58.30
Total	**512**	**440**	**952**	**100**

Note: expanded table is on our website.

Table 75: action taken on formal complaints finalised – disability

Primary issue	Total	% of Total
Complaints declined at outset	225	43.02
Complaints resolved after enquiries	177	33.84
Complaints resolved by agency prior to contact	78	14.91
Complaints consolidated into another complaint	14	2.68
Complaints referred to agency for local resolution	8	1.53
Service improvement comments or suggestions to agency	20	3.83
Referred to agency concerned or other body for investigation	1	0.19
Total	**523**	**100**

Table 76: Formal and informal complaints received and finalised – disability – five year comparison

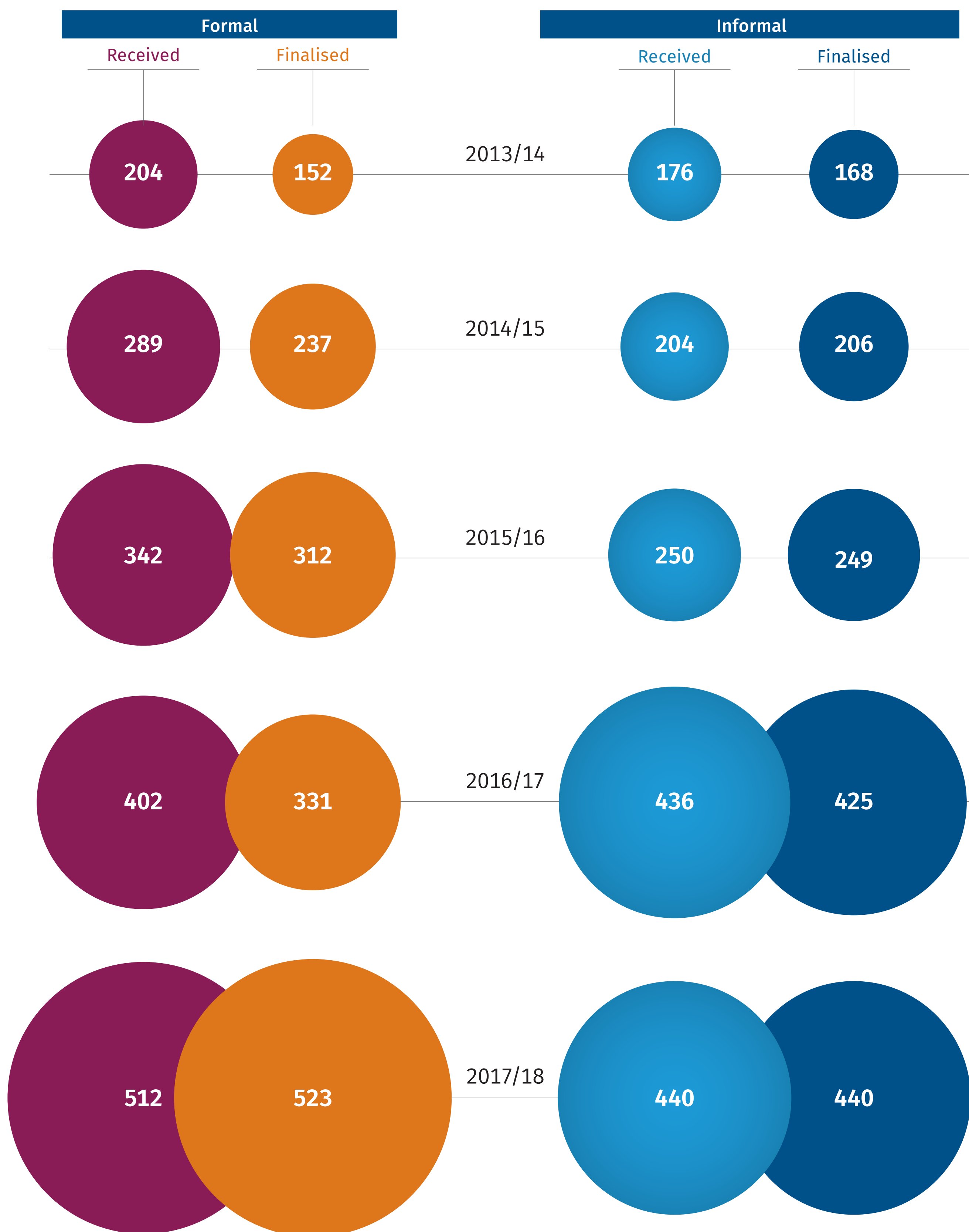


Table 77: What people complained about – accommodation services

Primary issue	Formal	Informal	Total	% of Total
Meeting individual needs	30	22	52	16.77
Staff to client abuse/neglect	24	10	34	10.97
Customer service	9	14	23	7.42
Complaint management	7	15	22	7.10
Access to service	14	6	20	6.45
All other issues	96	63	159	51.29
Total	**180**	**130**	**310**	**100**

This year, we received 952 formal and informal complaints about disability services – a 14% increase on the previous year (838). Most of the increase involved formal complaints, which increased by 27%. Since 2013–14, the number of complaints about disability services has increased by 151% – see table 76.

We distinguish between complaints about disability accommodation services and complaints about other disability support services.

Complaints about disability accommodation services

We received 310 complaints about disability accommodation services operated, funded or licensed by FACS, or funded as part of an NDIS participant's plan. The number of complaints about disability accommodation services in 2017–18 was slightly lower than in 2016–17.

Table 77 shows the issues in the complaints we received about disability accommodations services in 2017–18. The top issues raised in complaints about disability accommodation services were:

- Actions to meet individual needs – including not providing adequate or appropriate accommodation support, not taking adequate steps to meet health and medical needs, and not meeting nutritional needs.
- Alleged staff to client abuse or neglect – including neglect, ill-treatment, sexual misconduct, sexual abuse, physical assault, and inadequate action to investigate allegations.
- Customer service – including providing a poor or inadequate service, and displaying rude or inappropriate behaviour to clients and others.
- Complaints management – including failing to respond or take action in response to complaints, and delays in handling complaints.
- Access to a service – including unfairly exiting a resident, and not providing support with the person's transition to other accommodation.

Case studies 60–62 are examples of complaints we have handled about disability accommodation services.

Case study 60. Making service-wide improvements

We received a range of concerns about the supports provided by a disability accommodation and respite service. The complaint issues included that children were being accommodated with adults with disability who had behaviours of concern, the service had approved staff transporting a young person in the boot of the car, and the living environment was unsanitary – including an ongoing blocked toilet and a cockroach infestation.

We referred the issues to the provider to investigate. After the investigation by an external investigator, we met with the provider and the funding body to discuss the service improvement plan that had been developed to address the issues identified by the investigator.

We also obtained regular updates from the provider as they completed each aspect of the action plan. Among other things, the provider reviewed and strengthened the guidance they provide to staff about quality of service requirements, established an electronic critical incident reporting system, invested in a staff development program, and introduced greater accountability measures for managers.

Case study 61. Providing better support

We received a complaint from the neighbour of a person with disability living in supported accommodation. The neighbour raised concerns that the resident regularly screamed at cars early in the morning, often stood in the middle of the road and kicked parked cars, and that support staff would not take any action. The neighbour reported that the staff would sit in the backyard smoking and checking their mobile phones, and he raised concerns that the resident was not receiving adequate support.

We made inquiries with the provider, who took a range of actions to improve supports to the resident. These included providing staff with training and ongoing behaviour support guidance, and working with the resident and her support coordinator to transition to a model of increased support – including periods of 2:1 and 1:1 staff support.

We followed up with the neighbour, who advised that there had been a dramatic improvement in the resident's presentation and the quality of the care being provided by staff. The neighbour also reported that he was now engaging in conversations with the resident, which had not been possible before.

Case study 62. Protecting people who complain

A disability support worker helped four residents of a group home to make a complaint to our office about the conduct of the fifth resident of the house. We made inquiries with the provider, obtained a progress report, and were satisfied that appropriate supports had been put in place.

The disability support worker later raised concerns with us that his employer had taken disciplinary action against him because he had supported the residents to make a complaint to our office. We examined the evidence provided by the worker and referred the allegation about retribution to police. This is because we were concerned about a possible breach of CS-CRAMA, which makes it an offence to take retribution against a person for making a complaint to our office.

Police assessed the information and met with the provider about the alleged offence. They then referred the matter back to our office to deal with. We pursued the matter with the provider – they took action to strengthen their guidance about the protections for employees who complain or provide information to the Ombudsman's office, including developing a policy on whistleblowing protections.

Supporting residents to speak up

We received concerns that a disability accommodation provider was not supporting residents to exercise choice or control – including in relation to meals and relationships, did not appropriately respond to complaints by residents, and had installed a CCTV camera in a resident's bedroom. We were also told that the provider had advised residents not to speak with the OCV to raise concerns, and had admonished residents in response to an OCV visit report.

We made written inquiries and met with the provider about the concerns. In relation to the CCTV, we found that the provider had installed a visual monitor with a portable screen – in consultation with the affected resident and other stakeholders – to allow staff to check on the resident during the night, as required by her neurologist, without entering her room and waking her up. We also found that residents were involved in menu planning, but there was a need for service improvements to support decision-making by residents. This included:

- obtaining and effectively responding to their concerns and feedback
- improving behaviour support – and meeting core requirements for the authorisation and use of restrictive practices.

We made a range of suggestions to the provider, which they accepted. At the same time, we strongly emphasised the legislative protections for anyone who wants to make a complaint or provide information to the Ombudsman's office or an OCV – or who makes a complaint to the provider.

We monitored the actions of the provider in implementing our suggestions. We also delivered a 'Speak Up' workshop to residents and staff to support residents to understand their rights in speaking up about any concerns.

Table 78: What people complained about - accommodation services

Primary issue	Formal	Informal	Total	% of Total
Customer service	37	62	99	15.42
Complaint management	20	24	44	6.85
Access to service	24	15	39	6.07
Professional conduct/misconduct	23	11	34	5.30
Meeting individual needs	14	18	32	4.99
Staff to client abuse/neglect	22	10	32	4.99
All other issues	192	170	362	56.38
Total	**332**	**310**	**642**	**100**

Complaints about disability support services

There are a wide range of disability supports provided by specialist disability services. These include community participation and day programs, in-home personal care and other support, behaviour and communication assessments, and support coordination. In 2017–18, most disability support services were funded under the NDIS.

This year, we received 642 complaints about disability support services – an increase of 29% on 2016–17.

The top issues raised in complaints about disability support services were:

- Customer service – including providing a poor or inadequate service, and failing to reply or take action in relation to issues.
- Complaint management – including failing to respond, or take action in response, to a complaint and delays in handling complaints.
- Access to a service – including unfairly stopping supports, not assisting with the person's transition to another service, and not getting timely access to support.
- Professional conduct/misconduct – including not complying with requirements, not addressing conflict of interests, and misusing funds.
- Meeting individual needs – including not taking adequate steps to meet health, medical or hygiene needs.
- Alleged staff to client abuse or neglect – including neglect, ill-treatment, physical assault, and inadequate action in response to allegations.

Case studies 63–64 provide examples of complaints we handled about disability support services.

Case study 63. Responding to disclosures of abuse

The manager of a day program contacted us to raise concerns about the circumstances of a client with intellectual disability who lived at home with his family. The client had presented with a black eye and had disclosed that he had been physically assaulted by his step-parent. The provider raised the matter with the client's parent, who said that the client had a history of 'making things up'.

We advised the provider to make a report to police. We made further inquiries of the provider, examined relevant intelligence on the child protection and police databases, and obtained information from the NDIA.

We indicated to the provider that it needed to strengthen its guidance to ensure that:

- Staff report alleged or suspected criminal offences to police without delay and provide all relevant information.
- Staff understand the actions they should take when the subject of allegation is a family member or friend of the alleged victim – including the need to seek advice from police before contact with the subject of allegation or other family members.
- Accurate records are made of any incidents and the actions that are taken in response.

In response, the provider issued additional guidance to staff on responding to allegations of abuse and neglect, developed new forms to help staff with incident reporting and record keeping, and included the issue of responding to abuse and neglect in regular supervision between managers and staff.

In the course of handling this matter, the provider told us that the client often missed out on day activities because his parent 'self-managed' his

NDIS package and did not always pay the bills. The provider also indicated that the client had multiple unexplained absences from the program, and they had witnessed many instances of verbal abuse between the parent and step-parent – which occurred in the client's presence. The provider did not contact the NDIA about these issues as the client had stopped attending the service. We wrote to the NDIA to provide the relevant information that we had received from the provider, and to follow up on any other services that had been engaged to support the client and any action the NDIA intended to take.

We facilitated the provision of information to police by FACS about historical allegations in its child protection database, and provided additional relevant information to police from the provider – including photographs of injuries. In light of the additional information, police re-opened their investigation.

Case study 64. Unfairly ending supports

A parent complained to us about the actions of a day program provider to exit his son from the service while the NDIS support coordinator was in the process of negotiating a service agreement. The client had been accessing the service for over 15 years, and the provider had not raised any concerns about him.

The primary issue in this matter was the relationship between the provider and the client's parent – both parties told us that the relationship was difficult. The provider advised that it considered that the parent had made unreasonable demands in relation to the service agreement, and had made a vexatious complaint to the NDIA.

We found that the provider should have taken additional steps to try to resolve the conflict with the parent, rather than exiting the client from the service. They should also have told the parent that they may decide to stop supports to the client, the reasons for this, and what action he could take if his son wished to continue to access the service.

We also indicated to the provider that it needed to make changes to ensure that:

- Complaints or concerns raised by clients or their representatives are not used as the basis for stopping supports – noting that it is an offence to take retributive action against anyone for making a complaint.
- Their notice period for stopping supports complies with the NDIA Terms of Business for registered providers.
- They provide appropriate transition support to the client – working constructively with the client, their representatives, support coordinator, and alternative provider. We noted that, in this case, the client did not have any opportunity to farewell clients or staff or have a planned transition to an alternative provider.

The provider agreed with our suggestions and apologised to the client for the impact of their decision on them.

Key issues across complaints about disability service providers

There were a number of issues that were particularly notable in the complaints we received, irrespective of whether the complaint related to accommodation or other supports. Some of those issues are reflected in the case studies in this section.

Taking detrimental action against complainants

Many people are reluctant to make complaints because they fear that it will result in negative action being taken against them and/or the person receiving the service. Providing legislative protections for complainants is therefore a critical safeguard for enabling and supporting people to speak up and make complaints. Both CS-CRAMA and the Ombudsman Act contain protections for complainants – it is a criminal offence to take detrimental action against anyone for making a complaint to our office (or to a service provider or OCV), or for providing assistance or information to us.

This year, we handled a number of matters that involved alleged retribution against people for making complaints to service providers or our office, for helping people with disability to make a complaint to our office, and for providing information to us. In some of these cases, we assessed that there was prima facie evidence of an offence and referred the matters to Police for investigation.

It is not evident why there was an increase in matters involving alleged retribution against complainants in 2017–18. Although some were about new NDIS providers, others involved longstanding disability services. In each case, the individual matter reflected broader problems with the provider's complaint handling processes and approach that needed to be addressed. We have done significant work with providers to improve their complaint handling practices and systems – and to ensure that consistent service-wide messages are conveyed that complaints are positive and there are strong protections against retribution.

Strengthening probity requirements

An organisation funded by FACS used brokerage funds to purchase respite care for a child with disability from a third party provider. We received two separate complaints raising concerns about whether this provider had the necessary skills and qualifications to provide the service. We identified that the funded organisation had failed to obtain references for the self-employed provider or verify that she held a WWCC. After we raised these concerns with FACS, they acknowledged that the organisation had not demonstrated due diligence – and took steps to ensure the organisation now has adequate probity checking arrangements.

This complaint raised broader questions about the probity requirements on organisations funded by FACS (or other government agencies) when they broker services from a third party on behalf of vulnerable clients. Since August 2017, NSW Government agencies procuring human services from funded organisations have been required, with limited exceptions, to use the Human Services Agreement – which imposes standardised pre-employment probity checking requirements on funded organisations. We highlighted the need for the agreement to make clear what conditions should apply when organisations engage 'personnel and subcontractors'. In response, FACS acknowledged the need to strengthen their guidance for funded organisations to include an expectation that proper probity and due diligence checks should be done on third party providers in circumstances such as those raised by this case. We will monitor further action by FACS to prevent a similar situation from happening again in the future.

We also referred relevant information about the third-party provider and the funded organisation's actions to the OCG. After becoming aware that the sole operator subsequently registered as an NDIS provider to deliver in-home supports, we also provided information to the NDIA.

Stopping supports based on the perceived conduct of family members

We received an increased number of complaints about providers ending support – including exiting clients from accommodation services – due to unresolved conflict with the client's family. In many cases, we were contacted after the decision to stop supports had already been made.

As well as the adverse consequences for the client, our concerns in handling a range of these matters are that:

- It has not been evident that the provider has taken all reasonable steps to resolve the issues with the family members before making a decision to end supports.
- Inadequate consideration has been given to the needs and wishes of the client, including in relation to transition planning.

In June 2018, we released a good practice guidance on *Minimising conflict, maximising support: Families, NDIS participants and NDIS service providers working effectively together*. This is to help providers to understand ways in which they can prevent, manage and resolve conflicts and support effective communication with families to minimise any adverse impacts on clients.

Issues about NDIS providers

We handled a range of complaints that raised concerns about the actions of some newly registered NDIS providers. These included matters that:

- Identified an inadequate understanding of required standards and good practice in key areas, including a rights-based approach to support.
- Raised concerns about potential fraud and the use of sharp practices.
- Showed a lack of compliance with the terms of business for registered providers – including not providing the required period of notice for ending supports, and not complying with NSW quality and safeguarding arrangements such as probity checking requirements.

Handling these matters has involved a significant investment by our office and OCVs to support providers to understand quality standards and improve practice. We have also done substantial work to provide relevant information to the NDIA to inform its actions, including its fraud investigation and registration functions.

Disability reportable incidents

Since 3 December 2014, we have been responsible for operating the NSW disability reportable incidents scheme. Part 3C of the Ombudsman Act requires FACS and funded disability services to notify us of any allegations of serious incidents involving people with disability living in supported group accommodation. We oversee the actions and systems of these providers to prevent, handle and respond to specified reportable incidents across four areas. They are:

- Employee to client incidents – involving any sexual offence, sexual misconduct, assault, fraud, ill-treatment or neglect.
- Client to client incidents – involving assault that is a sexual offence, causes serious injury, involves the use of a weapon, or is part of a pattern of abuse of the person with disability by the other person with disability living in the same accommodation.
- Contravention of an apprehended violence order (AVO) taken out to protect a person with disability.
- An unexplained serious injury.

This year marked the final full year of operation of the NSW disability reportable incidents scheme, as the national reportable incidents scheme under the NDIS Commission came into operation on 1 July 2018.

Receiving notifications of incidents

In 2017–18, we received 837 notifications of reportable incidents – an increase of 7% on the previous year. Overall, between 1 July 2015 and 30 June 2018, notifications increased by 22% – see table 79.

