



# Annual Report 2020-2021

| 26 OCTOBER 2021

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## Letter to the Legislative Assembly and Legislative Council

26 October 2021

The Hon Matthew Mason-Cox MLC  
President  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

The Hon Jonathan O’Dea MP  
Speaker  
Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

I am pleased to present the 2020–21 annual report of the NSW Ombudsman’s Office, which covers the period of 12 months ending 30 June 2021.

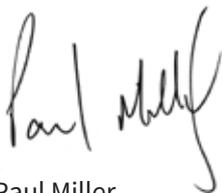
This report is presented in accordance with section 30 of the *Ombudsman Act 1974*. It also addresses the office’s annual reporting requirements in the following:

- *Annual Reports (Departments) Act 1985*
- Annual Reports (Departments) Regulation 2015
- *Public Interest Disclosures Act 1994* (section 31)
- *Government Information (Public Access) Act 2009* (section 25).

The Annexure to this report comprises a separate special report under section 31 of the *Ombudsman Act 1974*, which I am presenting together with this Annual Report.

In accordance with section 31AA of the *Ombudsman Act 1974*, I recommend that these reports be made public immediately.

Yours sincerely



Paul Miller  
**NSW Ombudsman**

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NSW Ombudsman  
Level 24, 580 George Street  
Sydney NSW 2000

Phone: **02 9286 1000**  
Toll free (outside Sydney Metro Area): **1800 451 524**  
National Relay Service: **133 677**  
Website: **[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)**  
Email: **[nswombo@ombo.nsw.gov.au](mailto:nswombo@ombo.nsw.gov.au)**

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## Our Vision

Everyone receives the right services and fair treatment from those we oversight.



## Our Mission

To be a leader in complaint handling, investigations, reviews, and public and community sector monitoring and assessment. We will be trusted by the public and by all of our stakeholders to hold the agencies we oversight to account and to make evidence-based recommendations that result in positive change.



## Our purpose

- To **protect citizens** from abuse of power and unfair treatment by helping them to voice and resolve complaints, and by investigating serious maladministration
- To **foster enduring reforms** that will prevent future failings and improve public administration and service delivery, including by:
  - helping government and service providers to learn from complaints and reviews
  - promoting public sector whistleblowing
  - providing advice, suggestions and recommendations that are evidence-based, realistic and effective
  - providing education and training to government agencies and service providers to encourage good administrative practice and build capability
- To provide a trusted source of **independent advice to the Parliament**, providing assurance of Executive compliance with the Rule of Law and supporting the Parliament's functions of scrutinising the Executive and implementing legislative reform.



## Our values

Integrity • Impartiality • Fairness • Transparency • Professionalism • Respect

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- Text [underlined and in blue](#) throughout this report denotes a hyperlink. If you are reading a printed version of this report, you can access these links via the PDF version of this report published on our website ([www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)).

## Ombudsman's message

I am pleased to present my first Annual Report since being appointed NSW Ombudsman in May this year.

### Responding to the COVID-19 pandemic

While we all hoped 2020–21 would be less challenging than the year before, the COVID-19 pandemic has continued to test us all.

In 2020–21, COVID-19 – and the Government's response to it – continued to have a significant impact both on groups and individuals across NSW. However, while everyone has been impacted in some way, not everyone has been impacted in the same way or to the same extent. Our report *2020 hindsight: the first 12 months of the COVID-19 pandemic* published in March this year highlighted the types of complaints made by people in NSW about actions taken by NSW Government agencies. It also demonstrated the issues that have arisen due to the fragmentation of the oversight and complaint handling system.

Our report emphasised that in response to any unfolding crisis, consideration must be given to ensuring independent oversight and clear avenues of external complaint. One of the benefits of a well-functioning complaint handling regime is the potential for complaints to provide on-the-ground intelligence and the early identification of issues before they escalate.

We continued throughout 2020–21 to handle in-jurisdiction complaints received about the COVID-19 response and have been referring other matters to relevant agencies as appropriate (see section 2.3 for a snapshot of relevant complaints). We are also continuing to liaise with Government departments to ensure we are informed about major developments in relation to issues such as changes to the quarantine system, so we can provide accurate and up-to-date information to people who contact us.

Due to COVID-19 there were periods in 2020–21 where the majority of Ombudsman's Office staff were working entirely from home. Upgrades to our IT systems and internal policies and procedures which commenced in 2019–20, and which continued over the past year, have helped to ensure we were well placed to operate efficiently and effectively in this remote environment.

Of course, working remotely will often pose difficulties for staff. This is particularly the case when staff, including those responsible for taking calls from members of the public, have had to do so in their own homes while juggling unanticipated responsibilities such as home-schooling children. I thank all the staff of the Ombudsman's office for their commitment to our work during these challenging times, for their continued good humour in the face of adversity, and for pulling together to continue to work towards delivery of our vision and mission.

Further information about our organisation and factors affecting us in 2020–21 can be found in Chapter 1.

### Our operations

Despite the challenges of 2020–21 we have continued at all times to fulfil our core front-line statutory functions. This includes complaint handling, monitoring and assessment of certain Government programs, overseeing the NSW whistleblowing regime, conducting inquiries and reviews of systemic issues affecting the public and community sectors, and reviewing the deaths of children and other vulnerable groups with a view to preventing similar deaths in the future.

Chapter 2 details the work we have been doing to achieve our purpose, including protecting citizens from abuse of power and unfair treatment, fostering enduring reforms, and providing a trusted source of independent advice to Parliament.

In 2020–21 there were 24,733 contacts made to our office. While this was lower than 2019–20 we were particularly pleased to see that a significant contributor to the decline has been a reduction of 52% in 'misdirected contacts' from the year before. We have been taking a range of actions to achieve that outcome, including providing clearer information on our website and telephone answering service about our services as well as services provided by other integrity agencies. Reducing misdirected complaints means we can spend more of our resources on the matters within our jurisdiction where we can provide meaningful advice and action.

Few of the actionable complaints we receive result in a formal, full-scale investigation under our Act. We generally aim to resolve complaints at the earliest possible stage, and if a satisfactory outcome can be achieved through inquiries and

conciliatory engagement with the agency and the complainant, we will aim to do that.

Going forward, however, any matter that does proceed to full investigation will be reported in our Annual Report. Accordingly, this Annual Report annexes a special report to Parliament under section 31 of the *Ombudsman Act 1974*. This comprises short summaries of the investigations we have completed over the last year. The Annexure to this report includes summaries of investigations into matters as diverse as asbestos compliance action; responsibilities regarding potentially contaminated land; the imposition of water and sewage management fees; and strip searches of young people in custody.

## Strategic Plan

As foreshadowed in our last Annual Report, from this year we will report on the progress we are making towards the strategic goals set out in our Strategic Plan 2020–25. Chapter 3 of this report highlights our key 2020–21 achievements.

Unsurprisingly, many of the initiatives in this first year of the plan have been focused on strengthening our internal systems, processes and governance. These actions (such as rolling out data analytics software, implementation of a new phone system, updating our online complaints form, and establishing a new performance development system for staff) will help to ensure that, moving forward, we are able to perform our statutory functions more efficiently and effectively.

Under our 2020–21 Strategic Plan Action Plan we have also launched a community engagement strategy; completed implementation of our training modernisation program, providing a new delivery model for our workshops; and commenced reviewing our current approach to complaint-handling reviews (Community Services) and audits (Public Interest Disclosures).

## Funding issues

During 2020–21 we continued to highlight the importance of our office being provided with sufficient and sustainable funding to enable us to perform our functions in a manner consistent with our statutory mandate, and with Parliamentary and community expectations.

The COVID-19 pandemic and the increasing shift to remote working and digital service delivery

has more fully exposed the extent to which this office has in some respects been left behind, with chronic under-funding leading to a long-term under-investment in legacy technologies, service-delivery modes, and processes.

In the most recent budget process, we sought from Government a modest uplift to our baseline funding to help meet our core statutory functions, as well as new funding to uplift or replace some of our ageing systems (including a new finance/enterprise resource planning system and fit-for-purpose case management system, both to replace systems well over 2 decades old).

As outlined in section 1.3, those requests were not successful, although we have recently been informed that funding will be provided for some essential cyber security enhancements.

The funding challenges we face are exacerbated by the diseconomies of scale associated with the very small size of the NSW Ombudsman's office, which has been getting even smaller over recent years (see Appendix B).

We are currently awaiting the Government's response to the Public Accountability Committee report on the budget process for independent oversight bodies. This recommended a new Parliamentary process for the determination of Ombudsman (and other independent oversight bodies) budget bids. In the meantime we continue to seek sufficient funding from Government to ensure we fulfil our statutory functions in accordance with Parliamentary and community expectations, both now and sustainably into the future.

This includes ensuring we can adequately prepare for, and fulfil, the proposed functions conferred on us by the *Mandatory Disease Testing Act 2021* and Public Interest Disclosures Bill 2021. As I have said elsewhere, the conferral of new functions without new funding is tantamount to a budget cut across the Ombudsman's office.

## Achieving our mission

In 2021–22 we continue to strive towards our mission. In particular, we seek to be a leader in complaint-handling, investigations, reviews and public and community sector monitoring and assessment; and to be trusted by the public and by all of our stakeholders to hold the agencies we oversight to account and to make evidence-based recommendations that result in positive change.



## Our independence

The NSW Ombudsman acts impartially in the public interest, and we report directly to Parliament.

We are independent, including from:

- the NSW Government
- the people who complain to us
- the agencies and officials whom we oversight and investigate.

Features of that independence include:

- We are established by an Act of Parliament, which sets out our jurisdiction and functions
- We cannot be directed by any minister or government official in the exercise of functions
- The Ombudsman is appointed for a fixed term
- The Ombudsman's remuneration is set by an independent tribunal
- The Ombudsman selects their own staff, including any Deputy Ombudsman
- We can make public reports to Parliament at any time
- Any person (including a person in custody) has a legal right to complain to us.

The NSW Parliament, Public Accountability Committee, the Auditor-General and others have raised concerns that the way the Ombudsman is funded may threaten its status as a fully independent office. The government is expected to respond to those concerns in 2021–22.

Being independent does not mean being unaccountable. The NSW Ombudsman is responsible to the Parliament, including by way of the provision of annual reports and through a parliamentary oversight committee, before which the Ombudsman is required to appear at least annually.

# 1 About our office

## 1.1 The NSW Ombudsman

The NSW Ombudsman's Office is an independent integrity office. We are established under legislation, and report directly to the NSW Parliament. We have been handling complaints and investigating maladministration by NSW government departments and agencies since 1975.

People have a right to complain to us about the public and community sector agencies and officials we oversee.

People who complain to us are protected under the law from any reprisal action being taken against them for doing so. Additional protections apply for public officials whose complaint is a public interest disclosure (whistleblowing). Our investigations are conducted in private, but we can report to Parliament on investigations and other matters in the public interest. Our complaint-handling services are free of charge to any member of the public.

Our functions have evolved over the years. We now undertake a range of activities beyond the traditional ombudsman role of complaint-handling and complaint investigations.

The principal legislation under which we operate is:

- *Ombudsman Act 1974* (Ombudsman Act)
- *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS CRAMA)
- *Public Interest Disclosures Act 1994* (PID Act)
- *Crimes (Administration of Sentences) Act 1999*
- *Children (Detention Centres) Act 1987*.

## Our statutory functions

### Complaint handling

Any person can complain to us about:

- the conduct of a 'public authority': any action or inaction, or alleged action or inaction, relating to a matter of administration (unless it is excluded conduct) – Part 3 Ombudsman Act
- the conduct of certain 'community service providers' with respect to service provision, failure to provide, withdrawal, variation or

administration of a community service – Part 4 CS CRAMA.

Some complaints we receive from public officials may also constitute 'public interest disclosures' under the *PID Act 1994*.

We can generally deal with complaints about the conduct of:

#### • **NSW state government departments**

There are currently 9 principal departments in NSW:

- Department of Premier and Cabinet (including Aboriginal Affairs NSW)
- Treasury
- Department of Customer Service (including Revenue NSW, NSW Fair Trading, Cyber Security NSW and SafeWork NSW)
- Department of Planning, Industry and Environment (including Office of Local Government)
- Department of Transport
- Ministry of Health
- Department of Education
- Department of Communities and Justice (DCJ) (including Housing)
- Department of Regional NSW.

#### • **Other NSW government entities**

Other government entities within our jurisdiction include:

- NSW government agencies – such as NSW Land and Housing Corporation, Investment NSW, Service NSW, Fire and Rescue NSW, the Art Gallery of NSW and other NSW cultural agencies.
- statutory bodies – such as the local health districts, NSW Trustee & Guardian, TAFE NSW, NSW Education Standards Authority, Rental Bond Board and Health Care Complaints Commission.
- state-owned corporations – such as Sydney Water, WaterNSW, Essential Energy and Landcom.

#### • **Public universities established under NSW legislation**

These include the University of New England, the University of New South Wales and the University of Sydney.

- **Local government, councillors and council staff**

We can handle complaints about the conduct of councillors and council employees, and administrative conduct of the council itself.

- **Custodial services**

This includes Corrective Services NSW and Youth Justice NSW (both of which are divisions of DCJ), and the Justice Health and Forensic Mental Health Network.

The *Crimes (Administration of Sentences) Act 1999* extends our jurisdiction to include the state's privately-run correctional centres.

- **Community service providers**

We handle complaints about community services that are provided, funded, authorised or licensed by the Minister for Families, Communities and Disability Services.

This includes both DCJ itself, as well as a large number of non-government organisations which provide community services including:

- community support and development
- child protection
- short-term accommodation and homelessness support
- out-of-home care and permanency support
- assisted boarding houses
- early intervention and family support services.

### **Own motion complaints**

We can examine conduct of the agencies and officials referred to above even if we have not received a specific complaint about it. Complaints initiated by us ('own motion complaints') can arise from information that comes to our attention through a range of means, including our various monitoring functions or our community engagement activities.

### **Resolving complaints**

We have limited resources and broad discretion in seeking to respond to complaints. We often provide information to complainants to help them understand the relevant agency's decision or actions. We can also help complainants understand the best way to resolve their complaint directly with the relevant agency

## **What we cannot do**

Our Act prevents us from receiving and handling certain complaints. For example, we cannot deal with complaints about the conduct of:

- government ministers
- Parliament and Members of Parliament
- NSW Police Force
- Judges and courts
- Independent Commission Against Corruption
- Law Enforcement Conduct Commission.

We also cannot deal with complaints about the Australian Government or its agencies. The [Commonwealth Ombudsman](#) is the integrity agency responsible for this.

We generally cannot deal with complaints about private companies or individuals.

(if they have not attempted to do so already), or provide information about appeal or review rights and where to seek legal support.

Where it appears that the complaint raises serious concerns about maladministration or other wrong conduct by an agency, we can make oral or written inquiries with the relevant agencies, step in to help conciliate the dispute, or monitor the situation and consider other similar complaints.

Where another office may be better placed to deal with a complaint, we can also help the complainant by referring the complaint to that office.

### **Inquiries and investigations**

Most complaints do not result in a formal 'investigation' under the Ombudsman Act. Before deciding to investigate, we usually seek to resolve issues through oral and written 'preliminary inquiries'. These inquiries may result in comments and suggestions being made to agencies, both to resolve the particular complaint as well as to make systemic improvements where these have been identified.

Proposals to investigate require approval from the Investigations and Major Projects Committee, which is a subcommittee of the NSW Ombudsman's Executive team.

The committee considers proposals against a set of criteria such as the gravity of the alleged wrong conduct, the broader context and the wider public interest and whether there are better alternatives to investigation. The committee also considers the Ombudsman's limited resources, strategic priorities and any relevant risks. Only those complaints or own motion inquiries that raise issues of wider public interest and systemic concerns are investigated.

Summaries of the investigations we completed 2020–21 are set out in the Annexure to this report.

## Monitoring and assessment of Aboriginal programs

Since July 2014, we have been monitoring and assessing designated Aboriginal programs under Part 3B of the Ombudsman Act.

A Deputy Ombudsman, Aboriginal Programs is appointed to discharge this function.

Currently, we are responsible for overseeing OCHRE, the NSW Government's overarching plan for Aboriginal affairs, which was launched in April 2013. OCHRE stands for: Opportunity; Choice; Healing; Responsibility; Empowerment.

POCHRE commits the NSW Government to working with, and in support of, Aboriginal communities by building strong working partnerships that have at their heart respect for local Aboriginal culture, leadership and decision making.

## Oversight of the Public Interest Disclosures Act (PID Act)

The Ombudsman is the lead oversight agency for public interest disclosures (whistleblowing). In accordance with section 6B(3) of the PID Act, the Ombudsman is required to prepare and furnish a report to Parliament about the Ombudsman's activities to oversee the PID Act each year. Our most recent report was published in December 2020 and can be accessed on our [website](#).<sup>1</sup>

The Ombudsman also chairs and provides secretariat support to the PID Steering Committee, which provides advice on the

operation of the PID regime. The PID Steering Committee prepares a separate annual report on its work, which is required to be tabled by the minister in Parliament. The 2020–21 report will be available on the NSW Parliament website. The Steering Committee's 2020–21 Annual Report was presented to the minister on 20 October 2021.

## Community services monitoring, reviews and inquiries

Under CS CRAMA we monitor and review the delivery of community services and related programs. This includes community services that are provided by the non-government sector with funding or authorisation from the NSW Government.

In particular, we can:

- review and report on the systems of community service providers for handling complaints
- review, on application or on the Ombudsman's initiative, the situation of a child in care or a person in care (or a group of such people)
- promote and assist the development of community service standards and educate service providers, clients and others about these standards
- monitor and review the delivery of community services, and inquire into matters affecting service providers and receivers, and make recommendations for improvements in the delivery of community services.

## Reviews of deaths

### Reviews of the deaths of children

Under Part 6 of CS CRAMA, we review certain deaths of children – those that occur in circumstances of abuse or neglect, and deaths of children in care or detention. Under Part 5a of CS CRAMA we also convene and support the NSW Child Death Review Team (CDRT), which examines the deaths of all children in NSW.

The focus of both the Ombudsman and CDRT child death review functions is to help to prevent the deaths of children. Since 2019, the Ombudsman's biennial report of reviewable child deaths and the CDRT's biennial report of the deaths of children have been combined into a single report.

1. NSW Ombudsman, *Oversight of the Public Interest Disclosures Act 1994: Annual Report 2019–20* (15 December 2020).

The most recently published combined report, the *Biennial report of the deaths of children in New South Wales: 2018 and 2019*, incorporating reviewable deaths of children, was tabled in the NSW Parliament on 24 August 2021. The report concerns the deaths of 989 children who died in NSW in 2018 and 2019. The report also includes information about longer term trends in child mortality. This report can be accessed on our [website](#).<sup>2</sup>

In addition to the biennial report, the CDRT is required to report annually to the NSW Parliament on its activities and the progress of its recommendations. CDRT annual reports can be accessed on [our website](#).

### **Reviews of the deaths of persons with disability**

Under Part 6 of CS CRAMA we also review the death of any person (child or adult) with disability who was living in, or temporarily absent from, supported group accommodation (as defined in the *Disability Inclusion Act 2014*) or an assisted boarding house at the time of their death.

As noted in Chapter 3 our disability death review function is currently under review. Our most recent report about reviewable disability deaths was published in August 2018, and can be accessed on our [website](#).<sup>3</sup>

### **Monitoring of disability reportable incidents**

Part 3C of the Ombudsman Act requires us to monitor disability reportable incidents in State-run or funded supported group accommodation. Those incidents include sexual misconduct, assault, ill-treatment, neglect or unexplained serious injury.

Since July 2018, NDIS registered service providers must notify the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission of any reportable incidents and allegations. From this time, we continued to handle reportable incident matters notified prior to July 2018, and to monitor reportable incidents involving people with disability living in supported group accommodation still operated by DCJ.

In March 2021, DCJ confirmed that the NSW Government had ceased delivering services for National Disability Insurance Agency or Continuity of Support Program clients. Accordingly we no longer perform functions under Part 3C of the Ombudsman Act.

### **Monitoring the segregation of detainees in youth detention**

Under the *Children (Detention Centres) Act 1987*, children and young people detained in a youth justice centre may be segregated from others for safety reasons; or they may be separated, for example due to medical reasons or to keep male and female detainees apart. They may also be placed in confinement as a punishment.<sup>4</sup>

The Children (Detention Centres) Regulation 2015 requires us to be notified when children and young people are in segregation beyond 24 hours duration. By agreement, Youth Justice also notifies us if a child or young person is separated or confined for more than 24 hours (or when a combination of segregation, separation and/or confinement meets this threshold). We receive automatic notifications from Youth Justice's systems when this occurs. The notifications allow us to review the person's current situation and how they are being managed, and to make inquiries if appropriate.

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2. NSW Ombudsman, *Biennial report of the deaths of children in New South Wales: 2018 and 2019: Incorporating reviewable deaths of children* (24 August 2021).

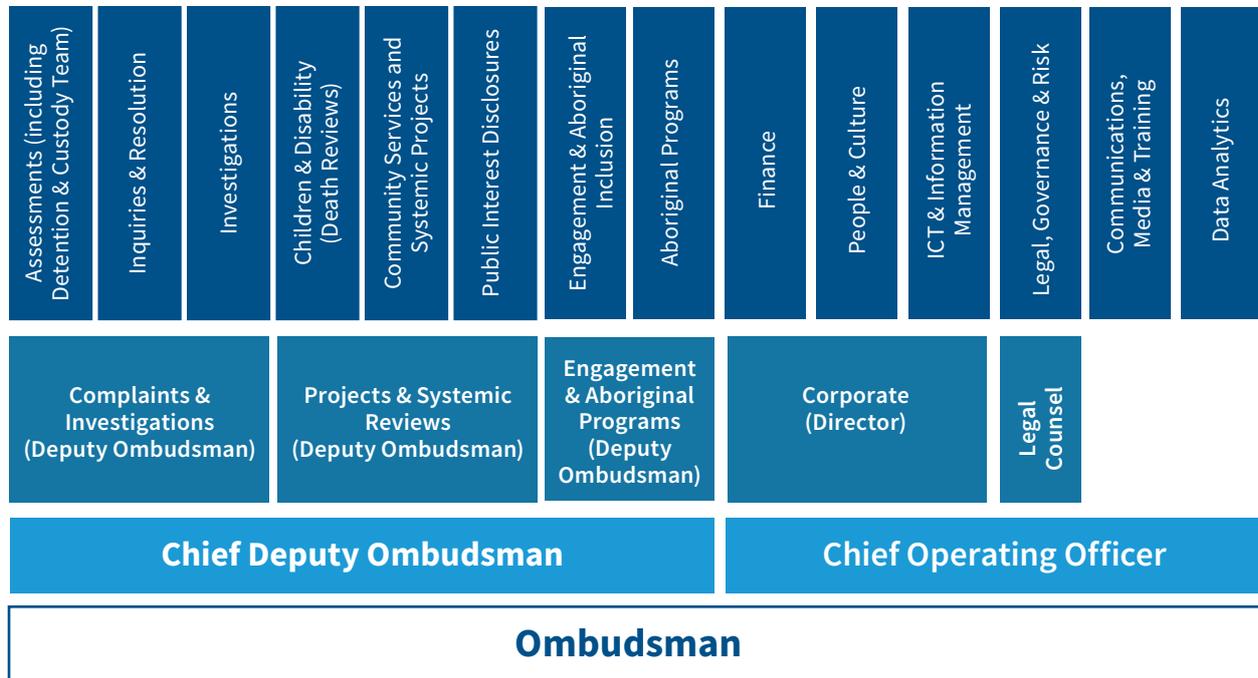
3. NSW Ombudsman, [Report of Reviewable Deaths in 2014–2017: Deaths of people with disability in residential care \(31 August 2018\)](#).

4. See *Children (Detention Centres) Act 1987*, ss 16, 19 and 21(1)(d). A young person may be punished for misbehaviour by exclusion from, or confinement to, a place for a period not exceeding 12 hours or, in the case of a detainee of or over the age of 16 years, not exceeding 24 hours.

## 1.2 Organisational structure

Below is our organisational structure as of 1 October 2021.

Figure 1. Organisational structure



### Changes to our structure

#### Completion of restructure

Our office undertook a restructure in October 2019. At that time, a decision was made to defer the review and restructure of our Corporate branch. This decision was made to enable staff in those units to support the broader restructure without being distracted by being part of it themselves.

The review and restructure of the Corporate branch was completed in 2020–21.

#### Executive roles

In May 2021 we abolished a senior executive role at the Band 3 level (the Deputy Ombudsman (Reviews, Investigations and Community Services) and advertised instead for 2 new senior executive positions at the Band 2 level.<sup>5</sup> These roles are the Chief Deputy Ombudsman and the Chief Operating Officer.

- The **Chief Deputy Ombudsman** leads the Ombudsman’s core statutory functions, including monitoring, investigating and promoting improvements in the performance,

accountability and compliance of government and non-government agencies, and resolving matters in the public interest.

- The **Chief Operating Officer** leads the implementation of strategic and transformative business improvements projects that will modernise the Ombudsman’s Office and enhance its operations and impact. The role leads a division responsible for all corporate, legal and governance systems and processes across the office, as well as enhancing the Ombudsman’s accessibility and brand reputation through external communications.

#### Executive team

Michael Barnes was appointed Ombudsman in December 2017. He resigned from his position in August 2020 and has since taken up the role of NSW Crime Commissioner. Paul Miller was appointed Ombudsman in May 2021, having acted in the role since Michael’s departure.

As at 1 October 2021 there are 7 senior executive roles in the organisation, not including the Ombudsman.

5. Under the *Government Sector Employment Act 2013*, senior executives (other than heads of agencies) are employed in 3 bands, with Band 1 being the most junior and Band 3 being the most senior.

## Executive team as at 1 October 2021

### **Paul Miller PSM** – Ombudsman

BEcon, LLB (Hons), LLM, MBA, MA (Phil),  
Solicitor of the Supreme Court of NSW

Paul was appointed Ombudsman in May 2021, having acted in the role since August 2020. Paul joined the Ombudsman's Office in April 2019 as Deputy Ombudsman (Reviews, Investigations and Community Services) and Community and Disability Services Commissioner. Paul has previously served as a Deputy Secretary with the Department of Justice and the Department of Premier and Cabinet.

### **Monica Wolf** – Chief Deputy Ombudsman and Commissioner for Community & Disability Services

BA, GradDipEdSt, GradCertPublicPolicy,  
GradCertPSM

Monica was appointed Chief Deputy Ombudsman in August 2021. Prior to this, Monica held a number of executive roles in the organisation, including, most recently, Deputy Ombudsman, Projects and Systemic Reviews. In these roles her responsibilities included leading teams responsible for reviews of the deaths of children, policy and systemic projects, and complaints and investigations. Monica worked for a 2-year period with the Royal Commission into Institutional Responses to Child Sexual Abuse, leading teams in both investigations and policy. In 2019, Monica completed the NSW Leadership Academy Leading Executives Program.

### **Chris Clayton** – Chief Operating Officer

BComm, GradDipCA, GradCertIA, CA

Chris was appointed Chief Operating Officer in August 2021. Prior to joining the Ombudsman's Office, Chris had an extensive career at the Audit Office of New South Wales, where he held a range of executive positions. Most recently, this included supporting the Auditor-General in overseeing audit quality, provision of audit-related technical support, innovation of audit practices, and corporate governance functions.

### **Danny Lester** – Deputy Ombudsman, Aboriginal Programs

EMPA, BAdEd, DipBus

Danny, a proud Wonnarua man, was appointed Deputy Ombudsman in 2014. Prior to this Danny worked in a range of senior roles in

Commonwealth and NSW agencies and the non-government sector, including at the Aboriginal Employment Strategy where he was CEO for 8 years. Danny has also been a Board member of many public/private sector interest entities.

### **Nicole Lawless** – Deputy Ombudsman, Complaints and Investigations

BA (Psych), PostGradDip (ForPsych), LLB, LLM,  
Solicitor of the Supreme Court of NSW

Nicole has led the Complaints and Investigations branch since July 2019. She previously worked at the Ombudsman's Office as a legal advisor and Counsel Assisting the Ombudsman. Nicole has held a range of roles in the NSW public service, including as a prosecutor at the NSW Office of the Director of Public Prosecutions, and as the Deputy Director of the Criminal Law Review Division in the NSW Attorney General's Department.