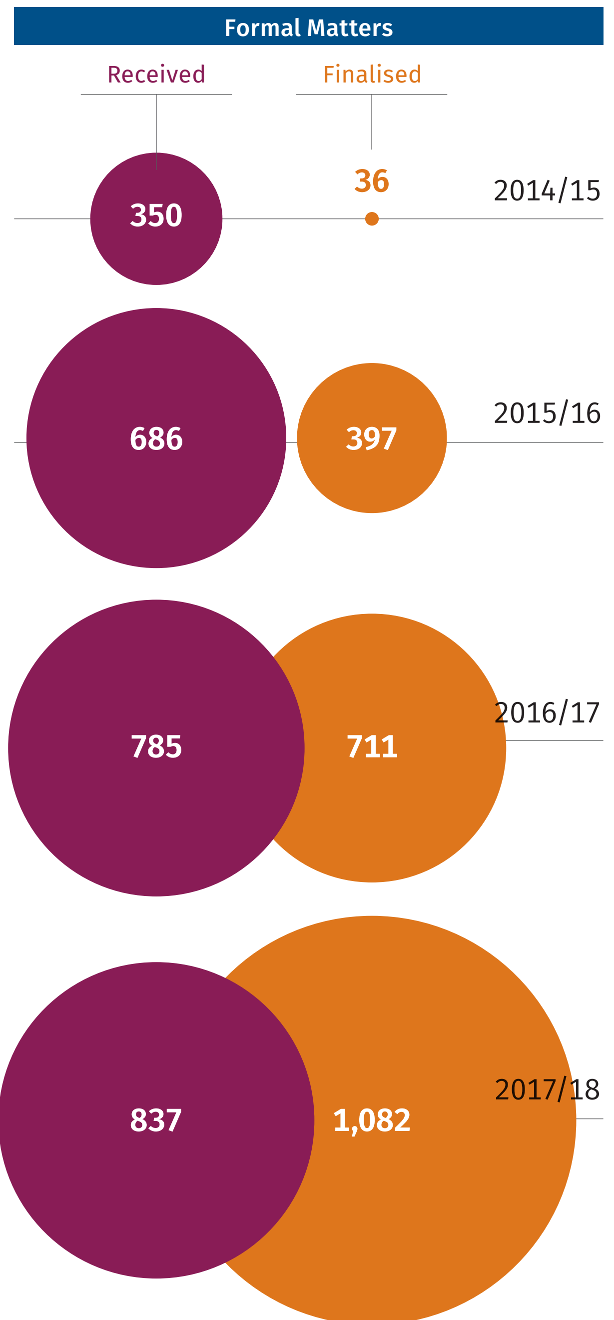
The numbers of notifications we received about employee to client incidents and client to client incidents were consistent with the previous year. However, the number of notifications of unexplained serious injuries increased by 38% on the previous year. Table 81 shows the types of notifications we received in 2017–18.

Notifications about employee to client matters

Of the 403 notifications we received about employee to client incidents, the majority involved allegations of neglect, physical assault and ill-treatment – see table 82. In 2017–18, allegations of ill-treatment increased by 50% and allegations of sexual misconduct more than doubled.

Case studies 65–68 are examples of notifications of employee to client incidents we handled.

Table 79: Notifications received and finalised - four year comparison



Notifications about client to client matters

Of the 247 notifications we received about client to client reportable incidents, about 45% involved allegations of a pattern of abuse by one client against another – followed by allegations of sexual offences (22%), and allegations of physical assault causing serious injury (21%). See table 84.

The number of notifications we received about client to client incidents was consistent with the previous year, with the exception of allegations of physical assault causing serious injury that increased by 34%.

Table 80: Formal and informal complaints and notifications received and finalised – four year comparison

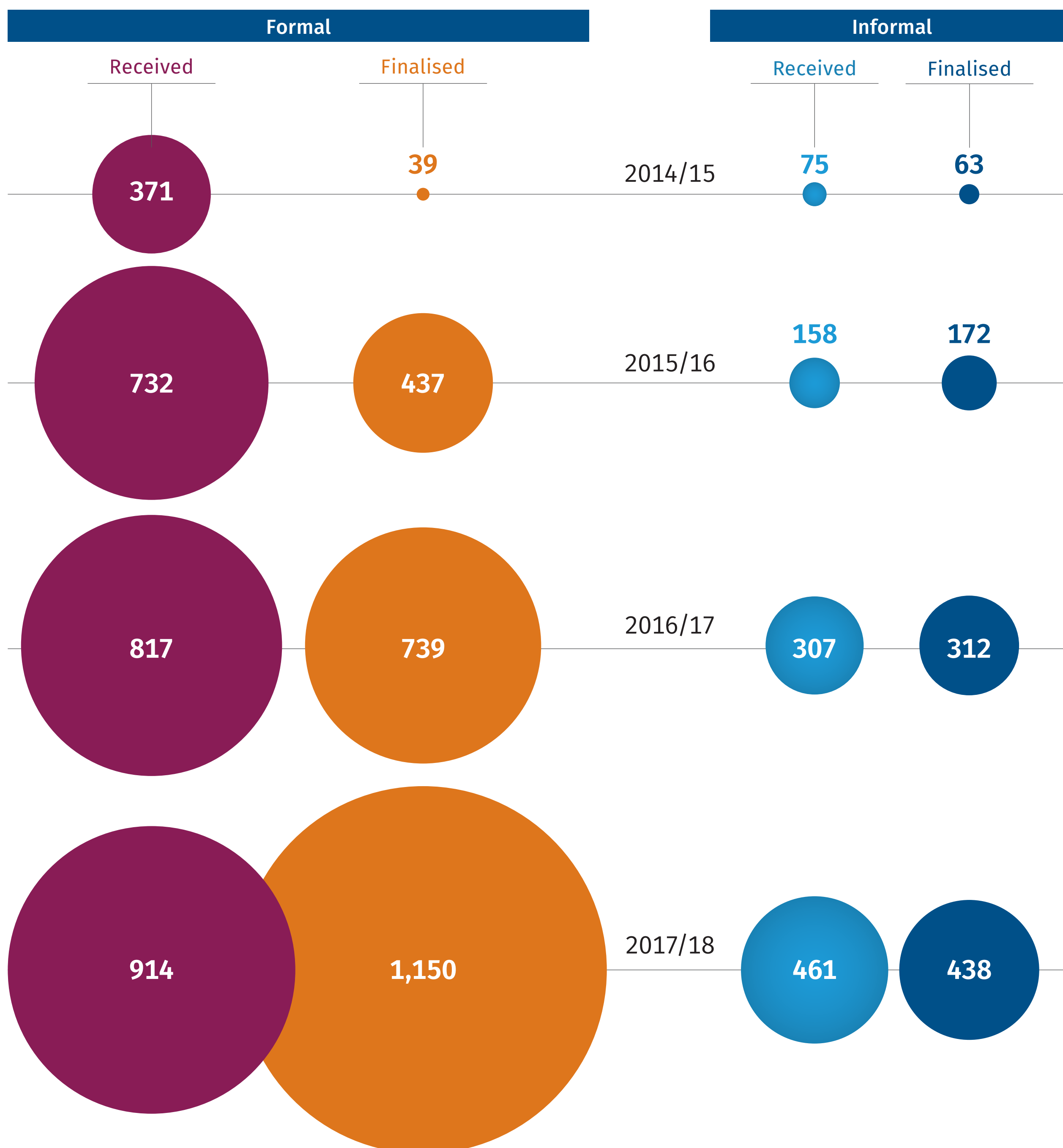


Table 81: Notifications received – by type of incident – four year comparison

Type of incident	2014-15	2015-16	2016-17	2017–18
Employee to client	207	310	404	403
Client to client	107	260	242	247
Unexplained serious injury	34	113	135	186
AVO breach by third party	2	3	4	1
Total	**350**	**686**	**785**	**837**

Table 82: Employee to client notifications received – by primary issue – four year comparison

Type of incident	2014-15	2015-16	2016-17	2017–18
Neglect	38	56	154	136
Physical assault	81	108	125	103
Ill treatment	23	67	54	81
Not in jurisdiction	21	42	28	28
Sexual misconduct	10	13	11	26
Sexual offence	25	16	26	23
Fraud	9	7	6	6
Reportable conviction	0	1	0	0
Total	**207**	**310**	**404**	**403**

Case studies 69–71 are examples of client to client incident notifications we handled. Case study 72 provides an example of a notification of an unexplained serious injury.

Case study 65. Identifying a pattern of employee conduct

We were notified of allegations that a staff member at a group home had indecently assaulted a client with disability during her shower routine. The provider stood the staff member down and referred the allegation to police. We made inquiries and found that the staff member had a history of complaints of a similar nature, including with the current provider.

We wrote to the provider to obtain information about any risk assessments it had done after the previous allegations to ensure the safety of clients – many of whom were particularly vulnerable as they did not verbally communicate. The provider considered all the information and dismissed the staff member for the pattern of conduct. As the staff member had been employed as an Assistant in Nursing, the provider also forwarded the matter to the HCCC for investigation.

We liaised with the OCG about this matter. The OCG subsequently barred the staff member from working with children.

Case study 66. Taking action on previous allegations

We were notified of allegations that a disability support worker had – without authorisation – used excessive force on a child to restrict the child's access to the kitchen. The provider advised that, as the worker had been the subject of previous allegations, it would transfer the worker to a group home with adult clients and under direct supervision.

We sought information from the provider about the previous allegations, which pre-dated the disability reportable incidents scheme. There were two previous allegations – relating to sexual misconduct towards an adult client with disability, and an alleged assault of another client with disability. Neither of the matters had been reported to police.

We asked the provider to report all the matters to police to ensure that they had a comprehensive history of the concerns. We also liaised with the police about releasing information to the OCG so a risk assessment could be done.

Case study 67. Working with police and the OCG

We were notified of allegations that a disability support worker pushed a client into dining room chairs and had threatened to kill him. The worker had admitted to the internal investigator that he had made a verbal threat. The incident was also allegedly witnessed by another employee.

Our internal intelligence holdings identified that we had previously received a notification involving allegations of a similar nature against the worker when he was employed by a different provider. Those allegations had not been reported to police.

We provided a written briefing to police – which included information about the allegations against the worker, the existence of an independent witness, and the admissions the worker had reportedly made about the verbal threat. We also provided information to the OCG.

Table 83: Formal and informal complaints received and finalised - four year comparison

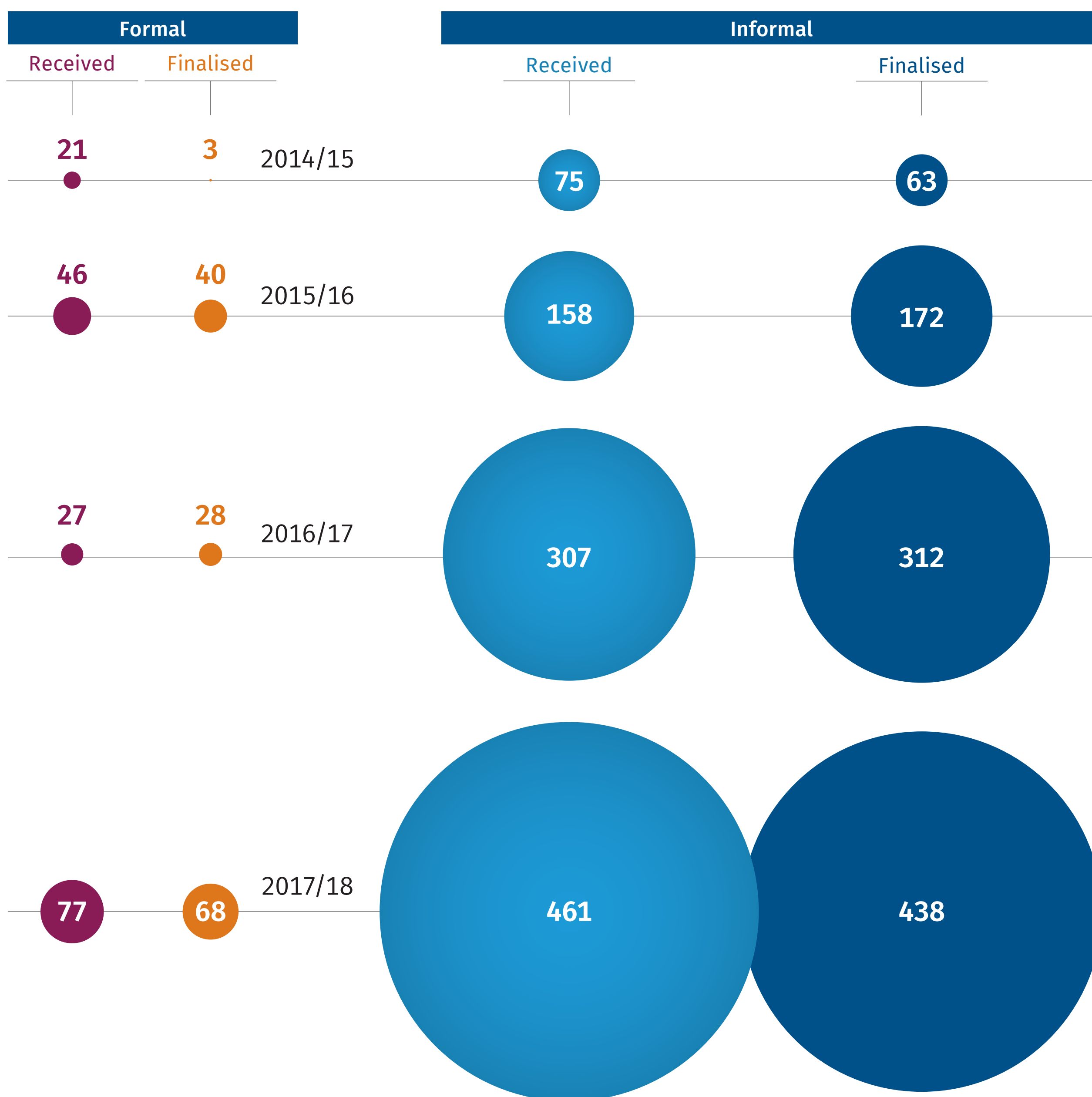


Table 84: Client to client notifications received - by primary issue - four year comparison

Type of incident	2014-15	2015-16	2016-17	2017–18
Pattern of abuse	28	139	115	112
Sexual offence	23	51	56	55
Assault causing serious injury	28	48	38	51
Assault involving the use of a weapon	23	15	21	16
Contravention of AVO	0	0	0	3
Reportable Conviction	0	0	1	1
Not in Jurisdiction	5	7	11	9
Total	**107**	**260**	**242**	**247**

As a result of our briefings, the police re-opened their investigation into the matter and the OCG started an assessment of the worker's WWCC clearance.

Case study 68. Providing better supports

We were notified of an alleged physical assault of a client by an employee, which was subsequently found to be unsubstantiated. However, information provided by the service raised questions about the client's support. We noted that the client wore a helmet with a face shield, and seemed to wear the helmet all day. A historical assessment indicated that the client needed a helmet to manage the risk of injury from seizures he experienced while being transferred from his wheelchair, but it was not clear why he was now wearing a helmet with a face cover all day. We also had concerns that – although a medical assessment indicated that the client's seizures and behaviour support needs may be associated with anxiety – no action appeared to have been taken in response, such as helping the client to obtain a psychological assessment.

In response to our inquiries, the provider helped the client to obtain a new assessment in relation to the helmet – which identified that it only needed to be worn during transfers. A review of the client's NDIS plan also resulted in funding for behaviour and other clinical support to help with his anxiety, to examine whether the seizures were likely to be due to anxiety, and to identify any less restrictive options to the helmet.

Case study 69. Addressing a pattern of abuse

We were notified of a pattern of abuse involving clients in supported accommodation with complex behaviour support needs. The allegations related to one client physically assaulting his four co-residents (involving slapping, hitting and scratching) over an extended period of time. At the time of the notification, the provider had sought clinical support for the client – but none of the residents had current behaviour support plans.

In response to the pattern of abuse, the provider obtained a comprehensive review of the group home and set up a clinical steering group to help implement the review recommendations. We monitored the actions of the provider to address the issues.

Among other things, the provider did significant work to:

- ensure that staff had current and informed strategies for supporting client behaviour needs
- help the clients to obtain assessments to get appropriate communication and sensory support
- transition the clients to a new purpose-built house that was better suited to their needs.

Case study 70. Improving support to reduce contact with police

We received a complaint from a client's family that a provider was not taking adequate action to protect their son from being abused by a co-resident. There were also concerns that the client was frequently coming to the attention of police in relation to his behaviour, and the service was not providing enough support to him to reduce this contact.

We facilitated a meeting between the family and local police to discuss the needs of the client. We referred the complaint to the provider for local resolution, and the service offered the client alternative accommodation. The family was involved in the staff induction process in the new accommodation, and the police were also kept informed of the changes being made, to inform their response and reduce the likelihood of arrest.

Case study 71. Getting to the cause of the abuse

We were notified of an alleged pattern of abuse by one client of a group home against his three co-residents. We were also contacted by family members, raising concerns about the safety of the co-residents. In response, the provider obtained a full behaviour support systems review of the group home. This identified a range of issues relating to client compatibility, behaviour support, staff training and the physical environment. The provider developed an action plan to implement the recommendations.

We were later notified of additional allegations of a pattern of abuse by the client against his co-residents. The provider obtained a further clinical review – it identified that a significant contributing factor to the abuse was the overlap in client routines, which tended to disrupt the man's schedule and upset him. The provider put measures in place to increase staff during peak times and to modify the timing of each client's daily routine.

The provider also reviewed its previous action plan to:

- assess the effectiveness of the measures that had been implemented
- identify and take immediate action to implement any outstanding measures.

We monitored the actions of the provider to address the patterns of abuse and the concerns of the family members. Among other things, the provider put in place clear protocols to address the safety of the clients, did a complex case review of the man's medications with his GP and pharmacist, reviewed the man's daily routines to ensure that he was actively engaged, and provided comprehensive staff training on his strengths, needs and behaviour support.

Case study 72. Checking a pattern of unexplained injuries

Over an eight-month period, we received three notifications and a complaint about significant unexplained bruising to a person with disability living in a group home. Our initial inquiries with the provider identified that there had been limited exploration of the potential cause of the bruising, as the provider believed that the injuries had been caused by a co-resident who had subsequently moved. However, we identified that the unexplained bruising continued after that client had moved.

The provider engaged an independent investigator to review the group home – including an examination of staff culture, incident reporting practices, and the possible cause of the injuries. The review resulted in a range of recommendations for service improvement, medical assessments, and support to clients. As a different service provider took over providing support to the clients, we made sure that the new provider received critical information from the review. We also facilitated communication between the complainant and the new provider to make sure the recommendations for the alleged victim were implemented.

Key issues in disability reportable incidents

Our oversight of the handling of disability reportable incidents highlighted some key issues. They included:

- The adequacy of the systems, guidance and governance arrangements of new NDIS providers to meet the needs of clients and quality requirements.
- The challenges for small NDIS providers in trying to adequately respond to, and investigate, allegations of abuse that involve the head of the agency or their relatives.
- The adequacy of the funds in NDIS plans to address issues that contribute to patterns of abuse between clients, including behaviour support and client compatibility.
- The need for readily available information for clients and their representatives to support decisions on moving between accommodation providers, and better coordination of accommodation vacancies.

Our handling of disability reportable incident notifications this year also underscored the importance of the work that is underway to establish an NDIS worker screening system. In a range of matters, we identified disability support workers with sustained findings of abuse and/or neglect of clients who had moved between providers. These matters also highlighted the need for information exchange provisions to enable providers to share information relevant to the safety of their clients.

Issuing a public alert

In January 2018, we issued a media release to alert the public to the danger posed to people with disability who are left in vehicles. We did this after we were notified of two matters involving disability support workers allegedly leaving clients in cars for extended periods during temperatures in excess of 35 degrees.

We called on the public to be vigilant and to take action when necessary. We noted that – although the community is increasingly aware of the dangers of leaving children unattended in vehicles – it is important to recognise that this type of neglect can expose vulnerable adults with disability to the same risks of dehydration, heatstroke and death.

Ombudsman

MEDIA RELEASE MEDIA RELEASE MEDIA RELEASE

Ombudsman warns of danger posed to people with disabilities left in vehicles

Providing guidance on responding to serious incidents

Fact sheets and videos

This year, we released two new fact sheets to provide practical guidance on:

- making a finding in disability reportable incident investigations
- providing advice about reportable incident investigations to people with disability and other involved parties.

We also contributed to the work of NDS in its Zero Tolerance project to develop a series of seven themed videos on responding to abuse. These videos complement our Resource Guide on the initial and early response to abuse and neglect in disability services, and provide valuable guidance to disability support workers on responding to allegations of abuse and neglect. They were launched on 25 July 2018 in Newcastle and are available on the NDS website.

Best practice working group

Prior to the start of the disability reportable incidents scheme in December 2014, we established a Best Practice Working Group to support and inform the work of our office and the disability sector in relation to the scheme, and to obtain expert advice on critical issues relating to the abuse and neglect of people with disability. The group, which comprised over 40 disability leaders and subject matter experts, including representatives from the NSWPF, FACS, NDS, non-government disability accommodation providers, advocates, clinicians, and legal and justice representatives – met once this year.

The working group discussed key issues from the NSW disability reportable incidents scheme, the work underway to establish the national scheme, ways in which the NDIS Commission can meaningfully engage with people with disability, and how disability providers can try to meet the likely challenges of the national scheme.

While we have now concluded the Best Practice Working Group in light of the transition to the NDIS Commission, it proved to be a highly valuable forum for obtaining feedback and guidance on the operation of the scheme, gaining advice on relevant leading research, and canvassing broader issues relating to the experience of people with disability.

Responding to the alleged abuse and neglect of adults with disability in community settings

Since July 2016, our office has had a standing inquiry into allegations of abuse and neglect of adults with disability in the community – such as the family home. We started the inquiry because there is currently no agency in NSW with the powers to investigate allegations that do not reach a criminal threshold. We are notified of these matters via an arrangement with the National Disability Abuse and Neglect Hotline, as well as contact from disability providers and members of the community.

In 2017–18, we received concerns about 105 matters. In 81 of these matters, the allegations did not relate to service providers. Instead, the alleged abuse and neglect involved family members or other people in the community. In the other 24 cases, there were also concerns about the conduct of a disability provider – such as a failure to adequately respond to signs of abuse.

Case studies 73 and 74 provide examples of the matters relating to the alleged abuse and neglect of adults with disability in community settings.

Case study 73. Responding to alleged neglect at home

We were contacted by the NDIS support coordinator of a young man with disability who lived at home with his parent. The support coordinator had concerns about the young man's safety and wellbeing in the care of his parent, and that these concerns were shared by the man's day program provider. The concerns included that:

- there were signs of neglect – including that the young man did not shower or change his clothes, had lost weight and did not appear to be eating properly, and had health conditions that were not being treated
- he did not have access to his own money
- he was prevented from accessing his psychiatrist because the parent disagreed with the specialist's opinion
- he appeared to be overmedicated
- there was domestic violence in the home between the parent and their partner.

We reviewed intelligence in child protection and police databases, which identified multiple previous reports of domestic violence and physical harm. We also made inquiries with the disability support services.

The support coordinator told us that she would be submitting an application to the NCAT for the appointment of an independent guardian for the young man. The day program provider indicated that they would provide information in support of the application. We monitored the actions of the involved agencies in response to the concerns.

The support coordinator arranged for a case manager to work with the parent – to see if the young man's circumstances could be improved without the need for guardianship. However, the situation became worse and the young man started to become violent with others, which was atypical behaviour for him. A respite provider also raised concerns about the adequacy of the young man's care.

The support coordinator therefore submitted a guardianship application. We liaised with police about them releasing information to NCAT to inform its decisions. Under subpoena, police provided NCAT with relevant information about the historical and recent domestic violence. NCAT then appointed the Public Guardian to make substitute decisions for the young man in areas such as services and health care. In light of the concerns about the man's finances, NCAT also set a hearing for financial management in six months – indicating that during that period the parent needed to open a bank account for the young man, and provide records demonstrating appropriate financial management.

Case study 74. Addressing concerns about safety and support

We were contacted by a member of the community, raising concerns about the circumstances of an NDIS participant with intellectual and physical disability who was living in the care of his grandmother and her husband. The informant told us that the young man was exposed to drug use and violence in the home, with no means of protecting himself.

We obtained information from police and child protection databases, and through inquiries with current and previous services that were involved with the young man. This information identified:

- significant domestic violence in the home, and concerns about drug and alcohol use
- previous concerns about financial abuse of the young man, which had resulted in a financial management order
- reports that he was being neglected, and having limited access to the community
- concerns that his views were not being considered and he had not been involved in the NDIS planning process
- concerns that the grandmother had previously removed him from supported accommodation with a disability service where he was reported to have been happy and well supported.

When the NDIS support coordinator asked questions about the young man's circumstances, the family changed NDIS providers – so the support coordinator raised concerns with the NDIA. We made inquiries with the NDIA and regularly liaised with the involved providers to monitor the actions they were taking to address their combined concerns. The NDIA reviewed the young man's NDIS plan, and included additional funds to move him to supported accommodation and provide a motorised wheelchair to help with his mobility and community access.

The young man subsequently moved to supported accommodation, started attending a day program, and obtained his motorised wheelchair and occupational therapy assessments and support. We stopped monitoring this matter once we were confident that the young man's support and safety issues had been addressed, and that the new support coordinator would take appropriate actions – such as a guardianship application – if the problems recurred.

Providing safeguards for vulnerable adults

The need for a public advocate or representative

Last year, we provided a briefing paper to the DPC and FACS on the work we have been doing as part of our standing inquiry into the abuse and neglect of adults with disability in community settings, and proposed the establishment of a NSW Public Advocate.

We emphasised the important need for a Public Advocate (or equivalent) to investigate allegations of abuse, neglect and exploitation of vulnerable adults – including adults with disability and older people – and to take the lead in facilitating and coordinating the response to safeguard individuals. We noted that establishing a Public Advocate is consistent with recommendations from NSW and national inquiries into elder abuse, and our March 2016 submission to the NSWLRC review of the *Guardianship Act 1987*.

In February 2018, we made a submission to the NSWLRC on the draft proposals from their review. We supported their proposal to establish a NSW Public Advocate – with the critical ability to investigate

allegations and to take timely and collaborative action to safeguard individuals at risk. In particular, we welcomed the proposed inclusion of powers to enable the Public Advocate to have direct access to the person at risk, to be able to require the provision of information from individuals and agencies, to have access to police and child protection databases, and to exchange information with other relevant agencies. However, we have also stressed that:

- It will be important to ensure that the Public Advocate (or Public Representative) is able to exchange information with non-government bodies in relation to the safety of people with impaired decision-making ability.
- We support a single agency having the investigative and case management functions for vulnerable adults in the community. However, if the proposed single agency is not genuinely independent (with associated reporting to Parliament), the functions should be split – with the investigative functions separate from the case management work. In our view, the investigative functions must be in an independent agency.

The final report from the NSWLRC's review was tabled in Parliament on 15 August 2018. In our view, the recommendations address the key current gaps that exist in relation to this work.

We have continued to have discussions with DPC about our work under the standing inquiry, and the need for a framework to be put in place to address these issues in NSW on an ongoing basis. In response to a request from DPC, we have agreed to continue our standing inquiry until July 2019, to minimise the risks to individuals while a longer-term option is canvassed and established. In this regard, we note that during the next year, the NSW Government will be considering and responding to the recommendations from the NSWLRC's review report.

Seclusion, restraint and observation of people with mental illness in NSW Health facilities

In September 2017, we made a submission to the Ministry of Health's review of seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities. We highlighted the need for:

- An integrated and user-friendly approach to safeguards in the mental health sector, with clear connections between complaints and actions to address systems and systemic issues.
- A consistent approach to the regulation of restrictive practices.
- Concerted and ongoing efforts to maximise the ability of consumers to be able to speak up about abuse and other unacceptable circumstances in relation to their care, and for reports and disclosures to be heard and acted on.
- Specific consideration of people with disability – including intellectual disability – in health policy and data collection.

Reducing the contact of people with disability with the criminal justice system

In June 2017, we released a Joint Protocol for disability providers and police to reduce the unnecessary contact of people with disability in supported accommodation with police and the criminal justice system. We have undertaken a range of actions this year to promote and monitor the implementation of this protocol.

Statewide Steering Committee

We established a SSC, comprising representatives of 27 agencies, including the NSWPF, FACS, non-government disability accommodation providers, the NDIA, and other key government and non-government agencies. The committee met on three occasions in 2017–18.

Holding regional forums with senior police and disability providers

At the time we released the protocol, we surveyed disability accommodation providers and found that only 13% had an identified police officer as a contact in their local area. We therefore held four regional forums this year with over 500 senior police and representatives of disability accommodation providers to help the parties develop relationships and improve communication. The forums were held in Dubbo (Western Region), Sydney (North West and Central Metropolitan Regions), Merewether (Northern Region), and Campbelltown (South West Metropolitan and Southern Regions).

In addition to identifying key contacts in police commands and disability services, the forums have resulted in a range of agreed actions by the parties at a local level on how they will implement the protocol. To assist with this, we have given each police command the details of all disability accommodation providers and residences in their area – including the contact details of the identified liaison officers. We have been monitoring progress in implementing the agreed actions.

Developing training resources

We have developed and released two animated video training resources for disability support workers and their managers. The short videos are designed to help staff to quickly understand the protocol and their responsibilities. We released the videos in March 2018 and – by the end of June – they had received over 3,000 views on our YouTube channel.

To increase awareness and understanding of the protocol by police officers, the NSWPF developed and delivered a Six Minute Intensive Training Scenario. They have also been using our video training resources.

Analysing data on incidents involving contact with police

To monitor the implementation of the protocol, we required disability accommodation providers to notify us of any incidents in which police were called in response to the behaviour or conduct of a resident between 1 September 2017 and 30 June 2018.

We took a closer look at a sample of matters each month – including information in police databases – to examine the circumstances that led to police involvement, opportunities for prevention, the police response, and actions to minimise recurrence. We assessed that, in around one quarter of the selected sample of matters, it was not evident that police contact was warranted – including matters where police were contacted with the aim of sending a message to the client, the incident involved verbal threats only, and/or staff were contacting police to comply with the provider's operating procedures.

Our analysis of the notified incidents also identified a number of broader issues. These included:

- The prevalence of contact with police for clients who are absent from the accommodation – either leaving without staff support, or not returning at the agreed time.
- The use of AVOs against clients to protect staff members, and subsequent breaches of the AVOs due to the involved staff continuing to work directly with the client.
- Staff calling police in response to lower-level behaviours between clients, without having a discussion with either client.

We are doing further analysis of the data and will continue to publish the information in our Disability e-news which is available on our website.

Rights Project for People with Disability

As reported above, we completed our Rights Project for People with Disability this year. In previous annual reports, we provided details on the work done in each reporting period. The following is our report card on the project, highlighting the extensive consultation and stakeholder engagement undertaken as well as the training and other resources that were developed and delivered.

- Established a Joint Advisory Committee in 2015 – with three other FACS-funded rights projects for people with disability to ensure that all four projects were complementary, well-targeted and informed.
- Developed and delivered 116 free Speak Up training workshops to almost 1,500 people with disability and support staff – these workshops encourage people with disability to speak up and develop the skills needed to do so. The majority of the workshops were held outside Sydney. This year we also delivered three 'train the trainer' Speak Up workshops in Queensland.
- Hosted three Disability Expert Forums in 2016 and 2017 – focused on identifying good practice rights-based initiatives and resources for people with disability, and two targeted consultations with people with intellectual disability, and people with psychosocial disability. After the first forum in 2016, we distributed a list of over 100 Australian and international resources that focus on the capacity of people with disability to realise their rights, with a particular emphasis on people with complex needs and marginalised groups.
- Published and distributed a video and tip sheet in 2016 – to help agencies improve the accessibility of their complaint handling systems. The video, My right to be heard, features five people with disability who provide personal insights and illustrate the importance of being heard. It includes a strong message from the and Community and Disability Services Commissioner about the obligation of all agencies and their staff to take an inclusive and flexible approach to complaint handling. The fact sheet, Tips for accessible complaint handling, provides practical guidance to complaint handlers about making it easier for people with disability to complain and receive a quality response.
- Partnered with the NDS Zero Tolerance project to develop and produce short training videos for staff in disability services about responding to abuse – in 2016, we also arranged for NDS to present an overview of its Zero Tolerance training to representatives from the Disability Council, the Commonwealth Ombudsman, the NSWPF and service providers. Participants committed to promoting the training package with service providers to help frontline staff identify possible abuse and neglect of people with disability using support services.

Completing our rights project

This year saw the completion of our three-year Rights Project for People with Disability. In 2015, FACS funded us to undertake the project to promote the rights of people with disability ahead of the full rollout of the NDIS in NSW. The project focused on three main areas. They were:

- Helping people with disability to understand and exercise their rights in the transition to the NDIS.
- Promoting accessible complaint systems and practices among NSW Government agencies and disability service providers.
- Strengthening systems to prevent, identify and respond to the abuse, neglect and exploitation of people with disability.

- Co-hosted a forum about preventing the abuse and neglect of people with disability – in collaboration with the NDS, the NSW Council for Intellectual Disability, and the VALID.
- Convened three provider roundtables – to promote improved practice in preventing and responding to abuse and neglect involving people with disability in supported group accommodation. These 2016 roundtables facilitated the sharing of information on good practice and shared challenges.
- Developed a guide for complaint handling staff and investigators in disability services – about obtaining best evidence from people with cognitive impairment, particularly those who are the subject of, or witnesses to, alleged abuse. The guide was developed in collaboration with Professor Penny Cooper and includes advice about removing interview barriers by making reasonable adjustments, interview planning and questioning techniques, the impact of trauma on communication, and the role of intermediaries.
- Developed a training course for frontline staff of disability services – to help them to appropriately respond to abuse and neglect at an early stage.
- Developed a training course for disability services on investigating serious incidents in the disability sector – the course provides practical advice for investigators on issues such as gathering and weighing evidence, key considerations when interviewing vulnerable witnesses, managing parties to an investigation and making findings.
- Contributed to NDIS Commission resources for participants and providers – by providing extensive feedback to the DSS about draft materials. We also provided advice for the proposal to develop a National Symbol for Speaking Up – to enable people with disability to have a common way of signifying that they want to speak up about something of concern to them.
- Sponsored three self-advocates and people with disability to attend the VALID 'Having a Say' Conference in Victoria – Robert Strike, Leigh Creighton and Tara Elliffe gave a presentation at the VALID conference, the largest national gathering of people with intellectual disability, along with Disability Rights project leader, Christine Regan.
- Engaged with disability advocacy organisations and other stakeholders about the impending start of the NDIS Commission – we delivered 12 presentations, reaching almost 400 people. We also spoke about the achievements and observations of the Rights Project for People with Disability to more than 100 representatives of advocacy organisations from across Australia at a forum hosted by the DSS.

Monitoring actions to improve behaviour management in schools

Last year, we reported on our special report to Parliament in August 2017 about our inquiry into behaviour management in schools. As our report was published at the same time as the NSW Parliament was conducting an inquiry into the provision of education to students with disability or special needs in schools in NSW, our findings were framed as 'proposals for reform' rather than final recommendations.

This year, we proposed that the Secretary Department of Education establish a standing committee – including families, advocates and key agencies – to help monitor the work being done by the department to address the issues raise in both inquiries. We argued that it was critical for the department to have an open and transparent process for responding to the most significant issues raised by both inquiries. We suggested that the standing committee could focus on particularly vulnerable cohorts of children – including certain children with disability, vulnerable children in OOHC, and those staying in youth refuges – noting the significant overlap in the issues facing each of these groups.

In September 2017, the Parliamentary Committee issued its final report, which included the recommendation that the NSW Government should urgently implement our 39 proposals. In March 2018, the NSW Government responded to the Parliamentary Inquiry – providing 'in principle' support for their recommendation – and indicating that they were reviewing our report and considering our proposals. The government's response stated that the department would do further work to build the capacity of schools to respond to the learning and support needs of students with complex or challenging behaviours. This work would focus on developing a new framework for policy and practice, building the capability of teachers and specialist education staff through professional learning and support, and improving the use of data.

Since then, the department has started work to develop a new strategy for improving educational outcomes for students with disability and their families. In partnership with the Australian Centre for Social Innovation, they have held a series of work-shops with key stakeholders and have also consulted separately with our office. We have used this process as an opportunity to reiterate the key messages from our inquiry – in particular, the need for:

- More rigorous monitoring and reporting of the compliance of schools with policy and practice requirements.
- Enhanced professional learning for educators and improved access for schools to expertise in meeting complex learning/behaviour needs.
- A stronger focus by the department on early dispute resolution, and monitoring complaint trends and outcomes.

We note that there are considerable challenges for the department in settling what should be the priorities, strategies and desired outcomes in improving outcomes for students with disability – particularly against the background of the large number of recommendations in both the Legislative Council inquiry report and our earlier report. Consistent with our proposal for a standing committee, it will be important for the department to work in an open and transparent manner with independent experts and other key stakeholders on how best to respond to these critical challenges.

We welcome the investment the department has made in enhancing staff skills in relation to complaint handling. However, given the sensitive nature of many of these matters, there remains a need to bring in independent third parties with specialist skills in dispute resolution.

Our senior staff presented the findings of our inquiry to the Association of Psychologists in Developmental Disability Services conference in November 2017, and the Legal Aid NSW civil law conference in June 2018.

Providing input for best practice guide

This year we were part of a reference group for, and provided input into, a FACS-funded project managed by the Chair of Intellectual Disability Behaviour Support at the University of NSW, A/Professor Leanne Dowse. The project involved developing two evidence-based practice guides on preventing and reducing challenging behaviour for use by practitioners working with children and young people. One guide was for early childhood intervention 0–8 years, and the other one for children and young people 9–18 years.

Reviewing HSC disability provisions

Disability provisions are practical arrangements designed to help students who could not otherwise make a fair attempt to show what they know in the exam room. The provisions are granted by the NESA solely on the basis of how the student's exam performance would be affected.

In May 2013, we tabled a report to Parliament after an investigation into HSC disability provisions. Since then, we have continued to receive complaints and concerns about the provisions, particularly during our behaviour management inquiry, which is discussed above. For example, we have handled a number of matters where schools have made specific provisions for students (such as the use of computers) for school based assessments that were subsequently not approved by NESA for HSC exams. Parents and advocates have argued that this apparent lack of alignment has resulted in the students in question being disadvantaged.

Questions have also been raised about the fairness of current processes – such as NESA not making publicly available the benchmarks it uses to make a decision about whether a student is eligible for disability provisions.

In April this year we met with NESA to discuss the ongoing concerns raised with our office. NESA advised us that it had recently engaged an independent consultant to undertake a comprehensive review of the implementation of the HSC disability provisions with a view to enhance their effectiveness, and that review would examine, among other issues, the type of concerns raised with our office. We understand the review has been completed and that the findings and recommendations are under consideration. We will closely examine the outcomes of the review to determine any further action on our part.

Examining the transfer of ADHC accommodation to the non-government sector

The NSW Government is in the process of transferring specialist disability services operated by ADHC – including accommodation and respite services – to non-government providers. This year, with funding from FACS, we started a project to look at the transfer process for people with disability in ADHC accommodation who have complex support needs.

The aim of the project is to identify at an early point any significant issues that may affect clients, and provide oversight and advice to address these issues during the transfer process. To help with the project, we established a reference group – made up of representatives from FACS, DPC, Health, Justice, the Intellectual Disability Rights Service (IDRS), NSW Council for Intellectual Disability (CID), People with Disability Australia (PWDA), and the Public Guardian. The reference group met on three occasions in 2017–18.

The project covers a selection of ADHC residences accommodating people with disability and complex support needs, and includes:

- visiting the residences before transfer to review records and talk with staff and clients
- obtaining input from guardians, families and other supporters, and OCVs
- raising with FACS ahead of transfer any identified issues about individual clients and the broader transfer process, and tracking the actions that are taken on these issues
- discussing the transfer process with the involved NGOs, and visiting the residences post-transfer.

Some of the consistent issues that we identified concern the importance of:

- having early and continued contact between the relevant NGO and clients/families and staff
- minimising the impact of transfer on the operations of the residence that is being transferred, particularly in the provision of support to clients
- ensuring that client-related documentation is accurate and complete ahead of transfer
- making sure that there are strong and effective links to accessible, appropriate and responsive health supports for clients ahead of transfer.

The project was initially scheduled to be completed at the end of June 2018. However, as the transfer of some of the selected accommodation services is not yet completed, the project has been extended until the end of September 2018. We will issue a report on the project in 2018–19.

Protecting residents of long-term supported group accommodation

This year we made a submission to the NSW Government's consultations on Protections for Residents of Long Term Supported Accommodation in NSW. We suggested options for:

- strengthening protections for residents with disability against unfair evictions
- reducing the risk that residents may be unfairly charged for the cost of property damage in particular circumstances
- ensuring that residents have access to independent decision supports to help them to make informed decisions about whether to enter into accommodation agreements.