### **Helen Wodak** – Acting Deputy Ombudsman, Projects and Systemic Reviews

BA, LLB, Solicitor of the Supreme Court of NSW

Helen was appointed Acting Deputy Ombudsman for the Projects and Systemic Reviews branch on 6 September 2021. Helen's substantive role is the Public Interest Disclosures Team Manager, and previously she was the Principal Investigator of the complaints team in the Community Services division of the Ombudsman's Office.

### **Ainslee Scott** – Director, Corporate

BComm, EMBA, MAICD, FCPA

Prior to joining the NSW Ombudsman's Office as Director, Corporate in July 2019, Ainslee held a number of executive and senior positions across both the public and private sectors, including with the Australian Curriculum Assessment and Reporting Authority, NSW Treasury, TransGrid and Colonial First State. Ainslee is also a member of the Australian Network on Disability Board.

### **Megan Smith** – Legal Counsel

BSc (Psych) (Hons), LLB (Hons), Solicitor of the  
Supreme Court of NSW

Megan has been the Ombudsman's Legal Counsel since February 2016. Prior to this she was a solicitor at a large commercial law firm. Megan has also co-authored a textbook on equity.

## 1.3 Factors affecting us in 2020–21

### Strategic plan 2020–25

On 1 July 2020 we launched a 5-year strategic plan articulating our vision, mission and purpose, as well as reaffirming our core values.

The plan identifies over 40 strategic initiatives to be pursued over the next 5 years, grouped around the themes of:

- Services and impact
- Engagement and relationships
- Leadership and governance
- People and culture
- Systems and processes.

An annual plan is developed each year for the activities we will take to bring us closer to achieving our strategic objectives.

Our first action plan was developed early in 2020–21 and we have been reporting to staff each quarter about how we are progressing against identified actions. We have committed to reporting publicly on the progress of our Strategic Plan through our annual reports.

In this report:

- Chapter 2 summarises our operations during 2020–21 and the work we are doing to achieve our purpose, including:
  - Protecting citizens from abuse of power and unfair treatment
  - Fostering enduring reforms
  - Providing a trusted source of independent advice to Parliament.
- Chapter 3 outlines the work we have undertaken in 2020–21 to achieve our strategic initiatives.

### Responding to the COVID-19 pandemic

As outlined in our 2019–20 Annual Report, our office has been significantly impacted by the COVID-19 pandemic.

We had closed our physical office on 18 March 2020, stood up our Critical Management team and developed a response plan built around 3 stages – Survive, Revive, Thrive. We fast tracked the implementation of IT solutions to support remote working, launched remote learning modes for our training services, and continued community engagement remotely where possible.

From July 2020 we moved to the ‘Thrive’ stage of our plan. By December 2020 20–30% of staff (approximately 25 people) were working in the office at any given time – with executive approval. Our reception opened on 8 February 2021 with limited opening hours and in accordance with Public Health Orders about public entry to premises.

On 1 March 2021 our ‘Return to Office Framework’ (COVID-safe office plan) commenced. While individual agreements varied due to circumstances such as role, team requirements and personal circumstances, full-time staff were generally required to work in the office a minimum of 2 days per week.

However, in the last week of June 2021 we again closed our office, including to members of the public, and required all staff to work at home. This was in response to the Public Health Orders imposed on 25 June 2021.<sup>6</sup>

### Funding issues

#### 2021–22 Budget requests

On 22 June 2021 the NSW Government tabled the state budget for 2021–22. The state budget allocated funding to the Premier for \$28.5 million recurrent expenditure and \$0.8 million capital expenditure for the services of the NSW Ombudsman.

6. [Public Health \(COVID-19 Greater Sydney\) Order \(No 2\) 2021](#) as amended on 25 June 2021. The amendments inserted the employer’s obligation to allow work at home if reasonably practicable from 25 June and, from 26 June, stay at home requirements for City of Sydney and 4 other suburbs.

The 2021–22 budget did not include certain amounts that had been requested by the NSW Ombudsman, including:

- (a) An increase in ongoing base funding needed to enable the office to properly discharge all of its statutory functions.
- (b) Funding in respect of additional expenses that will be incurred by the Ombudsman’s Office as a result of anticipated to be enacted or commenced in 2021–22:
  - a new Public Interest Disclosure Bill 2021, which the government introduced on 14 October 2021
  - the *Mandatory Disease Testing Act 2021*, which was enacted on 17 June 2021 (but is yet to commence).

We also requested funding in our annual budget for the items referred to below (that we had also requested from the Digital Restart Fund (DRF)). Those requests were also rejected.

## Digital Restart Fund

Funding for the following items was sought from the DRF, which has been established under the *Digital Restart Fund Act 2020*:

1. Funding needed to uplift digital capability and enable compliance with the minimum cyber security standards set by the NSW Cyber Security Policy (CSP) and the Australian Government Information Security Manual (ISM).
2. Funding to commission and implement a compliant finance/enterprise resource planning system to replace the current legacy systems used for accounts, financial reporting, procurement, payroll, and timesheet functions.
3. Funding to commission and implement a fit-for-purpose case management system to replace antiquated legacy systems, to improve our ability to perform our legislated functions, enhance cyber security, and enhance the experience for people who contact our office.
4. Funding to enhance digital service delivery to complainants and agencies (including the commissioning of a new external website) to enhance accessibility to our services, improve customer experience, and allow integration with the case management system.

DRF Funding has recently been confirmed for item 1. Although we understand the remaining requests are eligible for the DRF, we have been informed they have not been funded at this time because they have not been ranked as high priorities relative to other requests made across government for DRF funding.

## Legislative and legal issues

### Recent legislative amendments

#### Responding to oral complaints

Previously, under section 15 of the Ombudsman Act, if a person made an oral complaint to the Ombudsman’s Office (typically by phone), we could only inform them orally of our decision to refuse to conciliate, investigate or continue an investigation if they consented to this. Otherwise, we were required to provide this information in writing.

In December 2020, this provision was amended by the *Statute Law (Miscellaneous Provisions) Act 2020*. The legislation now provides that staff may inform a complainant orally of the decision and the reasons for the decision, unless the complainant asks to be informed of the reason in writing.

All complaints and decisions (whether written or oral) are recorded in our case management system.

#### Mandatory Disease Testing Act

The *Mandatory Disease Testing Act 2021*, which received assent on 17 June 2021 and will commence upon proclamation, will confer new powers on the Ombudsman.

The Act establishes a scheme for the mandatory blood testing of a person in circumstances where the person’s bodily fluid has come into contact with a health, emergency or public sector worker as a result of the person’s deliberate action and the worker may be at risk of contracting a blood-borne disease. Under section 36 of the Act the Ombudsman monitors the operation and administration of the Act, and prepares a report about the monitoring after the first 12 months of its operation and then every subsequent 3 years.

We continue to liaise with government with a view to ensuring that we are provided with sufficient resources to prepare for and perform this function in accordance with the legislation and parliamentary and community expectations.

## **Foreign Relations (State and Territory Arrangements) Act**

The *Foreign Relations (State and Territory Arrangements) Act 2020* (Cth) commenced in December 2020. Its stated aim is to ensure that arrangements between state or territory governments and foreign governments (and their associated entities) do not adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy.

In March 2021, we provided the NSW Department of Premier and Cabinet and the Australian Department of Foreign Affairs and Trade with information about any arrangements (primarily relating to our provision of training services) that may need to be reported under this legislation. We will continue to provide information as required.

## **Parliamentary Committee reports**

### **Ombudsman committee report on our 2020 Annual Report**

In August 2020 the Committee on the Ombudsman, Law Enforcement Conduct Commission and the Crime Commission published its report on its 2020 Review of the Annual Reports of oversighted bodies. No recommendations were directed to the Ombudsman.

### **Public Accountability Committee report on the budget process for independent oversight bodies**

In February 2021, the Public Accountability Committee published its second and final [report](#) on the budget process for independent oversight bodies in New South Wales.<sup>7</sup>

Consistent with its first report published in March 2020, the committee recommended that the Ombudsman (and the other independent oversight bodies) should have their annual budget bids presented to relevant parliamentary oversight committees for consideration. The committee also reiterated the recommendations made in its first report, which we outlined in last year's Annual Report.

The government was due to respond to the committee's recommendations in August 2021. However, the government has delayed a

substantive response as a number of relevant agencies expressed concern about the lack of consultation by the government in its development of that response. A response is now expected in the fourth quarter of 2021.

### **Committee on First Nations Deaths in Custody – recommendation concerning the Inspector of Custodial Services**

In April 2021 the Select Committee on the High Level of First Nations People in Custody and Oversight and Review in Deaths in Custody published its report.<sup>8</sup> A key recommendation of the report is that deaths in custody be subject to investigation by the Law Enforcement Conduct Commission.

The report also includes a recommendation 'that the NSW Government consider merging the functions of the Inspector of Custodial Services into the NSW Ombudsman's office.'

This recommendation was made following submissions by the Ombudsman that a merger of the Inspector into the Ombudsman's Offices would be beneficial, including:

- co-locating visits, complaint handling and all investigation functions would provide greater clarity to both the agencies and complainants
- as a very small organisation with limited resources, the Inspector's office would benefit from access to the broader resources of our office, including access to training and support
- a merger would enhance the independence of the Inspector's office – currently the Inspector's staff are employed by DCJ and are reliant on DCJ for all corporate support
- the existing dependency on DCJ (which also includes Corrective Services NSW and Youth Justice NSW, the agencies that are oversighted by the Inspector) may also mean that the Inspector could not currently meet international standards and expectations for nomination as a relevant oversight body under the Optional Protocol to the Convention Against Torture and other cruel, inhuman or degrading treatment or punishment (OPCAT).

In October the government released its response to the report. It 'noted' the recommendation to consider merging the functions of the Inspector

7. NSW Parliament Public Accountability Committee, *Budget process for independent oversight bodies and the Parliament of New South Wales: Final Report* (February 2021).

8. NSW Parliament Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody, *The high level of First Nations people in custody and oversight and review of deaths in custody* (April 2021).

of Custodial Services into the NSW Ombudsman's office. The government did not support expanding the functions of the Law Enforcement Conduct Commission to undertake full investigations in relation to deaths in custody.

## Significant judicial decisions and legal proceedings

### Significant judicial decisions and legal proceedings

There were no significant judicial decisions that affected the Ombudsman or the users of its services during the reporting period.

### Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

In April 2019, the Australian Government announced the establishment of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. The Australian Government has recently extended the Commission until September 2023.

Given the role of the NSW Ombudsman in reviewing the deaths of people with disability and previous functions overseeing reportable incidents in supported accommodation and dealing with complaints from people with disability, it was anticipated that the Royal Commission would seek to liaise with the NSW Ombudsman in the course of the inquiry.

Under the Ombudsman Act, the NSW Ombudsman and staff are neither 'competent' nor 'compellable' to appear as a witness or to provide evidence in any legal proceedings. Being not 'compellable' means that we cannot be required to give evidence in proceedings. Being not 'competent' means that we are not legally capable (that is, not able or permitted) to give evidence.

We have, however, been cooperating with and assisting the Royal Commission by voluntarily providing all records requested by the Commission (approximately 4,500 pages to date). We have done so on the basis that s 34(2) of the Ombudsman Act provides a limited exception to our non-disclosure obligations, permitting us to disclose information to a Commonwealth body that is exercising similar functions to those we exercise. We have taken the view that, given the terms of reference of this Royal Commission, it is such a body.

In providing information, we have also taken steps to ensure the Royal Commission is aware when it is necessary to protect sensitive personal information that may be contained in our records.



**2 Our operations: Achieving our purpose**

# 2.1 Highlights

## Changes to our executive

Paul Miller appointed NSW Ombudsman in May 2021

Abolished a Band 3 position and created new Band 2 positions: Chief Operating Officer and Chief Deputy Ombudsman

## Protecting citizens from abuse of power and unfair treatment



### Community engagement

Launched our Community Engagement Strategy and met with organisations and communities across NSW, including those in custody, to improve community members' understanding about our purpose and functions

Received **24,733** contacts to our office

25% lower contacts received in 2020-21 primarily due to fall in misdirected contacts and a decrease in custodial services complaints that coincides with the COVID-19 pandemic



**52% decline in misdirected contacts from 2019-20** through efforts to improve communication about what complaints we can help NSW citizens resolve

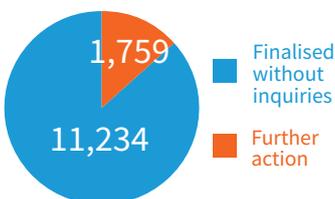


### Dealing with complaints

Finalised 12,993 actionable complaints, with 63% finalised within 1 week



### Took further action on 1,759 complaints,



including preliminary inquiries, suggestions and comments, conciliations and investigations

**Received 994 complaints and inquiries** related to the NSW Government response to the COVID-19 pandemic, including 463 actionable complaints



# Fostering enduring reforms to prevent future failings and improve public administration and service delivery

## Improving complaint-handling capability and systems

- Participated in a Standards Australia committee to develop a new Australian Complaint-Handling Standard

## Making suggestions for improvements

- Made formal comments or suggestions in respect of 27 complaints

## Investigations

- Commenced 2 investigations and completed 4
- Published 3 special reports to Parliament about investigations

## Monitoring and assessment of Aboriginal programs

- Government supported 68 of the 69 recommendations we made in our 2019 OCHRE Review Report
- Undertook over 140 Aboriginal community engagement activities across all of NSW, including remote and regional communities

## Monitoring the delivery of community services and related programs

- Published a report assessing DCJ's progress in dealing with problems we previously identified in supporting homeless children

## Monitoring implementation of our recommendations

- Undertook further follow-ups with regards to our previous work on school suspensions and HSC disability provisions

## Supporting agencies and service providers through training

- Published a third edition of our Managing Unreasonable Conduct of Complainants manual
- Successfully launched new blended and online learning models
- Resumed training delivery after suspension due to COVID-19 pandemic
- Delivered 115 workshops to 2,430 participants to improve public and community sector administration across the areas of complaint handling, public interest disclosures and investigations

## Providing a trusted source of independent advice to Parliament

Tabled  
6 special  
reports to  
Parliament

- Provided advice to Parliament about the need to confer appropriate powers and resources to allow our office to monitor and report on the Mandatory Disease Testing Act

### • Contributed to 5 parliamentary inquiries on

- *Inquiry into the High Level of First Nations People in Custody and Oversight and Review in Deaths in Custody*
- *Follow-up Review of the Management of NSW Public Housing Maintenance Contracts*
- *Inquiry into the Mandatory Disease Testing Bill*
- *Inquiry into the Child Protection and Social Services System*
- *Inquiry into a Proposal for a Compliance Officer for the NSW Parliament*





## 2.2 The 3 limbs of our purpose

We broadly identify 3 limbs to our purpose:

### **Protection**

We aim to protect citizens from abuse of power and unfair treatment by helping them to voice and resolve complaints, and by investigating maladministration



### **Prevention & improvement**

We aim to foster enduring reforms that will prevent future failings and improve public administration and service delivery



### **Independent advice and public accountability**

We aim to provide a trusted source of independent advice to the Parliament, providing assurance of Executive compliance with the Rule of Law and supporting the Parliament functions of scrutinising the Executive and implementing the legislative reform.

These limbs are interrelated. They look at our role from 3 different perspectives – the individual's, the agency/ service provider's and the Parliament's.

Most of our work will contribute in some way to all 3 limbs.

In the following pages, we have outlined our work in 2020–21 by reference to each of the three limbs. Each workstream is placed under whichever of the 3 limbs of our purpose to which it most clearly relates.



### **2.3 Protecting citizens from abuse of power and unfair treatment**

We seek to protect citizens from abuse of power and unfair treatment by helping them to voice and resolve complaints, and by investigating serious maladministration.

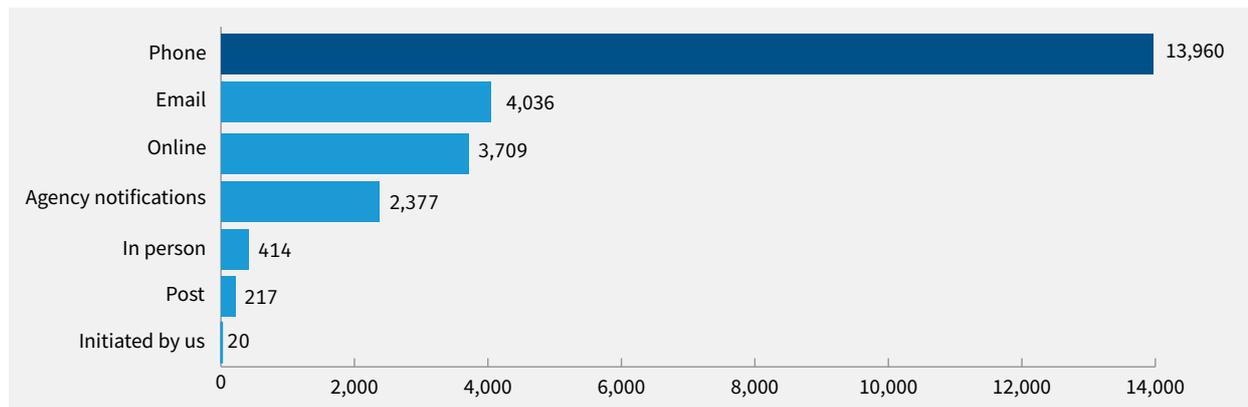
We use the term 'citizens' in its general and widest sense. The people we can help include those within and outside New South Wales, individuals as well as groups and organisations, children, young people and adults, as well as people who may not otherwise be able to exercise legal rights without assistance (such as those under guardianship orders). Our legislation enables 'any person' to bring a relevant complaint to the Ombudsman.

## Accessing our services

We seek to be accessible to all members of the public and can be contacted through a range of means including by phone, email, and online complaints form (updated in May 2021).

People can also visit our office in person. However, in-person visits were restricted during some periods of 2020–21 due to the ongoing impacts of COVID-19.

Figure 2. How we receive contacts



Some community members may be less likely to access our services without assistance. The very factors that may contribute to a person needing the help of the Ombudsman may also limit their ability or willingness to approach and engage with us.

To reach those who may not even have knowledge of our office or services, or may otherwise face impediments to accessing our services, we undertake a range of community outreach activities. We provide information about our services, and seek to build trust that issues can be raised with us and will be addressed appropriately.

## Contacts to our office

We categorise contacts received by our office into 6 categories (see Appendix A for more detail):

- **Actionable complaints** – these are complaints about a public authority or community service provider that we are authorised to deal with under the Ombudsman Act or CS CRAMA
- **Excluded complaints** – these are complaints about a public authority or community service provider that we are not authorised to deal with because the complaint is about ‘excluded conduct’

- **Requests for information** – this is where someone is not complaining but asks for our help or advice
- **Notifications** – these are where agencies report things to us because it is legally required (for example, when a young person is segregated alone in a youth justice centre for 24 hours or more)
- **Misdirected contacts** – this is where someone contacts us about a person or body that is not a public authority or a community service provider, and which we have no jurisdiction over (such as an Australian Government department or a private utility company)
- **Feedback Assist** – this is feedback (complaints, compliments or suggestions) provided by the public via a widget on the nsw.gov.au website (NB: Feedback Assist has now been discontinued on that website.)

Due to enhanced data quality assurance processes, there may be minor differences in prior year contact numbers compared to previously reported data.

## Community engagement



We are committed to serving all people and communities in NSW, and our vision is to ensure that everyone receives the right services and fair treatment from those we oversee. Earlier this year, our office launched our 'Community Engagement Strategy'. The strategy includes specific focus communities who we will work with, including:

- Aboriginal people and communities
- people from culturally and linguistically diverse communities
- people in, or recently released from, custody
- children and young people
- people with disability.

The strategy, which can be found on our [website](#), outlines a list of actions to improve community members' understanding about our purpose and functions.

During 2020–21 we:

- met with representatives from peak Aboriginal organisations such as the NSW Aboriginal Land Council, Aboriginal Health and Medical Research Council, First Peoples Disability Network and the NSW Child, Family and Community Peak Aboriginal Corporation (AbSec) to raise awareness of our role and how we can help
- met with representatives and leaders from the regional alliances that form the NSW Coalition of Aboriginal Regional

Alliances to discuss the progress of OCHRE-related initiatives

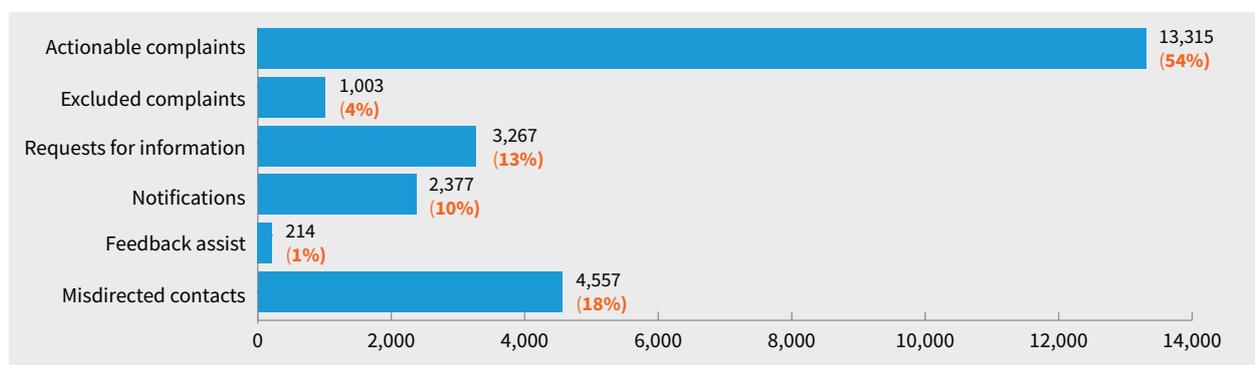
- met with Aboriginal out-of-home care agencies across NSW to inform them of our role and how we can help
- participated in 'good service mob', a 'collaboration of Aboriginal and non-Aboriginal staff from complaint-handling agencies
- held information stalls in Tumbarumba, Gundagai and Lavington to provide information about our role and how we can help
- held an information stall at the Royal Easter Show during Seniors Festival to provide information about our role and how to access our services
- collaborated with members of the Australian and New Zealand Ombudsman's Association Youth Initiatives Working Group, to develop a youth initiatives report which will highlight successful youth engagement initiatives and make recommendations to improve the delivery of services to young people
- met with representatives from Multicultural NSW, Multicultural Legal Services and the Refugee Council of Australia to discuss our role and how we can raise awareness of our office with culturally diverse communities
- liaised with the Office for Regional Youth to discuss opportunities to engage with the Regional Youth Taskforce
- liaised with agencies such as the Multicultural Youth Advocacy Network (Australia), Carers NSW, Youth Action, and the NSW Advocate for Children and Young People to discuss emerging issues and ways to address them.

Given the particular vulnerability of people in custody, and their unique dependency on the proper performance of functions by public officials, we maintain a regular program of visits to correctional centres and youth justice centres throughout the year. During visits we receive complaints and ensure that people in custody are aware of how we can assist them. This work is led by our specialised Detention and Custody Team.

## Contacts received in 2020–21

In 2020–21, we received 24,733 contacts.

Figure 3. Contacts received in 2020–2021



### Reducing the volume of misdirected contacts we receive

People sometimes contact our office about matters we cannot deal with. For example, sometimes people contact us with complaints or questions about an Australian Government agency, a private energy supplier, or their own private sector employer.

We always try to help people who come to us and, in the case of these misdirected contacts, that often means referring them to the right ombudsman or another body or service that can help with their issue, such as the Commonwealth Ombudsman, the NSW Energy and Water Ombudsman or the Fair Work Ombudsman.

However, we have also been taking action to reduce the number of misdirected contacts that come to us. This allows more of our resources to be devoted to actionable complaints and other matters within our jurisdiction.

Some actions we have been taking include:

- providing clearer information on our website about the other ombudsman and similar services responsible for issues that we cannot deal with
- implementing an automated phone recording system that provides redirection information when people call about matters that are not within our jurisdiction
- working with other ombudsman services, both parliamentary and industry, to produce informational flyers and posters that direct people to the right service for them.

A further breakdown of data relating to complaints and notifications is at Appendix A.

### Changes in contacts over time

In 2020–21, we received 24,733 contacts, 25% lower than the 33,075 contacts we received in 2019–20.

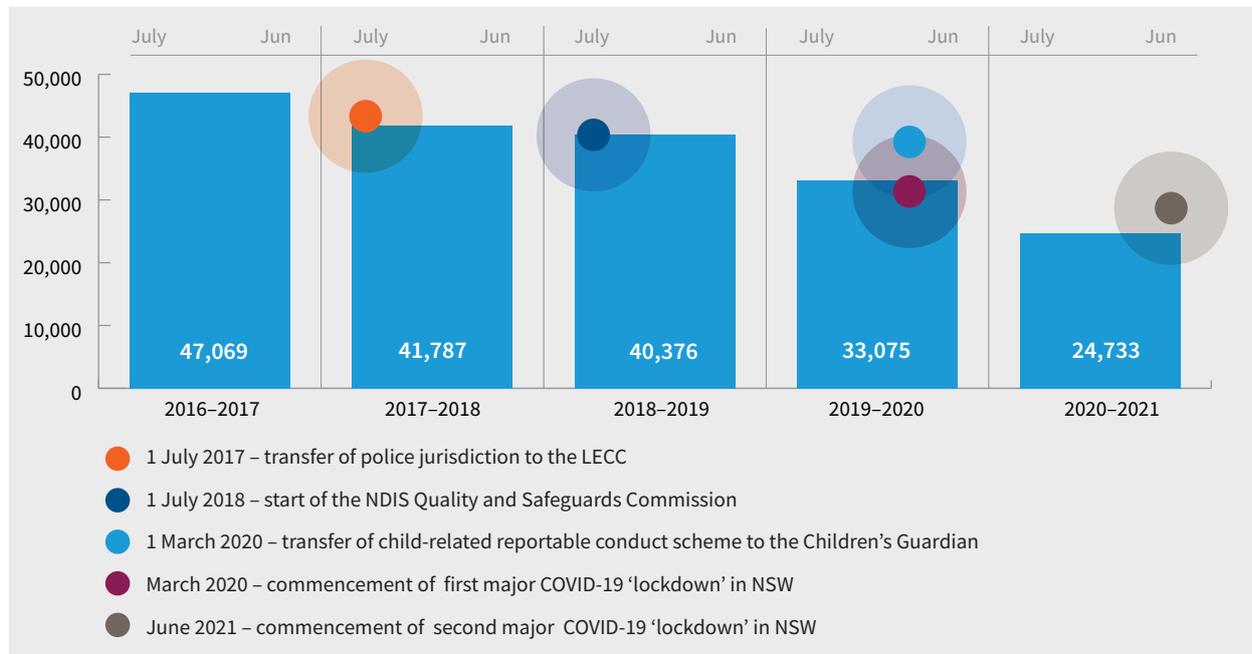
However, we received a similar number of actionable complaints in 2020–21 compared to 2019–20 in most areas, except for custodial services.

A growth in Youth Justice notifications that commenced in the last quarter of 2019–20 continued throughout 2020–21. This is mostly a result of mandatory COVID-19 quarantine (separation) requirements on admission to youth justice centres. However, we no longer receive notifications about reportable conduct by employees working with children and reportable incidents involving people with a disability, bringing an overall drop in the number of total notifications received.

The largest decline in contacts from 2019–20 was a 52% drop in misdirected contacts, from 9,470 in 2019–20 to 4,557 in 2020–21.

There was also a significant drop in the number of contacts received through Feedback Assist in 2020–21 following a review by the Department of Customer Service. The widget is no longer used on the NSW government website.

**Figure 4. Contacts received over 5 years**



Total contacts to our office have been declining over the past 5 years, and have reduced by 47% since 2016–17. These declines are primarily the result of:

- the transfer of responsibility for police oversight to the Law Enforcement Conduct Commission (LECC) on 1 July 2017, which has meant that we no longer receive actionable complaints about NSW Police Force
- the transfer of disability services to NDIS service providers from 1 July 2018, which has reduced both notifications (of disability reportable incidents) and the volume of actionable complaints we receive in relation to disability services
- the transfer of the NSW child-related reportable conduct scheme to the Children’s Guardian on 1 March 2020, which has resulted in our office no longer receiving mandatory employment-related child protection reports
- a significant reduction in misdirected contacts in 2020–21
- in 2020–21, a decrease in custodial services complaints that coincides with the COVID-19

pandemic and may be related to both the sizeable drop in the adult inmate population during the pandemic and the general restriction of activities within centres.

As well as the above, since March 2020, the circumstances of the COVID-19 pandemic has likely impacted the volume of contacts to our office, including because:

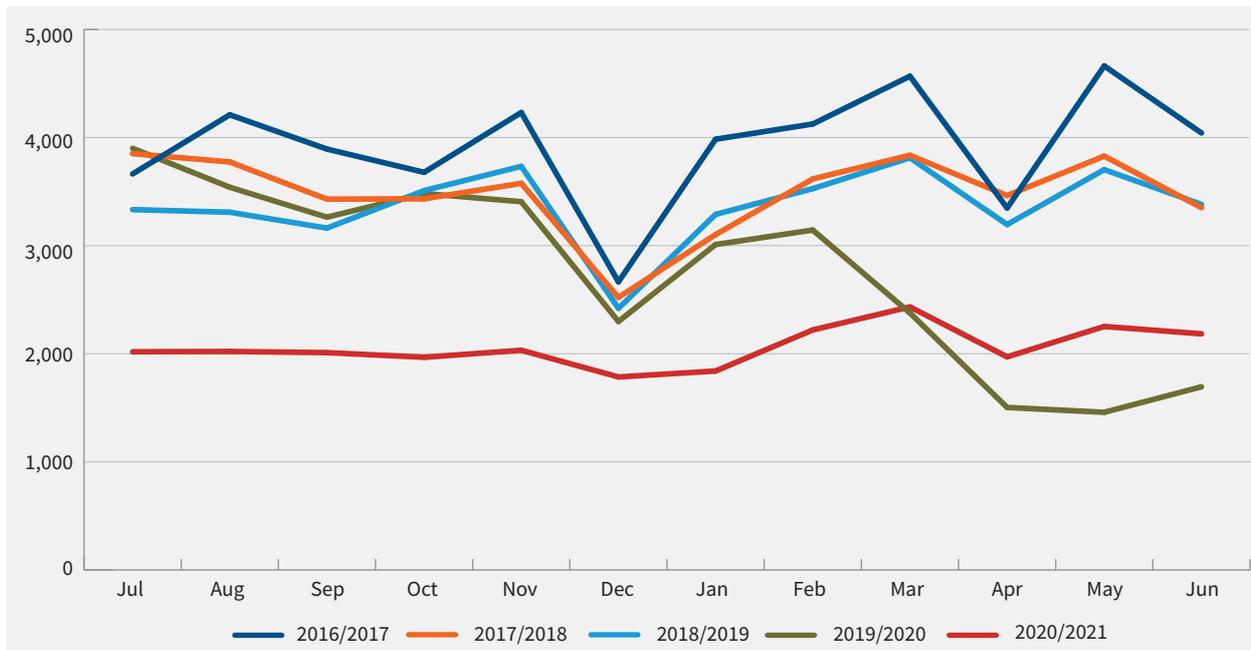
- Some of the usual routines of government and services that people receive (and therefore from time to time might complain to us about) have been disrupted. At the same time there have been at various times significant packages of financial supports, as well as agency level hardship and delayed payment policies, that may have lessened some of the impact on people and their livelihoods.
- As we outlined in our report, *2020 hindsight: the first 12 months of the COVID-19 pandemic* some of the most significant aspects of the government’s COVID-19 response (and therefore the issues about which contact to us might otherwise have been anticipated) are outside of our jurisdiction.<sup>9</sup> In particular,

9. NSW Ombudsman, *2020 hindsight: the first 12 months of the COVID-19 pandemic* (22 March 2021).

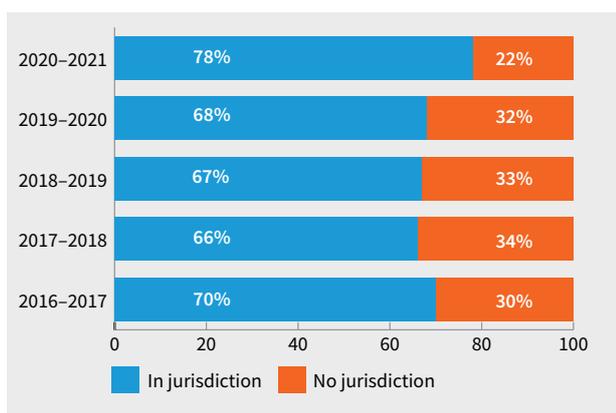
complaints about the actual rules imposed in a Public Health Order made by the Minister for Health and Medical Research or the enforcement of such orders by the NSW Police Force are not matters that we can deal with, as conduct of both the minister and the NSW Police Force are now excluded from our oversight by Schedule 1 of the Ombudsman Act.

- At various times (and particularly in periods when stay-at-home rules have been imposed under Public Health Orders) our office’s accessibility has been significantly reduced, for example through the closure of our physical office and reception, reductions in phone hours, suspended in-person visits to correctional and youth justice centres, and reduced community outreach events.

**Figure 5. Monthly contacts received over past 5 financial years**



**Figure 6. Contacts received in jurisdiction over 5 years**



The proportion of contacts we receive that are within our jurisdiction has increased in the last year, primarily as a result of a reduction in misdirected contacts.

Given the fragmentation and complexity of the oversight ecosystem it is to be expected that we will always receive some contacts about matters that are not in our jurisdiction. However, we will continue to aim to provide information to the public so that they can self-navigate to the right ombudsman or other oversight body to ensure that more of our resources are dedicated to responding to the actionable complaints and other matters that are within our legislative mandate.

## Handling actionable complaints

Given our limited resources, we must prioritise our efforts to those actionable complaints that involve issues of potentially significant public interest, including:

- systemic deficiencies in public administration
- individual cases of serious abuse of power
- an agency's failure to deal properly with complaints
- significant cross-jurisdictional issues (eg involving the conduct, policies or staff of 2 or more agencies)
- sensitive issues which are unlikely to be (or to be seen to be) properly addressed by the agencies concerned, for example, because of the seniority of staff the subject of allegations or potential conflicts of interest
- other significant public interest issues.

When assessing complaints, we may also consider factors such as the complainant's vulnerability, including whether there are alternatives reasonably available to the complainant to resolve the dispute.

Much of our complaint-handling work involves making inquiries with agencies and service providers and helping to resolve complaints in a relatively informal manner.

## How we finalised actionable complaints in 2020–21

### **Initial assessment – undertaken in respect of 100% (12,993) of the actionable complaints finalised in 2020–21**

We conduct an assessment of all complaints we receive.

We are often able to finalise complaints at this stage by:

- providing information and advice to the complainant (for example, providing an explanation of the agency's conduct or decision, or by outlining their rights of appeal or review)
- referring them to the appropriate section or officer within the relevant agency to raise their complaint. Depending on the circumstances, if a complainant has not already contacted the agency directly before contacting us, we may advise them to raise their concern directly with

the agency to give the agency the opportunity to respond to the concern, and then invite the complainant to come back to us if they are not satisfied with the agency's response.

### **Warm referral to agencies – undertaken in respect of 9% (1,172) of the actionable complaints finalised in 2020–21**

We have arrangements in place with most of the larger agencies allowing us to 'warm refer' complaints to them directly, with the complainant's consent. We do this where we assess that the agency has not had a reasonable chance to address the complaint. This is helpful as it means the complainant does not have to start the process of complaint again by contacting the agency directly, and the agency is aware that the issues have already been raised with us.

### **Preliminary inquiries – made in respect of 13% (1,742) of the actionable complaints finalised in 2020–21**

After receiving a complaint, we may make preliminary inquiries under section 13AA of the Ombudsman Act. This means we ask agencies to provide us with answers to questions raised by a complaint or to provide documents to help us understand and address issues raised.

Most complaints that result in preliminary inquiries are finalised following such inquiries. Sometimes this is because the information we receive suggests no further action is warranted and we are in a better position to explain to the complainant why this is the case. In other cases, our inquiries prompt agencies to take action to resolve the complaint or to provide the complainant with reasons or further information that addresses their concerns.

### **Suggestions – 39 suggestions made in respect of 12 actionable complaints finalised in 2020–21**

Under section 31AC of the Ombudsman Act, we can provide information and comments to an agency regarding a complaint. Following preliminary inquiries, we sometimes take this approach to suggest improvements the agency could make to prevent similar complaints arising in the future, for example by suggesting improvements that could be made to an agency's policies or practices, or other changes that will help to address the underlying issues that may have contributed to a complaint.

The 39 suggestions we made to agencies, in matters which have been finalised, were accepted and implemented by the agencies subject of complaint. We are currently awaiting advice from agencies in relation to a number of other suggestions we made in 2020–21.

### Conciliation of complaints – 1 conciliation conducted in 2020–21

Section 13A of the Ombudsman Act enables us to seek to deal with a complaint by formal conciliation. Conciliation is held on a voluntary basis and the parties may withdraw at any time. Conciliation may be conducted with the assistance of a professional conciliator or mediator. Where this happens, the conciliation process is internally ‘ring fenced’ from any other action we may take on the complaint, to ensure that the conciliation discussions can take place in a frank, confidential and ‘without prejudice’ environment.

Conciliation can be a highly effective means of resolving complaints, particularly where the complainant and the agency also need to maintain an ongoing relationship (such as a student of a school or university, a tenant in public housing, or person in care). However, currently we rarely undertake formal conciliations because we do not have the funding to do so.

As outlined in Chapter 3 we will commence exploring opportunities for enhanced conciliation/alternative dispute resolution (ADR) service provision in 2021–22.

### Formal Investigations – 2 commenced in 2020–21

Most actionable complaints we receive do not result in a formal investigation. In 2020–21 we commenced 2 investigations and we completed 4 investigations.

Where it appears that any conduct of a public authority may be contrary to law, unreasonable, unjust, oppressive or improperly discriminatory, based on improper motives, irrelevant grounds or consideration, based on a mistake of law or fact, or is otherwise wrong, the Ombudsman can choose to make the conduct the subject of formal investigation under section 13 of the Ombudsman Act.

**Table 1. Time taken to finalise actionable complaints**

Timeframe	Number	%
Under 1 week	8,248	63
8 to 30 days	2,451	19
1 month or more	2,294	18

**Table 2. How we finalised actionable complaints**

Action taken	Number	%
Finalised without inquiries*	11,234	86.5
Further action taken**	1,759	13.5
<b>Total</b>	<b>12,993</b>	<b>100</b>

\* This includes warm referral

\*\* This includes preliminary inquiries, suggestions and comments, conciliations and investigations.



## A SAMPLE OF THE WIDE VARIETY OF COMPLAINTS WE DEALT WITH

Our complaint-handling jurisdiction is extremely broad. It includes all NSW Government departments and local councils, as well as hundreds of other state public authorities – everything from public universities to state-run utilities and cultural institutions. We also receive complaints about state-funded community service providers, of which there are approximately 2000.

The following is a snapshot of some of the wide variety of complaints we seek to resolve:

- We arranged for an independent billing review for a public housing tenant whose average water charges increased from \$20 to \$107 per week. DCJ Housing reconciled the water account, resulting in a \$600 credit for the tenant.
- A complainant raised concerns that she had been fined for failing to attend court for jury duty, despite having emailed the Sheriff's Office notifying them beforehand that she was unable to attend at that time. We made inquiries with the Sheriff's Office, and it turned out the email was never received as the complainant had misspelled the email address. The Sheriff's Office agreed to waive the fine.
- We assisted a public housing tenant, whose 3-year-old son had tested for high levels of lead in his blood, to have her house repainted to mitigate the risk of lead poisoning from flaking paint.
- An international university student mistakenly overpaid the university by \$2,000. When they sought a refund, the university declined them several times even though they pointed out the money was very important as the only means of living during lockdown. The university reviewed the matter when we made inquiries and fully refunded the overpayment.
- We made suggestions to the NSW Trustee & Guardian (NSWTG) regarding the residents of an assisted boarding house who had been unable to manage their own finances as a result of an agreement between the boarding house proprietor and the local bank. We suggested that the NSWTG improve safeguards for the residents under financial management and ensure that residents receive all funds allocated by NSWTG for their use; receive statements about their available funds; and any withdrawal of funds is by and for the resident. NSWTG implemented our suggestions.
- We assisted a public housing tenant to have his appeals determined after DCJ had incorrectly interpreted the request to appeal certain decisions of DCJ staff as merely a 'complaint' about staff. We contacted DCJ Housing and clarified with them that, although the tenant's communication may have been unclear, the complainant was attempting to appeal DCJ's decisions. After we clarified this with DCJ Housing, it assisted the complainant to properly prepare his appeal documentation.
- We assisted an Aboriginal kinship carer to resolve an issue about his carer payment, resulting in payment of the allowance and updated care plans for the children.
- We obtained agreement from NSW Trustee & Guardian to submit a hardship application to Centrelink to review aged care fees for a person under guardianship.

- An inmate of a correctional centre was transferred between 2 centres with an overnight stop at a transit centre. He had seen his artwork packed with his property onto the truck, but it was missing on arrival and he was unable to determine what had happened to it. Our inquiries found the artwork had been taken off the truck at the last minute because space was needed for other property and was later sent separately to the new centre. The artwork was returned to the inmate.
- We assisted a single father communicate with the school where his daughters attended, which resulted in a payment plan being put in place. The father had disability and post traumatic stress disorder and had arrived in Australia as a refugee less than 2 years ago. His daughters also had disability, and he had accrued a debt to his local high school for extra fees resulting from his daughters being enrolled in the disability unit class. His daughters did not qualify for the NDIS due to their visa status, and he was being asked to submit his concerns in writing which he could not do without our assistance.
- We conciliated a complaint between a complainant and a local council. The complaint was about the transfer of property rights and the creation of a public right of way and easement into the adjoining national park. The previous owner of the complainant's property constructed the property across a marked road on council land. The council knew of this construction for at least the last 25 years. The previous owner had attempted to resolve the issue without result. As a result of the conciliation, council agreed to pass ownership of the land to the complainant. The complainant agreed to lodge the correct documentation with council to enable the correct permits for this to take place. The title of the (now closed) road would be passed to the complainant. The complainant would sign the relevant documents allowing the access pathway and easement to be created.
- We made suggestions to DCJ about the circumstances of 2 young people that had left home due to risks of harm in the family home. As the children had not been assumed into state care, they were not eligible for leaving care supports when they turned 18. We suggested DCJ provide transition to independence support to homeless young people who met the threshold for risk of significant harm but were not assumed into care, and expand the Premier's Priority Youth Initiative pilot program to consider eligibility for homeless young people who met the significant harm threshold. DCJ agreed to consult with their partners in the homelessness sector regarding our suggestions.
- Several years ago, a university offered an international student a scholarship for the duration of their undergraduate academic career. In the final year of the student's medical degree the university advised them it would not provide the scholarship in the final year, due to budget cuts. At the time, the student decided to defer payment of tuition fees and reluctantly signed a deed agreeing to pay the fees amounting to around \$35,000. When we made inquiries into the matter, the university decided it would no longer seek to recover the fees as a gesture of goodwill.

## Reviews of our decisions

In 2020–21 we accepted 20 requests seeking a review of a decision we made about a complaint. Reviews are accepted and conducted in accordance with our 'Request for a review of a decision [policy](#)'.

Most requests for review are received when a decision has been made by our office to close a complaint following initial assessment or after preliminary inquiries, and not to commence a formal investigation.

We finalised 80% of reviews within 3 months from receipt. Of the 20 requests for a review, we affirmed our decision to close the complaint in 14 of those cases. We re-opened 2 complaints and made further inquiries with the agency in relation to the complaints. Four review matters were still open as of 1 July 2021.

## Reviewing the circumstances of a child in care

We did not undertake any reviews of circumstances of a child in care during this reporting period.

## COMPLAINTS ASSOCIATED WITH THE COVID-19 PANDEMIC

The COVID-19 pandemic itself, as well as the various and changing regulatory and operational responses of government and agencies to the pandemic, has meant that COVID-related complaints have been a particular theme in the complaints we have received across our jurisdiction in 2020–21.

In 2020–21, we received 994 complaints and inquiries specifically related to the NSW Government's response to the pandemic. Of these:

- 463 (47%) were actionable complaints
- 272 (27%) were misdirected contacts
- 182 (18%) were excluded complaints
- 77 (8%) were requests for information.

### Hotel quarantine

We received 652 contacts about hotel quarantine.

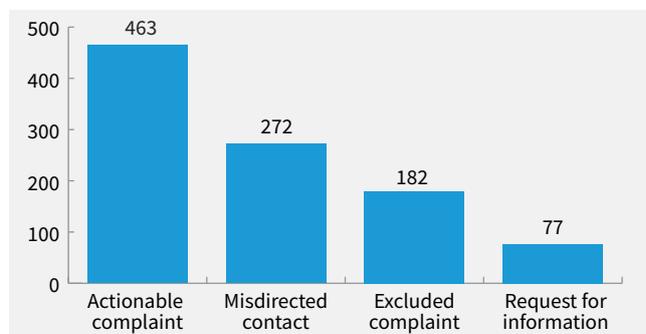
As outlined in our special report to Parliament *2020 hindsight: the first 12 months of the COVID-19 pandemic*, hotel quarantine is a complex system that involves multiple agencies and officials, some of which we can receive complaints about (such as NSW Health) and some of which we cannot (NSW Police Force).

224 of the contacts we received about hotel quarantine were actionable complaints, and 57 were requests for information. 371 contacts were outside our jurisdiction (167 excluded complaints and 204 misdirected contacts). The majority of the excluded complaints were about the making of the Public Health Orders and their contents.

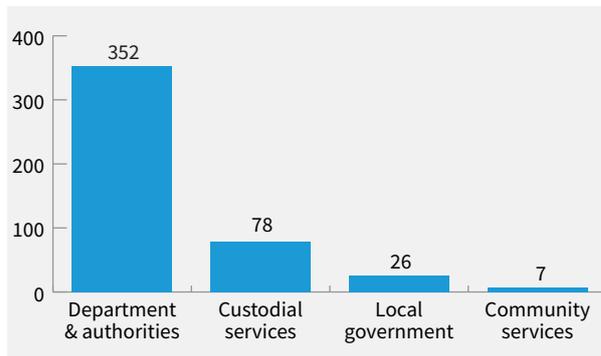
Most actionable complaints we received about hotel quarantine were closed following the provision of relevant information and advice to the complainant. We also made inquiries with a number of agencies on a small proportion of these complaints, around issues related to the handling of quarantine exemption applications, daily welfare checks and refusal to allow access to a medical device.

As we reported last year, and outlined in our March 2021 report to Parliament, there is a lack of clarity about complaint mechanisms for people in quarantine. As a result we have continued to informally assist people making misdirected complaints to us. For example, we have reported complaints about food, accommodation and other issues related to quarantine accommodation managed by the NSW Police Force to relevant government contractors to ensure they are assessed and, where necessary, addressed.

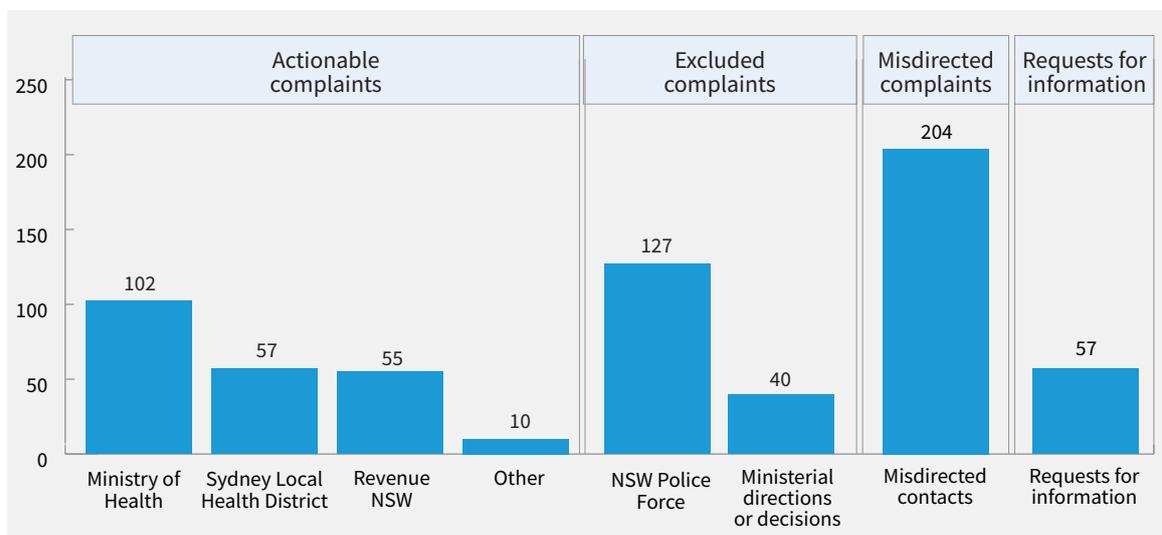
Figure 7. Contacts received about COVID-19



**Figure 8. Actionable complaints received about COVID-19**



**Figure 9. Contacts about hotel quarantine by agency and jurisdiction**



**A snapshot of complaints we have received regarding COVID-19**

We assisted a commercial tenant of a shopping centre who was unsure how to progress her concerns about unsafe COVID practises at a new COVID testing clinic in the centre. We contacted the local health district to help resolve the matter. The clinic closed immediately to address the safety concerns.

We assisted a caller worried their partner may self-harm in COVID-19 hotel quarantine. The partner had anxiety, obsessive compulsive disorder and had returned to Australia to visit a terminally ill relative. They complained that the medical assessment at the airport did not result in a room with a balcony or a window that could be opened. We explained the medical assessment is not something we would review and instead contacted police using our authority under section 34 of the Ombudsman Act to disclose safety concerns and ensure a welfare check was undertaken. Police advised that in response, health staff conducted a lengthy medical assessment of the traveller and initiated daily checks.

We received several complaints this year from parents whose children are in care and who were unable to visit them in person due to restrictions put in place as a result of COVID-19. Where possible we assisted to ensure other arrangements were made in these circumstances, including video calls and additional telephone calls.



## **2.4 Fostering enduring reforms to prevent future failings and improve public administration and service delivery**

We foster enduring reforms to prevent future failings and improve public administration and service delivery by:

- helping government and service providers to learn from complaints and reviews
- promoting public sector whistleblowing
- providing advice, suggestions and recommendations that are evidence-based, realistic and effective
- providing education and training to government agencies and service providers to encourage good administrative practice and build capacity
- reviewing the deaths of certain children in order to make recommendations as to policies and practices for implementation by service providers to prevent or reduce the likelihood of reviewable deaths.

## Improving complaint-handling capability and systems

### Complaints Handling Improvement Program (CHIP)

In September 2018 we tabled a [report](#) on the implementation of the Whole of Government Commitments to Effective Complaint Handling, which form part of the Complaint Handling Improvement Program (CHIP).<sup>10</sup> Since this time we have continued to promote the commitments and provide advice to agencies, including local councils, about complaint-handling policy and procedures and issues such as how to manage unreasonable conduct from complainants.

In our report we recommended the Ombudsman Act be amended to include a ‘keep systems under scrutiny’ function. This function would enable us to extend the progress made under the CHIP by dedicating resources to monitoring and evaluating the complaint handling policies and practices of NSW public sector agencies and local councils. We have liaised with government about this proposal.

### National complaint-handling standard

The NSW Ombudsman is participating on a Standards Australia committee with a range of agencies, industry ombudsman and complaint-handling consultants to review the Australian Complaint Handling Standard (AS 10002:2014 Guidelines for complaint management in organizations). During 2020–21 the committee undertook a targeted review of the standard which Standards Australia released for public comment between August and September 2021.

We recently wrote to NSW government departments and local councils informing them about the review, including the means to contribute to it. Next the committee will consider any comments made through the public consultation period and seek to finalise the review.

## Research on return on investment of public sector complaint-handling

A research team from the University of Newcastle has recently released a [report](#) demonstrating that agencies can expect a positive return on investment (ROI) from effective complaints handling.<sup>11</sup>

The project was supported by the NSW Ombudsman and other Australian and New Zealand ombudsmen and government departments through funding and a collaborative steering committee.

The report found, among other things, that agencies need to gather comprehensive data about complaints. This is a recommendation our office has also made over many years, in addition to regularly analysing and reporting on trends and issues arising to drive solutions and improvements. The research also emphasised the need for agencies to measure customer satisfaction at the conclusion of every complaint process, and to be aware of complainants’ perceptions of the complaints process. Addressing concerns early can help to minimise negative experiences which diminish trust in government services or lead to repeat or escalated complaints.

As outlined in Chapter 3 we are working to improve the way we collect data and obtain feedback on our own services from complainants and stakeholders, including by developing a proposed regular survey program.

## Learning from complaints and making suggestions for improvements

When we inquire into and seek to resolve an individual’s specific complaint or concerns, we often identify broader deficiencies or scope for improvements in policies or practices.

Under section 31AC of the Ombudsman Act, we can provide information and comments to an agency regarding a complaint. In doing this we often highlight issues that may affect other people in similar circumstances as the complainant.

We make suggestions to assist the agency or service provider to improve policy or practice, or otherwise address issues that contributed to a complaint.

10. NSW Ombudsman, *Complaint handling improvement program: Commitments implementation review* (31 August 2018).

11. SOCAP, University of Newcastle, *Return on Investment of Effective Complaints Management* (March 2018).

In 2020–21, we made section 31AC comments or suggestions to agencies or service providers in respect of 27 complaints. Most of our suggestions are accepted and acted upon. In future years we will look to monitor the outcomes of our suggestions so that we can report on how frequently our suggestions are accepted, and when they are not.

## Investigations

In 2020–21, we commenced 2 formal investigations and completed 4.

Of those we completed, 1 was commenced in 2020–21 and the remainder had been commenced in previous years.

As at 30 June 2021, we had 9 open investigations.

### Investigation reports

Under section 17 of the Ombudsman Act, our investigations must be conducted in the absence of the public.

Where the investigation is completed, a final report on the investigation will be provided to the relevant agency and its minister under section 26 of the Ombudsman Act. The report will include any findings of wrong conduct. It may include recommendations for corrective action in respect of the particular wrong conduct as well as for systemic improvements to prevent future wrong conduct or improve administrative practice in the future. It is a matter for the relevant minister and the agency whether the final investigation report from the Ombudsman is made public.<sup>12</sup>

### Special reports on public interest and/or systemic issues arising from investigations

Under section 31 of the Ombudsman Act, the Ombudsman can separately prepare special reports to Parliament at any time.

We will usually publish a detailed special report following an investigation if the investigation has identified serious systemic issues or other matters of significant public interest, especially where these may have broader implications beyond the particular complainant and agency or service provider involved.

In 2020–21 we published the following 3 special reports about investigations:

- *Strip searches conducted after an incident at Frank Baxter Youth Justice Centre* (8 June 2021)
- *An inherent conflict of interest: councils as developer and regulator* (15 December 2020)
- *Investigations into actions taken by SafeWork NSW Inspectors in relation to Blue Mountains City Council workplaces* (21 August 2020).

### Annexure: Special report on investigation outcomes

From this year, we are incorporating within our Annual Reports a separate annexure that includes summaries of all formal investigations completed during the year, whether or not they resulted in a special report.

Although this annexure will be tabled within our Annual Report, it is formally presented to Parliament as a separate report under section 31 of the Ombudsman Act.