Safeguards and the NDIS

On 1 July 2018, the NDIS Commission started in NSW and South Australia, and many of our functions relating to oversighting services and supports for people with disability moved to the NDIS Commission. Over the past year, we did significant work to help with developing the NDIS Quality and Safeguarding Framework and establishing the NDIS Commission – as part of supporting the transition of our functions.

Ombudsman
New South Wales

Changes to safeguarding arrangements in relation to the NDIS in NSW

The NDIS Quality and Safeguards Commission starts in NSW and SA on 1 July 2018. From that date, some of the NSW Ombudsman's functions in relation to services and supports for people with disability will move to the NDIS Commission.

Complaints about NDIS providers

The NSW Ombudsman currently handles complaints about registered and unregistered NDIS providers. From 1 July, the NDIS Commission will take over this function. From Monday 2 July, any person who wishes to make a complaint or raise concerns about an NDIS provider should contact the NDIS Commission.

Where people contact us to make a complaint about an NDIS provider after 1 July, we will provide the relevant contact details for the NDIS Commission. However, the Commission and the Ombudsman's office will work together to make sure there is 'no wrong door' for making a complaint. Where appropriate, we will provide assistance to the complainant to complain to the NDIS Commission, such as through making a 'warm referral' (where we provide the key details to the Commission on the complainant's behalf, with their consent).

The NSW Ombudsman will continue to handle and seek to resolve any complaints that we received before the start of the NDIS Commission. Depending on the matter, we may provide information to the Commission to inform its work with NDIS providers – for example, where the matter raises significant quality issues.

Complaints about NSW community services

Under the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the Ombudsman's office will continue to handle complaints about other community services – including services operated, funded or licensed by the Department of Family and Community Services.

Reportable incidents

The NSW Ombudsman currently operates the Disability Reportable Incidents scheme, which requires FACS and funded providers to notify our office of certain allegations involving people with disability living in supported group accommodation.

From 1 July 2018, registered providers in NSW and SA will be required to notify the NDIS Commission of the following incidents

6/2018

NDIS Fact Sheet 3

Changes to safeguarding arrangements for the NDIS in NSW

In June 2018, we issued a factsheet on *Changes to safeguarding arrangements in relation to the NDIS in NSW*, to provide guidance on the Ombudsman's functions in relation to people with disability before and after the start of the NDIS Commission. In particular, the guidance makes it clear that:

- From 1 July 2018, the NDIS Commission has primary responsibility for handling complaints and receiving notifications of reportable incidents involving NDIS providers.
- The Ombudsman's office will continue to handle and finalise our existing matters involving NDIS providers.
- We continue to have jurisdiction over services operated, funded or licensed by FACS – including FACS-operated disability accommodation and assisted boarding houses.
- There is no change to our work coordinating the OCV scheme, our operation of the 'child related' reportable conduct scheme, or our standing inquiry into the abuse and neglect of adults with disability in community settings.
- We will work with the NDIS Commission to ensure there is 'no wrong door' for making a complaint.
- We will continue to review the deaths of people with disability in residential care.

Ahead of the start of the NDIS Commission, the NSW Minister for Disability Services and the Commonwealth Minister for Social Services extended an existing arrangement to continue the Ombudsman's jurisdiction over NDIS providers until 1 July 2019. This arrangement provides for the definition of 'service provider' under CS-CRAMA to continue to include 'a person or organisation who provides supports to a NSW NDIS participant where that person or organisation is authorised or funded as part of a participant's plan'. It enables our office to complete matters that we already have in train, and to continue important functions for next year – such as the operation of the OCV scheme for disability providers, our standing inquiry into the abuse, neglect and exploitation of vulnerable adults, and reviews of the deaths of people with disability.

We are working with the NDIS Commission on robust operational arrangements to ensure that we minimise any duplication of effort for any individual matter.

Supporting the transition to the NDIS Commission

In 2017–18, we continued to provide substantial information and guidance to the NSW and Commonwealth Governments about the establishment of the NDIS Commission and the intended operation of its functions. This included:

- Attending a national workshop and providing detailed briefings and input on developing the rules and guidance on handling complaints about NDIS providers, and the national reportable incidents scheme – including the deaths of people with disability.
- Sharing information and knowledge about our data holdings and systems on reportable incidents, complaints and deaths, the volume of matters received, and feedback about proposed information systems.
- Providing detailed information on staffing numbers, roles and grades to inform the set-up of the NDIS Commission.

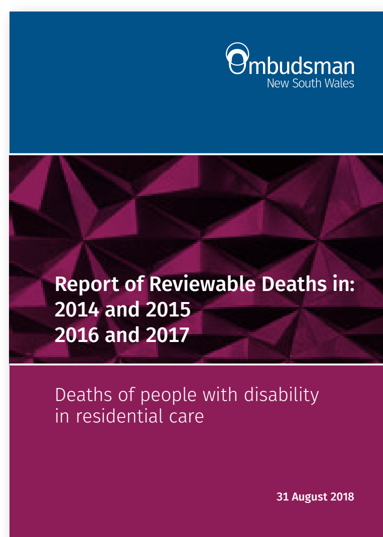
In early November 2017, with funding from FACS, we established a joint project team with the DSS to support the effective transition to the NDIS Commission. Our work included:

- Providing advice and feedback on developing NDIS Commission legislation and rules – including about handling complaints about NDIS providers, behaviour support, reportable incidents, information sharing, the NDIS code of conduct, and the NDIS practice standards.

- Developing guidelines and related resources for NDIS providers about their obligations – including for reportable incidents, complaints and procedural fairness.
- Preparing complaint handling guidelines for the NDIS Commission – in partnership with the Victorian Office of the Disability Services Commissioner.
- Providing feedback on draft promotional materials about the NDIS Commission's functions, and customising existing Ombudsman products for it to use.
- Providing feedback on proposed communications with people with disability and their families about the NDIS Commission and its functions.

We stressed that direct engagement with providers and people with disability was a priority – to maximise their awareness of the changes coming with the start of the NDIS Commission.

We also liaised with the NDIS Commissioner, the Complaints Commissioner and the Registrar on a number of transitional issues before the Commission assumed its functions.



Reducing preventable deaths of people with disability in residential care

Under CS-CRAMA, we review the death of any person living in, or temporarily absent from, residential care provided by a service provider or an assisted boarding house. This includes the deaths of NDIS participants living in residential care. We focus on identifying issues that may contribute to deaths or that may affect the safety and wellbeing of people with disability in residential care, and make recommendations aimed at helping to reduce preventable deaths.

In 2017–18, we prepared our report to Parliament on the reviewable deaths of people with disability in residential care that occurred over two biennial periods – 236 people who died in 2014 and 2015, and 258 people who died in 2016 and 2017.

Our reviews of preventable deaths in 2014–17 also highlighted the need for concerted action to:

- Identify illness or injury and take action to obtain urgent medical assistance without delay.
- Provide an effective first aid response.
- Identify and effectively manage breathing, swallowing and choking risks.
- Improve access to preventive health services and supports, particularly for smoking, obesity and other lifestyle risks.
- Provide behaviour and other support to help to minimise aversion and resistance to health services and treatment.
- Improve support and coordination of care in hospital.

Our report was tabled in Parliament in August 2018, and includes seven recommendations to NSW Health.

This year, ahead of the start of the NDIS Commission, we held discussions with the Commissioner, about the jurisdiction of our respective agencies for the deaths of people with disability in residential care.

The arrangement between the NSW and Commonwealth Ministers will ensure that the deaths of these individuals continue to be examined, with an ongoing focus on preventing or reducing avoidable deaths. The arrangements and joint approach between our office and the NDIS Commission in relation to the deaths of people with disability in residential care will enable both:

- the NDIS Commission to examine the actions of registered NDIS providers
- the NSW Ombudsman to examine the intersection with, and actions of, NSW service systems – such as health, justice and other services.

We consider that the arrangements in NSW during 2018–19 may also provide a template for other jurisdictions to consider, and potentially lead to a national approach to reviewing the deaths of people with disability and identifying strategies for reducing preventable deaths.

Coordinating the Official Community Visitor scheme

The Ombudsman has a general oversight and coordination role for the OCV scheme and we support OCVs on a day-to-day basis. Our work includes operating and administering the scheme, providing information and advice to OCVs, allocating services and setting priorities for visits to meet the needs of residents, supporting OCVs to respond to concerns about residents, and identifying and addressing issues that require a complaint or other action.

This year, our OCV team's activities included:

- Recruiting and inducting 12 new OCVs to the scheme.
- Supporting OCVs to conduct 3,018 visits to disability supported accommodation, residential OOHC and assisted boarding houses across the state – and to raise 4,926 issues (new and carried over from the previous year).
- Organising and running a two-day OCV annual conference – with presentations on the NDIS Commission and the NDIA, the new model of Intensive Therapeutic Care for residential OOHC providers, disability advocacy issues, and the personal experiences of young people living in residential OOHC.
- Facilitating regular meetings between OCVs and the Ministers responsible for the scheme, and our office.

In February 2018, the OCV annual report for 2016–17 was tabled in Parliament. It includes detailed information about the work of OCVs, personal accounts by residents and OCVs, and practical case studies of issues and outcomes facilitated by OCVs.

At present, the NDIS Quality and Safeguarding Framework does not include a community visitor scheme. A multilateral review of existing community visitor schemes for people with disability is expected to be done in 2018, and it will examine the intersection of the schemes with the NDIS. The outcomes of this review will inform the future operation of the NSW OCV scheme for people with disability. This year, we provided feedback on the proposed terms of reference and methodology of the review – informed by our ongoing liaison with the operators of the community visitor schemes in Victoria, Queensland and South Australia.

Table 85: Issues reported by OCVs by service type, 2017-2018

Service type	Total no of visitable services	No of issues identified	Average issues reported per service
Disability supported accommodation	1,660	3584	2.2
Residential OOHC	297	1272	4.3
Assisted boarding houses	18**	70	3.9
Total	**1,975**	**4926***	**2.5**

* This figure includes new issues and issues carried over from 2016-2017
** includes the 5 licences that Melrose Boarding house holds, so you could say practically that there are only 15 assisted boarding houses in operation

Table 86: Number of services allocated for visiting – three year comparison

Service type	No of services allocated	Total no of services (registered on OCV Online)	% visitable services allocated
2015-2016	1,298	1,625	80
2016-2017	1,356	1,729	78
2017-2018	1,492	1,975	75.5

Appendices and references

In this Part, we provide information to comply with statutory reporting obligations around diversity, access to information and public sector finances.

We also provide an index and glossary to assist the reader to easily access and better understand the information in the report that is important to them.

Appendix A – Financials

INDEPENDENT AUDITOR'S REPORT

Ombudsman's Office

To Members of the New South Wales Parliament

Opinion

I have audited the accompanying financial statements of the Ombudsman's Office, which comprise the Statement of Comprehensive Income for the year ended 30 June 2018, the Statement of Financial Position as at 30 June 2018, the Statement of Changes in Equity and the Statement of Cash Flows for the year then ended, notes comprising a Statement of Significant Accounting Policies and other explanatory information.

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Ombudsman's Office as at 30 June 2018, and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards
- are in accordance with section 45E of the *Public Finance and Audit Act 1983* (PF&A Act) and the Public Finance and Audit Regulation 2015

My opinion should be read in conjunction with the rest of this report.

Basis for Opinion

I conducted my audit in accordance with Australian Auditing Standards. My responsibilities under the standards are described in the 'Auditor's Responsibilities for the Audit of the Financial Statements' section of my report.

I am independent of the Ombudsman's Office in accordance with the requirements of the:

- Australian Auditing Standards
- Accounting Professional and Ethical Standards Board's APES 110 'Code of Ethics for Professional Accountants' (APES 110).

I have fulfilled my other ethical responsibilities in accordance with APES 110.

Parliament promotes independence by ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their roles by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies
- precluding the Auditor-General from providing non-audit services.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

The Ombudsman's Responsibility for the Financial Statements

The Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards and the PF&A Act, and for such internal control as the Ombudsman determines is necessary to enable the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Ombudsman is responsible for assessing the Ombudsman's Office's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting except where the Ombudsman Office will be dissolved by an Act of Parliament or otherwise cease operations.

Auditor's Responsibilities for the Audit of the Financial Statements

My objectives are to:

- obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error
- issue an Independent Auditor's Report including my opinion.

Reasonable assurance is a high level of assurance, but does not guarantee an audit conducted in accordance with Australian Auditing Standards will always detect material misstatements. Misstatements can arise from fraud or error. Misstatements are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions users take based on the financial statements.

A description of my responsibilities for the audit of the financial statements is located at the Auditing and Assurance Standards Board website at: www.auasb.gov.au/auditors_responsibilities/ar4.pdf. The description forms part of my auditor's report.

My opinion does not provide assurance:

- that the Ombudsman's Office carried out its activities effectively, efficiently and economically
- about the assumptions used in formulating the budget figures disclosed in the financial statements
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about any other information which may have been hyperlinked to/from the financial statements.

Dominika Ryan
Director, Financial Audit Services

27 August 2018
SYDNEY

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24 August 2018

Statement by the Ombudsman

Pursuant to section 45F of the *Public Finance and Audit Act 1983* and to the best of my knowledge and belief I state that:

(a) the accompanying financial statements have been prepared in accordance with the provisions of the Australian Accounting Standards (which include Australian Accounting Interpretations), the requirements of the *Public Finance and Audit Act 1983*, the Public Finance and Audit Regulation 2015 and financial reporting directions mandated by the Treasurer.

(b) the statements exhibit a true and fair view of the financial position of the Ombudsman's Office as at 30 June 2018, and the financial performance for the year then ended; and

(c) there are no known circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

Michael Barnes
Ombudsman

Ombudsman's Office

Statement of comprehensive income for the year ended 30 June 2018

	Notes	Actual 2018 $'000	Budget 2018 $'000	Actual 2017 $'000
Expenses				
Employee related expenses	2(a)	27,303	30,923	27,868
Operating expenses	2(b)	5,826	4,438	5,818
Depreciation and amortisation	2(c)	1,470	1,964	906
Total Expenses		**34,599**	**37,325**	**34,592**
Revenue				
Appropriations	3(a)	29,657	34,255	28,885
Sale of goods and services	3(b)	1,070	1,041	1,036
Grants and contributions	3(c)	5,340	1,399	4,024
Acceptance by the Crown Entity of employee benefits and other liabilities	3(d)	1,334	1,048	377
Other income	3(e)	40	16	97
Total Revenue		**37,441**	**37,759**	**34,419**
Gain/(loss) on disposal	4	**(20)**	**–**	**(10)**
Net result		**2,822**	**434**	**(183)**
Other comprehensive income				
Total other comprehensive income		–	–	–
Total comprehensive income		**2,822**	**434**	**(183)**

The accompanying notes form part of these financial statements.

Ombudsman's Office

Statement of financial position as at 30 June 2018

	Notes	Actual 2018 $'000	Budget 2018 $'000	Actual 2017 $'000
Assets				
Current Assets				
Cash and cash equivalents	6	3,109	2,498	1,187
Receivables	7	1,392	971	2,125
Total Current Assets		**4,501**	**3,469**	**3,312**
Non-Current Assets				
Plant and equipment	8	2,745	2,888	1,595
Intangible assets	9	865	746	854
Total Non-Current Assets		**3,610**	**3,634**	**2,449**
Total Assets		**8,111**	**7,103**	**5,761**
Liabilities				
Current Liabilities				
Payables	10	592	330	533
Provisions	11	2,586	2,705	2,466
Other current liabilities	12	1,638	1,608	2,359
Total Current Liabilities		**4,816**	**4,643**	**5,358**
Non-Current Liabilities				
Provisions	11	737	751	727
Total Non-Current Liabilities		**737**	**751**	**727**
Total Liabilities		**5,553**	**5,394**	**6,085**
Net Assets/(Liabilities)		**2,558**	**1,709**	**(324)**
Equity				
Accumulated funds		2,558	1,709	(324)
Total Equity		**2,558**	**1,709**	**(324)**

The accompanying notes form part of these financial statements

Ombudsman's Office

Statement of changes in equity for the year ended 30 June 2018

	Notes	Accumulated funds 2018 $'000	Accumulated funds 2017 $'000
Balance at 1 July		(324)	(141)
Net result for the year		2,822	(183)
Total comprehensive income for the year		**2,498**	**(324)**
Transaction with owners in their capacity as owners			
Increase/(decrease) in net assets from equity transfer	19	**60**	**–**
Balance at 30 June		**2,558**	**(324)**

The accompanying notes form part of these financial statements.

Ombudsman's Office

Statement of cash flows for the year ended 30 June 2018

	Notes	Actual 2018 $'000	Budget 2018 $'000	Actual 2017 $'000
Cash flows from operating activities				
Payments				
Employee related		(25,773)	(29,864)	(27,532)
Other		(8,211)	(4,508)	(7,384)
Total Payments		**(33,984)**	**(34,372)**	**(34,916)**
Receipts				
Appropriations		29,657	34,255	28,885
Sale of goods and services		1,070	1,041	1,036
Grants and contributions		5,340	1,399	4,024
Other		2,490	334	1,119
Total Receipts		**38,557**	**37,029**	**35,064**
Net cash flows from operating activities	14	**4,573**	**2,657**	**148**
Cash flows from investing activities				
Purchases of plant and equipment		(2,386)	(2,962)	(202)
Purchase of intangible assets		(265)	(190)	(110)
Net cash flows from investing activities		**(2,651)**	**(3,152)**	**(312)**
Net increase/(decrease) in cash		**1,922**	**(495)**	**(164)**
Opening cash and cash equivalents		1,187	2,993	1,351
Closing cash and cash equivalents	6	**3,109**	**2,498**	**1,187**

The accompanying notes form part of these financial statements.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2018

1 Summary of Significant Accounting Policies

(a) Reporting entity

The Ombudsman's Office (Office) is a NSW government entity. Our role is to make sure that public and private sector agencies and employees within our jurisdiction fulfill their functions properly. We help agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration. We are independent of the government and agencies and non-government organisations that we oversight.

The Office is a not-for-profit entity (as profit is not its principal objective) and we have no major cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts.

The financial statements for the year ended 30 June 2018 have been authorised for issue by the Ombudsman on 24 August 2018.

(b) Basis of preparation

Our financial statements are general purpose financial statements, which have been prepared on an accrual basis in accordance with:

- applicable Australian Accounting Standards (which include Australian Accounting Interpretations);
- the requirements of the *Public Finance and Audit Act 1983* and the Public Finance and Audit Regulation 2015; and the financial reporting directions mandated by the Treasurer

Plant and equipment are measured at fair value. Other financial statements items are prepared in accordance with the historical cost convention.

Judgements, key assumptions and estimations that management has made are disclosed in the relevant notes to the financial statements.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency. Except when an Accounting Standard permits or requires otherwise, comparative information is disclosed in respect of the previous period for all amounts reported in the financial statements.

(c) Statement of Compliance

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

(d) Insurance

Our insurance activities are conducted through the NSW Treasury Managed Fund (the Fund), the self insurance fund NSW government agencies. The expense (premium) is determined by the Fund manager, and is calculated by our past claims experience, overall public sector experience and ongoing actuarial advice.

(e) Accounting for the Goods and Services Tax (GST)

Income, expenses and assets are recognised net of GST, except that:

- the amount of GST incurred by us as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of the acquisition of an asset or as part of an item of expense, and
- receivables and payables are stated with GST included.

Cash flows are included in the statement of cash flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which is recoverable from, or payable to, the Australian Taxation Office are classified as operating cash flows.

(f) Revenue recognition and measurement

Income is measured at the fair value of the consideration or contribution received or receivable. Additional comments regarding the accounting policies for the recognition of income are discussed below.

(i) Parliamentary appropriations and contributions

Except as specified below, parliamentary appropriations and contributions from other bodies (including grants) are recognised as income when the entity obtains control over the assets comprising the appropriations/contributions. Control over appropriations and contributions is normally obtained upon the receipt of cash. Appropriations are not recognised as income in the following circumstance:

- Unspent appropriations are recognised as liabilities rather than income, as the authority to spend the money lapses and the unspent amount must be repaid to the Consolidated Fund. The liability is disclosed in Note 12 as part of 'Current liabilities - other'. The amount will be repaid and the liability will be extinguished next financial year.