## Monitoring and assessment of Aboriginal programs

In October 2020 the NSW Government provided a response to our October 2019 [OCHRE Review Report](#).<sup>13</sup> The government supported 68 of the 69 recommendations we made (there were minor concerns relating to the funding of 1 recommendation). We are liaising with government to monitor implementation of the recommendations, including holding workshops with responsible agencies. As at 30 June 2021 we had held 4 of 6 workshops.

The biannual Aboriginal Procurement Advisory Committee (APAC) meeting was hosted and chaired by the Deputy Ombudsman Aboriginal Programs on the 23 September 2020, virtually, and on 21 June 2021 at Parliament House. These meetings enable genuine connections across and within government, and engagement with external industry stakeholders. They are aimed at strengthening accountability and reporting to ensure the Aboriginal Procurement Policy (APP) is working to achieve its required objectives and outcomes. These forums also enable

12. However, if the Ombudsman provides a section 26 report to the minister and is not satisfied that sufficient steps have been taken in due time as a result of that report, the Ombudsman can make a report to the Parliament and the minister, and the minister must make a statement to Parliament within 12 days responding to the report: section 27, Ombudsman Act.

13. NSW Ombudsman, *OCHRE Review Report* (28 October 2019).

opportunities to embed new solutions for the economic prosperity of Aboriginal people, communities, and Aboriginal businesses.

Community engagement and government liaison meetings have continued via video conferencing, teleconferencing and face to face visits compliant with NSW Public Health Orders. The monitoring and assessment team undertook over 140 engagement activities across all of NSW, including remote and regional communities, this financial year in order to discharge our function.

During 2020–21 we commenced a project to examine whether services and programs for Aboriginal inmates align with initiatives and priorities being undertaken as part of OCHRE.

We have also been supporting the review on the progress of the DCJ Aboriginal Outcomes Strategy 2017 to 2021 to determine whether it has achieved its target to reduce the overrepresentation of Aboriginal children and young people in out-of-home care by 10% by 30 June 2020.

## Monitoring the delivery of community services and related programs

Under CS CRAMA we monitor and review the delivery of community services and related programs.

In 2020–21 we focused on 3 areas – the child protection system, the response to unaccompanied homeless children, and access to homelessness services for people with complex needs.

### Delivering results in child protection

During 2020–21 we commenced a project to assess how well the child protection system can demonstrate that it is meeting stated goals of protecting vulnerable children and young people, reducing entries to out-of-home care and improving outcomes for those in care. Our work involves reviewing performance information that relates to early intervention, family preservation, responses to risk of significant harm reports and the out-of-home care sector. We are aiming to report on our work in 2022.

## More than Shelter – addressing the legal and policy gaps in supporting homeless children: A progress report

In October 2020 we published a report assessing DCJ’s progress in dealing with the problems previously identified in our June 2018 report, [More than shelter – addressing legal and policy gaps in supporting homeless children](#).<sup>14</sup>

We found that the recommendations of our previous report had not been implemented and that more progress was needed. In our new report we made further recommendations to DCJ, including that the department publish a plan within 3 months outlining how and when it will work to deal with the outstanding issues that are the subject of other recommendations.

In February 2021 DCJ published its plan to implement the new recommendations and advised that a final progress report about implementation will be provided by March 2022.<sup>15</sup>

In line with its commitments, DCJ published in July 2021 a revised policy to guide responses to unaccompanied homeless children who are aged 12–15.<sup>16</sup> The new version contains a stronger statement about DCJ’s role in supporting youth homelessness services. It also commits DCJ to regularly monitoring implementation of the policy to ensure that outcomes align with its purpose and goals.

### Access to homelessness services

Current NSW government policy describes homelessness as not just a housing problem. Instead, the policy envisages holistic multi-agency service provision that aims to address the causes of people’s homelessness. In practice, our complaint work has shown that there are barriers that can prevent people getting the services they need, particularly when they have complex needs. We sent a discussion paper on these issues to DCJ and select youth homelessness services. After considering their responses, we decided to broaden the scope of our work to the full range of services to homeless adults and families. We aim to produce a public report about this issue in 2021–22.

14. NSW Ombudsman, *More than shelter – addressing legal and policy gaps in supporting homeless children: A progress report* (19 October 2020); NSW Ombudsman, *More than shelter – addressing legal and policy gaps in supporting homeless children* (21 June 2018).

15. See [More than Shelter progress report - Implementation Plan | Family & Community Services \(nsw.gov.au\)](#).

16. Department of Communities and Justice, *Unaccompanied Children 12–15 Years Accessing Specialist Homelessness Services Policy* (23 July 2021).

## Systemic review of deaths of children at risk of harm or in care

The Ombudsman monitors and reviews certain child deaths – those that occur in circumstances of, or are suspicious of, abuse or neglect, and deaths of children in care or detention. Each year, approximately 25 deaths of children are reviewable.

A key focus in our reviewable child death review work is identifying practice and systems issues that may contribute to deaths, or that may expose other children to risks in the future. As part of this work, we consider how agencies and service providers have acted, and can act, to identify and respond to risks and vulnerabilities evident in the lives of the children and their families. Our reviews involve examining relevant records and information relating to the children who died. We may also require specific information from agencies to assist our review.

The majority of reviewable child deaths involve families known to the child protection system. Well recognised child protection issues – including family violence and relationship breakdown, parental mental illness, and parental alcohol and drug use – are often present in families where children have died in circumstances of abuse or neglect.

Much of our work in relation to reviewable child deaths is necessarily out of public view. We work with agencies to address practice and systems issues to ensure protection of children and improved support of vulnerable families. This work involves a range of activities, including:

- providing comment or feedback through correspondence and reports
- consultation and discussions
- referral of certain cases to NSW Health for internal review
- formal actions under the Ombudsman Act – such as preliminary inquiries and investigation
- providing our reviews to the NSW Coroner (on request) to assist it make decisions about inquests and in determining any lines of inquiry it may wish to follow.

In addition to these activities, 1 of our key functions is to make recommendations about policies and practices that can be implemented by government and non-government agencies to assist in preventing or reducing the likelihood of child deaths.

Comprehensive details of the recommendations we make and our monitoring of their implementation are included in our Child Death Review Team annual reports and biennial reports, which are available on our [website](#).

## Improving agency responses to the COVID-19 pandemic

### 2020 hindsight: the first 12 months of the COVID-19 pandemic

In March 2021 we published a report looking back at the first 12 months of the COVID-19 pandemic, reporting what we have seen, primarily through the lens of complaints we received from individuals about the actions taken by NSW Government agencies. This report acknowledged the effective public health response to the pandemic in NSW; outlined the problems of fragmented complaint handling, the importance of an effective oversight system during a crisis, including the benefits of a well-functioning complaint-handling regime; and provided details of the impact of the pandemic on the NSW Ombudsman's service.

In early February 2021 we suggested to government that a quarantine complaint-handling 'roundtable' meeting be convened to bring together those agencies involved in delivering quarantine services with those oversight bodies that can receive complaints about these services. The aim of a roundtable was to clarify the role of each service agency and the associated jurisdiction of external complaint-handling agencies, in order to ensure more effective and expeditious resolution of issues and complaints relating to quarantine, without compromising public health outcomes. A roundtable was held for this purpose in May 2021.

## Improving the Public Interest Disclosures system

In late 2021 we will publish our Public Interest Disclosures Annual Report detailing the activities we have undertaken to fulfil our responsibilities under the PID Act.

Work has also been underway to modernise and enhance the PID legislation in NSW. In particular, the NSW Government has been undertaking a complete re-write of the PID Act to implement recommendations made in October 2017 by the Joint Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission.<sup>17</sup>

The PID Steering Committee has been asked to advise the government on the Bill. We have worked closely with the Department of Premier and Cabinet on the drafting of the Bill, which was introduced into Parliament in October 2021.

## Monitoring implementation of our recommendations

When we make recommendations to the NSW Government or agencies within our jurisdiction, we seek to ensure that they are evidence-based, practicable and will lead to demonstrable improvements in administrative practice. It is important for us to monitor the implementation of our recommendations to ensure that agreed recommendations are implemented in a timely manner, and that any unanticipated issues are identified and reviewed.

We have specific processes by which we monitor recommendations made in relation to our Part 3B (monitoring of Aboriginal programs) function; and our death review functions. In 2020–21 we followed up a range of additional matters we have previously examined. Some examples are outlined below.

### School suspensions

In 2017 we published a special [report](#) to Parliament examining the complex area of behaviour management of students in NSW schools and suggesting a number of proposals for reform.<sup>18</sup>

In May 2021 we wrote to the Department of Education outlining concern about the reported number of suspensions occurring, particularly of students in kindergarten to year 2 and students with disabilities. We undertook to continue to monitor the implementation and outcomes of the new Student Behaviour Strategy, which commits to implementing new student behaviour policies and procedures, a monitoring and evaluation plan, as well as changes across data systems to support suspension data collection. We also sought information to better understand the current situation, particularly in relation to issues raised in our 2017 report, including suspensions and poor school attendance for children in residential out-of-home care (OOHC), and the Education department's inability to accurately identify students in OOHC.

In response Education has advised it has been progressively implementing a data exchange with DCJ to ensure accurate identification of public-school students who are in OOHC. Education also said it currently collects no data on suspensions of students in this group.

We will take account of this advice in our work on outcomes delivered in the child protection system.

### HSC disability provisions

This year, we asked the NSW Education Standards Authority (NESA) to tell us about its progress in implementing the recommendations of a 2019 independent review of HSC disability provisions. These are arrangements intended to help students who cannot otherwise make a fair attempt to show what they know in an exam room. We made our own recommendations to improve the program in a 2013 [report](#) but there have been persistent concerns since then about the relatively low rate of applications for students in public schools, compared with the Catholic and Independent school sectors.<sup>19</sup>

In June this year, NESA told us it has implemented changes including the introduction from term 3, 2021 of an early approval process for year 10 students with permanent disabilities. NESA reported that it has also delivered professional development on the disability provisions program to teachers in more than 800 schools since

17. Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, Statutory Review of the *Public Interest Disclosures Act 1994*. [Report \(nsw.gov.au\)](#).

18. NSW Ombudsman, *NSW Ombudsman Inquiry into behaviour management in schools* (August 2017).

19. See NSW Ombudsman, *A level playing field? HSC disability provisions* (May 2013).

September 2019. NESA said it aimed to reach every school within 3 years and would ensure targeted invitations to schools with low or no participation in the program.

## Surveillance Devices Commissioner

Our 2016 [report](#) about Operation Prospect, concerning an investigation into ‘Operation Mascot’, recommended that the government establish a public interest monitor in NSW under the *Surveillance Devices Act 2007* and the *Telecommunications (Interception and Access) Act 1979* to: receive advance notice on all warrant applications; appear in warrant application proceedings; cross-examine witnesses on the content of their applications; receive notice of use reports; and publicly report on the performance of these functions.

In response, the Attorney General decided to create the office of the Surveillance Devices Commissioner. While this role was not conferred with all of the functions, powers and independence envisaged in our recommendation, the commissioner provides extra scrutiny in relation to surveillance device applications by assisting judicial officers deciding warrant applications to make informed decisions and reporting annually on warrants sought and granted.

In June 2021 we met with the commissioner who informed us he has been working with agencies to improve their processes in making surveillance device warrant applications, resulting in the provision of clearer reasons for seeking warrants, and enhanced reporting.

## Supporting agencies and service providers through training

### Manual on Managing Unreasonable Conduct of Complainants third edition

In June 2021 we released the third edition of our Manual on Managing Unreasonable Conduct of Complainants. The manual is designed to help organisations and their staff take a systematic and consistent approach to managing their interactions with people engaging in unreasonable conduct.

Among other updates we have revised the chapter on cultural communication styles, which provides guidance on various global communication styles,

and the way they can influence interactions with people who have made a complaint. In particular, the new edition provides guidance for culturally appropriate communication with Aboriginal and Torres Strait Islander peoples.

The manual is a joint project with the Australasian Parliamentary Ombudsman. It is available for download on our [website](#).

### The continuing impact of our work

This reporting year marks 10 years since the establishment of the Information and Privacy Commission (IPC) and the commencement of the *Government Information (Public Access) Act 2009* (GIPA). GIPA implemented significant changes recommended by the NSW Ombudsman in his extensive 2009 [review](#) to improve government transparency and integrity and transform how government approached the public’s right to know.<sup>20</sup>

Key changes implemented out of that review were mandatory proactive government disclosure requirements, a right to access government information unless there are specific and justifiable public interest reasons to refuse access, changes to the application and review process, and importantly, the establishment of an independent Information Commissioner with the power to review decisions as well as monitor the Act’s operation to recommend changes to better carry its purposes.

In July 2021, the IPC released its 10 year data analysis overview of the GIPA. It noted a number of pleasing trends but also areas needing improvement and new challenges and risks to deal with.

Our 2009 review arose from doubts that the former freedom of information regime was operating as well as it could or should. It is pleasing to note that after 10 years of operation, the resulting Act continues to provide a sound foundation that promotes the public’s right to know and, importantly, an independent proponent able to champion the continued development of the Act in an evolving government landscape.

20. NSW Ombudsman, *Opening up government: Review of the Freedom of Information Act 1989* (February 2009).

## Training workshops

We provide education and training to government agencies and service providers to encourage good administrative practice and build agencies' capability to handle complaints, conduct investigations and ensure equitable access to their services. We also provide training about the responsibilities of public authorities under the PID Act, and the roles and responsibilities of those involved in disclosures.

Our core workshops are:

- Fundamentals of Complaint Handling
- Public Interest Disclosures Awareness
- Public Interest Disclosures Management
- Managing Unreasonable Conduct by a Complainant.

Due to the COVID-19 pandemic, we suspended all training workshops on 18 March 2020. At that time, workshops were delivered face-to-face and were not viable due to health restrictions and government guidelines. The major impact on our training operations provided us with an opportunity to redesign our training for online delivery.

In November 2020, we started delivering PID training online. Between November 2020 and 30 June 2021, we delivered 25 PID management sessions to 607 participants and 23 PID awareness sessions to 912 participants.

For our complaint handling, access and equity, and investigation skills workshops, we delivered 8 workshops in the period between 1 July 2020 and 31 March 2021. In the April to June 2021 quarter, we successfully relaunched this aspect of our training business, with workshops delivered using a mixture of face-to-face and remote delivery. Our clients were located in NSW, across Australia and in Canada.

The transition to this new blended-learning business model has been successful, with overwhelmingly positive learner feedback. Despite the second NSW lockdowns commencing in late June 2021, we are now well positioned to sustain our complaint-handling and other related training.

**Table 3. Training workshops delivered by topic**

Topic	Workshops	Participants
Public interest disclosures	48	1,519
Complaint handling	63	855
Investigation skills	3	37
Access & equity	1	19
<b>Total</b>	<b>115</b>	<b>2,430</b>

Further information about our PID training will be included in our 2020–21 PID Annual [Report](#).

**Table 4. Workshops by sector (excluding PID training)**

Sector	Workshops
State government agencies	22
Community service providers	4
Local government	0
Public sector agencies outside NSW	6
Mixed community and public sector agencies	11
Australian government agencies	17
International agencies	3
Private organisations	4

During 2020–21, 49% of participants completed evaluations of our training (excluding PID).

Of these:

- 86% rated our training overall as excellent/good.
- 98% rated our trainers as excellent/good.
- 97% rated the content covered in the training as excellent/good.
- 96% would recommend our training to others.

We will publish PID training evaluation results in the forthcoming PID 2020–21 Annual Report.



## Feedback about our training

*'Interactive, real content, specific approaches that you can apply, insightful and considered.'*

*'The extensive experience of the facilitator meant that the workshop had real value and went beyond a box checking exercise. Easy to listen to, kept my attention and adapted with the needs within the room.'*

*'I have found the online modules very helpful with stepping through each element and going through the different parts of the manual.'*

*'I was able to really unpack this to a relatable way in my department to be doing better at complaint handling.'*

*'I attended the workshop this morning on Unreasonable Complainant Conduct. The entire workshop was excellent and well worth me getting up at 4:30 am Pacific Time. I have had some training in dealing with 'high conflict' people in legal disputes, but I like this approach better as I don't have to categorize the person's behavior, just deal with the conduct.' (International client)*



## **2.5 Providing a trusted source of independent advice to Parliament**

The Ombudsman is an officer of the NSW Parliament, and a core aim is to provide independent and trusted advice to the Parliament to support the exercise of its own functions. In this way we help to provide assurance of compliance by government agencies with the Rule of Law and we support the Parliament's functions of scrutinising the government and implementing legislative reform.

Offices such as ours, as well as the Independent Commission Against Corruption and the Audit Office, effectively constitute permanent commissions of inquiry that report to, and provide advice and recommendations to the Parliament.

## Supporting Members of Parliament to serve their constituents

### Visits to electorate offices

We visited the Wyong Electorate Office in April and the Wagga Wagga Electorate Office in May 2021. These visits are an opportunity to outline our role and functions to electorate officers and discuss common complaint issues.

### Complaint referrals from MPs

From time to time we provide information sessions about our services to (usually new) Members of Parliament and electorate office staff. We did not conduct any such sessions in 2020–21 but will recommence these in 2021–22.

## Special reports to Parliament

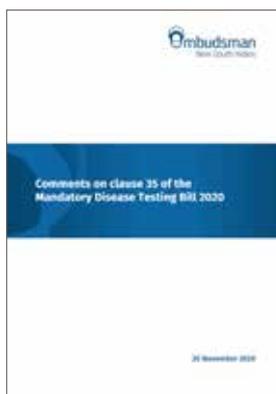
Tabling reports in Parliament is a key aspect of our role.



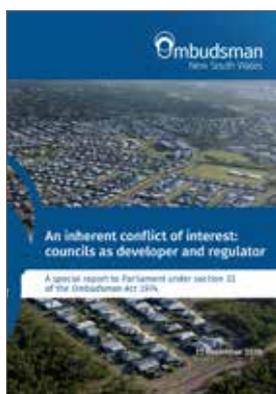
Investigations into actions taken by SafeWork NSW Inspectors in relation to Blue Mountains City Council workplaces (21 August 2020)



'More than shelter – addressing legal and policy gaps in supporting homeless children' A progress report (19 October 2020)



Comments on clause 35 of the Mandatory Disease Testing Bill 2020 (20 November 2020)



An inherent conflict of interest: councils as developer and regulator (15 December 2020)



2020 hindsight - the first 12 months of the COVID-19 pandemic (22 March 2021)



Strip searches conducted after an incident at Frank Baxter Youth Justice Centre (8 June 2021)

## Advice to Parliament on legislative proposals

### Mandatory Disease Testing Act

Prior to the passage of *Mandatory Disease Testing Act 2021*, on 20 November 2020, we presented a special report to Parliament to assist Parliament's consideration of the Bill. We confirmed that the Ombudsman is an appropriate office to monitor and report on the operation of the legislation. However, we noted that the Bill, as drafted, did not confer the necessary powers the Ombudsman would need to obtain information to undertake its proposed monitoring function.

We also noted that the Ombudsman's Office does not have the capacity to undertake the proposed functions without adequate additional resources, and sought assurances that these resources will be provided in the budget process.

On 17 November the Standing Committee on Law and Justice commenced an Inquiry into the Mandatory Disease Testing Bill. We provided a copy of our report to the Inquiry for its consideration and gave evidence before the Committee in February.

The Mandatory Disease Testing Act received assent on 17 June 2021, but is yet to commence.

### Our parliamentary oversight committee

The Ombudsman is accountable to a standing joint Parliamentary Committee: the Parliamentary Committee on the Office of the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission.

We keep the committee informed about issues affecting our office, including those that impact our ability to perform our functions effectively.

We also appeared before the committee for the 2021 review of annual and other reports of oversight bodies in May 2021.

## Contribution to other Parliamentary Inquiries

We also assist Parliament, especially parliamentary committees, by contributing to inquiries when we have experience, expertise and data relevant to the issues being canvassed. This advice contributes to public debate, effective law making and scrutiny of Executive action.

During 2020–21, in addition to our appearance at our annual oversight Committee hearing noted above, we contributed to 5 parliamentary inquiries:

- We made a submission to the Committee on Children and Young People Inquiry into the Child Protection and Social Services System in January 2021, highlighting a range of issues including the limited publicly available information that would allow assessment of the success of new initiatives and other reforms in providing for the safety, welfare and wellbeing of children and young people, supporting vulnerable families, reducing entries to out-of-home care, and minimising children's time in it, and improving their care experience.
- We made a submission to the Inquiry into a Proposal for a Compliance Officer for the NSW Parliament in February 2021, including offering to provide advice and guidance in relation to how the proposed role of Compliance Officer would fit with existing PID arrangements, should it be established.
- We appeared before the Public Accounts Committee's Follow-up Review of the Management of NSW Public Housing Maintenance Contracts in May 2021 after making a submission in December 2020 detailing issues relating to complaints about maintenance issues in public housing.
- We appeared before, and made a submission to, the Select Committee Inquiry into the High Level of First Nations People in Custody and Oversight and Review in Deaths in Custody, which published its report in April 2021.
- We appeared before the Standing Committee on Law and Justice Inquiry into the Mandatory Disease Testing Bill.



### **3 Strategic outcomes and initiatives**

On 1 July 2020 we launched a 5-year strategic plan articulating our vision, mission and purpose, as well as reaffirming our core values.

The plan includes 10 strategic outcomes we are seeking to achieve between 2020 and 2025 and over 40 initiatives to help us do that.

## Strategic outcomes



1. Consistent and best practice service provision and quality standards



2. High-quality evidence-based advice and recommendations, on issues that are important, timely and relevant, that lead to positive and practical change



3. The public, including the most vulnerable members of the community, understand our role, can access our services, and have trust and confidence that we will help



4. Agencies understand our role, have confidence in the fairness of our investigations and oversight, and respect us and our advice, because we understand them and their business and they know we will add value



5. Our status as an independent statutory oversight body supporting accountable and responsible government is reinvigorated through a stronger connection to Parliament



6. Unified leadership and a clear strategy, supported by rigorous governance structures



7. Clarity of role and purpose, with a set of strategically aligned statutory functions that support efficient operations at a sustainable scale



8. An employer of choice whose workforce is diverse, highly engaged and capable, and bound together by shared values, purpose and culture



9. Modernised and continuously maintained ICT and support systems and processes that give our people the tools they need to perform at their best and improve the customer experience



10. Rigorous evaluation processes and performance metrics that keep us on track and drive continuous improvement



## 1: Customer service

**Strategic outcome: Consistent and best practice service provision and quality standards.**

Strategic initiatives	Status	2020–21 Key actions
<b>1.1.</b> Review the demographic and geographic provision of our services to promote alignment to areas of greatest need and where our work can have its greatest impact	Commenced planning	Commenced reviewing the demographic and geographic information we capture to progress this initiative.
<b>1.2.</b> Embed streamlined and consistent complaints-handling workflows, including through the development of new knowledge management and workflow teams	Underway	<p>Refreshed the format of our online complaint form.</p> <p>Modified our current case management system to align system workflows with the organisational structure that came into place following our office restructure in 2019. (This is an interim measure pending a proposed upgraded system).</p> <p>Implemented a new cross-office framework where nominated staff lead our relationships with, and monitor issues arising in, particular portfolio areas (such as public housing and education).</p> <p>Implemented internal processes to ensure that staff with specialised portfolio responsibilities share their knowledge and intelligence with all relevant staff, and in particular complaint-handling staff.</p>
<b>1.3.</b> Develop and apply an independent internal review and quality assurance framework	Underway	<p>Developed a new quality assurance framework for our assessments team.</p> <p>Reviewed and updated our ‘Request for a review of a decision policy’.</p> <p>Developed a glasshouse process to review our performance against any recommendations we make to other agencies in investigations to determine whether we need to make internal changes.</p>
<b>1.4.</b> Strengthen links with counterpart ombudsman in other Australian and international jurisdictions, to share best practice and to consider opportunities for joint investigations or projects if appropriate.	Completed and now ongoing	<p>Participated in a range of national and international fora, including:</p> <ul style="list-style-type: none"> <li>• Acting Ombudsman presentation on ‘Keeping Government to Account in Emergencies and Post-Emergencies’ at the inaugural virtual International Ombudsman Institute (IOI), Asia-Pacific Ombudsman Region (APOR) Conference in November 2020.</li> <li>• Acting Ombudsman attendance at the APOR forum and the APOR members’ meeting in April 2021.</li> <li>• Acting Ombudsman and staff attended IOI webinar: UN Resolution on Ombudsman and mediators in February 2021.</li> <li>• Deputy Ombudsmans attended the APOR Deputies Forum in June 2021.</li> <li>• Provided articles to a number of newsletters, including for the IOI and APOR communities.</li> <li>• Staff participated in Australian &amp; New Zealand Ombudsman Association (ANZOA) special interest groups, engaging with other members on issues such as complaints management, data &amp; analytics, Indigenous engagement and vulnerable consumers.</li> </ul>



## 2: Impact

**Strategic Outcome: High-quality evidence-based advice and recommendations, on issues that are important, timely and relevant, that lead to positive and practical change.**

Strategic initiatives	Status	2020–21 Key actions
<b>2.1.</b> Continue to embed rigorous governance processes for the approval and prioritisation of investigations and other major projects, and their effective project management	Underway	Refined the terms of reference and procedures for our internal Investigations & Major Projects Committee.
<b>2.2.</b> Review investigation processes with a view to more timely, flexible and scalable investigation approaches, appropriate to the nature of the relevant investigation	Completed and now ongoing	Conducted an internal review of current investigation procedures and developed new operational principles and procedures for the management of investigations and significant complaints. Provided training for investigation staff about best-practice administrative investigations and critical thinking and analysis skills.
<b>2.3.</b> Increase focus on the delivery of systemic investigations, major emerging issues and system monitoring reports to Parliament	Underway	Developed terms of reference for a cross-office Systemic Issues Monitoring and Review Committee, which was stood up in July 2021, to enable us to better identify and monitor emerging issues that may warrant future action. Commenced drafting a streamlined process for report finalisation and publication.
<b>2.4.</b> Enhance our analytic capabilities and build the evidence base to better understand the causes and contributing factors of preventable child deaths, including in particular demographic and social factors	Underway	Rolled out analytics software to the data analytics team to automate and simplify a number of reporting processes. Commenced 2 projects to better understand the causes and contributing factors of preventable child deaths: <ul style="list-style-type: none"> <li>• Joint study with the Australian Institute of Health and Welfare on the degree to which socio-economic status influences the risk of dying during infancy and early childhood.</li> <li>• Review (led by Aboriginal members of the NSW Child Death Review Team) on the risk and preventive factors in suicide deaths of Aboriginal children.</li> </ul>
<b>2.5.</b> Review and refresh our approach to reviewing the deaths of persons with disability in residential care, to ensure consistency with the work of recently established agencies including the NDIS and Ageing and Disability Commission, and to better focus our preventive recommendations to those, such as NSW Health, that we oversight	Completed planning	Commissioned an external review of our disability death review function to consider the impact of recent legislative and administrative changes on our ability to conduct such reviews, and to identify options, including potential legislative options. Obtained legal advice in regard to the current scope of the disability death review function (in light of the NDIS) to assess whether relevant provisions in CS CRAMA remain effective for their intended purpose. Submitted the above mentioned review and legal advice to government for its consideration (currently awaiting a response).

Strategic initiatives	Status	2020–21 Key actions
<p><b>2.6.</b> Pursue an enhanced program of visits to correctional centres and youth justice centres to improve access to our services, as well as to enhance the capacity of our staff to deal with complaints through a strong working understanding of the correctives system and the unique context in which complaints may arise in such settings</p>	<p>Completed and now ongoing</p>	<p>Visited 27 custodial facilities (21 correctional centres, 5 youth justice centres and 1 court cell complex).</p> <p>Stood up a new detention and custody team of identified staff to be subject matter experts and implemented intensive training to other staff on handling custodial complaints and visiting custodial facilities.</p> <p>Arranged for staff who visit correctional centres to do Security Awareness Training online from the Corrective Services Academy.</p> <p>Prepared a risk assessment control matrix for our visits to custodial facilities.</p>
<p><b>2.7.</b> Invest in improved customer and case-management data collection, workflows and analytics capabilities, to improve end-to-end customer experience, drive efficiencies, enhance the early identification of systemic issues, improve accountability through better data reporting and support the targeting of resources.</p>	<p>Commenced planning</p>	<p>Developed a business case and submitted funding requests (to NSW Treasury and to the NSW Digital Restart Fund) for the design and build of a new case management system to minimise manual data entry, enhance workflows and data quality and integrity, facilitate enhanced data analytics, improve information and cyber security, and enhance customer service and access to case information.</p> <p>Pending the above, continued to take steps to ensure our current legacy system operates as effectively as possible.</p>



### 3: Accessibility

**Strategic Outcome: The public, including the most vulnerable members of the community, understand our role, can access our services, and have trust and confidence that we will help.**

Strategic initiatives	Status	2020–21 Key actions
<p><b>3.1.</b> Fully review and refresh all of our external communications, including a new website designed around improved user experience</p>	Underway	<p>Delivered a digital strategy and upgrade roadmap for our website, and improved user experience through a significant design update.</p> <p>Commissioned a social media content strategy to enhance our community and stakeholder engagement.</p> <p>Commissioned a low literacy accessibility review of our website to improve user experience and accessibility.</p>
<p><b>3.2.</b> Strengthen links with other community bodies, and consider external collaborations, that will support our community engagement, particularly with vulnerable cohorts</p>	Underway	<p>Commenced development of a protocol for engaging with Members of Parliament when we have visits in their electorate.</p>
<p><b>3.3.</b> Review and refresh our branding and all communications, including to ensure that they are accessible and consistently in plain English, courteous and non-bureaucratic English</p>	Underway	<p>Reviewed and updated our style guide to ensure our publications meet contemporary standards of Plain English.</p> <p>Delivered Plain English training to staff across the organisation.</p> <p>Published a new plain English brochure and Easy English brochures and forms to assist low literacy individuals with making a complaint.</p> <p>Developed refreshed corporate identity guidelines in support of our Strategic Plan.</p> <p>Revised a range of our correspondence templates to assist us communicate more effectively with complainants.</p>
<p><b>3.4.</b> Develop and implement a community engagement strategy that proactively reaches out to cohorts that most need our services</p>	Completed	<p>Launched our Community Engagement Strategy.</p> <p>Translated content on our website about complaints into 5 community languages other than English.</p> <p>Created a simple brochure translated into 52 different community languages to support our outreach to culturally and linguistically diverse communities.</p>
<p><b>3.5.</b> Review intake processes, to provide faster and more efficient responses to enquiries or referral of out-of-jurisdiction complaints, including consideration of a technology-assisted phone answering and referral system, more user-friendly online complaints forms, and messaging and ‘chat bot’ capability.</p>	Underway	<p>Implemented a new phone system that allows people to identify the correct place for their complaint.</p> <p>Refreshed our online complaint form, including to make clearer the matters that we cannot assist with.</p>



## 4: Trust

**Strategic Outcome: Agencies understand our role, have confidence in the fairness of our investigations and oversight, and respect us and our advice, because we understand them and their business and they know we will add value.**

Strategic initiatives	Status	2020–21 Key actions
<b>4.1.</b> Comprehensively map the bodies we oversight, and develop a scalable approach to regular engagement and monitoring	Underway	Established a framework and processes for improved monitoring of issues arising in particular portfolio areas.
<b>4.2.</b> Explore opportunities for enhanced conciliation/alternative dispute resolution (ADR) service provision to resolve complaints in a manner that is fast, cheap and effective	Not commenced	We will commence progressing this initiative in 2021–22.
<b>4.3.</b> Modernise and enhance our educational and training service provision, to ensure its alignment to our strategic purpose around public sector improvement and provides an adequate return on investment (ROI).	Underway	Completed implementation of our training modernisation program, providing a new delivery model for our workshops. Engaged a consultant to complete business process mapping of our training services following modernisation. Engaged a consultant to develop our PID training delivery strategy, preparing our organisation for the new PID Bill.
<b>4.4.</b> Develop, in consultation with stakeholders, a refreshed approach to our ‘monitoring’ and ‘auditing’ functions, particularly in respect of (a) community services, to ensure clarity of roles, consistency of approach, and prioritisation and proportionality of effort (b) Public Interest Disclosures, to ensure we target delivery of our training services, use our data effectively, and focus on auditing to improve PID handling.	Commenced planning	Commenced, with an external consultant, reviewing our current approach to complaint-handling reviews (Community Services) and audits (PID) and developing a new framework and consistent guidance, tools and templates.



## 5: Independence

**Strategic Outcome: Our status as an independent statutory oversight body supporting accountable and responsible government is reinvigorated through a stronger connection to Parliament.**

Strategic initiatives	Status	2020–21 Key actions
<p><b>5.1.</b> Engage with the clerks of the Parliament and other statutory oversight bodies to develop a shared working model for ‘Parliamentary statutory officers’</p>	Commenced planning	Continued to monitor issues arising out of the Public Accountability Committee inquiry into Budget Process for independent oversight bodies and the Parliament of NSW, and the NSW Audit Office report examining the effectiveness of the financial arrangements of 4 integrity offices.
<p><b>5.2.</b> Proactively communicate the work we do and its value, including through a program of more regular proactive reporting on monitoring projects and investigations to the Parliament</p>	Underway	<p>Published 10 reports to Parliament.</p> <p>Developed improved communication planning to maximise media and public engagement with our work.</p> <p>Commissioned a social media content strategy to be implemented in 2021–22.</p>
<p><b>5.3.</b> Work with Parliament to explore improved service provision to support Parliament and its members.</p>	Underway	<p>Promoted a range of parliamentary educational events to our staff.</p> <p>The Secretariat of our parliamentary oversight committee presented to our complaints and investigations staff on the role of parliamentary committees.</p> <p>Worked with the NSW Parliament to produce a <a href="#">paper</a>, NSW public health restrictions to deal with the COVID-19 pandemic: A chronology (November 2020).</p>



## 6: Governance

**Strategic Outcome: Unified leadership and a clear strategy, supported by rigorous governance structures.**

Strategic initiatives	Status	2020–21 Key actions
<b>6.1.</b> Embed this Strategic Plan so that it is internalised by staff and reflected in all that we do	Completed and now ongoing	Engaged staff in developing and reporting on Strategic Plan annual action plans.  Shared information about progress of initiatives during staff meetings, staff newsletters and our intranet.
<b>6.2.</b> Review organisational structures, committee structures, reporting lines and resourcing allocation to ensure all work is aligned to strategy	Completed and now ongoing	Strengthened governance via regular meetings of our Investigations & Major Projects Committee, Business Improvement Steering Committee and ICT Governance Board.  Amended the structure of the Executive team by appointing a Chief Deputy Ombudsman position and Chief Operating Officer, commencing August 2021.
<b>6.3.</b> Develop and share internally a comprehensive office-wide rolling 12 month program covering all events, investigations, projects and other significant work across the office	Completed and now ongoing	Developed a comprehensive rolling calendar so staff have visibility of all events, investigations, projects and activities of relevance across the office in the upcoming 12-month period.
<b>6.4.</b> Support our emerging leaders including through the extended leadership team and structured leadership and management training	Underway	Rolled out a leadership program to our extended leadership team aimed at building skills to enable more effective performance conversations.



## 7: Purpose

**Strategic Outcome: Clarity of role and purpose, with a set of strategically aligned statutory functions that support efficient operations at a sustainable scale.**

Strategic initiatives	Status	2020–21 Key actions
<b>7.1.</b> Seek a review of the Community Service (Complaints, Reviews and Monitoring) Act to clarify Parliament’s intentions regarding the Ombudsman’s ongoing functions	Commenced	Suggested to the Department of Premier and Cabinet, in both 2019 and 2020, a full review of CS CRAMA, offering assistance with any such review.
<b>7.2.</b> Continue to engage with Government and Parliament to modernise our governing legislation to ensure our functions and powers remain appropriate	Underway	Identified (in addition to our proposal for a full review of CS CRAMA) a number of potential amendments to our governing legislation to reduce ambiguity and anomalies; provide for the performance of our functions more efficiently and effectively; and bring the legislation in-line with more contemporary approaches and expectations.  Wrote to the Special Minister of State about progressing our proposed amendments.
<b>7.3.</b> Continue to seek clarity from government and Parliament regarding the implementation of OPCAT, and its impact on our mandate	Underway	Raised concerns about the delay in NSW nominating bodies to perform functions under OPCAT at the Parliamentary Inquiry into the High Level of First Nations people in custody and oversight and review of deaths in custody, and in our report <i>2020 hindsight: the first 12 months of the COVID-19 pandemic</i> .
<b>7.4.</b> Continue to engage with government and Parliament about opportunities for merger or co-location with strategically aligned independent oversight offices to enhance operational synergies and corporate efficiency.	Underway	Suggested that the office and functions of the Inspector of Custodial Services be merged into the NSW Ombudsman to reduce confusion for inmates and enable greater synergies (eg in terms of prisoner complaints, visits/inspections and investigations).



## 8: People and culture

**Strategic Outcome: An employer of choice whose workforce is diverse, highly engaged and capable, and bound together by shared values, purpose and culture.**

Strategic initiatives	Status	2020–21 Key actions
<b>8.1.</b> Implement a refreshed Performance Development Program, which is supported by a leading edge Human Capital Management (HCM) system	Completed and now ongoing	Rolled out a new performance development framework for all staff.
<b>8.2.</b> Implement our Health and Wellbeing Action Plan	Completed and now ongoing	Launched our new Health and Wellbeing Framework and Policy, which included a 12-month action plan with commitments to: <ul style="list-style-type: none"> <li>• establish a health &amp; wellbeing intranet page for information, resources and support on health &amp; wellbeing</li> <li>• host a range of health &amp; wellbeing workshops for staff</li> <li>• promote/coordinate ‘Get Healthy and Work’ checks</li> <li>• promote community events.</li> </ul>
<b>8.3.</b> In collaboration with our Diversity and Inclusion (D&I) Advisory Forum, implement a range of D&I initiatives to promote greater inclusion and support diversity, including cultural inclusion training, and a recruitment and retention strategy to promote the employment of Aboriginal people and diverse community members	Completed and now ongoing	Approved an updated Diversity & Inclusion Framework and Action Plan developed by our Diversity & Inclusion Forum.
<b>8.4.</b> Support initiatives for employee mobility and development to complement business needs and staff development	Completed and now ongoing	Developed a new recruitment strategy, aligned with diversity & inclusion principles. Supported a number of external and internal secondments to encourage career development.
<b>8.5.</b> Develop and implement an employee recognition program to recognise excellence and reinforce our organisational values	Completed and now ongoing	Developed an Employee Reward and Recognition Program with our inaugural presentation of awards held in November 2020.
<b>8.6.</b> Reinforce our commitment to flexible working	Underway	Revised our working at home policy, seeking to increase flexibility for staff, reducing the minimum number of days staff are expected to be in the office to 2 days per week (depending on role) and extending the bandwidth hours each day staff can perform their duties.
<b>8.7.</b> Develop and apply an internal communications strategy, including a new intranet and cross-office newsletter, that supports knowledge sharing and a unified and collaborative culture.	Underway	Shared information with staff through a range of fora including monthly all-staff meetings, branch meetings and bi-monthly meetings of our extended leadership team, and publishing fortnightly staff newsletters.



## 9: Modernising systems

**Strategic Outcome: Modernised and continuously maintained ICT and support systems and processes that give our people the tools they need to perform at their best and improve the customer experience.**

Strategic initiatives	Status	2020–21 Key actions
<b>9.1.</b> Invest in modernised systems that support a digital working environment that make accessing our services easier and more efficient	Underway	Approved an ICT strategy, with implementation to occur over 5 years.
<b>9.2.</b> Enhance our cyber security framework	Underway	Developed a new cyber security policy, aligned to NSW Government ICT guidelines.  Worked to ensure information security process match industry standards and best practice techniques.  Developed and tested a Cyber Incident Response Plan.
<b>9.3.</b> Undertake a comprehensive refresh of all internal policies and procedures, and keep them under continuous review.	Underway	Conducted a comprehensive review of our policy register and have prioritised reviews of relevant documents to be implemented.  Updated a range of policies and governance documents, including: Audit and Risk Committee Charter; Code of Ethics and Conduct; Cyber security policy; Fraud Control Plan and Fraud and Corruption Control policy; Internal Audit Charter; Procurement policy; Purchasing card policy; Working at home policy.  Converted some key policies (eg our 'Request for a review of a decision' policy) into Easy English and published them on our website.



## 10: Continuous improvement

**Strategic Outcome: Rigorous evaluation processes and performance metrics that keep us on track and drive continuous improvement.**

Strategic initiatives	Status	2020–21 Key actions
<b>10.1.</b> Develop a regular survey program for obtaining feedback on complainant and stakeholder experiences, outcomes and satisfaction surveys.	Commenced planning	Conducted an analysis of existing customer satisfaction surveys and developed brief telephone and email surveys for people who contact us to make a complaint.
<b>10.2.</b> Develop and apply tools to track the acceptance, implementation and impact of our advice and recommendations	Underway	Strengthened the way we follow up on recommendations made in investigations by designing a monitoring and recording process and assigning a clear responsibility for this task within the investigation team.
<b>10.3.</b> Review and refresh all internal key performance indicators (KPIs) to ensure they are measurable and meaningful, and ensure relevant data is able to be collected and analysed to report against these KPIs.	Commenced planning	Commenced an internal review of our existing KPIs and other tracking metrics.  Commenced preliminary research to inform the development of a new suite of KPIs in 2021–22.

# Appendices

## A. Additional complaints data



## A.1 Categorisation of contacts and complaints

We categorise contacts received by our office into 6 categories.

### 1. Actionable complaints

These are complaints that we are authorised by legislation to receive and, if necessary, to investigate under the Ombudsman Act or CS CRAMA.

An actionable complaint under the Ombudsman Act (section 12) is a complaint about the conduct of a 'public authority' (as defined by the Act), provided the conduct is not 'excluded conduct'. Schedule 1 of the Act prescribes what is 'excluded conduct'.

An actionable complaint under CS CRAMA is a complaint about the conduct of a 'service provider' with respect to the provision, failure to provide, withdrawal, variation or administration of a 'community service' in respect of a particular person or group of persons. 'Community service' and 'service provider' are defined in that Act.

(An actionable complaint made to us by a public official about suspected wrongdoing by a NSW public authority may also constitute a 'public interest disclosure' under the PID Act.)

### 2. Excluded complaints

These are complaints to our office that are about a NSW public authority (as defined in the Ombudsman Act) or service provider (as defined in CS CRAMA), but where the conduct complained about is excluded from our jurisdiction. Examples of excluded complaints include:

- a complaint to us about any conduct of a minister (excluded by Item 1 of Schedule 1 Ombudsman Act)
- a complaint to us about most conduct of the NSW Police Force (excluded by Item 13 of Schedule 1 Ombudsman Act)
- a complaint to us about the conduct of a public authority relating to the appointment or employment of a person or other employment-related matter, unless the conduct arises from the making of a public interest disclosure (excluded by item 12 of Schedule 1 Ombudsman Act).

### 3. Requests for information

People (including both members of the public and public officials) often contact us to seek information, advice or other assistance about

a public authority or community service rather than to make a complaint. This includes where public officials contact us to request advice or assistance about making or dealing with public interest disclosures.

(An actionable complaint made to us by a public official about suspected wrongdoing by a NSW public authority may also constitute a 'public interest disclosure' under the PID Act.)

### 4. Notifications

In some cases, agencies have a legal duty to report to us when certain events or incidents occur. These include:

- notifications of segregation of detainees (Youth Justice) for protection under section 10(2) (a) of the Children's (Detention Centres) Regulation 2015.
- notifications of the deaths of children occurring in NSW, and the deaths of persons with disability in supported group accommodation, under Part 5A and Part 6 of CS CRAMA.

### 5. Misdirected contacts

We classify a contact to our office as a misdirected contact if it is about a person or body that is not a NSW public authority (as defined in the Ombudsman Act) or service provider (as defined in CS CRAMA). For example, if someone were to contact us wishing to complain about a Commonwealth agency or a private company, that would be a misdirected contact.

### 6. Feedback Assist

Feedback Assist is an online tool that enables members of the public to provide feedback to NSW government agencies through a link (a 'widget') on their websites.

Previously the Feedback Assist widget was also included on the NSW Government's centralised website (nsw.gov.au). Under section 35E of the Ombudsman Act, the Ombudsman's Office undertook the role of receiving, reviewing and, where appropriate, referring to relevant agencies any feedback provided via that nsw.gov.au widget.

Following a review of NSW Government websites Feedback Assist is no longer available on nsw.gov.au.

## A.2 Complaints about state government departments and other public authorities (excluding custodial services and community services)

Table 5. Finalised actionable complaints by area and department/authority\*

Area and department / authority	Number	%
<b>Communities and Justice</b>	<b>1,627</b>	<b>29</b>
DCJ Housing	1,040	18
NSW Trustee & Guardian	272	5
Legal Aid Commission of New South Wales	80	1
Other	235	4
<b>Customer Service</b>	<b>873</b>	<b>15</b>
Service NSW	409	7
Fair Trading	222	4
Registry of Births, Deaths and Marriages	67	1
Other	175	3
<b>Transport</b>	<b>607</b>	<b>11</b>
Roads and Maritime	437	8
Transport for NSW	156	3
Sydney Trains	5	0
Other	9	0
<b>Planning, Industry and Environment</b>	<b>589</b>	<b>10</b>
Land and Housing Corporation	403	7
National Parks & Wildlife Service	21	0
Department of Planning, Industry and Environment	63	1
Other	102	2
<b>Education</b>	<b>506</b>	<b>9</b>
Department of Education (including public schools)	255	5
TAFE NSW	212	4
TAFE Digital	17	0
Other	22	0
<b>Universities</b>	<b>455</b>	<b>8</b>
Charles Sturt University	92	2
University of Sydney	59	1
University of New South Wales	53	1
Other	251	4

Area and department / authority	Number	%
<b>Treasury</b>	<b>418</b>	<b>7</b>
Revenue NSW	344	6
icare	69	1
Small Business Commissioner NSW	3	0
Other	2	0
<b>Health</b>	<b>329</b>	<b>6</b>
Ministry of Health	178	3
Health Care Complaints Commission	94	2
Ambulance Service of New South Wales	14	0
Other	43	1
<b>Local Health Districts</b>	<b>170</b>	<b>3</b>
Sydney Local Health District	69	1
Hunter New England Local Health District	21	0
Western Sydney Local Health District	17	0
Other	63	1
<b>Regional NSW</b>	<b>29</b>	<b>1</b>
Department of Primary Industries	14	0
Forestry Corporation of NSW	4	0
Rural Assistance Authority	4	0
Other	7	0
<b>Premier and Cabinet</b>	<b>18</b>	<b>0</b>
Department of Premier and Cabinet	4	0
Electoral Commission NSW**	3	0
Infrastructure NSW	3	0
Other	8	0
<b>Other and agency not named</b>	<b>40</b>	<b>1</b>
<b>Total</b>	<b>5,661</b>	<b>100</b>

\* This table excludes complaints about Corrective Services NSW, Youth Justice NSW and the Justice Health and Forensic Mental Health Network (which are covered in Tables 8 and 10 below) and complaints about the provision of community services by Department of Communities and Justice (see Table 11 below)

\*\* The Electoral Commission NSW is an independent agency.

## Observations:

In 2020–21, we finalised 5,661 actionable complaints about NSW Government departments and other public authorities. The most frequently raised issues included complaints about: customer service; complaint-handling process; the merits of a decision; charges and fees; and the outcome of a complaint or review process.

Examples of agencies we received complaints about in 2020–21 include:

- Land and Housing Corporation – most commonly about delays in responding to and completing maintenance requests; and the response of LAHC to complaints made about maintenance.
- DCJ Housing – nearly half of the complaints we received about DCJ Housing concern customer service, with about half of those about delay.
- Department of Education – we continue to receive complaints about student suspensions including in relation to vulnerable children (including Aboriginal children, children with disability, those who have experienced complex trauma, and/or children in out-of-home care). We also received complaints regarding school enrolments, including placement of children with disability.
- TAFE NSW – we received complaints from TAFE students about enrolments being cancelled for failure to pay tuition fees on time, and claims that insufficient regard was had to their ability to pay during the pandemic

## A.3 Complaints about local government

Table 6. Finalised actionable complaints about local councils (Top 10 by number)

Council	Number	Resident population	Rate – complaints per 100,000 residents	%
Central Coast Council	164	345,809	47	6
Canterbury-Bankstown Council	111	380,406	29	4
Northern Beaches Council	91	274,041	33	3
Inner West Council	77	201,880	38	3
City of Sydney Council	69	248,736	28	3
Penrith City Council	68	216,282	31	3
Lake Macquarie City Council	64	207,775	31	2
Blacktown City Council	63	382,831	16	2
Bayside Council	62	181,472	34	2
City of Parramatta Council	59	260,296	23	2
<b>Total</b>	<b>828</b>	<b>2,699,528</b>	<b>31</b>	<b>30</b>

## Observations

In 2020–21, we finalised 2,725 actionable complaints about councils, including 8 complaints about county councils.

Table 6 (above) shows the 10 councils with the highest number of actionable complaints. Actionable complaints about these councils represent 29% of all local government actionable complaints we finalised in 2020–21.

The most frequently raised issues in actionable complaints about councils were: standards of

customer service; complaint-handling processes; council enforcement action; charges and fees; and merits/reasoning of council decisions when they are exercising their discretion in accordance with policy or in a statutory setting.

In 2020–21, we received more local government complaints than we did in the previous year about customer service and complaint handling. We have reached out to all councils to engage with them on improved complaint handling and our Complaint Handling Improvement Program.

## A.4 Complaints and related data concerning people in detention or under court-ordered supervision

Table 7. Notifications about segregation and separation

Youth justice centre	Segregation	Separation	Total
Acmena Youth Justice Centre	20	225	<b>245</b>
Cobham Youth Justice Centre	23	499	<b>522</b>
Frank Baxter Youth Justice Centre	31	296	<b>327</b>
Orana Youth Justice Centre	1	124	<b>125</b>
Reiby Youth Justice Centre	25	392	<b>417</b>
Riverina Youth Justice Centre	1	73	<b>74</b>
<b>Total</b>	<b>101</b>	<b>1,609</b>	<b>1,710</b>

### Observations

A spike in youth justice notifications that commenced in the last quarter of 2019–20 continued throughout 2020–21. This is mostly a result of mandatory COVID-19 quarantine

(separation) requirements being applied to young people on their admission to youth justice centres.

Table 8. Finalised actionable complaints about adult correctional centres

Correctional centre	Number of complaints	% of total complaints	% of security level
<b>Maximum security</b>	<b>2,327</b>	<b>82</b>	<b>100</b>
Parklea Correctional Centre	348	12	15
Clarence Correctional Centre	325	11	14
Metropolitan Remand & Reception Centre	195	7	8
Junee Correctional Centre	190	7	8
Mid North Coast Correctional Centre	181	6	8
Metropolitan Special Programs Centre	145	5	6
Shortland Correctional Centre	130	5	6
South Coast Correctional Centre	123	4	5
Bathurst Correctional Centre	111	4	5
Wellington Correctional Centre	111	4	5
Long Bay Hospital Correctional Centre	104	4	4
Silverwater Women's Correctional Centre	102	4	4
Goulburn Correctional Centre	76	3	3
Lithgow Correctional Centre	62	2	3
High Risk Management Correctional Centre	42	1	2

Correctional centre	Number of complaints	% of total complaints	% of security level
Macquarie Correctional Centre	26	1	1
Hunter Correctional Centre	25	1	1
Mary Wade Correctional Centre	15	1	1
Special Purpose Centre	15	1	1
Compulsory Drug Treatment Correctional Centre	1	0	0
<b>Medium security</b>	<b>297</b>	<b>10</b>	<b>100</b>
Dillwynia Correctional Centre	200	7	67
John Morony Correctional Centre	46	2	15
Cooma Correctional Centre	28	1	9
Tamworth Correctional Centre	12	0	4
Broken Hill Correctional Centre	10	0	3
Kariong Correctional Centre	1	0	0
<b>Minimum security</b>	<b>231</b>	<b>8</b>	<b>100</b>
Cessnock Correctional Centre	99	3	44
Geoffrey Pearce Correctional Centre	30	1	13
Kirkconnell Correctional Centre	27	1	12
Dawn de Loas Correctional Centre	23	1	10
Mannus Correctional Centre	12	0	5
Emu Plains Correctional Centre	10	0	4
St Heliers Correctional Centre	10	0	4
Glen Innes Correctional Centre	7	0	3
Oberon Correctional Centre	7	0	3
Ivanhoe (Warakirri) Correctional Centre	5	0	2
Illawarra Reintegration Centre	1	0	0
<b>Total</b>	<b>2,855</b>	<b>100</b>	

## Observations

In 2020–21, we finalised 2,855 actionable complaints about adult correctional centres. The main issues were about:

- medical care – most commonly about the roll out of depot injections of opioid substitution treatment by Justice Health in response to COVID-related lockdowns
- daily routine – such as the amount of time inmates spend outside of their cell, their ability to contact family and friends, and their access to activities or programs
- property – for example, being misplaced or lost when an inmate moves within or between centres

- visits – in person social visits were suspended at times during 2020–21 relating to the COVID-19 pandemic.
- alleged officer misconduct – allegations ranged from minor complaints, such as allegations of rudeness or harassment by staff to more serious allegations, such as assault or excessive use of force.

The highest number of actionable complaints were received about: Parklea Correctional Centre, Clarence Correctional Centre, Metropolitan Remand and Reception Centre (MRRC), and Dillwynia Correctional Centre. The first 3 are the largest centres for the male inmate population, each capable of accommodating more than 1,000 inmates, and Dillwynia is now the largest centre for female inmates.

Parklea and MRRC are the 2 main reception centres for men in the Sydney metropolitan area and many inmates contact us with complaints arising from their limited knowledge of the system. These are valid complaints but most often we inform them about how they can firstly progress their matter internally at their centre and invite them to come back to us if that fails to achieve a resolution.

**Table 9. Finalised actionable complaints about youth justice centres**

Youth justice centre	Number	%
Frank Baxter	18	35
Cobham	11	21
Riverina	8	15
Reiby	7	13
Orana	5	10
Acmena	3	6
<b>Total</b>	<b>52</b>	<b>100</b>

## Observations

In 2020–21, we finalised 52 actionable complaints about youth justice centres. Most often young people contact us about their daily routine (such as how much access they have to recreation) or allegations regarding officer conduct.

We receive most contact from Frank Baxter and Cobham youth justice centres. These are the 2 largest centres, and Cobham is the main reception centre for the Sydney metropolitan area for male detainees.

**Table 10. Finalised actionable complaints about other custodial services**

Agency	Number	%
Justice Health	441	61
Corrective Services NSW	207	29
Community Corrections	36	5
The Forensic Hospital	16	2
State Parole Authority	7	1
Court escort/security unit	4	1
Women's Transitional Centres	4	1
Amber Laurel Correctional Centre	1	0
Balund-a (Tabulam)	1	0
Grafton Intake and Transient Centre	1	0
Youth Justice	1	0
<b>Total</b>	<b>719</b>	<b>100</b>

## Observations

In 2020–21, we finalised 719 actionable complaints about other custodial and corrections-related services, mainly about Justice Health. When an inmate from a publicly managed correctional centre complains about their health care the complaint is recorded against Justice Health. Complaints about health care in privately managed prisons are recorded against the centre the inmate is calling from as health care in those locations is generally not provided by Justice Health.