(ii) Rendering of services

Revenue from the rendering of services such as conducting training programs, is recognised when the service is provided.

(iii) Grants and other contributions

Income from grants (other than contributions by owners) is recognised when the entity obtains control over the contribution. The entity is deemed to have assumed control when the grant is received or receivable. Contributions are recognised at their fair value. Contributions of services are recognised when and only when a fair value of those services can be reliably determined and the services would be purchased if not donated.

(g) Assets

(i) Acquisitions of assets

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by us.

Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Fair value is the price that would be received to sell an asset in an orderly transaction between market participants at measurement date.

Assets acquired at no cost, or for nominal consideration, are initially recognised at their fair value at the date of acquisition.

Where payment for an asset is deferred beyond normal credit terms, its cost is the cash price equivalent; i.e. deferred payment amount is effectively discounted over the period of credit.

(ii) Capitalisation thresholds

Individual plant and equipment and intangible assets costing $5,000 and above are capitalised. All items that form part of our IT network, such as software and hardware, are capitalised regardless of the cost.

(iii) Impairment of plant and equipment

As a not-for-profit entity with no cash generating units, impairment under AASB 136 Impairment of Assets is unlikely to arise. As plant and equipment is carried at fair value, impairment can only arise in the rare circumstances where the costs of disposal are material. Specifically, impairment is unlikely for not-for-profit entities given that AASB 136 modifies the recoverable amount test for non-cash generating assets of not-for-profit entities to the higher of fair value less costs of disposal and depreciated replacement cost, where depreciated replacement cost is also fair value.

(iv) Depreciation of plant and equipment

Depreciation is provided for on a straight-line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life.

All material separately identifiable components of assets are depreciated over their shorter useful lives.

Depreciation rates used:

- Plant and equipment — 20%-25% (2018) and 20%-25% (2017)
- Furniture & fittings — 10% (2018) and 10% (2017)
- Leasehold improvements — Useful life of 10 years or to the end of the lease, if shorter.

(v) Restoration costs

The present value of the expected cost for the restoration or cost of dismantling of an asset after its use is included in the cost of the respective asset if the recognition criteria for a provision are met.

(vi) Maintenance

The costs of day-to-day servicing or maintenance are charged as expenses as incurred, except where they relate to the replacement of a part or component of an asset, in which case the costs are capitalised and depreciated.

(vii) Leased assets

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased assets, and operating leases under which the lessor does not transfer substantially all the risks and rewards. Operating lease payments are recognised as an expense on a straight-line basis over the lease term.

(viii) Intangible assets

We recognise intangible assets only if it is probable that future economic benefits will flow to the Office and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition.

The useful life of intangible assets are assessed to be finite.

Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for our intangible assets, they are carried at cost less any accumulated amortisation.

Our intangible assets are amortised using the straight-line method over a period of five to ten years. The amortisation rates used for computer software is 10% to 20%.

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than its carrying amount, the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss.

(ix) Receivables

Receivables, including trade receivables and prepayments are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Receivables are initially recognised at fair value plus any directly attributable transaction costs.

Subsequent measurement is at amortised cost using the effective interest method, less an allowance for any impairment of receivables. Any changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process.

Short-term receivables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(x) Revaluation of plant and equipment

We value our physical non-current assets in accordance with the *Valuation of Physical Non-Current Assets at Fair Value* Policy and Guidelines Paper (TPP 14-01). This policy adopts fair value in accordance with AASB13 Fair Value Measurement, AASB 116 *Property, Plant and Equipment* and AASB 140 Investment Property.

Non-specialised assets with short useful lives are measured at depreciated historical cost as an approximation of fair value. The entity has assessed that any difference between fair value and depreciated historical cost is unlikely to be material.

(xi) Fair value hierarchy

A number of the entity's accounting policies and disclosures require the measurement of fair values, for both financial and non-financial assets and liabilities.

The Office is using depreciated historical cost to measure plant and equipment as it presents an approximation of fair value of plant and equipment.

(h) Liabilities

(i) Payables

These amounts represent liabilities for goods and services provided to us as well as other amounts. Payables are financial liabilities at amortised cost, initially measured at fair value, net of directly attributable transaction costs. Subsequent measurement is at amortised cost using the effective interest method. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(ii) Employee benefits and related on costs

(a) Salaries and wages, annual leave, sick leave

Salaries and wages (including non-monetary benefits) and paid sick leave that are expected to be settled wholly within 12 months after the end of the period in which the employees render the service are recognised and measured at the undiscounted amounts of the benefits.

Annual leave that is not expected to be settled wholly before twelve months after the end of the annual reporting period in which the employees render the related service is required to be measured at present value in accordance with AASB 119 Employee Benefits (although short-cut methods are permitted). Actuarial advice

obtained by Treasury has confirmed that the use of a nominal approach plus the annual leave on annual leave liability (using 7.9% of the nominal value of annual leave (7.9% 2017) can be used to approximate the present value of the annual leave liability. We have assessed the actuarial advice based on our circumstances and have determined that the effect of discounting is immaterial to annual leave liability.

Unused non-vesting sick leave does not give rise to a liability as it is not considered probable that sick leave taken in the future will be greater than the benefits accrued in the future.

(b) Long service leave and superannuation

Our liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. We account for the liability as having been extinguished, resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown Entity of employee benefits and other liabilities'.

Long service leave is measured at the present value of expected future payments to be made in respect of services provided up to the reporting date. Consideration is given to certain factors based on actuarial review, including expected future wage and salary levels, experience of employee departures, and periods of service. Expected future payments are discounted using Commonwealth government bond rate at the reporting date.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for defined contribution superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employee's salary. For defined benefit superannuation schemes (State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employee's superannuation contributions.

(c) Consequential on-costs

Consequential costs to employment are recognised as liabiilties and expenses where the employee benefits to which they relate have been recognised. This includes outstanding amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax.

(iii) Other Provisions

Provisions are recognised when: the entity has a present legal or constructive obligation as a result of a past event; it is probable that an outflow of resources will be required to settle the obligation; and a reliable estimate can be made of the amount of the obligation. The present value of the expected cost for the restoration or cost of dismantling of an asset after its use is included in the cost of the respective asset if the recognition criteria for a provision are met. If the effect of the time value of money is material, provisions are discounted at 3% (2017: 2.75%), which is a pre-tax rate that reflects the current market assessments of the time value of money and the risks specific to the liability. When discounting is used, the increase in the provision due to the passage of time (i.e. unwinding of discount rate) is recognised as a finance cost.

(i) Equity

The category accumulated funds includes all current and prior period retained funds.

(j) Budgeted amounts

The budgeted amounts are drawn from the original budgeted financial statement presented to Parliament in respect of the reporting period. Subsequent amendments to the original budget (e.g. adjustment for transfer of functions between entities as a result of Administrative Arrangement Orders) are not reflected in the budgeted amounts. Major variances between the original budgeted amounts and the actual amounts disclosed in the primary financial statements is explained in Note 15.

(k) Changes in accounting policy, including new or revised Australian Accounting Standards

(i) Effective for the first time in 2017-2018

The accounting policies applied in 2017-2018 are consistent with those of the previous financial year.

(ii) Issued but not yet effective

NSW public sector entities are not permitted to early adopt new Australian Accounting Standards unless NSW Treasury determines otherwise. The following new Accounting Standards which are applicable to the office, have not yet been applied and are not yet effective.

- AASB 9 Financial Instruments
- AASB 15, AASB 2014-5, AASB 2015-8 and 2016-3, regarding Revenue from Contracts with Customers
- AASB 16 Leases
- AASB 17 Insurance Contracts
- AASB 1058 Income of Not-for-profit Entities

- AASB 2016-6 Amendments to Australian Accounting Standards – Applying AASB 9 with AASB 4 Insurance Contracts
- AASB 2016-7 Amendments to Australian Accounting Standards – Deferral of AASB 15 for Not-for-Profit Entities
- AASB 2016-8 Amendments to Australian Accounting Standards – Australian Implementation Guidance for Not-for-Profit Entities
- AASB 2017-3 Amendments to Australian Accounting Standards – Clarifications to AASB 4
- AASB2017-6 Amendments to Australian Accounting Standards – Prepayment Features with Negative Compensation

(iii) The impact of the new standard

AASB 16 will require lessees to account for practically all leases (including operating leases greater than 12 months) under a single on-balance sheet model in a similar way to finance leases under AASB 117 Leases. At the commencement of a lease, a lessee will recognise a liability representing its obligation to make future lease payments and an asset representing its right of use to the underlying asset for the lease term. Lessees will be required to separately recognise interest expense on the lease liability and depreciation expense on the Right of Use asset rather than operating lease expense.

The Office has two motor vehicles and office accommodation under lease arrangements. The impact is estimated to be around $0.8 million in the Statement of Financial Position, which represents the operating lease commitments as at 1 July 2019. However, if a decision is made to exercise our option under the accommodation lease, this figure will be $17.5 million, based on expected rent and associated payments.

(l) Equity Transfers

The transfer of net assets between entities as a result of an administrative restructure, transfers of programs/functions and parts thereof between NSW public sector entities and 'equity appropriations' are to be treated as contributions by owners and recognised as an adjustment to 'Accumulated Funds'. This treatment is consistent with AASB 1004 *Contributions and Australian Interpretation 1038 Contributions by Owners Made to Wholly-Owned Public Sector Entities.*

Transfers arising from an administrative restructure involving not-for-profit entities and for-profit entities are recognised at the amount at which the assets and liabilities were recognised by the transferor or immediately prior to the restructure. Subject to the following paragraph, in most instances this will approximate fair value.

All other equity transfers are recognised at fair value, except for intangibles. Where an intangible has been recognised at (amortised) cost by the transferor because there is no active market, the entity recognises the asset at the transferor's carrying amount. Where the transferor is prohibited from recognising internally generated intangibles, the entity does not recognise that asset.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2018

		2018 $'000	2017 $'000
2	**Expenses**		
(a)	**Employee related expenses**		
	Salaries and wages (including annual leave)*	22,177	22,667
	Superannuation - defined benefit plans	214	280
	Superannuation - defined contribution plans	1,757	1,695
	Long service leave	1,108	81
	Workers' compensation insurance	69	77
	Payroll tax and fringe benefit tax	1,367	1,395
	Redundancy	611	1,673
		27,303	**27,868**
(b)	**Operating expenses include the following:**		
	Auditor's remuneration - audit of the financial statements	33	33
	Operating lease rental expense - minimum lease payments	2,055	2,221
	Insurance	26	23
	Fees	890	1,063
	Telephones	135	102
	Stores	194	170
	Training	425	325
	Printing	43	61
	Travel	468	488
	Consultants	154	215
	Other contractors	604	489
	Unwinding of discount on provisions	1	–
	Maintenance - non-employee related*	381	308
	Other	417	320
		5,826	**5,818**
	* Reconciliation - Total maintenance		
	Maintenance expenses - contracted labour and other	381	308
	Employee related maintenance expense included in Note 2(a)	80	78
	Total maintenance expenses included in Notes 2(a) and 2(b)	**461**	**386**
(c)	**Depreciation and amortisation expense**		
	Depreciation		
	Plant and equipment	169	143
	Leasehold Improvements	1,050	518
	Furniture and Fittings	16	20
	Total depreciation expense	**1,235**	**681**
	Amortisation		
	Software	235	225
	Total amortisation expense	**235**	**225**
	Total depreciation and amortisation expenses	**1,470**	**906**

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2018

3 Revenue

	2018 $'000		2017 $'000	
Summary of Compliance	Appropriation	Expenditure	Appropriation	Expenditure
(a) Appropriations and Transfers to the Crown Entity				
Original Budget per Appropriation Act	34,255	33,367	31,050	28,885
Other Appropriations/Expenditure - Section 24 PFAA - transfers of functions between entities	(3,710)	(3,710)	–	–
Total Appropriations Expenditure/ Net Claim on Consolidated Fund	**30,545**	**29,657**	**31,050**	**28,885**
Appropriation drawn down		29,657		28,885
Liability to Consolidated Fund		–		–
Appropriations				
Recurrent	28,636	27,884	29,625	28,573
Capital	1,909	1,773	1,425	312
	30,545	**29,657**	**31,050**	**28,885**

	2018 $'000	2017 $'000
(b) Sale of goods and services		
Rendering of services	1,070	1,036
	1,070	**1,036**
(c) Grants and contributions		
Crown Entity funded redundancies	418	114
Operation Prospect - Grant from the Department of Premier and Cabinet	–	302
Disability Reportable Incidents - Grant from Department of Family & Community Services	3,869	1,648
Managing unreasonable complaint conduct practice manual - Grant from Ombudsman of other states	26	–
Joint Investigation Response Team (JIRT) Review - Grant from JIRT agencies	–	192
Disability Rights Project - Joint Advisory Committee cost share from project partners	7	–
Complex Needs Project - Grant from Department of Family & Community Services	593	–
National Disability Insurance Scheme - Grant from Department of Family & Community Services	427	–
Police Division Redundancies – Grant from the Department of Premier and Cabinet	–	1,768
	5,340	**4,024**
(d) Acceptance by the Crown Entity of employee benefits and other liabilities		
The following liabilities and/or expenses have been assumed by the Crown Entity:		
• Superannuation - defined benefit	214	280
• Long service leave provision	1,108	81
• Payroll tax on superannuation	12	16
	1,334	**377**

The significant movement in long service leave is the result of an actuarial review.

	2018 $'000	2017 $'000
(e) Other income		
Miscellaneous	40	97
	40	**97**
4 Gain/(loss) on disposal		
Gain/(loss) on disposal of plant and equipment	(20)	(10)
	(20)	**(10)**

5 Service groups of the entity

The Ombudsman's Office operates under one service group - the independent resolution, investigation or oversight of complaints and notifications made by the public about agencies within the jurisdiction of the Ombudsman and the scrutiny of complaint handling and other systems of those agencies. The Ombudsman's police and compliance roles, which formed part of this service group, were transferred to other agencies from 1 July 2017. See note 19.

6 Current assets – cash and cash equivalents

	2018 $'000	2017 $'000
Cash at bank and on hand	3,109	1,187
	3,109	**1,187**

For the purposes of the statement of cash flows, cash and cash equivalents include cash at bank and on hand.

Cash and cash equivalent assets recognised in the statement of financial position are reconciled at the end of the year to the statement of cash flows as follows:

	2018 $'000	2017 $'000
• Cash and cash equivalents (per statement of financial position)	3,109	1,187
• Closing cash and cash equivalents (per statement of cash flows).	**3,109**	**1,187**

Refer Note 17 for details regarding credit risk, liquidity risk and market risk arising from financial instruments.

7 Current assets – receivables

	2018 $'000	2017 $'000
Long service leave refundable	167	25
Workshops and other	53	66
GST receivable	84	103
Prepayments	709	645
Lease incentive receivable	379	1,286
	1,392	**2,125**

Refer to Note 17 for further information regarding credit risk, liquidity risk and market risk arising from financial instruments.

8 Non-current assets – plant and equipment

	Plant and equipment $'000	Leasehold improvements $'000	Furniture and fittings $'000	Total $'000
At 1 July 2017 - fair value				
Gross carrying amount	1,030	3,634	315	4,979
Accumulated depreciation	(846)	(2,305)	(233)	(3,384)
Net carrying amount	**184**	**1,329**	**82**	**1,595**
At 30 June 2018 - fair value				
Gross carrying amount	1,490	5,055	390	6,935
Accumulated depreciation	(904)	(3,074)	(212)	(4,190)
Net carrying amount	**586**	**1,981**	**178**	**2,745**

Reconciliation

A reconciliation of the carrying amount of each class of assets at the beginning of and end of reporting period is set out below:

	Plant and equipment $'000	Leasehold improvements $'000	Furniture and fittings $'000	Total $'000
Year ended 30 June 2018				
Net carrying amount at start of year	184	1,329	82	1,595
Additions	571	1,703	112	2,386
Write-off on disposal	–	(1)	–	(1)
Depreciation expense	(169)	(1,050)	(16)	(1,235)
Net carrying amount at end of year	**586**	**1,981**	**178**	**2,745**

	Plant and equipment $'000	Leasehold improvements $'000	Furniture and fittings $'000	Total $'000
At 1 July 2016 - fair value				
Gross carrying amount	1,103	3,515	320	4,938
Accumulated depreciation	(780)	(1,856)	(218)	(2,854)
Net carrying amount	**323**	**1,659**	**102**	**2,084**
At 30 June 2017 - fair value				
Gross carrying amount	1,030	3,634	315	4,979
Accumulated depreciation	(846)	(2,305)	(233)	(3,384)
Net carrying amount	**184**	**1,329**	**82**	**1,595**

Reconciliation

A reconciliation of the carrying amount of each class of assets at the beginning of and end of reporting period is set out below:

	Plant and equipment $'000	Leasehold improvements $'000	Furniture and fittings $'000	Total $'000
Year ended 30 June 2017				
Net carrying amount at start of year	323	1,659	102	2,084
Additions	14	188	–	202
Write-off on disposal	(10)	–	–	(10)
Depreciation expense	(143)	(518)	(20)	(681)
Net carrying amount at end of year	**184**	**1,329**	**82**	**1,595**

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2018

9 Non-current assets – intangible assets

	1 July 2016 $'000	30 June 2017 $'000	1 July 2017 $'000	30 June 2018 $'000
Software				
Gross carrying amount	2,292	2,393	2,393	2,467
Accumulated amortisation	(1,323)	(1,539)	(1,539)	(1,602)
Net carrying amount	**969**	**854**	**854**	**865**

Reconciliation

A reconciliation of the carrying amount of each class of assets at the beginning and end of the reporting period is set out below:

	2018 $'000	2017 $'000
Net carrying amount at start of year	854	969
Write-off on disposal	(19)	–
Additions	265	110
Amortisation expense	(235)	(225)
Net carrying amount at end of year	**865**	**854**

All intangibles were acquired separately and there are no internally developed intangible assets.

10 Current liabilities – payables

	2018 $'000	2017 $'000
Accrued salaries, wages and on-costs	158	90
Creditors	434	443
	592	**533**

Refer Note 17 for details regarding credit risk, liquidity risk and market risk arising from financial instruments

11 Current/non-current liabilities – provisions

	2018 $'000	2017 $'000
Current provisions		
Annual leave	1,388	1,361
Annual leave loading	248	241
Provision for related on-costs on annual leave	184	192
Provision for related on-costs on long service leave	766	672
Total current provisions	**2,586**	**2,466**
Non-current provisions		
Provision for related on-costs on long service leave	67	58
Provision for make-good	670	669
Total non-current provisions	**737**	**727**
Reconciliation – make good		
Carrying amount at the beginning of financial year	669	669
Unwinded/change in discount rate	1	–
Carrying amount at the end of financial year	**670**	**669**

The provision for make good is a non-current liability and was recognised for the estimate of future payments for make good upon termination of the current accommodation lease. The five year lease started in October 2014.

	2018 $'000	2017 $'000
Aggregate employee benefits and related on-costs		
Provisions - current	2,586	2,466
Provisions - non-current	67	58
Accrued salaries, wages and on-costs (Note 10)	158	90
	2,811	**2,614**

The value of annual leave and associated on-costs expected to be taken within 12 months is $1.820 million (2017: $1.794 million). The Office has a proactive annual leave management program, whereby all staff are encouraged to take their full entitlement each year.

The value of long service leave on-costs expected to be settled within 12 months is $83,304 (2017: $73,000) and $749,740 (2017: $657,000) after 12 months.

12 Current liabilities – other

	2018 $'000	2017 $'000
Current		
Unearned revenue	52	13
Lease Incentive Liability	1,586	2,346
	1,638	**2,359**

The lease incentive liability is amortised using the straight-line method over the period of the useful life of leasehold improvement assets acquired through the lease incentives.

In 2017-2018, the lease incentive liability was reduced by $0.76 million due to depreciation on lease incentive assets.