## A.5 List of custodial facilities visited during 2020–21

Custodial facility	Date/s of visit
<b>Correctional centres</b>	
Long Bay Hospital Area 2	28 July 2020
Emu Plains Correctional Centre	17 August 2020
Shortland Correctional Centre	1 September 2020
Metropolitan Special Programs Centre Areas 1, 2 and 3	17 September 2020, 22 April 2021
Broken Hill Correctional Centre	16 October 2020
Clarence Correctional Centre	15 December 2020
John Morony Correctional Centre	20 February 2021
High Risk Management Correctional Centre	17 February 2021
Goulburn Correctional Centre	17 February 2021
Mid North Coast Correctional Centre	9 March 2021, 10 March 2021
Silverwater Women's Correctional Centre	17 March 2021
Geoffrey Pearce Correctional Centre	29 March 2021
Special Purpose Centre	8 April 2021
Dillwynia Correctional Centre	6 May 2021
Bathurst Correctional Centre	11 May 2021
Lithgow Correctional Centre	12 May 2021
Junee Correctional Centre	25 May 2021
Mannus Correctional Centre	26 May 2021
Metropolitan Remand and Reception Centre	1 June 2021
Mary Wade Correctional Centre	9 June 2021
<b>Youth justice centres</b>	
Frank Baxter Youth Justice Centre	14 August 2020
Cobham Youth Justice Centre	23 November 2020
Acmena Youth Justice Centre	14 December 2020
Reiby Youth Justice Centre	24 March 2021
Riverina Youth Justice Centre	26 May 2021
<b>Court cells</b>	
Surry Hills Court Cell Complex	10 November 2020

## A.6 Actionable complaints about community service providers

**Table 11. Finalised actionable complaints about community service providers by service area\***

Service area	Number	%
Statutory child protection	347	36
Out-of-home-care home-based – foster care	326	34
Out-of-home-care home-based – kinship care	149	15
Out-of-home-care – intensive therapeutic care	54	6
Specialist homelessness services – youth	24	2
After care/leaving care	20	2
Specialist homelessness services – adult	11	1
Early intervention/family support	9	1
Out-of-home-care – other	9	1
Adoption	7	1
Other service area	3	0
Disability services	2	0
Neighbourhood centre	2	0
<b>Total</b>	<b>963</b>	<b>100</b>

\*This table includes complaints about community services provided by Department of Communities and Justice and non-government organisations. Other complaints about Department of Communities and Justice are included in Table 5.

### Observations

In 2020–21, we finalised 963 actionable complaints about community service providers. The Ombudsman may make inquiries in response to a complaint about the provision, failure to provide, withdrawal, variation or administration of a community service by DCJ or persons/organisations funded, licensed or authorised by the Minister for Families, Communities and Disability Services.

The main issues we received complaints about were:

- Statutory child protection – These include complaints we receive from mandatory

reporters and members of the community who are concerned when they have made a report about a child at risk of harm, and where it appears that no action has been taken in response to their report.

- Foster care – These include complaints from foster carers about the support they are receiving from DCJ or the organisation responsible for case management (eg lack of support, training, financial assistance and referrals to specialist support for the children and young people in their care). We also receive complaints from parents whose children are in foster care. Many of these complaints relate to contact arrangements, with parents raising concern about the amount of contact they can have with their children.
- Kinship care – As with foster care, complaints from kinship carers are often about the supports they are receiving from the case management agency.
- Intensive therapeutic care (ITC) – Many of the complaints were from young people in ITC and related to bullying by other residents; access to education and training programs; quality of food available; and other issues that arise for them in residential placements. We also received a number of complaints from Official Community Visitors who visit these services on a regular basis (eg about behaviour and therapeutic supports for young people in these placements; and training and development of staff who provide support to the young people).

## A.7 Notifications received

Notification type	Number
Youth Justice (segregations and separations)	1,710
Deaths of children that occurred in NSW	494
Deaths of persons with a disability in supported group accommodation	164
Reportable incidents involving people with disability	9
<b>Total</b>	<b>2,377</b>

See above at Table 7 for notifications about youth justice segregation and separations.

**B. Our people  
and workplace**



## B.1 Our people

### Officers and employees

#### Number of staff

The office has built a broad and diverse workforce with a variety of backgrounds, skills and expertise. As at 30 June 2021 our workforce consists of 134 people who are either full-time or part-time employed.

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.

Our staff are employed under the provisions of the *Government Sector Employment Act 2013* (GSE Act), along with associated rules and

regulations and the *Crown Employees (Public Service Conditions of Employment) Award 2009*. These industrial instruments set out the working conditions and entitlements offered to staff.

**Table 12. FTE staff levels 2020–2021 (as at 30 June)**

Division	2020	2021
Complaints and investigations	42.40	52.69
Projects and systemic reviews	23.34	27.09
Engagement and Aboriginal programs	11.60	9.80
Legal, governance and risk (created in 2020–21)	N/A	4.00
Corporate	22.40	22.39
Executive	7.00	6.00
<b>Total</b>	<b>106.74</b>	<b>121.97</b>

**Table 13. FTE staff levels 2017–2019 (as at 30 June)**

	2017	2018	2019
Statutory officer	7.00	6.00	6.00
Investigative, systemic review, project, research and legal	114.23	129.94	104.58
Inquiries and assessment	12.14	11.07	10.00
Investigative and administrative support	30.97	22.97	21.77
Community engagement and training	4.10	4.20	4.50
Corporate – Human resources, finance, information technology and governance	15.20	18.60	17.80
<b>Total full-time equivalent</b>	<b>183.64</b>	<b>192.78</b>	<b>164.65</b>

#### Senior executive

**Table 14. Senior executive levels (all executives employed as at 30 June)**

Band	2019		2020		2021	
	Female	Male	Female	Male	Female	Male
Band 4	0	1	0	1	0	1
Band 3	0	1	0	1	0	0
Band 2	0	0	0	0	2	0
Band 1	8	1	6	1	2	1
<b>Total</b>	<b>8</b>	<b>3</b>	<b>6</b>	<b>3</b>	<b>4</b>	<b>2</b>
<b>Total (male and female)</b>	<b>11</b>		<b>9</b>		<b>6*</b>	

*\* We had 3 additional senior executive roles that were vacant as at 30 June 2021:  
- 1 at Band 3  
- 2 at Band 1*

Table 15. Senior executive remuneration – average range across all positions (as at 30 June 2021)

	2019–20		2020–21	
Band	Range \$	Average	Range \$	Average
Band 4	475,151 – 548,950	502,300	487,051 – 562,650	502,300
Band 3	337,101 – 475,150	400,273	345,551 – 487,050	N/A
Band 2	268,001 – 337,100	N/A	274,701 – 345,550	274,701
Band 1	187,900 – 268,000	238,904	192,600 – 274,700	249,890

Table 16. Senior executive remuneration as a percentage of total employee-related expenditure (as at 30 June 2021)

	2019–20	2020–21
Percentage of total employee-related expenditure	15.09%	11.42%*

\* As noted above, 3 senior executive roles were vacant as at 30 June 2021.

## People Matter Employment Survey results

We recorded a significant improvement in our 2020 PMES results compared to the previous year, which had taken place during a significant organisational restructure.

Our response rate rose from 59% to 100%, and our engagement score increased from 64% to 67%.

We have undertaken actions to respond to our lowest scoring areas: grievance processes (41%), learning and development (47%) and action on

survey results (59%). These include:

- the establishment of a cross-office PMES team comprising staff at various levels, to review our PMES results and develop an action plan
- the implementation of a new performance and development management system
- the development of new bullying and harassment, and grievance policies, and the development of an online grievance management training module
- regular reporting through internal communication channels on how we are addressing PMES results.

Table 17. PMES 2020 results: key topics – comparison against public sector average

Satisfaction area	2020 Ombudsman %	2020 Public sector average %
Employee engagement	64	67
Job satisfaction	60	70
Wellbeing, health and safety	69	76
Senior managers	68	58
Communication and change management	69	62
Inclusion and diversity	77	74
Flexible working satisfaction	86	67
Role clarity and support	63	66
Autonomy and employee voice	71	71
Feedback and performance management	60	63
Learning and development	47	54

Satisfaction area	2020 Ombudsman %	2020 Public sector average %
Recruitment	63	45
Teamwork and collaboration	68	69
Risk and innovation	78	75
Decision-making and accountability	64	60
Customer service	74	74
Pay	75	63
Grievance processes	41	45
Action on survey results	59	45

## Personnel and industrial relations policies and practices

We have the following personnel policies and practices in place:

1. Collateral flexible working hours agreement
2. Consultative arrangements policy
3. Diversity & inclusion framework
4. Bullying, harassment and discrimination policy & procedure
5. Grievance management policy & procedure
6. Leave guideline
7. Overtime policy
8. Performance development policy & framework
9. Purchased leave policy
10. Reasonable adjustment policy
11. Recording of time worked policy
12. Salary packaging policy
13. Study assistance
14. Dealing with misconduct allegations policy & procedure

## Work health and safety

We have the following health and safety policies and practices in place:

1. Work Health & Safety – policy
2. Work Health & Safety – First aid policy
3. Work Health & Safety – Return to work program

4. Work Health & Safety – Framework
5. Work Health & Safety – Committee terms of reference
6. Work Health & Safety – Safe driving policy
7. Injury management policy
8. Grievance management policy & procedure
9. Health & wellbeing policy & framework
10. Working from home policy

### Work Health and Safety committee

We have a Work Health and Safety 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 work health and safety hazards and risks, and understands the impact of operational and business requirements on the safety and wellbeing of our staff.

### Work health safety injuries and incidents

There was 1 work-related injury, 1 work-related incident, and 2 non-work-related incidents during 2020–21, which were immediately reported and addressed. The injury reported was repetitive strain pain due to excessive typing.

### Workers' compensation claims

We participate in the icare Treasury Managed Fund, a self-insurance scheme for the NSW public sector. There was 1 new claim reported to our insurer during the reporting period. As at 30 June 2021, there was 1 open claim. The claim has now been closed.

**Table 18. Workers' compensation – 5-year comparison**

	2016-17	2017-18	2018-19	2019-20	2020-21
Claims brought forward	1	0	1	0	1
New claims	0	1	0	1	1
Claims closed	1	0	1	0	1
Open claims 30 June	0	1	0	1	1

**Table 19. Workers' compensation incidence rate – 5-year comparison**

	2016-17	2017-18	2018-19*	2019-20	2020-21
Number of submitted claims	0	1	0	1	1
FTE staff number	183.64	192.78	164.65	106.74	121.97
Incidence rate (%)	0.00	0.00	0.00	0.94%	0.82%

\* in 2017-18, the incidence rate is recorded as 0 as the claim related to an official community visitor (OCV) who was not included in our FTE staff numbers; OCVs are statutory appointments. The OCV scheme was administered by the Ombudsman until 2019.

## B.2 Diversity and inclusion

### Workforce diversity

Our organisation is committed to promoting diversity and inclusion. Our recruitment practices, the diversity of our staff, and our inclusion practices support this commitment.

**Table 20. Trends in the distribution index for workforce diversity groups**

Workforce diversity group	Benchmark	2018	2019	2020	2021
Women	100	99	101	101	101
Aboriginal and/or Torres Strait Islander people	100	N/A	N/A	N/A	N/A*
People whose first language spoken as a child was not English	100	90	89	89	93
People with disability	100	92	94	N/A	N/A*
People with disability requiring work-related adjustment	100	N/A	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 of 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.

\* The distribution index is not calculated when the number of employees in the workforce diversity group is less than 20 or when the number of other employees is less than 20.

**Table 21. Trends in the representation of workforce diversity groups**

Workforce diversity group	Benchmark	2018	2019	2020	2021
Women	50%	76.5%	77.7%	69.67%	70.1%
Aboriginal and/or Torres Strait Islander people	3.3%	2.3%	2.7%	3.28%	4.5%
People whose first language spoken as a child was not English	23.2%	21.2%	19.7%	22.95%	26.4%
People with disability	5.6%	10.14%	10.6%	8.2%	6.8%
People with disability requiring work-related adjustment	N/A	1.38%	1.38%	1.64%	0.7%

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, the cumulative representation of Aboriginal employees in the sector is expected to reach 3.3%.

Note 3: A benchmark from the Australian Bureau of Statistics (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 22. Workforce diversity actual staff numbers at census date (24 June 2021)**

Remuneration level of substantive position	Total staff (men, women & unspecified)	Respondents	Men	Women	Unspecified gender	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 disability	People with a disability requiring work-related adjustment
\$0 – \$49,470	0	0	0	0	0	0	0	0	0	0
\$49,470 – \$64,973	0	0	0	0	0	0	0	0	0	0
\$64,973 – \$72,635	5	5	0	5	0	1	2	2	1	1
\$72,635 – \$91,916	22	21	9	13	0	1	8	8	2	0
\$91,916 – \$118,863	61	61	20	41	0	1	16	17	5	0
\$118,863 – \$148,578	40	40	9	31	0	2	9	8	1	0
\$148,578 > (Non SES)	4	4	2	2	0	1	0	0	0	0
\$148,578 > (SES)	2	2	0	2	0	0	0	0	0	0
<b>Total</b>	<b>134</b>	<b>133</b>	<b>40</b>	<b>94</b>	<b>0</b>	<b>6</b>	<b>35</b>	<b>35</b>	<b>9</b>	<b>1</b>

## Diversity and inclusion framework

Our organisation has a diverse and inclusive workplace culture that embraces and values the many communities, places and perspectives of the people we serve. We have a staff-led Diversity and Inclusion (D&I) Advisory Forum that supports the implementation of a range of D&I initiatives to promote greater inclusion and support diversity.

This year, we launched our D&I framework, which sets out our commitment to inclusive work practices and culture and identifies key existing and planned initiatives to support diversity and inclusion in the workplace.

Key actions undertaken include:

- through the support of the Australian Network of Disability (AND), we engaged various interns as part of the 'Stepping Into' Disability Internships program.
- Supported and raised awareness of major diversity and inclusion events.

## Proposed workforce diversity strategies

We have proposed the following strategies for 2021–22:

- develop a workforce strategy that incorporates diversity and inclusion initiatives, including nominating identified roles across the organisation
- develop a program to match experienced high-potential and performing women in the organisation with others in the office to support them in their development through either coaching or mentoring
- join the Employer of Choice for Gender Equality (EOCGE) citation recognition program designed to encourage, recognise and promote organisations' active commitment to achieving gender equality in workplaces
- enhance the ICT strategy to ensure accessibility issues are considered when procuring new systems (per web content accessibility standards)
- develop a workforce strategy that incorporates diversity and inclusion initiatives, supported by a recruitment & selection framework with guidance and support materials for inclusive recruitment practices.

## B.3 Multicultural plan

### Release of our multicultural plan

In 2020–21, we published our NSW Ombudsman Multicultural plan 2021–22, which sets out our:

- commitment to people from culturally diverse backgrounds
- workforce diversity profile
- work with culturally diverse people and communities
- 2021–2022 priorities.

Our priorities include a range of activities to enhance our staff diversity, develop a more inclusive workplace and improve the way we work with people from culturally diverse backgrounds, both internally and externally. Under the plan we intend to:

- continue to recognise and celebrate key multicultural events
- develop and publish a community engagement strategy
- utilise a range of communication formats and channels (including training and information sessions) to inform people from culturally diverse backgrounds about our role and functions, and to identify gaps in our delivery of services
- use existing demographic datasets (eg. Australian Bureau of Statistics) to inform our outreach activities and better tailor them to the needs of particular communities
- engage in targeted consultation and engagement with culturally diverse communities, and services that support them
- monitor our translation and interpreter tracking register to ensure we are identifying the language service needs of people who contact our office
- continue to consult with Multicultural NSW about improvements to language services, including telephone interpreter services

The full plan is published on the policies section of our website [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

## Multicultural plan actions

We continue where possible to conduct outreach and engagement activities to ensure people from culturally diverse communities understand our role, can access our services, and have trust and confidence that we will help. These activities are constrained by our financial resources, and have also been impacted by COVID-19.

Activities undertaken this year include:

- participating in community information days (the St George Migrant Information Day and the Anti-poverty Forum)
- engaging with Multicultural NSW, including through the participation in 2 pilot training sessions delivered on working with interpreters and cultural competence
- continuing to strengthen our relationship with the Multicultural Disability Advocacy Association, and regularly delivering information sessions about our services to their clients
- attending a range of interagency forums considering issues for refugees and other people from culturally diverse backgrounds
- developing fact sheets about our role and functions (and distributing them through a range of agencies, including the Western Sydney Community Centre's Multicultural Legal Service and Advance Diversity Services).

## B.4 Governance, insurance and risk

As an independent office, we are accountable to the people of NSW through the NSW Parliament.

The work of the Ombudsman is scrutinised by the Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission. This committee examines our annual report and other reports to Parliament and may report to Parliament on any matter relating to our work. However, it cannot review our decisions about individual complaints.

### Risk management and insurance activities

Our risk management framework provides the principles and processes for all risk management activities across the office. In 2020–21, we

continued to implement strategies to mature our approach to risk management. Our Audit and Risk Committee (ARC) provided us with independent assistance about our risk management practices. The committee met 6 times and operated in accordance with NSW Treasury requirements.

Key activities included:

- continued working with KPMG to uplift risk management maturity, including the development of risk appetite statements, design of risk metrics, enhancement of enterprise risk reporting, and the introduction of a new governance, risk and compliance tool
- finalisation and implementation of a new fraud control plan
- refreshment of the business continuity plan
- deployment of internally developed and provided risk management training to staff
- introduction of 'risk in focus' sessions for the ARC to deep dive into specific risks presented by a rotating Executive owner
- monitoring the implementation of all external and internal audit recommendations.

The NSW Government is a self-insurer and provides cover in respect of all of the NSW Ombudsman's activities.

### Completing internal audits

The ARC continued to receive updates on, and provided advice about, the Internal Audit Program, in partnership with an outsourced internal auditor and the Executive. The ARC has closely monitored the development of the internal audit strategy and the completion of audits.

Key activities included:

- revision of the annual internal audit plan to address the Executive review of organisational risks and meet the internal audit needs in the context of the office's response to the COVID-19 pandemic
- completion of 3 internal audits, and monitoring of the implementation of findings and recommendations
- independent external review of the internal audit function by the Institute of Internal Auditors (IIA) Australia as required once every 5 years per TPP20-08 Internal Audit and Risk Management Policy for the General Government Sector.

## Internal audit and risk management policy attestation



### Internal Audit and Risk Management Attestation Statement - FY2020-2021 Ombudsman's Office

I, Paul Miller, NSW Ombudsman, am of the opinion that the Ombudsman's Office has internal audit and risk management processes in operation that comply with the following 7 Core Requirements set out in the *Internal Audit and Risk Management Policy for the General Government Sector*:

Core Requirements	Status
<b>Risk Management Framework</b>	
1.1 The Accountable Authority shall accept ultimate responsibility and accountability for risk management in the agency.	Compliant
1.2 The Accountable Authority shall establish and maintain a risk management framework that is appropriate for the agency. The Accountable Authority shall ensure the framework is consistent with AS ISO 31000:2018.	Compliant
<b>Internal Audit Function</b>	
2.1 The Accountable Authority shall establish and maintain an internal audit function that is appropriate for the agency and fit for purpose.	Compliant
2.2 The Accountable Authority shall ensure the internal audit function operates consistent with the International Standards for Professional Practice for Internal Auditing.	Compliant
2.3 The Accountable Authority shall ensure the agency has an Internal Audit Charter that is consistent with the content of the 'model charter'.	Compliant
<b>Audit and Risk Committee</b>	
3.1 The Accountable Authority shall establish and maintain efficient and effective arrangements for independent Audit and Risk Committee oversight to provide advice and guidance to the Accountable Authority on the agency's governance processes, risk management and control frameworks, and its external accountability obligations.	Compliant
3.2 The Accountable Authority shall ensure the Audit and Risk Committee has a Charter that is consistent with the content of the 'model charter'.	Compliant

#### Membership

The independent chair and members of the Audit and Risk Committee are:

- Independent Chair, Christine Feldmanis, appointed 24 May 2017 to 23 May 2022
- Independent Member 1, David Roden, appointed 27 June 2016 to 27 June 2021
- Independent Member 2, Vicki Allen, appointed 23 August 2017 to 22 August 2022
- Independent Member 3, Peter Scarlett, appointed 27 June 2021 to 26 June 2026.

Paul Miller  
NSW Ombudsman  
31 August 2021

Megan Smith  
Chief Audit Executive  
31 August 2021

## Cyber security attestation

ABN 76 325 886 267

Level 24, 580 George Street, Sydney NSW 2000

T 02 9286 1000 | F 02 9283 2911

Tollfree 1800 451 524

[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)



### Cyber security attestation statement for the 2020-21 financial year for the NSW Ombudsman

I, Paul Miller, am of the opinion that the NSW Ombudsman's Office has identified and is actively managing cyber security risks in a manner consistent with the guidance set out in the NSW Government Cyber Security Policy (the **Policy**). The NSW Ombudsman's Office is, however, not fully compliant with all the requirements of that Policy.

Identified risks have been assessed and are currently being managed within the constraints of the existing resources and capabilities of the office.

Governance is in place to assess and manage the cybersecurity maturity and initiatives of the Ombudsman's Office.

A cyber incident response plan for the Ombudsman's Office is in place and has been tested during the 2020-21 reporting period. The intention is to test the cyber incident response plan on a yearly basis.

An Information Security Management System (ISMS) is in place. It has not yet been audited but a current state review of the Office's attested compliance to the ISMS has been undertaken in the 2020-21 reporting period.

The Ombudsman's Office made progress towards greater compliance with the Policy during 2020-21.

However, there has been some continued disruption as a result of the COVID-19 pandemic and the changed working environment, as well as changes in technology usage associated with the pandemic.

The NSW Ombudsman's Office is continuing to document and develop the program of work that will be needed to achieve greater maturity against the requirements in the Policy and the ACSC Essential Eight. Delivery of this program of work will require additional investment, and a business case has been submitted to the NSW Government (including with respect to the Fund established under the *Digital Restart Fund Act 2020*) to obtain the necessary funding.

A handwritten signature in black ink, appearing to read "Paul Miller".

Paul Miller  
**NSW Ombudsman**  
31 August 2021

## B.5 Privacy and Personal Information Protection Act compliance

Our privacy management plan, which addresses the requirements of both the *Privacy and Personal Information Protection Act 1998* (PPIPA) and the *Health Records and Information Privacy Act 2002*, was reviewed and incorporated into our new Privacy and Information Management Framework.

We reviewed our operational procedures to identify and address any systemic issues that might lead to privacy breaches. We also updated our internal governance processes to better manage and resolve potential breaches of privacy. Anticipating the introduction of a mandatory data breach notification scheme, we confirmed that our current processes for proactively notifying potential data breaches aligned with the proposed scheme as well as current best practice.

We received no requests for review under Part 5 of the PPIPA during the reporting period.

## B.6 Public interest disclosures

As a public authority under the *Public Interest Disclosures Act 1994* (PID Act), the Ombudsman is required to have policies and procedures in place to facilitate the reporting of wrongdoing by staff.

Staff are made aware of the PID Act and assured that they will be given protection and support if they make a public interest disclosure.

### Internal reporting policy

Our internal reporting policy is in place and we have taken the following actions to raise staff awareness about the PID Act and this policy:

- internal reporting policy and internal report form is available on our staff intranet and website
- new staff are required to read the internal reporting policy as part of their induction
- information about how to make a report about wrongdoing is provided on posters at our office
- staff have attended mandatory PID awareness training and management training

- an Easy English version of the internal reporting policy has been developed
- email communications to all staff have promoted the PID Act and encouraged staff to make internal reports.

## PID statistics

Under the PID Act, we are required to report information about public interest disclosures that we receive from our staff and/or about our office.

In 2020–21, we did not receive any public interest disclosures from members of staff about our office.

(Note: The Ombudsman is also an investigating authority under the PID Act, and may receive public interest disclosures from public officials about other public authorities. Information about the public interest disclosures we receive and deal with as an investigating authority are included in our separate annual reports on Oversight of the *Public Interest Disclosures Act 1994*, which are published on our website.)

## B.7 Government Information (Public Access) Act

### Public access to our information

Under the *Government Information (Public Access) Act 2009* (GIPA Act) there is a conclusive overriding public interest against the disclosure of information relating to our complaint handling, investigative and reporting functions: this information is ‘excluded information’ under the GIPA Act. The secrecy provisions of the *Ombudsman Act 1974* also limit the information we can make publicly available.

This means that we tend to receive few GIPA Act applications, and those we do receive are frequently invalid (as they seek excluded information).

Where an applicant applies for information, some of which is excluded information and some or which is not, we assist the applicant to make a valid application for the information that is not excluded information.

We also carefully consider all requests for information from the public and other agencies to decide whether it might be appropriate for us to voluntarily disclose requested information under section 8 of the GIPA Act or other legislation.

In accordance with the GIPA Act we also:

- proactively release ‘open access information’ such as our information guide, policy documents, and reports tabled in Parliament
- conduct regular yearly reviews of the kinds of other government information held that should be made publicly available.

There have been no substantive changes to the kinds of government information the Ombudsman holds or the considerations relevant to making that information publicly available.

Our website provides information about our most recent publications, activities, and other information that may be of public interest. The website also contains our public reports and publications and our policies, including our strategic plan and code of conduct. We have previously noted our special reports and submissions to Parliament.

## Statistical information about access applications

Table 23. Invalid GIPA applications

Reason for invalidity	Number of applications
Application does not comply with formal requirements (section 41 of the Act)	0
Application is for excluded information of the agency (section 43 of the Act)	5
Application contravenes restraint order (section 110 of the Act)	0
Total number of invalid applications received	5
Invalid applications that subsequently became valid applications	2

Table 24. Number of GIPA 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 (application by legal representative)	0	0	0	0	0	0	0	0
Members of the public (other)	1	1	0	0	0	0	0	0

\* More than 1 decision can be made in respect of a particular access application. If so, a recording must be made in relation to each such decision.

**Table 25. Number of GIPA applications by type of application 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	1	0	0	0	0	0	0
Access applications (other than personal information applications)	1	0	0	0	0	0	0	0
Access applications that are partly personal information applications and partly other	0	0	0	0	0	0	0	0

\* A 'personal information application' is an access application for personal information (as defined in clause 4 of Schedule 4 to the Act) about the applicant (the applicant being an individual).

**Table 26. Timeliness**

	Number of applications
Decided within the statutory timeframe (20 days plus any extensions)	1
Decided after 35 days (by agreement with applicant)	1
Not decided within time (deemed refusal)	0
<b>Total</b>	<b>2</b>

**Table 27. Number of applications reviewed under Part 5 of the Act (by type of review and outcome)**

	Decision varied	Decision upheld	Total
Internal review	0	1	<b>1</b>
Review by Information Commissioner*	0	1	<b>1</b>
Internal review following recommendation under section 93 of Act	0	0	<b>0</b>
Review by NCAT	0	0	<b>0</b>
<b>Total</b>	<b>0</b>	<b>2</b>	<b>2</b>

\* 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 28. Applications for review under Part 5 of the Act (by type of applicant)**

	Number of applications for review
Applications by access applicants	2
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	0

## B.8 Complaints about us

The NSW Ombudsman welcomes feedback about our services, and we take any complaints about our own services and decisions seriously. Complaints provide us an opportunity to look at the quality of our services and the feedback we receive is used to improve our performance and services.

In 2020–21, we received 10 formal complaints about the services we provided or the actions of our staff. Issues raised in the formal complaints included allegations of:

- failure to deal appropriately with a complaint about an agency
- poor customer service
- delays
- failure to respond.

In 3 cases we found the complaints were substantiated, and we apologised to the complainant. We also reviewed our processes to ensure that we learnt from the complaints and improved our practices.

Traditionally, the complaints about the conduct of our staff number is low. This is because when citizens express dissatisfaction with our service it is usually about the decision we have made (which is addressed through the Request for Review of Decision procedure – see 2.3).

## B.9 Finance

### Revenue, expenses and financial position

#### Revenue

The majority of our revenue comes from the NSW Government in the form of a consolidated fund appropriation. This is used to meet both recurrent and capital expenditure. Note 3 within the financial statements provides details of the revenue received for the year (\$26.269 million).

Due to the impact of COVID-19, training revenue received was lower in 2019–20 and 2020–21 compared to previous years.