13 Commitments for expenditure

	2018 $'000	2017 $'000
Operating lease commitments		
Entity as lessee		
Future minimum rentals payable under non-cancellable operating lease as at 30 June are, as follows:		
Within one year	3,566	3,335
Later than one year and not later than five years	876	4,155
Total (including GST)	**4,442**	**7,490**

The total operating lease commitments include GST input tax credits of $0.404 million (2017: $0.681 million) which are expected to be recoverable from the Australian Taxation Office.

The current five year accommodation lease was negotiated and signed by the then Government Property NSW commenced in October 2014.

14 Reconciliation of cash flows from operating activities to net result

	2018 $'000	2017 $'000
Net cash used on operating activities	4,573	148
Depreciation and amortisation	(1,470)	(906)
Decrease/(increase) in provisions	(130)	128
Increase/(decrease) in prepayments	64	129
Decrease/(increase) in payables	(59)	(176)
Increase/(decrease) in receivables	(797)	(79)
Decrease/(increase) in other liabilities	721	583
Net gain/(loss) on disposal of assets	(20)	(10)
Decrease/(increase) in net asset from equity transfer	(60)	–
Net result	**(2,822)**	**(183)**

15 Budget review

Net result

In August 2017, as part of government's decision to transfer our police function to the newly created Law Enforcement Conduct Commission (LECC), the Treasurer approved a Section 24 transfer of funding from the Ombudsman to the LECC and to the Department of Premier and Cabinet (DPC) on behalf of the Office of the Inspector of the LECC. This transfer did not change the budget figures used in our financial statements so it appears that at year end we had underspent our appropriation, when compared to budget. Linked to this transfer is a reduction in our Net Cost of Services (NCS) of $3.845 million, which consists of $3.8 million in employee related expenses, $35,000 in operating expenses, and $10,000 in depreciation expenses for asset transfers. Our Crown revenue reduced by $3.835 million, which consist of $3.71 million recurrent funding and $125,000 in Crown acceptance of certain employee entitlements.

Our Grant revenue was higher than budget by $3.942 million. Over half of the additional funding was to support our disability reportable incident function, including $1.55 million for the 2018-2019 financial year. Other projects funded through Grants include the Ombudsman providing additional assurance in the transfer of Family and Community Service clients with complex requirements; working with the Commonwealth Department of Social Services to develop resources, processes and other systems for the new Quality and Safeguards Commission; and paying redundancies, which were funded from the Crown Entity.

Although we budgeted $1.048 million for employee entitlements accepted by the Crown Entity, which is a non-cash revenue item, the annual actuarial review by Treasury of our long service leave liability required us to increase this liability. We therefore had $286,000 more revenue recorded for our Crown Entity acceptance item than what we had budgeted. Overall, our total revenue was $318,000 less than budget.

Our total expenses were $2.726 million less than budget for a range of reasons including the transfer of funding to the LECC and DPC mentioned above. We transferred some of our employee related budget to other operating expenses, which allowed us to engage contractors and consultants to support our core work. For example, we engaged external experts to undertake specialised research to underpin the work of the office including the work for the Child Death Review Team and engaged expert advice to support our investigative work. Depreciation expenses were $494,000 lower than budget.

We made a number of requests totalling $2.825 million to carry forward unspent funds to 2018-2019 including the Grant funding provided in 2017-2018 but for the following financial year. Our requests were approved.

Assets and liabilities

Overall, our net assets were $849,000 higher than budget. We had $611,000 more cash than expected, particularly as we had received Grants funding for 2018-2019. Our current assets were higher than budget, due to the lease incentive receivable ($379,000) still being outstanding. Our non-current assets were slightly lower than expected.

Total liabilities were $159,000 higher than budget due to accrued creditor payment increasing.

Cash flows

Our net cash flow from operating activities was $1.916 million higher than budget. Receipts were $1.528 million higher than expected due to revenue received in advance for the disability reportable incident function. We discuss the reasons for the change in the Net Result section above. Our net cash flow from investing activities was $0.5 million less than budget as we deferred our lease incentive capital program to the 2018-2019 financial year.

16 Related Party Disclosure

There were two key management personnel (KMP) in the Office during the year - the Ombudsman and the Acting Ombudsman. Compensation for these KMP is as follows:

	2018 $'000	2017 $'000
Short-term employee benefits:		
Salaries	539	461
Other monetary allowances	–	4
Non-monetary allowances	–	4
Long-term employee benefits:		
Post-employment benefits	45	–
Other long term benefits	47	–
Termination benefits	–	–
Total Remuneration	**631**	**469**

We did not enter into transactions with close family members or entities controlled or jointly controlled by our KMP.

During the year, we entered into transactions on arm's length terms and conditions with other entities controlled by NSW Government. These transactions include:

- Payments into the icare TMF Scheme
- Long Service Leave and Defined Benefit Superannuation assumed by the Crown
- Appropriations (and subsequent adjustments to appropriations)
- Transactions relating to the Treasury Banking System
- Payment for the audit of our financial statements
- Receipts from the provision of training and related services
- Grants and contributions related to funding specific programs and projects.

17 Financial instruments

The Office's principal financial instruments are outlined below. These financial instruments arise directly from the Office's operations and are required to finance our operations. The Office does not enter into or trade financial instruments, including derivative financial instruments, for speculative purposes.

Our main risks arising from financial instruments are outlined below, together with the Office's objectives, policies and processes measuring and managing risk. Further quantitative and qualitative disclosures are included throughout these financial statements. The Ombudsman has overall responsibility for the establishment and oversight of risk management and reviews and approves policies for managing these risks. The Audit and Risk Committee (ARC) has been established to provide advice to the Ombudsman. The ARC does not have executive powers. Risk management policies are established to identify and analyse the risks faced by the Office, to set risk limits and controls and to monitor risks. Compliance with policies is reviewed by the Audit and Risk Committee on a regular basis.

(a) Financial instrument categories

Class	Note	Category	Carrying Amount 2018 $'000	Carrying Amount 2017 $'000
Financial assets				
Cash and cash equivalents	6	N/A	3,109	1,187
Receivables[1]	7	Receivables (at amortised cost)	599	1,377
Financial Liabilities				
Payables[2]	10	Financial liabilities measured at amortised cost	592	533

Notes

[1] Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7).
[2] Excludes statutory payables and unearned revenue (i.e. not within scope of AASB 7).

(b) Credit risk

Credit risk arises when there is the possibility of our debtors defaulting on their contractual obligations, resulting in a financial loss to the Office. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for impairment). Credit risk is managed through the selection of counterparties and establishing minimum credit rating standards. Credit risk arises from the financial assets of the Office, including cash, receivables and authority deposits. No collateral is held by the Office and the Office has not granted any financial guarantees.

Cash

Cash comprises cash on hand and bank balances within the Treasury Banking System.

Receivables – trade debtors

The only financial assets that are past due or impaired are 'sales of goods and services' in the 'receivables' category of the statement of financial position. All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. An allowance for impairment is raised when there is objective evidence that we will not be able to collect all amounts due. This evidence includes past experience, and current and expected changes in economic conditions and debtor credit ratings. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand. No interest is earned on trade debtors. The carrying amount approximates fair value. Sales are made on 14-day terms. The Office is not exposed to concentration of credit risk to a single debtor or group of debtors.

	2018 $'000	2017 $'000
Neither Past due nor impaired	6	8
Past due but not impaired		
< 3 months overdue	47	52
3 months - 6 months overdue	–	6
> 6 months overdue	–	–
	53	**66**
impaired		
< 3 months overdue	–	–
3 months - 6 months overdue	–	–
> 6 months overdue	–	–
	–	–
Total receivables - gross of allowance for impairment	**53**	**66**

* Each column in the table reports 'gross receivables'. The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7. Therefore, the 'total' will not reconcile to the receivables total recognised in the statement of financial position.

(c) Liquidity risk

Liquidity risk is the risk that the Office will be unable to meet its payment obligations when they fall due. We continuously manage risk through monitoring future cash flows to ensure adequate holding of high quality liquid assets. During the current and prior year, there were no defaults of loans payable. No assets have been pledged as collateral. The entity's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk.

Bank overdraft

The Office does not have any bank overdraft facility. During the current and prior years, there were no defaults or breaches on any loans payable.

Trade creditors and accruals

The liabilities are recognised for amounts due to be paid in the future for goods and services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in NSW Treasury Circular 11/12. For small business suppliers, if trade terms are not specified, payment is made not later than 30 days from date of receipt of a correctly rendered invoice. For other suppliers, if trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received. For small business suppliers, where payment is not made within the specified time period, simple interest must be paid automatically unless an existing contract specifies otherwise. For payments to other suppliers, the Head of an authority (or a person appointed by the Head of an authority) may automatically pay the supplier simple interest. The Office did not pay any penalty interest during the financial year.

The table below summarises the maturity profile of our financial liabilities.

		Interest rate exposure			Maturity dates		
Payables	**Nominal amount# $'000**	**Fixed interest rate**	**Variable interest rate**	**Non-interest bearing**	**< 1 yr**	**1–5 yrs**	**5 yrs**
2018							
Accrued salaries, wages and on-costs	158	–	–	158	158	–	–
Creditors	434	–	–	434	434	–	–
Total	**592**	**–**	**–**	**592**	**592**	**–**	**–**
2017							
Accrued salaries, wages and on-costs	90	–	–	90	90	–	–
Creditors	443	–	–	443	443	–	–
Total	**533**	**–**	**–**	**533**	**533**	**–**	**–**

The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities based on the earlier date on which the Office can be required to pay. The tables include both interest and principal cash flows and therefore will not reconcile to the statement of financial position.

(d) Market risk

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. Our exposure to market risk are primarily through interest rate risk. The Office has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on profit and equity due to a reasonably possible change in risk variable is outlined in the information below for interest rate risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Office operates and the time frame for the assessment (i.e. until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the statement of financial position reporting date. The analysis is performed on the same basis as for 2017. The analysis assumes that all other variables remain constant.

	–1%		+1%	
	Net Result $'000	**Equity $'000**	**Net Result $'000**	**Equity $'000**
2018				
Financial assets				
Cash and cash equivalents	(31)	(31)	31	31
2017				
Financial assets				
Cash and cash equivalents	(12)	(12)	12	12

(e) Fair value measurement

Financial instruments are generally recognised at cost. The amortised cost of financial instruments recognised in the statement of financial position approximates their fair value, largely due to the short-term maturities of these instruments.

18 Contingent liabilities and Contingent assets

There are no contingent assets or liabilities for the year ended 30 June 2018 (2017: nil).

19 Equity Transfer

In 2015 the Government announced its intention to establish a single civilian oversight agency for the NSW Police Force and the NSW Crime Commission. The new agency, the Law Enforcement Conduct Commission (LECC), commenced operations on 1 July 2017. It replaced the Police Integrity Commission and the police complaints division of the Ombudsman's Office. The Ombudsman's law enforcement related compliance work was transferred to the Office of the Inspector of the LECC, also from 1 July 2017.

Funding was transferred to the LECC ($3.455 million) and to the Department of Premier and Cabinet (DPC) (for the Office of the Inspector of the LECC) ($0.255 million) under Section 24 of the Public Finance and Audit Act in October 2017.

In addition to the transfer of funding, adjustments were made to equity when we transferred net assets, reducing our leave liabilities provision for staff transferred to LECC ($43,000) and DPC ($17,000) and increased equity by $60,000.

20 Events after the reporting period

There were no events after the reporting period 30 June 2018 (2017: refer to note 19).

End of the audited financial statements

Appendix B – Access and equity programs

It is important that we are accessible to all members of the NSW community, especially those who are disadvantaged or experiencing hardship. We are committed to raising awareness of our office by participating in community events, visiting community groups to talk about our work, and ensuring that information about our services is readily available in an accessible form.

This year, we reviewed and updated our access and equity policy which sets out the framework for a range of access and equity programs including our Disability Inclusion Action plan (DIAP), Multicultural Policies and Services Program (MPSP) Action plan, Aboriginal policy and Carers recognition policy.

All agencies are required to report on their DIAP, MPSP and Carers recognition activities. Our report follows. More details including case studies are in the 'What we do', and 'Connecting with the community' and 'Sharing our knowledge and expertise' sections of this report.

Disability inclusion action plan

Focus area 1: Developing positive community attitudes and behaviours

Strategies

- effective disability inclusion policy and strategies in place
- improved employee awareness and acceptance of the rights of people with disability, and improved inclusive practices
- improved community awareness and acceptance of the rights of people with disability, and improved inclusive practices.

2017–18 report on activities

- reviewed our access and equity and reasonable adjustment policies
- conducted disability awareness training as part of our mandatory induction training program
- participated in campaigns such IDPwD to raise staff awareness of the rights and achievements of people with disability
- through our complaint handling and project work, identified and addressed barriers to services provided by the agencies we oversight including supporting and assisting newly registered NDIS providers understand quality standards and practice improvement; and monitoring and promoting the implementation of the joint protocol to reduce the contact of people with disability in supported accommodation with the criminal justice system
- through our community education and training activities delivered training to the public sector, non-government organisations and users of community services, specifically training on:
  - disability awareness
  - effective complaint management for disability sector
  - responding to serious incidents in the disability sector
  - the rights stuff (for users of support services)
  - Speak Up! Workshops for people with disability to speak up when something is not right
- through our Rights Project for People with Disability (DRP), promoted and upheld the rights of people with disability, particularly those with complex support needs and provide training and resources to enable the rights of people with disability within agencies and the community
- participated in state and national discussions about the NDIS, the implementation of the National Quality and Safeguards Framework and responses to serious abuse and neglect.

Focus area 2: Creating liveable communities

Strategies

- our office building and any offsite venues we use are accessible to people with disability
- our information is accessible to people with disability
- our workplace is safe and accessible to all staff
- improved services to people with disability by the government and non-government agencies we oversight.

2017–18 report on activities

- accessibility was considered in our ongoing office refurbishment program
- accessibility was considered when offsite venues for outreach and other activities are booked
- website accessibility standards are implemented
- a project to redevelop our website commenced – with improved functionality a priority
- information resources produced in alternate formats for people with disability, taking into consideration the special needs of multiple disadvantaged groups such as Aboriginal people and young people with disability

- promoted and provided reasonable adjustments to staff with disability, ensuring that all staff enjoy a safe and accessible work place
- conducted regular workstation inspections to ensure that our staff enjoy ergonomically safe and sound work environment and reviewed and promoted personal emergency evacuation plans
- promoted a workplace free of bullying and discrimination including conducting training for managers and supervisors
- through our public administration complaint handling activities, continued our work with public sector agencies to improve their services to people with disability including the provision of social housing
- through our community services complaint handling and oversight activities:
  - continued our work with the Department of Family and Community Services and non-government organisations to improve services and outcomes for people with disability, specific details and case studies are in our annual report
  - dealt with a range of complaints that raised concerns about the actions of some newly registered NDIS providers, supporting providers to understand quality standards and improve practice
  - provided relevant information to the NDIA to inform its actions, including its fraud investigation and registration functions.
- through our monitoring, review and project work:
  - identified and addressed systemic issues relating to the needs of people with disability, and facilitated agencies to improve their services – for example, we promoted and monitored the implementation of the Joint Protocol to reduce the contact of people with disability in supported accommodation with the criminal justice system
  - continued our standing inquiry into allegations of abuse and neglect of adults with disability in the community – such as the family home – receiving allegations of abuse and neglect involving family members or other people in the community.
- through our handling of disability reportable incident notifications, highlighted the need for information exchange provisions to enable providers to share information relevant to the safety of their clients particularly in regards to an NDIS worker screening system
- through the Official Community Visitor (OCV) program:
  - inspected visitable services
  - talked to residents about issues of concern.

Focus area 3: Supporting access to meaningful employment

Strategies

- improved recruitment experience for people with disability
- increased opportunities for people with disability to join our office
- staff with disability are supported and have the same opportunity in training and career advance.

2017–18 report on activities

- our reasonable adjustment policy is promoted to job applicants and adjustments are made during interviews if required
- we used the special arrangements for the employment of people with disability under the Government Sector Employment Act
- implemented reasonable adjustments so that appropriate alterations to job roles and/or work spaces are made to support our staff with disability to perform their duties in an inclusive and accessible workplace
- provided disability awareness and other relevant training to all staff to ensure that they understand the rights and needs of people with disability in the workplace
- with 10.4% of staff identifying as having a disability, we exceed the NSW Government benchmark of 5.6% for employment of people with disability.

Focus area 4: Improving access to mainstream services through better systems and processes

Strategies

- improved policy and guidelines that underpin our commitments to people with disability
- improved accessibility of our services for people with disability
- people with disability are able to access mainstream services and make informed choices

2017–18 report on activities

- reviewed access and equity and reasonable adjustment policies
- our commitment to people with disability was promoted both internally and externally
- continued to improve our website to ensure that it is accessible and easy to navigate for people with disability

- developed targeted accessible information for people with disability, for example, easy English version of fact sheets and information in video format
- all our published reports and other resources are in accessible PDF format
- through our complaint handling work we identified issues relating to service provisions to people with disability, and facilitated agencies to address these issues – specific details including case studies are in our annual report
- through our monitoring, reviewing and project work, identified and addressed systemic issues relating to the needs of people with disability, and facilitated agencies to improve their services – for example:
  - following a report to Parliament about behaviour management in schools, we gave evidence to a Parliamentary Inquiry and are working with the Department of Education to progress this matter.

Looking forward

- following a period of change, we will review and update our DIAP to ensure it aligns with our new strategic direction and changed working environment
- we will ensure that we met accessibility standards with the redevelopment of our website
- we will refresh our internal consultation forum
- we will continue to provide our range of training courses to agencies
- we will continue to identify and address issues relating to service provision to people with disability.

Multicultural policies and services program (MPSP)

Service delivery

- we have procedures in place for using translation and interpreting services and all our frontline inquiry staff are trained to use these services
- we allocated funds for interpreting and translation services
- three staff received the CLAS allowance, and collectively they provided language assistance in four community languages
- we provided language assistance to our clients on 92 occasions in 24 community languages
- we provide a range of information in community languages including information about our services in 26 community languages
- our 'making a complaint to the Ombudsman' brochure is available in 48 community languages
- everything we produce in community languages is checked by community readers for language and cultural appropriateness
- we have developed easy English information material to explain our role in community services, the NDIS and complaint handling for people whose first language is not English
- our community language information is in accessible PDF format and available for downloading on our website
- we distributed information and spoke to community members at a range of community events
- we train all new staff on cross cultural awareness and competence as part of our formal induction training for all new staff.

Planning

- our MPSP 2015–19 is outcome focused with strategies and actions to ensure our services are accessible and appropriate for culturally, linguistically and religiously diverse people
- strategies to address issues relevant to culturally, linguistically and religiously diverse people are linked to our corporate plan and relevant business plans
- we report on the implementation of our diversity programs, including our MPSP
- where available, we use statistical information obtained from our contacts with clients to inform our MPSP and business planning processes
- we have a MPSP advisory committee, to provide advice and support and to monitor the implementation of our MPSP
- we keep a register of our use of interpreting and translation services to inform our decision-making in developing community language information.

Leadership

- our MPSP is approved by the Ombudsman
- the Assistant Ombudsman (Corporate) is the lead officer for our MPSP and holds overall responsibility for developing and implementing our plan
- our MPSP assigns responsibilities to relevant staff.

Engagement

- we liaised with multicultural groups to promote our services to people from culturally, linguistically and religiously diverse backgrounds, and to identify gaps in our awareness strategies and service delivery

- we attended community events such as the Harmony Day Expo in Eastwood; delivered tailored information sessions to agencies such as the Mt Druitt Ethnic Communities Agency; and attended conferences such as the Multicultural Youth Advocacy Network conference
- we worked with key Commonwealth and NSW agencies to develop communication strategies for the roll-out of the NDIS in NSW and developed and consulted on guidelines and other resources to support the new NDIS Commission
- we developed fact sheets, videos and other resources to support our work including an information sheet in Plain English, Easy English, Arabic, Italian and Spanish to support a project we had commenced about the transfer process for people with disability in ADHC accommodation services who have complex support needs
- we consulted key religious leaders, survivor groups and a number of former police and royal commissioners about establishing a standing 'child safety' committee for survivors and faith groups to provide governance arrangements to help drive the response to the Royal Commission's recommendations.

Looking forward

- following a period of change, we will review and update our MPSP to ensure it aligns with our new strategic direction and changed working environment
- we will refresh our internal consultation forum
- we will continue to identify and address issues in our own work and agencies we oversight relating to provision of service to people from culturally, linguistically and religiously diverse backgrounds.

2017–18 additional reporting requirements

Disability services

As a 2017–18 theme, agencies are required to include examples that demonstrate the inclusion of people with disability from culturally diverse backgrounds in its Disability Inclusion Action Plan. The report will also include the benefits of its actions towards cultural diversity, accessibility and inclusion. This ensures NSW continues to be a place where people with disability from culturally diverse backgrounds have access to mainstream services and programs, and are part of the community.

We are committed to improving the circumstances of people with disability, their families and carers. We look for practical ways to break down barriers and promote access to our services, information and employment opportunities. We support the rights of people with disability through our work. The 'People with disability' and the 'Connecting with the community' sections of our annual report provide more information about this work.

Our key disability related work in 2017–18

We continued our contribution to developing the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework and establishing the NDIS Commission, as part of supporting the transition of our functions. This included working with the Department of Social Services on developing legislation, guidelines and related resources and providing feedback on proposed communications with people with disability and their families about the NDIS Commission and its functions.

We handled a range of complaints that raised concerns about the actions of some newly registered NDIS providers. This involved a significant investment by our office and OCVs to help support providers understand quality standards and improve their practices. We have also done substantial work to provide relevant information to the NDIA to inform its actions, including its fraud investigation and registration functions.

Our handling of disability reportable incident notifications underscored the importance of the work that is underway to establish an NDIS worker screening system. In a range of matters, we identified disability support workers with sustained findings of abuse and/or neglect of clients who had moved between providers. These matters also highlighted the need for information exchange provisions to enable providers to share information relevant to the safety of their clients.

We continued our standing inquiry into allegations of abuse and neglect of adults with disability in the community – such as the family home – receiving allegations of abuse and neglect involving family members or other people in the community.

We promoted and monitored the implementation of the Joint Protocol for disability providers and police to reduce the contact of people with disability in supported accommodation with the criminal justice system. This included holding forums, developing training resources and analysing data to identify issues.

We completed our three-year Rights Project. This project helped people with disability to understand and exercise their rights in the transition to the NDIS and promoted accessible complaint systems and practices among NSW Government agencies

and disability service providers. It also strengthened systems to prevent, identify and respond to the abuse, neglect and exploitation of people with disability.

Our official community visitors made 2,884 visits to accommodation services – speaking with residents and raising and resolving issues with the service provider.

We developed fact sheets, videos and other resources to support our work including an information sheet in Plain English, Easy English, Arabic, Italian and Spanish to support a project we had commenced about the transfer process for people with disability in ADHC accommodation services who have complex support needs.

We participated in community events such as conferences, forums and expos to raise awareness of the role of the Ombudsman in community services and the rights of people receiving these services and delivered presentations about disability awareness and the role of our office as well as presenting to disability advocacy and other organisations about the NDIS Commission.

Settlement services

Settlement services will be a MPSP reporting theme over four years (2017–18 – 2020–21). Agencies are required to include in their report examples that demonstrate the services and programs provided to specifically address the needs of refugees. The report will demonstrate the benefits of its actions towards helping refugees start a new life in NSW.

Our Youth Liaison Officer (YLO) worked with agencies supporting refugees, particularly young refugees. Information on the role of the Ombudsman was provided. This engagement is expected to continue in 2018-19.

Language services

Agencies are required to report against four areas.

Area 1: client demographics

The main language requiring a translator or interpreter was Arabic.

Area 2: expenditure

In 2017–18 we spent $8,500 on translation and interpreter services.

Area 3: in house staff – bilingual staff and CLAS recipients

Three bilingual staff use their language skills in their daily work.*

Three staff have had their language skills tested.

Bilingual staff use the following languages – Russian, Serbian, Cantonese and Auslan.

Three staff are paid a CLAS allowance.

*Centralised records are not kept of the community languages that staff speak; however, 21.2% of staff reported that their language first spoken at home was not English (source: workforce profile).

Area 4: services provided

Interpreting services were provided on 88 occasions.

Translation services were provided on four occasions.

The top 11 languages serviced were:

- Arabic: 20
- Mandarin: 11
- Cantonese: 10
- Russian: 10
- Farsi: 8
- Korean: 6
- Turkish: 6
- Spanish: 4
- Vietnamese: 3
- Bengali: 3
- Vietnamese: 3

In 2017–18, all requests for assistance were met and all languages were serviced.

Compliance with the NSW Carers (Recognition) Act 2010

Educational strategies

- our Carers recognition policy is promoted to staff and information about the Carers (Recognition) Act and the NSW Carers Charter is displayed in the office
- we participated in community events to promote the rights of people with disability and their carers and increase awareness about how to make a complaint
- we provided 'Speak Up' training to family members and other carers
- we provided 'The rights stuff – tips for solving problems and making complaints' training to users of community services and their carers
- we worked with Carers NSW to promote our services to young people who are carers.

Consultation and liaison with carers

- we maintained contact with peak carers organisations via our existing consultative platform and through our core business work in oversighting the provision of community services
- our Aboriginal Unit visited carer support groups |in Newcastle and Wagga Wagga to listen to full-time grandparent carers and help with a range of enquiries and complaints
- we helped to resolve complaints from carers – case studies highlighting this work is throughout our annual report.

Staff who are carers

- we promote a range of policies that support staff who are carers – including flexible working hours, working from home, and leave for carer responsibilities
- we consult broadly on policies affecting staff to ensure that issues of importance to staff with carer responsibilities are appropriately considered.

Appendix C – Compliance with annual reporting requirements

The *Annual Reports (Departments) Act 1985*, the Annual Reports (Departments) Regulation 2010, various Treasury circulars and ss 30 and 42 of the *Ombudsman Act 1974* require us to include certain information in this report. The table below lists the required information (as described in Treasury's annual report compliance checklist, dated September 2018) and where it is located in this report.

Requirement	Comment/location
Letter of submission	page c
Application for extension of time	Not applicable
Charter	pages d and 46–47
Aims and objectives	page d
Access	inside front cover
Management and structure	pages 21–23
Summary review of operations	pages 3–19
Funds granted to non-government community organisations	No funds granted
Legal change	page 47
Economic or other factors	pages 39–44
Management and activities	This report details our activities in the reporting period.
Research and development	pages 75, 111, 114–115
Human resources	pages 26–35
Consultants	page 41
Workforce diversity	page 30–32
Disability Inclusion Action Plan	page 12, 163–165
Land disposal	Not applicable
Promotion (overseas travel)	pages 18-19
Consumer response	page 8
Payment of accounts	Pages 42–43
Time for payment of accounts	pages 42–43
Risk management and insurance activities	page 24
Internal audit and risk management policy attestation	page 25
Disclosure of controlled entities	Not applicable
Disclosure of subsidiaries	Not applicable
Multicultural Polices and Services Program	pages 12, 163, 165–167
Agreements with Multicultural NSW	Not applicable
Work health and safety	page 32–33

Financial statements	pages 140–162
Identification of audited financial statements	Page 140, 162
Inclusion of unaudited financial statements	Not applicable
Statement of action taken to comply with the *Privacy and Personal Information Protection Act 1998* (PPIPA) and statistical details of any review conducted by the NSW Ombudsman under Part 5 of the PPIPA	We have a privacy management plan as required by s 33(3) of PPIPA, which includes our obligations under the *Health Records and Information Privacy Act 2002*. We received no requests for review under PPIPA during the reporting period. However one of the previous year's request was finalised in 2017–18. In this case, the complainant made an application to NCAT claiming that the Ombudsman breached her privacy in the course of dealing with her complaint. NCAT found that there had been a breach of s 18 of PPIPA but determined to take no further action on the matter.
After balance date events having a significant effect in succeeding year on: • financial operations • other operations • clientele/community served.	Not applicable
Total external costs (such as fees for consultants and printing costs) incurred in the production of the report	$11,994
The website at which the report may be accessed	www.ombo.nsw.gov.au
Exemptions from the reporting provisions	As a small department, the Ombudsman is exempted from the requirement to report annually, and may instead report each three years, on the following matters: • workforce diversity • disability inclusion action plans • multicultural polices and service program • work health and safety. However, we have chosen to include those matters in this report.
Numbers and remuneration of senior executives	page 28
Implementation of Price Determination	Not applicable
Government Information (Public Access) Act 2009	page 171–174
Digital information security policy attestation	page 36
Public interest disclosures	page 26–27
Requirements arising from employment arrangements	Not applicable.
Public availability of annual reports	Available on the Ombudsman website www.ombo.nsw.gov.au
Complaints referred to the Ombudsman (requirement under s 42 of the Ombudsman Act)	Two matters were referred to us by other agencies

Appendix D – NSW Ombudsman GIPA report

This is the Ombudsman's report for 2017–18, as required by s 125 of the *Government Information (Public Access) Act 2009* (GIPA Act) and clause 7 of the Government Information (Public Access) Regulation 2009 (GIPA Regulation).

The secrecy provisions of the *Ombudsman Act 1974* limit the information we can make publicly available. Information about our complaint handling, investigative and reporting functions is excluded information under Schedule 2 of the GIPA Act. Nevertheless, we still try to make as much information as possible publicly available.

This year we continued to make a range of information available on our website – including special reports to Parliament, guidelines and submissions.

Review of the Ombudsman's proactive release program

Each agency must review its program for releasing government information at least once every 12 months to identify the kinds of government information it holds that can be made publicly available, without imposing unreasonable additional costs on the agency (s 7(3) of the GIPA Act). Details of that review and the information made available as a result of it must be included in the agency's annual report (cl 7(a) of the GIPA Regulation).

Our program for proactively releasing information involves reviewing our information holdings. This includes reviewing any informal requests for information we receive where the information is given to the person making the request. Our right to information officers, along with other staff, identify any other information that can be made available on our website.

We continue to use social media as a way to engage with stakeholders – such as members of the public, community groups, professionals, government and non-government agencies.

Our Twitter account (@NSWOmbo) has 693 followers. We have tweeted about the release of our annual reports, media appearances, reports tabled in Parliament, the training we offer and our involvement in community events. Our Twitter terms of use are published on our website.

We use our Facebook page in the same way we use Twitter – to provide information about our work and involvement in community events. Our Facebook terms of use are also published on our website.

Our YouTube channel provides access to videos about our work and events that we have held. We also provide some general information for organisations about their obligations, particularly those organisations providing services to people with disability.

We published our Disability e-News update twice during the year. This provides information about our work in the disability area, updates about the official community visitors and disability reportable incidents schemes, and our community education and training offerings. The newsletter is distributed to a subscriber mailing list and made available on our website. Subscription is open to anyone via our website. We currently have 462 subscribers.

We publish the PID e-News as part of our role under the *Public Interest Disclosures Act 1994* to promote public awareness and understanding of the Act. In 2017–18 we distributed two issues to subscribers. PID e-News provides updates about changes to legislation and regulations, training sessions, events, publications, guidance materials and educational resources. It has 1,295 subscribers with subscription available to anyone via email to pid@ombo.nsw.gov.au.

One of the most effective ways of sharing information about our work is the latest news section of our website. Information is provided there about our reports to Parliament, training programs, presentations, visits to rural and regional centres, visits from delegations to our office, and other information that may be of public interest.

A range of our fact sheets and policies are available on our website. The fact sheets feature topics such as our complaint handling commitments and disability reportable incidents. Key policies are also available there – including our statement of corporate purpose, code of conduct and conflict of interests policy.

During 2017–18, we continued to review our interagency agreements to determine their suitability for release. We entered into two new agreements – a memorandum of understanding (MOU) with the Law Enforcement Conduct Commission amending the MOU signed in 2016–17, and an agreement with the Department of Premier and Cabinet about the feedback hub. These agreements are not currently available on our website.

We added four contracts to our register of government contracts as we engaged private sector companies to do work for us that was valued over $150,000. These contracts were for fit out work, for the purchase of workstations and to replace our laptops.

Statistical information about access applications – clause 7(d) and Schedule 2

Clause 7(b), (c) and (d) of the GIPA Regulation require an agency to report certain information each year about access applications received under the GIPA Act.

We received two formal access applications during the reporting year. We received seven access applications that were invalid because they sought access to excluded information.

Table 87: Number of applications by type of applicant and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media	0	0	0	0	0	0	0	0
Members of Parliament	0	0	0	0	0	0	0	0
Private sector business	0	0	0	0	0	0	0	0
Not for profit organisations or community groups	0	0	0	0	0	0	0	0
Members of the public (by legal representative)	0	0	0	0	0	0	0	0
Members of the public (other)	1	0	0	1	0	0	0	0

Table 88: Number of applications by type of applicant and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications	0	0	0	0	0	0	0	0
Access applications (other than personal information applications)	1	0	0	1	0	0	0	0
Access applications that are partly personal information applications and partly other	0	0	0	0	0	0	0	0

Note: A personal information application is an access application for personal information (as defined in clause 4 of Schedule 4 to the GIPA Act) about the applicant (the applicant being an individual).

Table 89: Invalid applications

Reason for invalidity	No of applications
Application does not comply with formal requirements (s 41 of the GIPA Act)	0
Application is for excluded information of the agency (s 43 of the GIPA Act)	7
Application contravenes restraint order (s 110 of the GIPA Act)	0
Total number of invalid applications received	7
Invalid applications that subsequently became valid applications	0

Table 90: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 of the GIPA Act (valid applications only)

Reason for invalidity	No of times consideration used
Overriding secrecy laws	0
Cabinet information	0
Executive Council information	0
Contempt	0
Legal professional privilege	0
Excluded information	0
Documents affecting law enforcement and public safety	0
Transport safety	0
Adoption	0
Care and protection of children	0
Ministerial code of conduct	0
Aboriginal and environmental heritage	0
Invalid applications that subsequently became valid applications	0

Table 91: Other public interest considerations against disclosure: matters listed in tables to s 14 of the GIPA Act

Reason for invalidity	No of times consideration used
Responsible and effective government	0
Law enforcement and security	0
Individual rights, judicial processes and natural justice	0
Business interests of agencies and other persons	0
Environment, culture, economy and general matters	0
Secrecy provisions	0
Exempt documents under interstate Freedom of information legislation	0
Total	**0**

Table 92: Timeliness

	No of applications
Decided within the statutory time frame (20 days plus any extensions)	2
Decided after 35 days (by agreement with applicant)	0
Not decided within time (deemed refusal)	0

Note: These statutory time frames are for valid applications only. We received two valid applications this year.

Table 93: Number of applications reviewed under Part 5 of the GIPA Act (by the type of review and outcome)

	Decision varied	Decision upheld	Total
Internal review	0	1	1
Review by information commissioner*	1	1	2
Internal review following recommendation under section 93 of Act	0	0	0
Review by NCAT	0	1	1
Total	**1**	**3**	**4**

***Note:** The Information Commissioner does not have the authority to vary decisions, but can make recommendations to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision has been made by the Information Commissioner.

Table 94: Applications for review under Part 5 of the GIPA Act (by type of applicant)

	No of applications for review
Applications by access applicants	4
Applications by persons to whom information the subject of access application relates (see s 54 of the GIPA Act)	0

Table 95: Applications transferred to other agencies

	No of applications transferred
Agency-initiated transfers	0
Applicant-initiated transfers	0

Index

A

Aboriginal Affairs (AA), 52, 57, 59.

Aboriginal and Torres Strait Islander people *See Deputy Ombudsman (Aboriginal Programs); OCHRE*.
- Bourke, 13, 18, 50, 55–57.
- Child protection system,, 97, 99, 120.
- Complaints, 50–53.
- Economic development, 55, 57, 58.
- FACS, 52, 56.
- Grandmothers Against Removal (GMAR), 53, 54.
- Guiding principles, 53–54.
- Guiding Principles Yarning circle (GPYC), 53–54.
- Juvenile justice, 88, 90.
- Monitoring programs, 57–59.
- Opportunity hubs, 55, 57–58.
- Out-of-home-care, 50–55.
- Participation in child protection decision making, 53–54.
- Place based service delivery, 11, 55–59.
- Stakeholder activity, 13, 50, 57–59.
- Working with Aboriginal communities, 50–59.

Aboriginal, Child, Family and Community Care State Secretariat (AbSec), 18, 50, 53, 97.

Aboriginal Employment Strategy (FACS), 55–58.

Aboriginal Procurement Policy (APP), 57–58.

Abuse and neglect *See community education and training*.
- People with disability, 123, 132–133, 136–137.

access and equity programs, 12, 32, 163 See *also community education and training*.

accounts paid on time, 42–43.

ADHC accommodation, 17, 135. *See also Ageing, Disability and Homecare (ADHC)*.

Ageing, Disability and Homecare (ADHC), .14, 108, 135 *See also ADHC accommodation*.

Annual reports, 9.

asbestos, 70, 72.

Assistant Ombudsman (Strategic Projects), 50, 56, 100.

attestation of compliance *See internal audit; risk management; digital information security*.

audit *See internal audit; audit and risk committee; financial statements*.
- Keeping systems under scrutiny, 113.
- Public interest disclosures, 73.

audit and risk committee (ARC), 25–26, 28, 35, 39.

Australian and New Zealand Ombudsman Association (ANZOA), 19, 50.

authorities *See departments and authorities*.

B

behaviour management in schools
- inquiry into the provision of education to students with disability or special needs, 9, 10.
- monitoring actions to improve, 134.

Best practice working group, 18, 129.

Boarding houses, 116, 138.

Bourke *See Aboriginal and Torres Strait Islander people.*

C

Carer
- Child deaths, 114.
- Child protection system, 98, 103, 112.
- Complaints, 50–54, 95, 96, 98.

carers recognition policy, 12, 163, 167.

Centre for education statistics and evaluation, 59.

Child Abuse Squad (CAS), 106.

child and family services, 93–97.

child deaths *See Register of Child Deaths (RCD)*.
- Parliamentary inquiry, 9.
- Reporting, 9, 118.
- Reviewing the deaths of children, 118–119.

child protection *See also child and family services; Employment related child protection; homelessness services; Royal Commission into Institutional Responses to Child Sexual Abuse*.
- Aboriginal communities, 13, 18, 50, 53, 55.
- Databases, 120, 129, 130, 132.
- JIRT review, 101–102.
- Monitoring, 99–103.
- Stakeholder activities, 99–100.

Child Protection (Working With Children) Act 2012, 103, 111.

children and young people, 103–115 *See child and family services; child deaths; child protection; Employment related child protection; homelessness services; juvenile justice; Reviewing the deaths of children*.
- behaviour management in schools, 134.
- committee for children and young people, 9.

connecting with young people, 14–15.
contact with police, 95.
homeless children, 98, 100.
in custody, 80, 88, 89–92.
inquiry into prevention of youth suicide, 9.
residential care, 116.
reviewing the deaths of children, 114–115.
training youth homelessness services, 16.
working with Aboriginal communities, 53–56.
youth, 9, 14–16, 46, 50, 53, 100, 113, 134.

Children's Guardian, 97, 110, 112
See also Office of the Children's Guardian (OCG).

child safety committee for survivors and faith based groups, 14, 19, 110
See also Royal Commission into Institutional Responses to Child Sexual Abuse.

Childstory, 53, 99.

community education and training, 15–19.

community housing provider (CHP), 11, 66–67.

Community services centre (CSC), 54–55, 97, 102, 181.

Complaint handling improvement program (CHIP), 62.

Connected Communities strategy, 59.

connecting with the community, 12–15.

Correctional system (adult)
Better Prisons Program, 83.
complaints
subject matter, 82, 83.
trends, 80–81.
correctional centres
benchmarking, 84.
centre-based budget, 84.
CSNSW review, 86.
death of inmate, 87.
old, 85.
private, 84, 91.
transfer of inmates between, 84–85.
discipline
inmate, 86–87.
unfair, 83, 86.
Forensic Hospital, 91.
Immediate Action Teams (IAT), 87.
infrastructure projects, 83–85.
inmates
high risk, 85.
population, 83.
internal charges, 86.
investigations, 83.
Justice Health Patient Health Inquiry Line, 80.
lock ins, 85.
Metropolitan Special Programs Centre, 85.
officer misconduct allegations, 83.
Rapid Build Prisons (RBPs), 84.
segregation, 87, 88.
Segregation housing unit, 86.
separation, 88.
supermax, 85.
use of force, 87–88.