Figure 10. 2020–21 revenue

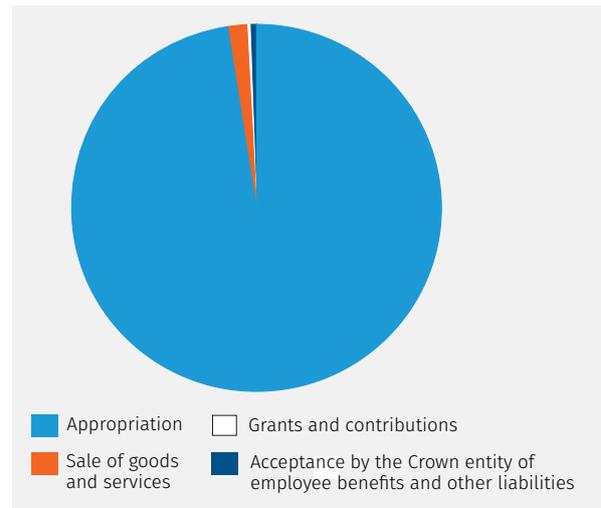
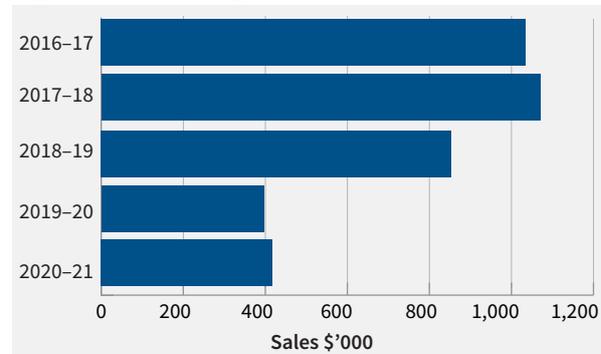


Figure 11. Training revenue



#### Expenses

Total expenses recorded was \$25.785 million, \$1.92 million less than budget primarily due to staff turnover and vacancies throughout the year. Employee-related expenses accounted for 65.6% of total expenses.

The significant operating expenses include consultants (\$1.541 million), contractors (\$1.454 million), maintenance (\$0.678 million) and fees (\$0.44 million).

Figure 12. 2020–21 expenses

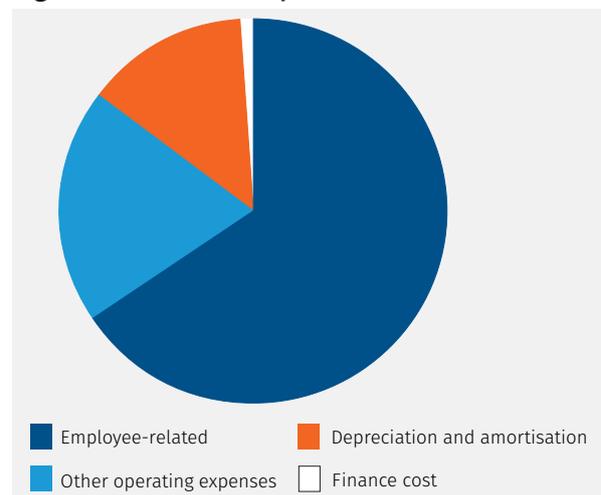
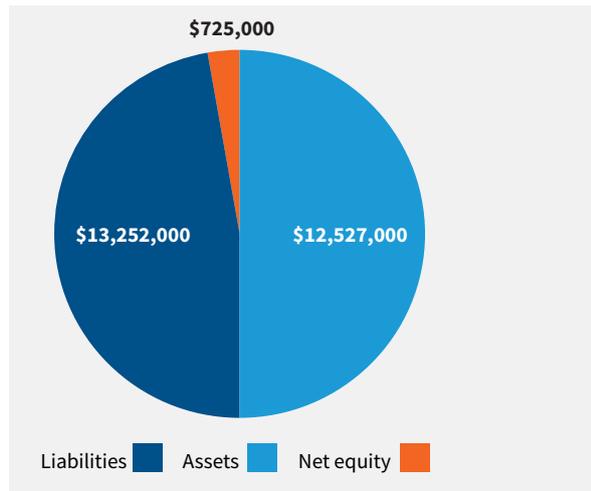


Figure 13. Financial position as at 30 June 2021



## Financial Position as at 30 June 2021

The net operating result for the year ended 30 June 2021 is a deficit of \$1.097 million.

Total assets have decreased from the previous year primarily through the impairment of our office lease, whose book value has been written down to its market value (or 'fair value'). This is a result of a significant decline in market rent due to the impact of COVID-19.

Net assets have reduced from \$0.372 million in 2019–20 to net liabilities of \$0.725 million in 2020–21.

## Financial statements

The financial statements are prepared in accordance with legislative provisions and accounting standards, and are audited by the Audit Office of New South Wales. The independent auditor's report and financial statements can be found in Appendix C.

## Consultants

Table 29. Consultancies valued at \$50,000 or more

Category	Consultant	Nature	Cost \$*
Information technology	eSecure	Cyber security services	99,825
Information technology	Harper Stone	Consulting services for website discovery phase	61,840
Information technology	Deloitte Touche Tohmatsu	Business case development support for case management system	67,650
Management services	Deloitte Touche Tohmatsu	Development of Public Interest Disclosure training strategy	177,623
Management services	Deloitte Touche Tohmatsu	Development of resources to support NSW Ombudsman's complaint handling review and audit functions (Service over 2 years – total cost \$111,392)	103,492
Management services	The Sax Institute	Research services relating to suicide deaths of Aboriginal children and young people	88,000
Management services	KPMG	Review of NSW Ombudsman's disability death review function	101,423
Management services	Australian Institute of Health & Welfare	Research services relating to early childhood mortality in NSW; data linkage (Service over 2 years – total cost \$140,800)	95,700
Organisational review	KPMG	Business strategy advice on organisational budget	130,130
Training	PINPOINT HRM	Human Capital Management system implementation support	120,846
<b>Total (inc GST)</b>			<b>1,046,529</b>

\*figure rounded to whole dollars

Table 30. Consultancies valued at less than \$50,000 – aggregate cost

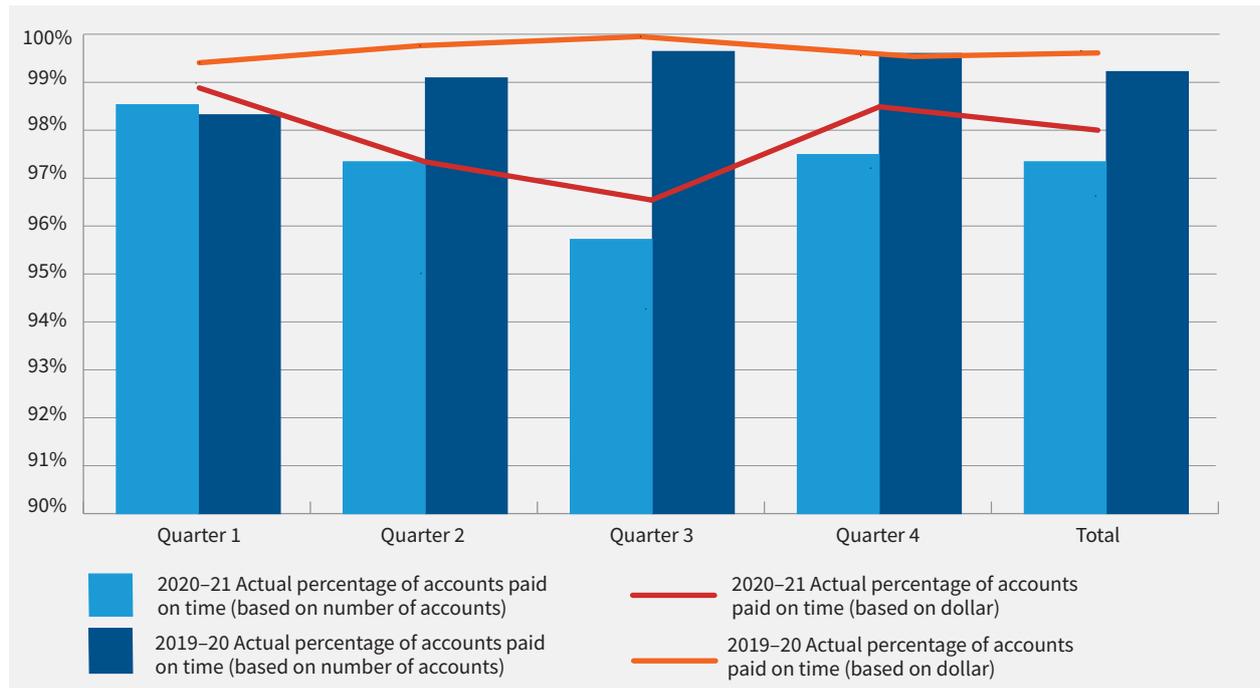
Category	Count	Cost \$* (inc GST)
Finance and accounting/tax	3	14,130
Information technology	12	271,613
Legal	2	8,217
Management services	13	232,336
Environmental	0	–
Engineering	0	–
Organisational review	4	57,071
Training	4	56,371
<b>Total</b>	<b>38</b>	<b>639,738</b>

## Payment of accounts

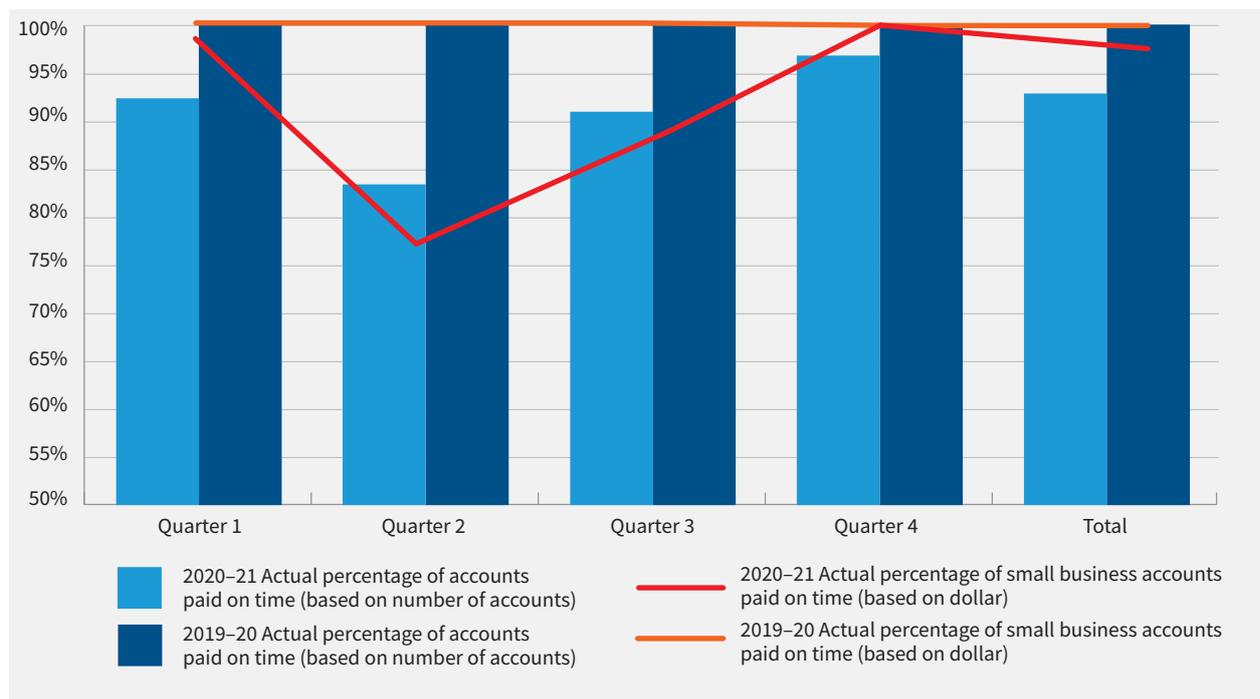
Table 31. Accounts due or paid within each quarter 2020–2021

Measure	Sep	Dec	Mar	Jun
<b>All suppliers</b>				
Numbers of accounts due for payment	339	263	304	597
Numbers of accounts paid on time	334	256	291	582
Actual percentage of accounts paid on time (based on number of accounts)	99%	97%	96%	97%
Dollar amount of accounts due for payment	\$2,390,188	\$1,937,332	\$2,168,086	\$4,451,312
Dollar amount of accounts paid on time	\$2,378,061	\$1,888,908	\$2,105,851	\$4,389,196
Number of payments for interest on overdue accounts	Nil	Nil	Nil	Nil
Number of payments for interest on overdue accounts	Nil	Nil	Nil	Nil
<b>Small businesses</b>				
Number of accounts due for payment to small business	26	18	33	62
Number of accounts due to small business paid on time	24	15	30	60
Actual percentage of small business accounts paid on time (based on number of accounts)	92%	83%	91%	97%
Dollar amount of accounts due for payment to small businesses	\$109,872	\$54,010	\$106,210	\$320,926
Dollar amount of accounts due to small business paid on time	\$108,552	\$40,567	\$90,508	\$317,142
Actual percentage of small business accounts paid on time (based on \$)	99%	75%	85%	99%
Number of payments to small businesses for interest on overdue accounts	Nil	Nil	Nil	Nil
Interest paid to small businesses on overdue accounts	Nil	Nil	Nil	Nil

**Figure 14. 2019-20 and 2020-21 All suppliers' accounts paid-on-time comparison**



**Figure 15. 2019-20 and 2020-21 Small business suppliers' accounts paid-on-time comparison**



The charts above indicate that on-time payments have significantly decreased during this reporting period compared to 2019-20.

However, during 2020-21 we identified process flaws in the internal recording of invoicing dates (received, due and paid), which likely means that data from 2019-20 and earlier years is unreliable. During 2020-21 we revised our accounts payable

processes to address those flaws, which has resulted in accurate data being produced for 2020-21.

Having rectified these data entry issues, we have commenced a program to improve our payment-on-time practices, and will continue to do so in the coming year.

Late payments generally arise because of avoidable internal delay in the provision of invoices to the accounts payable team or where payment processing is held up due to internal queries. Delays have also arisen in 2020–21

because of office closures and the delay in the receipt of posted invoices. Lower quarter 3 payment-on-time rates are affected by our office's Christmas shutdown of 3 weeks.

**Table 32. 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
<b>All suppliers</b>	\$	\$	\$	\$	\$	\$
September 2020	379,655	6,716	-92	0	0	<b>386,278</b>
December 2020	332,960	37,686	-681	-496	-20	<b>369,448</b>
March 2021	325,378	11,517	6,171	0	0	<b>343,066</b>
June 2021	214,736	6,398	0	0	0	<b>221,133</b>
<b>Small businesses</b>	\$	\$	\$	\$	\$	\$
September 2020	7,418	0	0	0	0	<b>7,418</b>
December 2020	4,440	0	0	0	0	<b>4,440</b>
March 2021	0	0	0	0	0	<b>0</b>
June 2021	21,780	4,547	0	0	0	<b>26,327</b>

Negative balances reflect credits with suppliers that can be used for future payments.

## After-balance date events

### Financial operations

There are no after-balance events that have affected our financial operations.

### Other operations

Due to our training modernisation program, we were able to continue to deliver remote learning to our clients following the second wave of COVID-19 in NSW that commenced in June 2021, despite progressive lockdowns across the state. However, some of our clients have postponed face-to-face workshops. We hope to be able to offer these workshops following the end of the current lockdown periods.

### Clientele or community served

Complying with the various Public Health Orders issued in 2020–2021, and particularly those that resulted in the COVID-19 lockdowns in Greater Sydney and NSW, meant we were unable to undertake community visits in line with our community engagement plan. The second closure

of our physical offices to the public in June 2021 again stopped us accepting in-person visits by members of the public.

As of 11 October 2021, our offices remain closed to the public.

## B.10 Report production and access

**Table 33. Total external costs incurred in the production of this report**

Proofreading and indexing services	\$2,540
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This report is published on our website at: <https://www.ombo.nsw.gov.au/news-and-publications/publications/annual-reports>

## Ombudsman expenses over time

### Declining funding over time

Over the course of the last decade, the size and funding of the NSW Ombudsman’s Office has declined significantly.

In 2020–21, our expenses (\$25.785 million) were the lowest they had been since 2010–11 in nominal terms, and in real terms they were the lowest they have been at any time over the decade. Effectively all of the decline has occurred in the second half of the decade, with a drop of 25% from 2016–17.

Correspondingly, staff numbers have also declined, peaking at 214.66 FTE as at 30 June 2016 to almost half that number (121.97 FTE) at 30 June 2021.

Figure 16. Ombudsman budget 2011–2021 (\$000)

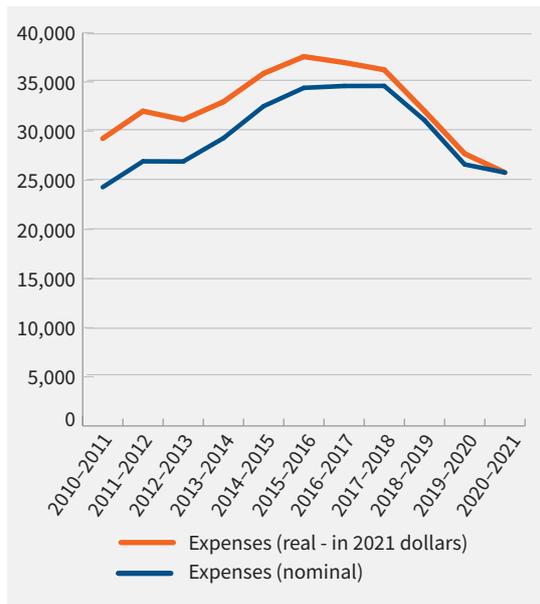
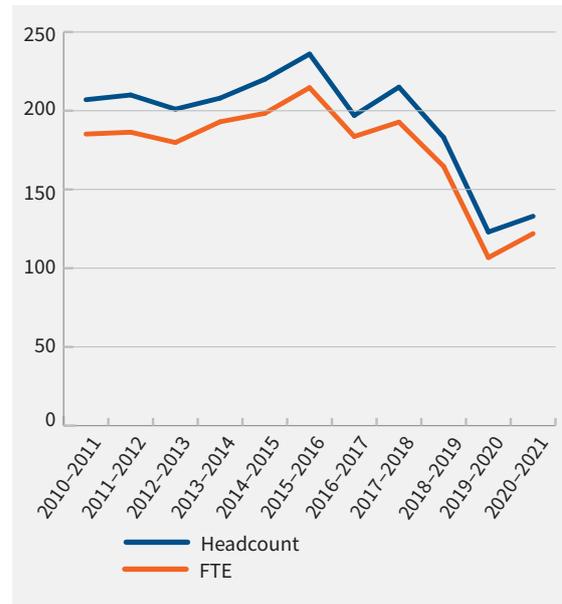
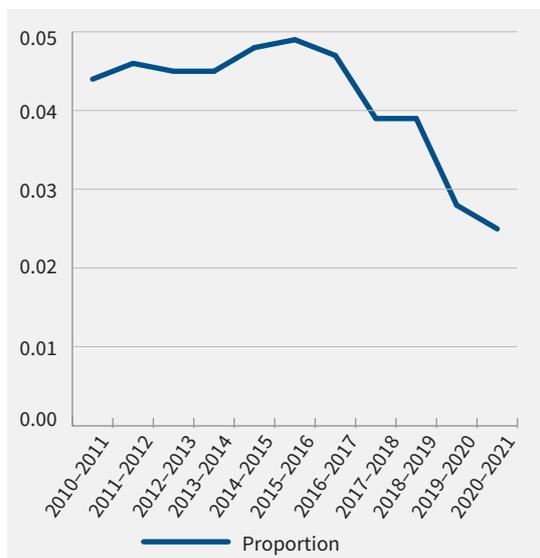


Figure 17. Ombudsman staffing (as at year end)



The expenses of the NSW Ombudsman represent a tiny proportion – less than 0.05% – of total general government expenses. Again, this proportion has been reducing in recent years.

Figure 18. Ombudsman budget as a proportion of total general government expenses



### **Changing functions over time**

It is hard to make precise year-on-year comparisons because of changes that have occurred to the Ombudsman's functions.

During the early to mid-2010s, some increases in expenses and funding were associated with new functions or projects, including:

- in 2014, the establishment of a statutory role of Deputy Ombudsman (Aboriginal Programs) and associated monitoring and assessment functions
- in 2015–16, the provision of supplementary funding for the undertaking of an unusually large investigation (Operation Prospect).

In more recent years, some significant reductions have been associated with legislative changes that have resulted in the loss or transfer of functions, including:

- the abolition of our complaint-handling functions in respect of the NSW Police Force as a result of the establishment of the Law Enforcement Conduct Commission in mid-2017
- the transfer of our employment-related child protection functions to the Office of the Children's Guardian in mid-2019.

### **The challenge posed by diseconomies of scale**

There are clearly serious challenges faced by very small (and especially shrinking) agencies given the inevitable diseconomies of scale.

These challenges are exacerbated for agencies, like the Ombudsman, that must operate fully independently at arms' length from large departments and other government agencies. A key challenge is achieving the minimum scale needed to support viable corporate and support services such as people & culture, legal and IT.

With most available funding necessarily allocated to staff salaries and office rent, small agencies also face difficulties in making necessary investments for their long-term sustainability (such as technology maintenance and digital service delivery enhancement, continuous process improvement, and learning and development), especially where those investments may be infrequent and on a one-off, lump-sum basis (for example, a proposed once-in-a-decade legacy system upgrade).

**C. The Ombudsman's  
Office financial  
statements**



# The Ombudsman's Office financial statements

In this part, we provide the audited financial statements of the Ombudsman's Office



## 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 (the Office), which comprises the Statement by the Ombudsman, the Statement of Comprehensive Income for the year ended 30 June 2021, the Statement of Financial Position as at 30 June 2021, 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:

- have been prepared in accordance with Australian Accounting Standards and the applicable financial reporting requirements of the *Government Sector Finance Act 2018* (GSF Act), the *Government Sector Finance Regulation 2018* (GSF Regulation) and the Treasurer's Directions
- presents fairly the Office's financial position, financial performance and cash flows.

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 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 (including Independence Standards)' (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.

#### Other Information

The Office's annual report for the year ended 30 June 2021 includes other information in addition to the financial statements and my Independent Auditor's Report thereon. The Ombudsman of the Office is responsible for the other information. At the date of this Independent Auditor's Report, the other information I have received comprise the Statement by the Ombudsman.

My opinion on the financial statements does not cover the other information. Accordingly, I do not express any form of assurance conclusion on the other information. In connection with my audit of the financial statements, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on the work I have performed, I conclude there is a material misstatement of the other information, I must report that fact.

I have nothing to report in this regard.

## **Ombudsman's Responsibilities for the Financial Statements**

The Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards, the GSF Act, GSF Regulations and Treasurer's Directions. The Ombudsman's responsibility also includes 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 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.

## **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 / is] 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](http://www.auasb.gov.au/auditors_responsibilities/ar4.pdf) OR [www.auasb.gov.au/auditors\\_responsibilities/ar6.pdf](http://www.auasb.gov.au/auditors_responsibilities/ar6.pdf) . The description forms part of my auditor's report.

The scope of my audit does not include, nor 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.



Lisa Berwick  
Director, Financial Audit

Delegate of the Auditor-General for New South Wales

28 September 2021  
SYDNEY

ABN 76 325 886 267

Level 24, 580 George Street, Sydney NSW 2000

T 02 9286 1000 | F 02 9283 2911

Tollfree 1800 451 524

[www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)



28 September 2021

## Statement by the Ombudsman

Pursuant to section 7.6(4) of the *Government Sector Finance Act 2018* ('the Act') and to the best of my knowledge and belief I state that these financial statements:

- have been prepared in accordance with the Australian Accounting Standards and the applicable requirements of the Act, the *Government Sector Finance Regulation 2018* and the Treasurer's directions, and
- present fairly the Ombudsman's Office financial position, financial performance and cash flows.

A handwritten signature in black ink, appearing to read "Paul Miller". The signature is written in a cursive, flowing style.

Paul Miller

**Ombudsman**

## Ombudsman's Office

### Statement of Comprehensive Income for the year ended 30 June 2021

	Notes	Budget 2021 \$'000	Actual 2021 \$'000	Actual 2020 \$'000
<b>Continuing operations</b>				
<b>Expenses excluding losses</b>				
Employee-related expenses	2(a)	21,210	16,904	18,433
Operating expenses	2(b)	5,519	5,110	4,326
Depreciation and amortisation	2(c)	958	3,537	3,572
Finance costs	2(d)	22	234	277
<b>Total expenses excluding losses</b>		<b>27,709</b>	<b>25,785</b>	<b>26,608</b>
<b>Revenue</b>				
Appropriations	3(a)	26,457	25,915	25,554
Sale of good and services from contracts with customers	3(b)	576	418	396
Grants and other contributions	3(c)	-	57	295
Acceptance by the Crown Entity of employee benefits and other liabilities	3(d)	883	(121)	(489)
Other income	3(e)	-	-	22
<b>Total revenue</b>		<b>27,916</b>	<b>26,269</b>	<b>25,778</b>
<b>Operating result</b>		<b>207</b>	<b>484</b>	<b>(830)</b>
Losses on disposal	4	-	-	(63)
Other losses	5	-	(1,581)	-
<b>Net Result</b>		<b>207</b>	<b>(1,097)</b>	<b>(893)</b>
<b>Other comprehensive income</b>				
Total other comprehensive income		-	-	-
<b>TOTAL COMPREHENSIVE INCOME</b>		<b>207</b>	<b>(1,097)</b>	<b>(893)</b>

The accompanying notes form part of these financial statements.

# Ombudsman's Office

## Statement of Financial Position as at 30 June 2021

	Notes	Budget 2021 \$'000	Actual 2021 \$'000	Actual 2020 \$'000
<b>ASSETS</b>				
<b>Current Assets</b>				
Cash and cash equivalents	7	865	1,148	911
Receivables	8	906	1,159	906
<b>Total Current Assets</b>		<b>1,771</b>	<b>2,307</b>	<b>1,817</b>
<b>Non-Current Assets</b>				
Property, plant and equipment				
- Plant and equipment		1,910	2,193	2,465
Total property, plant and equipment	9	1,910	2,193	2,465
Right-of-use assets	10	11,452	7,104	11,430
Intangible assets	11	1,713	923	800
<b>Total Non-Current Assets</b>		<b>15,075</b>	<b>10,220</b>	<b>14,695</b>
<b>Total Assets</b>		<b>16,846</b>	<b>12,527</b>	<b>16,512</b>
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Payables	12	1,263	670	1,166
Contract liabilities	13	-	68	-
Borrowings	14	2,551	2,739	2,549
Provisions	15	1,790	1,868	1,791
<b>Total Current Liabilities</b>		<b>5,604</b>	<b>5,345</b>	<b>5,506</b>
<b>Non-Current Liabilities</b>				
Borrowings	14	9,652	6,893	9,632
Provisions	15	1,011	1,014	1,002
<b>Total Non-Current Liabilities</b>		<b>10,663</b>	<b>7,907</b>	<b>10,634</b>
<b>Total Liabilities</b>		<b>16,267</b>	<b>13,252</b>	<b>16,140</b>
<b>Net Assets/(Liabilities)</b>		<b>579</b>	<b>(725)</b>	<b>372</b>
<b>EQUITY</b>				
Accumulated funds		579	(725)	372
<b>Total Equity</b>		<b>579</b>	<b>(725)</b>	<b>372</b>

The accompanying notes form part of these financial statements.

## Ombudsman's Office

### Statement of Changes in Equity for the year ended 30 June 2021

	Notes	Accumulated Funds 2021 \$'000	Accumulated Funds 2020 \$'000
<b>Balance at 1 July</b>		<b>372</b>	<b>964</b>
Net result for the year		(1,097)	(893)
<b>Total comprehensive income for the year</b>		<b>(725)</b>	<b>71</b>
<b>Transaction with owners in their capacity as owners</b>			
Increase in net assets from equity transfers		-	301
<b>Balance at 30 June</b>		<b>(725)</b>	<b>372</b>

The accompanying notes form part of these financial statements.