Corrective Services NSW (CSNSW), 80, 83, 84, 85, 86, 87.

criminal justice system, 14, 18, 97, 100, 131, 163–165.

Custodial Services, 6, 14, 46–48, 80, 85, 91.
See also Correctional system (adult); juvenile justice; Justice Health.

D

Department of Education, 57, 66, 113, 134, 165.

Department of Family and Community Services NSW (FACS), 47, 100, 164.
See also FACS housing.
Aboriginal Outcomes Strategy (AOS), 54, 55.
and Aboriginal communities, 50, 53, 55, 97.
complaints, case studies, 50–53.
Guiding Principles, 53, 54.
best practice guide, 134.
commissioning model, 99.
deaths of children, 115.
disability accommodation services, complaints against FACS, 118.
Helpline, 99, 102, 104, 112.
homeless children, 11.
Integrated Governance Framework (IGF), 11, 99–100.
Joint Investigation Response Team (JIRT), 100, 101, 102.
leaving care planning, 52, 53, 96.
Office of the Senior Practitioner (OSP), 97, 102, 104.
Ombudsman's jurisdiction over FACS services, 136.
OOHC services, 93.
commissioner, 113.
complaints against FACS, 93, 100–101.
Quality Assurance Framework (QAF), 112.
practice framework, 11, 54, 100.
probity requirements, third party brokers, 122.
reforms, systemic, 97, 99.
reportable conduct, 112–114.

Department of Justice, 101, 109.

Department of Premier and Cabinet (DPC), 39, 40, 55, 56, 65, 75, 131, 135.

Department of Primary Industry (DPI), 71.

Department of Social Services (DSS), 14, 19, 40, 133, 136.

departments and authorities, 47, 60–72.
complaint handling improvement project (CHIP), 21, 62–63, 65.

complaints
complaint handling, 62.
formal, 60–61, 62.
informal, 60–61.
resolving, 60.
investigations, 70–72.
monitoring, 65.

Deputy Ombudsman (Aboriginal Programs), 50, 55, 56, 57–58.

detainee, 80, 83, 88–90, 181 *See Custodial Services*.

Detainee risk management plan (DRMP), 89.

detention, 46, 93, 114 *See juvenile justice*.

Digital information security annual attestation statement, 36.

Director of Public Prosecutions (DPP), 92.

disability reportable incidents
Best Practice Working Group, 18, 129.
case studies, 129–130.
client to client, 123, 125.
employee to client, 123, 125.
key issues highlighted, 128.
national scheme, 129.
NDIS providers, 130.
NDIS worker screening system, 128.
notifications, 123, 128–129.
Ombudsman
functions, 123.
public alert, 128.
serious incidents, guidance, 129.
serious injury, 123, 125.

Disability Rights Project, 12, 132–133, 163.

disability services
accommodation services, 122, 123.
case studies, 120–121.
complaints, 120–121, 122, 124, 125, 128, 131.
NDIS providers, 121, 122.
conflict with clients' families, 122.
deaths, residential care, 116, 136, 137.

domestic violence, 101.

Domestic Violence NSW, 98.

E

education and training, 15–18, 19, 34. *See community education and training*.

electricity consumption *See Environmental impact*.

Employment related child protection, 103–115. *See also child and family services; juvenile justice*.
notification of concern (NoC), 111.
notifications, 104, 106, 108.
by agency, 108.
by allegation, 109.
criminal offences, 108.
education sector, 104–105.
scrutinising agencies systems, 113.
sexual misconduct and offences, 104, 107, 109.
working with stakeholders, 113.
reportable conduct
allegations, 110, 112.
criminal offences, 104.
findings and action, 110.
information sharing, 113.
other jurisdictions, 111.
Working With Children Check (WWCC), 103, 106, 109, 111.

Environmental impact, 38–39.

F

FACS housing, 11, 49, 52, 66, 67–68.

Financial statements, 140–162.

fuel consumption *See also Environmental impact*.

functions, 1, 9, 14, 46.

G

GIPA *See Public Information (Public Access) Act 2009*.

Glossary, 181.

governance framework *See Integrated Governance Framework (IGF)*.

Government Information (Public Access) Act 2009 (GIPA), 46, 65, 79.
Ombudsman's report, 172–174.

Grandmothers Against Removals NSW (GMAR NSW), 53–55.

Guiding Principles Yarning Circle (GPYC), 18, 50, 53, 54.

H

Health Care Complaints Commission (HCCC), 17, 80.

Homelessness NSW, 34, 98, 100.

homelessness services
improving services, 113.
protecting young people, 114.

HSC disability provisions, 134–135.

I

Independent Commission Against Corruption (ICAC), *17, 74, 87.*

Integrated Governance Framework (IGF), 99–100.

Intellectual Disability Rights Service (IDRS), ...135.

internal audit, ... 24, 26, 32.
attestation statement, ...25.

J

joint consultative committee (JCC), ...27.

joint investigation response team (JIRT)
integrated governance framework, ...99.
protection of vulnerable teenagers, ... 101–102.
Responding to Royal Commission outcomes, ... 109.
review of operations, ...102–103.

joint protocol
people with disability in supported accommodation,
....12, 14, 18, 101, 131.
young people in residential out-of-home-care,
....97, 100.

Justice Health, ... 80, 83, 91.

juvenile justice, ... 11, 17, 88, 90, 98.

juvenile justice centres (NSW), ... 14–15, 80, 83, 88, 89.

L

Land and Housing Corporation (LaHC), ... 67–69.

Law Enforcement Conduct Commission (LECC),
.... 4, 50, 171, 182.

Legal Aid NSW, ...72, 100, 134.

Legislative Council *See NSW Legislative Council*.

local Aboriginal land councils (LALCs), ...75.

local government, ... 5–6, 48, 76–79.

M

multicultural *See access and equity programs*.

Multicultural Policies and Services Program (MPSP)
See access and equity programs.

My right to be heard, ...132.

N

National Disability Insurance Agency (NDIA),
....12, 122.

National Disability Insurance Scheme (NDIS),
....12–13, 17, 136.
See *National Quality and Safeguarding Framework*; *See also NDIS Quality and Safeguards Commission (NDIS Commission)*.
NDIS providers, ... 121, 122, 128, 130, 136–137.

National Disability service (NDS), ...129, 133.

National Quality and Safeguarding Framework,
.... 136, 138.

NCAT *See NSW Civil and Administrative Tribunal (NCAT)*.

NDIS Quality and Safeguards Commission (NDIS Commission), ... 19, 123, 129, 136, 137, 138.

NSW Aboriginal Land Council (NSWALC), ... 57.

NSW Auditor-General, ...140.

NSW Child Death Review Team (CDRT)
See child deaths.

NSW Civil and Administrative Tribunal (NCAT),
....97, 130, 170, 174.

NSW coalition of Aboriginal regional alliances (NCARA), ...58.

NSW Coroner, ... 35.

NSW Crime Commission (NSWCC), ...92.

NSW Education Standards Authority (NESA),
.... 113, 134–135.

NSW Health, ... 18, 50, 101, 115, 131, 137.

NSW Indigenous Chamber of Commerce (NSWICC), .57.

NSW Law Reform Commission (NSWLRC),
....18, 130–131.

NSW Legislative Council, ...9, 71, 114, 134.

NSW Parliament, ... 8–9, 50, 109, 110, 114, 134.

NSW Police Force (NSWPF),
.... 11, 35, 54, 101–102, 104, 131, 132.
See also Police.

NSW Public Advocate, ... 130–131.

NSW Public Service Commission (PSC), ... 28, 58.

NSW Treasury, ... 24, 25, 26, 39–40, 44.

NSW Trustee and Guardian (T&G), ...64, 69.

O

OCHRE *See OCHRE initiatives, see also Aboriginal and Torres Strait Islander people*.

OCHRE initiatives
Aboriginal Language and Culture Nests, ...11, 57, 58.
Connected Communities strategy, ...57, 59.
healing in Aboriginal policy, ...13, 57, 59.
Local Decision Making, ...57.
monitoring, ...11, 13, 50, 57.
Ombudsman's role, ...15, 57.
Opportunity Hubs initiative, ...11, 57, 58.

OCV *See Official Community Visitor*.

Office of Local Government (OLG), ... 76.

Office of the Children's Guardian (OCG),
...............97, 100, 103, 106, 109, 111–113, 125–126.
See also Children's Guardian.

Office of the Senior Practitioner (OSP), ... 54, 97, 102, 104.

Official Community Visitor, ... 12, 33, 95, 100, 116, 121, 122, 135, 136, 138.

Operation Prospect, ... 9, 10.

out-of-home care (OOHC), ... 54, 93–97, 98, 100, 102–103, 104, 112–114, 134, 138.

overseas *See community education and training*.

P

Parliament *See NSW Parliamant; NSW Legislative Council; Parliamentary Joint Committee on the Ombudsman*.

Parliamentary Committee, ... 1, 134.

Parliamentary Inquiries, ... 9.

Parliamentary Joint Committee on the Ombudsman, Law Enforcement Conduct Commission and Crime Commission (PJC), ... 8–9, 24, 75.

parole *See Custodial Services*.

People matter employee survey (PMES), ... 28, 29, 30.

people with disability, ... 116–138.
See also disability reportable incidents; Abuse and neglect; Ageing, Disability and Homecare (ADHC); disability reportable incidents; Disability Rights Project; Official Community Visitor.
- abuse and neglect of adults with disability in community settings, ... 129.
- behaviour management in schools, ... 134.
- complaints, ... 116–122.
  - accommodation services, ... 118–119.
  - NDIS providers, ... 122.
  - support services, ... 120–121.
  - taking detrimental action, ... 121.
- contact of people with disability with the criminal justice system, ... 131.
- disability reportable incidents, ... 123–129.
- HSC provisions, ... 134.
- Official Community Visitors, ... 138.
- probity requirements, ... 122.
- public advocate, ... 130.
- reviewable deaths, ... 137.
- Rights Project, ... 132.
- Safeguards and the NDIS, ... 136.
- Seclusion, restraint and observation of people with mental illness, ... 131.
- speak up, ... 119.
- transfer of ADHC accommodation, ... 135.

Police *See NSW Police Force*.
- Disability related, ... 123–124, 129, 131.
- Employment related child protection, ... 103, 112.
- interstate alerts, ... 112.
- Joint Investigation Response Team, ... 101–102.
- Joint protocol – people with disability in supported accommodation, ... 97.
- Joint protocol – young people in OOHC, ... 100.
- Operation Prospect, ... 92.
- police function, ... 2, 4, 28, 40.
- public interest disclosure steering committee, ... 75.
- vulnerable teenagers, ... 101–102.
- working with Aboriginal communities, ... 50.

Premier's priority, ... 62, 101.

prison *See Custodial Services*.

Procurement *See Aboriginal Procurement Policy (APP)*.

Public interest disclosures (PID), ... 26–27, 73–76.

Public interest disclosure Steering Committee, ... 75.

Public Service Association (PSA), ... 99.

Q

Quality and Safeguarding Framework (NDIS), ... 1, 136, 138, 166.

Quality Assurance Framework (QAF) trial, ... 112.

R

Rapid Build Prisons (RBPs), ... 83–84.

recommendations, ... 9–10.

Register of Child Deaths (RCD), ... 36, 37, 114.

Registrar of Community Housing, ... 67.

remuneration, ... 27, 28, 31.

Revenue NSW, ... 63, 65–66, 77.

Reviewing the deaths of children, ... 114–115.

reviewing the deaths of people with disability, ... 137.

rights project for people with disability (DRP), ... 12, 132–133.

risk management, ... 24–26.

risk management plans, detainees, ... 89.

Risk of significant harm (ROSH), ... 99, 100–101, 104, 115.

Roads and Maritime Services (RMS), ... 65.

Royal Commission into Institutional Responses to Child Sexual Abuse, ... 14, 19, 88, 98, 109–111.

S

safeguarding framework *See National Quality and Safeguarding Framework*.

SafeWork NSW, ... *72*.

Schools
- and Aboriginal communities, ... 59.

Behaviour management, ... 9, 10, 134.
Complaints and notifications, ... 66, 108, 109.
HSC disability provisions, ... 134.
Legislative Council inquiry, ... 9, 134.
reportable conduct scheme, ... 98, 110, 113.
sexual misconduct notifications, ... 104, 107, 114.
sexual offences, ... 107.
student suspensions, ... 66.
students with special needs, ... 24.

Segregation, ... 82, 84, 86, 87, 88, 89, 90.

Senior executive, ... 26, 28.

Service NSW, ... 65–66, 69.

social housing, ... 11, 49, 52, 66–68.

Special Report to Parliament, Ombudsman, ... 9–10, 57, 58, 71, 134, 171.

Staff
diversity, ... 30–31.
learning and development, ... 33.
number and levels, ... 26–28.
our statutory officers, ... 21.
policies and practices, ... 24–26.

stakeholder, ... 8, 50, 57, 75, 97, 99–100, 104
See also connecting with the community.

statistical highlights, ... 4.

statistical work (Ombudsman), ... 47.

Submissions, Ombudsman, ... 9, 18, 24, 50, 75, 114, 130, 131, 135.

supported group accommodation, ... 133, 135.

T

TAFE, ... 69–70.

Their Futures Matter (TFM) reform, ... 54, 98–99.

Training *See community education and training*.

transfer of Ombudsman's functions to NDIS Commission, ... 1, 136.

Transition *See also National Disability Insurance Scheme (NDIS)*.
Aboriginal Employment, ... 55.
Complaints, ... 120.
disability complaints and notifications, ... 116–120.
NDIS, ... 19, 136–137.
Rights project, ... 133.
to independent living, ... 53.
training, ... 17.

U

University, ... 69–70.

V

Victorian Commission for Children and Young People (VCCYP), ... 19, 111.

Visitor *See Official Community Visitor*.

Vulnerable, ... 48.
Aboriginal communities, ... 50, 55–56, 59.
Adult correctional centres, ... 84.
children and young people, ... 11, 97, 98–100, 101, 102–103, 104, 106, 113.
Juvenile justice, ... 88–91.
People with disability, ... 129, 131, 135–136, 137.

W

Water compliance
investigation, ... 70, 71, 74.
report to Parliament, ... 9–10, 71.

WaterNSW, ... 71, 74.

Whistleblower *See Public interest disclosures (PID)*.
Disability services, ... 119.
Public interest disclosures, ... 73–76.
submissions, ... 18.

Whistleblowing *See Whistleblower*.

Workers compensation, ... 33.

Workforce diversity, ... 30–32.

Work, Health and Safety (WHS)
committee, ... 32.
Keeping our people safe, ... 32–33.

Working with children check (WWCC)
child protection system, ... 97.
employment related child protection, ... 103, 106, 109, 110, 111.
monitoring child protection system, ... 97, 99.
people with disability, ... 122, 127.
working with Aboriginal communities, ... 51.

Y

Yfoundations, ... 98, 100, 113.

young people *See children and young people*.

youth *See children and young people*.

youth liaison officer (YLO), ... 14–15, 113.

Z

Zero Tolerance project, ... 129, 132.

Glossary

Term	Meaning
AA	Aboriginal Affairs
ABS	Australian Bureau of Statistics
AOS	Aboriginal Outcomes Strategy
AbSec	Aboriginal Child, Family and Community Care State Secretariat
ACWA	Association of Children's Welfare Agencies
ACYP	Advocate for Children and Young People
ADHC	Department of Ageing, Disability and Home Care
AES	Aboriginal Employment Service
ANZOA	Australian and New Zealand Ombudsman Association
APIC	Aboriginal Participation in Construction
APP	Aboriginal Procurement Policy
ARC	Audit and risk committee
ATO	Australian Taxation Office
AVO	Apprehended violence order
BI	Business improvement
BIU	Business improvement unit
CAS	Child abuse squad
CAS Act	*Crimes (Administration of Sentences) Act 1999*
CC	Correctional Centre
CDRT	Child Death Review Team
CHIP	Complaint handling improvement program
CHP	Community housing provider
CIMS	Client information management system – Juvenile Justice database
Commitments	The Ombudsman's six Commitments for effective complaint handling
CSC	Community Services Centre
CS-CRAMA	*Community Serivces (Complaint, Review and Monitoring) Act 1993*
CSNSW	Corrective Services New South Wales
CVE	Countering violent extremism
DAC	Data Analytics Centre
DIAP	Disability inclusion action plan
DM	Division manager
DPC	Department of Premier and Cabinet
DPI	Department of Primary Industries
DRMP	Detainee risk management plan
DSS	Department of Social Services
ECD	Early Childhood Directorate
ECAV	Education Centre Against Violence
EPA	Environmental Protection Authority

Term	Meaning
ERCPD	Employment related child protection division
FACS	Department of Family and Community Services
FTE	Full-time equivalent
GIPA Act	Government Information (Public Access) Act 2009
GMAR NSW	Grandmothers against Removals
GPYC	Guiding Principles Yarning Circle
GREP	NSW Government Resource efficiency policy
GSE Act	*Government Sector Employment Act 2013*
HCCC	Health Care Complaints Commission
HCM	Human Capital Management
HR	Human Resources
HRMCC	High Risk Management Correctional Centre or Supermax
IAT	Immediate Action Teams
ICAC	Independent Commission Against Corruption
IGF	Integrated governance framework
IPAA	Institute of Public Administration Australia
ISS	Intensive support service
IT	Information technology
JCC	Joint Consultative Committee
JIRT	Joint Investigation Response Team
KPI	Key performance indicator
LALC	Local Aboriginal land council
LaHC	Land and Housing Corporation
LARC	Legal Aid Review Committee
LECC	Law Enforcement Conduct Commission
MP	Members of Parliament
MPSP	Multicultural policies and services program
NCARA	NSW Coalition of Aboriginal Regional Alliances
NCAT	NSW Civil and Administrative Tribunal
NCS	Net cost of services
NDIA	National Disability Insurance Agency
NDIS	National Disability Insurance Scheme
NDIS Commission	NDIS Quality and Safeguards Commission
NDIS Commissioner	NDIS Quality and Safeguards Commissioner
NDS	National Disability Services
NESA	NSW Education Standards Authority
NGO	Non-government organisation
NIS	National Investigations Symposium
NRAR	National Resources Access Regulator
NSWALC	NSW Aboriginal Land Council

Term	Meaning
NSWCC	New South Wales Crime Commission
NSWICC	NSW Indigenous Chamber of Commerce
NSWLRC	NSW Law Reform Commission
NSWPF	New South Wales Police Force
OCHRE	NSW Government Aboriginal Affairs Strategy
OCG	Office of the Children's Guardian
OCV	Official Community Visitor
OLG	Office of Local Government
OOHC	Out-of-home care
OSP	Office of the Senior Practitioner
PID	Public interest disclosure
PJC	Parliamentary Joint Committee on the Ombudsman, Law Enforcement Conduct Commission and Crime Commission
PMES	People Matter Employee Survey
PPIPA	*Privacy and Personal Information Protection Act 1998*
PSA	Public Service Association
PSC	Public Service Commission
QAF	Quality assurance framework
RBP	Rapid build prisons
RCD	Register of Child Deaths
RISC	Risk, information and security committee
RMS	Roads and Maritime Services
ROSH	Risk of significant harm
Royal Commission	Royal Commission into Institutional Responses to Child Sexual Abuse
SHU	Segregation Housing Unit
SOORT	Statutory and Other Offices Remuneration Tribunal
SSC	Statewide Steering Committee
Supermax	High Risk Management Correctional Centre or HRMCC
T&G	Trustee and Guardian
TFM	Their Futures Matter
VALID	Victorian Advocacy League for Individuals with Disability
VCCYP	Victorian Commission for Children and Young People
WHS	Work, health and safety
WWCC	Working with children check
YLO	Youth Liaison Officer