# Ombudsman's Office

## Statement of Cash Flows for the year ended 30 June 2021

	Notes	Budget 2021 \$'000	Actual 2021 \$'000	Actual 2020 \$'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Payments</b>				
Employee related		(20,232)	(17,108)	(19,099)
Suppliers for goods and services		(5,532)	(6,687)	(4,568)
Finance costs		-	(221)	(269)
<b>Total Payments</b>		<b>(25,764)</b>	<b>(24,016)</b>	<b>(23,936)</b>
<b>Receipts</b>				
Appropriations		26,457	25,915	25,554
Sale of goods and services		576	418	396
Grants and other contributions		-	57	295
Other		-	930	726
<b>Total Receipts</b>		<b>27,033</b>	<b>27,320</b>	<b>26,971</b>
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	19	<b>1,269</b>	<b>3,304</b>	<b>3,035</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Purchase of property, plant and equipment		(210)	(367)	(544)
Purchase of intangible assets		(1,105)	(151)	(106)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>		<b>(1,315)</b>	<b>(518)</b>	<b>(650)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Payment of principal portion of lease liabilities		-	(2,549)	(2,237)
<b>NET CASH FLOWS FROM FINANCING ACTIVITIES</b>		<b>-</b>	<b>(2,549)</b>	<b>(2,237)</b>
<b>NET INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS</b>				
		<b>(46)</b>	<b>237</b>	<b>148</b>
Opening cash and cash equivalents		911	911	763
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	7	<b>865</b>	<b>1,148</b>	<b>911</b>

The accompanying notes form part of these financial statements.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### 1 Statement of Significant Accounting Policies

#### (a) Reporting entity

The Ombudsman's Office (Office) is a NSW government entity and is controlled by the State of New South Wales, which is the ultimate parent. 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. The Office is independent of the government agencies and non-government organisations that we oversight.

The Office is a not-for-profit entity (as profit is not its principal objective) and it has no cash generating units.

The financial statements for the year ended 30 June 2021 have been authorised for issue by the Ombudsman on 10 September 2021.

#### (b) Basis of preparation

The Office's financial statements are general purpose financial statements, which have been prepared on an accruals basis in accordance with:

- applicable Australian Accounting Standards (AAS) (which include Australian Accounting Interpretations);
- the requirements of the *Government Sector Finance Act 2018* (GSF Act) and
- Treasurer's Directions issued under the GSF Act.

Property, plant and equipment are measured using the fair value basis. Other financial statements items are prepared in accordance with the historical cost convention except where specified otherwise.

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, which is the Office's presentation and functional currency.

#### (c) Statement of compliance

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

#### (d) Accounting for the Goods and Services Tax

Income, expenses and assets are recognised net of the amount of goods and services tax (GST), except that the:

- amount of GST incurred by the Office as a purchaser that is not recoverable from the Australian Taxation Office (ATO) is recognised as part of an asset's cost of acquisition or as part of an item of expense, and
- receivables and payables are stated with the amount of 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 are recoverable from, or payable to, the ATO are classified as operating cash flows.

#### (e) Comparative information

Except when an AAS permits or requires otherwise, comparative information is presented in respect of the previous period for all amounts reported in the financial statements.

#### (f) Changes in accounting policies, including new or revised AAS

##### (i) Effective for the first time in FY2020-21

The Office applied AASB 1059 *Service Concession Arrangements: Grantors* (AASB 1059) for the first time. The nature and effect of the changes as a result of adoption of this new accounting standard are described below.

Several other amendments and interpretations apply for the first time in FY2020-21, but do not have any impact on the financial statements of the Office.

##### **AASB 1059 *Service Concession Arrangements: Grantors***

AASB 1059 is effective from 1 July 2020. At the same time NSW Treasury Policy and Guideline Paper TPP 06-8: Accounting for Privately Financed Projects (TPP 06-8) was withdrawn effective from 1 July 2020.

Service Concession Arrangements are contracts between an operator and a grantor, where the operator provides public services related to a service concession asset on behalf of the grantor for a specified period of time and manages at least some of those services.

Where AASB 1059 applies, the grantor recognises the service concession asset when the grantor obtains control of the asset and measures the service concession asset at current replacement cost. At the same time the

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

grantor recognises a corresponding financial liability or unearned revenue liability or a combination of both.

The Office has determined no transaction during the financial year was accounted for under AASB 1059.

The adoption of AASB 1059 did not have an impact on the Statement of Comprehensive Income, the Statement of Financial Position and the Statement of Cash Flows for the financial year.

### (ii) Issued but not yet effective

NSW public sector entities are not permitted to early adopt new AAS, unless Treasury determines otherwise. The following new AAS have not yet been applied and are not yet effective.

- AASB 17 *Insurance Contracts*
- AASB 1060 *General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities*
- AASB 2020-1 *Amendments to Australian Accounting Standards – Classification of Liabilities as Current or Non-current*
- AASB 2020-3 *Amendments to Australian Accounting Standards – Annual Improvements 2018–2020 and Other Amendments*
- AASB 2020-5 *Amendments to Australian Accounting Standards – Insurance Contracts*
- AASB 2020-6 *Amendments to Australian Accounting Standards – Classification of Liabilities as Current or Non-current – Deferral of Effective Date*
- AASB 2020-7 *Amendments to Australian Accounting Standards – Covid-19-Related Rent Concessions: Tier 2 Disclosures*
- AASB 2020-8 *Amendments to Australian Accounting Standards – Interest Rate Benchmark Reform – Phase 2*

These Standards are unlikely to have an impact on the Office's financial statements in the period of initial application.

### (g) Going concern

The Office is a 'going concern' public sector entity. The Office receives a Parliamentary appropriation as outlined in the NSW Budget Papers for FY2020-21 on an 'as needs' basis from the Crown Entity. The negative equity in FY2020-21 was caused by one-off impairment loss for right-of-use assets.

### (h) Impact of COVID-19 on Financial Reporting for FY2020-21

In preparing the financial statements, the Office has considered the known and possible impacts of the COVID-19 pandemic. The Office has included disclosures about key assumptions and judgements, and any changes to these since the last reporting period. The specific things considered when assessing the impact of COVID-19 on the financial statements include:

- any credit risk (expected credit losses) on receivables and other financial and contractual assets
- the existence of any onerous contracts that would require recognising an immediate liability
- whether the Office's right-of-use assets are impaired
- the impact on the remaining lives of physical and intangible assets
- the existence of any contingent assets and liabilities
- the direct impact of any NSW Government announcements on the Office's operations
- any changes to liquidity risk
- any events after the reporting date
- the impact on the assumption that the Office remains a going concern

COVID-19 significantly impacted the market rent for Sydney CBD properties and therefore the value of the Office's right-of-use assets in the Statement of Financial Position. The Office has undertaken an impairment assessment for the right-of-use assets, to determine whether the carrying amount exceeded their recoverable amount. Impacted right-of-use assets were written down to their recoverable amounts by reference to the right-of-use asset's fair value less costs of disposal and an impairment loss is recognised. The Office recognised impairment loss for right-of-use assets during FY2020-21 of \$1.6 million. Impairment loss for right-of-use assets is included in "Other Losses" in the Statement of Comprehensive Income.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

<b>2 Expenses Excluding Losses</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
<b>(a) Employee related expenses</b>		
Salaries and wages (including annual leave)^ *	14,664	16,170
Superannuation – defined benefit plans	43	188
Superannuation – defined contribution plans	1,279	1,189
Long service leave	(167)	(688)
Workers' compensation insurance	60	46
Payroll tax and fringe benefit tax	748	969
Redundancy	277	559
	<b>16,904</b>	<b>18,433</b>

^\$124,000 of employee related costs have been capitalised in intangible assets, and therefore excluded from the above (2020: nil).

<b>(b) Other operating expenses include the following:</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Auditor's remuneration – audit of the financial statements	37	40
Finance lease outgoings	70	239
Insurance	50	31
Fees	440	510
Telephones	73	67
Stores	47	95
Training	254	163
Printing	13	25
Travel	45	90
Consultants	1,541	1,028
Contractors	1,454	1,165
Expense relating to short-term leases	23	-
Maintenance – non-employee related*	678	592
Other	385	281
	<b>5,110</b>	<b>4,326</b>
* Reconciliation - Total maintenance expense		
Maintenance expense - contracted labour and other (non-employee related), as above	678	592
Employee related maintenance expense included in Note 2(a)	87	82
Total maintenance expenses included in Notes 2(a) and 2(b)	<b>765</b>	<b>674</b>

### *Recognition and Measurement*

#### **Maintenance expense**

Day-to-day servicing costs or maintenance are charged as expenses as incurred, except where they relate to the replacement or an enhancement of a part or component of an asset, in which case the costs are capitalised and depreciated.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### Insurance

The Office's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self-insurance for Government entities. The expense (premium) is determined by the Fund Manager based on past claims experience.

### Lease expense

The Office recognises the lease payments associated with the following types of leases as an expense on a straight-line basis:

- Leases that meet the definition of short-term, i.e. where the lease term at commencement of the lease is 12 months or less. This excludes leases with a purchase option.
- Leases of assets that are valued at \$10,000 or under when new.

Variable lease payments not included in the measurement of the lease liability (i.e. variable lease payments that do not depend on an index or a rate, initially measured using the index or rate as at the commencement date). These payments are recognised in the period in which the event or condition that triggers those payments occurs.

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>(c) Depreciation and amortisation expense</b>		
<b>Depreciation</b>		
Right-of-use assets	2,746	2,746
Leasehold improvements	383	367
Plant and equipment	232	183
Furniture and fittings	24	22
<b>Total depreciation expense</b>	<b>3,385</b>	<b>3,318</b>
<b>Amortisation</b>	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Software	152	254
<b>Total amortisation expense</b>	<b>152</b>	<b>254</b>
<b>Total depreciation and amortisation expense</b>	<b>3,537</b>	<b>3,572</b>

Refer to Note 9, 10, and 11 for recognition and measurement policies on depreciation and amortisation.

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>(d) Finance costs</b>		
Interest expense from lease liabilities	221	269
Unwinding of discount and effect of changes in discount rate on provisions	13	8
	<b>234</b>	<b>277</b>

### Recognition and Measurement

Finance costs consist of interest and other costs incurred in connection with the borrowing of funds. Borrowing costs are recognised as expenses in the period in which they are incurred, in accordance with Treasury's Mandate to not-for-profit NSW General Government Sector entities.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### 3 Revenue

#### Recognition and Measurement

Income is recognised in accordance with the requirements of AASB 15 *Revenue from Contracts with Customers* or AASB 1058 *Income of Not-for-Profit Entities*, dependent on whether there is a contract with a customer defined by AASB 15 *Revenue from Contracts with Customers*.

#### (a) Appropriations and transfers to the Crown Entity

Summary of Compliance	2021 \$'000			2020 \$'000		
	Appropriation	Expenditure	Variance	Appropriation	Expenditure	Variance
Original Budget per Appropriation Act	26,457	25,915	542	29,045	25,554	3,491
Other Appropriations/ Expenditure						
- Section 4.9 GSF Act Transfers of functions between entities	-	-	-	(2,537)	-	(2,537)
- Section 4.13 GSF Act Exigency of Government	-	-	-	303	-	303
<b>Total Annual Appropriations / Expenditure on Annual Appropriations</b>	<b>26,457</b>	<b>25,915</b>	<b>542</b>	<b>26,811</b>	<b>25,554</b>	<b>1,257</b>
Amount drawn down against Annual Appropriations		25,915			25,554	
<b>Appropriations (per Statement of Comprehensive Income):</b>						
Recurrent	25,142	24,600	542	26,061	24,894	1,167
Capital	1,315	1,315	-	750	660	90
	<b>26,457</b>	<b>25,915</b>	<b>542</b>	<b>26,811</b>	<b>25,554</b>	<b>1,257</b>

Movement of Section 4.7 GSF Act - Deemed Appropriations	2021 \$'000	2020 \$'000
Opening balance	911	-
Add: Appropriations deemed on 1 July 2019	-	763
Add: additions of deemed appropriations	647	897
Less: expenditure charged against deemed appropriations	(410)	(749)
Closing balance	<b>1,148</b>	<b>911</b>

#### Recognition and Measurement

##### Parliamentary appropriations other than deemed appropriations

Income from appropriations, other than deemed appropriations (of which the accounting treatment is based on the underlying transaction), does not contain enforceable and sufficiently specific performance obligations as defined by AASB 15. Therefore, except as specified below, appropriations (other than deemed appropriations) are recognised as income when the Office obtains control over the assets comprising the appropriations. Control over appropriations is normally obtained upon the receipt of cash.

Appropriations are not recognised as income in the following circumstances:

- 'Equity appropriations' to fund payments to adjust a for-profit entity's capital structure are recognised as equity injections (i.e. contribution by owners) on receipt and equity withdrawals on payment to a for-profit entity.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

	2021 \$'000	2020 \$'000
<b>(b) Sale of goods and services from contracts with customers</b>		
Rendering of services	418	396
	<b>418</b>	<b>396</b>

### *Recognition and Measurement*

Revenue from rendering of services such as conducting training programs, is recognised when the Office satisfies the performance obligation by delivering training workshops. The revenue is measured at the transaction price agreed under the contract.

	2021 \$'000	2020 \$'000
<b>(c) Grants and other contributions</b>		
Disability Reportable Incidents - Grant from Department of Communities and Justice	57	-
Crown Entity funded redundancies	-	295
	<b>57</b>	<b>295</b>

The Office received \$57,000 in grant funding from the Department of Communities and Justice with specific performance obligations to continue the disability reportable incidents work. The Office has fulfilled its obligations in December 2020.

### *Recognition and Measurement*

Revenue from grants with sufficiently specific performance obligations is recognised as when the Office satisfies a performance obligation by transferring the promised goods.

Revenue from these grants is recognised based on the grant amount specified in the funding agreement, and revenue is only recognised to the extent that it is highly probable that a significant reversal will not occur. No element of financing is deemed present as funding payments are usually received in advance or shortly after the relevant obligation is satisfied.

Income from grants without sufficiently specific performance obligations are recognised when the entity obtains control over the granted assets (e.g. cash).

### **(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:

	2021 \$'000	2020 \$'000
Superannuation - defined benefit	43	188
Long service leave provision	(167)	(688)
Payroll tax on superannuation	3	11
	<b>(121)</b>	<b>(489)</b>

	2021 \$'000	2020 \$'000
<b>(e) Other income</b>		
Other	-	22
	<b>-</b>	<b>22</b>

	2021 \$'000	2020 \$'000
<b>4 Losses on Disposal</b>		
Losses on disposal of plant and equipment	-	(63)
	<b>-</b>	<b>(63)</b>

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

<b>5 Other Losses</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Impairment loss – Right-of-use assets	(1,581)	-
	<b>(1,581)</b>	<b>-</b>

The impairment loss recognised during the financial year is \$1.6 million, which is measured as the difference between the assets carrying amount and its recoverable amount, which is based on its fair value. The valuation technique used in the fair value measurement is classified as level 3 according to AASB 13 fair value hierarchy.

### *Recognition and Measurement*

#### **Impairment losses on non-financial assets**

Impairment losses may arise on non-financial assets held by the Office from time to time. Accounting for impairment losses is dependent upon the individual asset (or group of assets) subject to impairment. Accounting Policies and events giving rise to impairment losses are disclosed in the following notes:

Trade receivables and contract assets – Note 8

Property, plant and equipment – Note 9

Leases – Note 10

Intangible assets – Note 11

### **6 Program Groups of the Office**

The Ombudsman's Office operates under one program group - the independent resolution, investigation or oversight of complaints and notification made by the public about agencies within the jurisdiction of the Ombudsman and the scrutiny of complaint handling and other systems of those agencies.

<b>7 Current Assets - Cash and Cash Equivalents</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Cash at bank and on hand	1,148	911
	<b>1,148</b>	<b>911</b>

For the purposes of the Statement of Cash Flows, cash and cash equivalents include cash at bank and on hand.

Cash and cash equivalents (per Statement of Financial Position)	1,148	911
Closing cash and cash equivalents (per Statement of Cash Flows)	<b>1,148</b>	<b>911</b>

Refer Note 20 for details regarding credit risk and market risk arising from financial instruments.

<b>8 Current Assets - Receivables</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Trade receivables from contracts with customers	85	-
GST receivable	234	256
Long service leave refundable	-	89
Other receivables	61	1
	380	346
Less Allowance for expected credit losses*		
- Trade receivables from contracts with customers	-	-
Total expected credit losses	-	-
Prepayments	779	560
	<b>1,159</b>	<b>906</b>

#### *\*Movement in the allowance for expected credit losses*

Balance at the beginning of the year	-	(37)
Amounts recovered during the year	-	37
Balance at the end of the year	-	-

Refer Note 20 for details regarding credit risk of trade receivables that are neither past due nor impaired.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### Recognition and Measurement

All 'regular way' purchases or sales of financial asset are recognised and derecognised on a trade date basis. Regular way purchases or sales are purchases or sales of financial assets that require delivery of assets within the time frame established by regulation or convention in the marketplace.

Receivables are initially recognised at fair value plus any directly attributable transaction costs. Trade receivables that do not contain a significant financing component are measured at the transaction price.

### Subsequent measurement

The Office holds receivables with the objective to collect the contractual cash flows and therefore measures them at amortised cost using the effective interest method, less any impairment. Changes are recognised in the net result for the year when impaired, derecognised or through the amortisation process.

### Impairment

The Office recognises an allowance for expected credit losses (ECLs) for all debt financial assets not held at fair value through profit or loss. ECLs are based on the difference between the contractual cash flows and the cash flows that the Office expects to receive, discounted at the original effective interest rate.

For trade receivables, the Office applies a simplified approach in calculating ECLs. The Office recognises a loss allowance based on lifetime ECLs at each reporting date. The Office has established a provision matrix based on its historical credit loss experience for trade receivables, adjusted for forward-looking factors specific to the receivable.

	Leasehold Improvements \$'000	Plant and Equipment \$'000	Furniture and Fittings \$'000	Total \$'000
<b>9 Property, Plant and Equipment</b>				
<b>At 1 July 2019 - fair value</b>				
Gross carrying amount	5,094	1,134	390	6,618
Accumulated depreciation	(3,394)	(725)	(234)	(4,353)
<b>Net carrying amount</b>	<b>1,700</b>	<b>409</b>	<b>156</b>	<b>2,265</b>
<b>Year ended 30 June 2020</b>				
Net carrying amount at beginning of year	1,700	409	156	2,265
Purchases of assets	267	524	16	807
Disposals	-	(35)	-	(35)
Depreciation expense	(367)	(183)	(22)	(572)
<b>Net carrying amount at end of year</b>	<b>1,600</b>	<b>715</b>	<b>150</b>	<b>2,465</b>
<b>At 1 July 2020 - fair value</b>				
Gross carrying amount	5,361	1,576	406	7,343
Accumulated depreciation	(3,761)	(861)	(256)	(4,878)
<b>Net carrying amount</b>	<b>1,600</b>	<b>715</b>	<b>150</b>	<b>2,465</b>
<b>Year ended 30 June 2021</b>				
Net carrying amount at beginning of year	1,600	715	150	2,465
Purchases of assets	110	252	5	367
Disposals	-	-	-	-
Depreciation expense	(383)	(232)	(24)	(639)
<b>Net carrying amount at end of year</b>	<b>1,327</b>	<b>735</b>	<b>131</b>	<b>2,193</b>
<b>At 30 June 2021 - fair value</b>				
Gross carrying amount	5,463	1,798	363	7,624
Accumulated depreciation	(4,136)	(1,063)	(232)	(5,431)
<b>Net carrying amount</b>	<b>1,327</b>	<b>735</b>	<b>131</b>	<b>2,193</b>

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### Recognition and Measurement

#### Acquisition of property, plant and equipment

Property, plant and equipment are initially measured at cost and subsequently revalued at fair value less accumulated depreciation and impairment. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other AAS. Fair value is the price that would be received to sell an asset in an orderly transaction between market participants at measurement date.

#### Capitalisation thresholds

Property, plant and equipment and intangible assets costing \$5,000 and above individually are capitalised. All items that form part of our IT network, such as software and hardware, are capitalised regardless of the cost.

#### Major inspection costs

When a major inspection is performed, its cost is recognised in the carrying amount of the plant and equipment as a replacement if the recognition criteria are satisfied.

#### 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.

#### Depreciation of property, 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 to the Office.

All material identifiable components of assets are depreciated separately over their useful lives.

Depreciation rates used:

- Leasehold improvements Useful life of 10 years or to the end of the lease, if shorter.
- Plant and equipment 20%-25% (2020: 20%-25%)
- Furniture & fittings 10% (2020: 10%)

#### Right-of-Use Assets acquired by lessees

From 1 July 2019, AASB 16 *Leases* (AASB 16) requires a lessee to recognise a right-of-use asset for most leases. The Office has elected to present right-of-use assets separately in the Statement of Financial Position.

Further information on leases is contained at Note 10.

#### Revaluation of property, plant and equipment

Physical non-current assets are valued 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 AASB 13 *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, which for these assets approximates fair value. The Office has assessed that any difference between fair value and depreciated historical cost is unlikely to be material.

The residual values, useful lives and methods of depreciation of property, plant and equipment are reviewed at each financial year end.

#### Impairment of property, 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. Since property, plant and equipment is carried at fair value or an amount that approximates fair value, impairment can only arise in the rare circumstances where the costs of disposal are material.

The Office assesses, at each reporting date, whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the entity estimates the asset's recoverable amount. When the carrying amount of an asset exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount.

As a not-for-profit entity, an impairment loss is recognised in the net result to the extent the impairment loss exceeds the amount in the revaluation surplus for the class of asset.

After an impairment loss has been recognised, it is reversed only if there has been a change in the assumptions used to determine the asset's recoverable amount. The reversal is limited so that the carrying amount of the

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

asset does not exceed its recoverable amount, nor exceed the carrying amount that would have been determined, net of depreciation, had no impairment loss been recognised for the asset in prior years. Such reversal is recognised in net result and is treated as a revaluation increase. However, to the extent that an impairment loss on the same class of asset was previously recognised in net result, a reversal of that impairment loss is also recognised in net result.

### 10 Leases

#### Entity as a lessee

The Office leases office building space and the lease contracts are typically made for fixed periods of 5 years but may have extension options. Lease terms are negotiated on an individual basis and contain a wide range of different terms and conditions. The lease agreements do not impose any covenants, but leased assets may not be used as security for borrowing purposes. The Office does not provide residual value guarantees in relation to leases.

AASB 16 *Leases* (AASB 16) requires a lessee to recognise a right-of-use asset and a corresponding lease liability for most leases.

The Office has elected to recognise payments for short-term leases and low value leases as expenses on a straight-line basis, instead of recognising a right-of-use asset and lease liability. Short-term leases are leases with a lease term of 12 months or less. Low value assets are assets with a fair value of \$10,000 or less.

#### Right-of-use assets under leases

The following table presents right-of-use assets that do not meet the definition of investment property.

	<b>Buildings \$'000</b>
<b>Balance at 1 July 2020</b>	<b>11,431</b>
Depreciation expense	(2,746)
Impairment loss	(1,581)
<b>Balance at 30 June 2021</b>	<b>7,104</b>
<b>Balance at 1 July 2019</b>	<b>14,418</b>
Depreciation expense	(2,746)
Adjustment on lease incentives	(241)
<b>Balance at 30 June 2020</b>	<b>11,431</b>

#### Lease liabilities

The following table presents liabilities under leases:

	<b>2021 \$'000</b>	<b>2020 \$'000</b>
<b>Balance at 1 July</b>	<b>12,181</b>	<b>14,418</b>
Interest expenses	221	269
Payments	(2,770)	(2,506)
<b>Balance at 30 June</b>	<b>9,632</b>	<b>12,181</b>

The following amounts were recognised in the Statement of Comprehensive Income during the period in respect of leases where the entity is the lessee:

	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Depreciation expense of right-of-use assets	2,746	2,746
Interest expense on lease liabilities	221	269
Expense relating to short-term leases	23	-
Impairment loss	1,581	-
Total amount recognised in the Statement of Comprehensive Income	<b>4,571</b>	<b>3,015</b>

The total cash outflows for leases of \$2.8 million in FY2020-21 (FY2019-20: \$2.5 million).

The Office's right-of-use assets was impaired due to the significant decline in market rent. The Office has undertaken an impairment assessment that concluded the recoverable amount has decreased to \$7.1 million, which is determined by reference to its fair value less costs of disposal.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### **Recognition and Measurement**

The Office assesses at contract inception whether a contract is, or contains, a lease. That is, if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

The Office recognises lease liabilities to make lease payments and right-of-use assets representing the right to use the underlying assets, except for short-term leases and leases of low-value assets.

### **Right-of-use assets**

The Office recognises right-of-use assets at the commencement date of the lease (i.e. the date the underlying asset is available for use). Right-of-use assets are initially measured at the amount of initial measurement of the lease liability, adjusted by any lease payments made at or before the commencement date and lease incentives, any initial direct costs incurred, and estimated costs of dismantling and removing the asset or restoring the site.

The right-of-use assets are subsequently measured at cost. They are depreciated on a straight-line basis over the shorter of the lease term and the estimated useful lives of the assets, as follows:

- Buildings 5 years and 3 months

The right-of-use assets are also subject to impairment. The Office assesses, at each reporting date, whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the Office estimates the asset's recoverable amount. When the carrying amount of an asset exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount. After an impairment loss has been recognised, it is reversed only if there has been a change in the assumptions used to determine the asset's recoverable amount. The reversal is limited so that the carrying amount of the asset does not exceed its recoverable amount, nor exceed the carrying amount that would have been determined, net of depreciation, had no impairment loss been recognised for the asset in prior years. Such reversal is recognised in the net result.

### **Lease liabilities**

At the commencement date of the lease, the Office recognises lease liabilities measured at the present value of lease payments to be made over the lease term. Lease payments include fixed payments (including in substance fixed payments) less any lease incentives receivable.

The lease payments are discounted using Treasury Corporation rate. The Office is an agency in the General Government sector that does not borrow funds in the market. Instead we receive appropriations from the Crown and where the Crown needs additional funding, Treasury Corporation will go to market to obtain these funds. Therefore, we use Treasury Corporation rates as our incremental borrowing rates as instructed by Treasury.

After the commencement date, the amount of lease liabilities is increased to reflect the accretion of interest and reduced for the lease payments made. In addition, the carrying amount of lease liabilities is remeasured if there is a modification, a change in the lease term, a change in the lease payments (e.g., changes to future payments resulting from a change in an index or rate used to determine such lease payments) or a change in the assessment of an option to purchase the underlying asset.

The Office's lease liabilities are included in borrowings.

### **Short-term leases and leases of low-value assets**

The Office applies the short-term lease recognition exemption to its short-term leases of machinery and equipment (i.e., those leases that have a lease term of 12 months or less from the commencement date and do not contain a purchase option). It also applies the lease of low-value assets recognition exemption to leases of office equipment that are considered to be low value. Lease payments on short-term leases and leases of low value assets are recognised as expense on a straight-line basis over the lease term.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### 11 Intangible Assets

	Software \$'000
<b>At 1 July 2019</b>	
Gross carrying amount	2,789
Accumulated amortisation	(1,779)
<b>Net carrying amount</b>	<b>1,010</b>
<b>Year ended 30 June 2020</b>	
Net carrying amount at beginning of year	1,010
Additions	106
Disposals	(62)
Amortisation	(254)
<b>Net carrying amount at end of year</b>	<b>800</b>
<b>At 1 July 2020</b>	
Gross carrying amount	2,541
Accumulated amortisation	(1,741)
<b>Net carrying amount</b>	<b>800</b>
<b>Year ended 30 June 2021</b>	
Net carrying amount at beginning of year	800
Additions	
- Internally developed	124
- Externally acquired	151
Disposals	-
Amortisation	(152)
<b>Net carrying amount at end of year</b>	<b>923</b>
<b>At 30 June 2021</b>	
Gross carrying amount	2,748
Accumulated amortisation	(1,825)
<b>Net carrying amount</b>	<b>923</b>

#### *Recognition and Measurement*

The Office recognises 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. Following initial recognition, 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 and impairment losses.

The useful lives of intangible assets are assessed to be finite. The Office's intangible assets are amortised using the straight-line method over a period of five to ten years. The amortisation rates used for computer software are 10% to 20% (2020: 10% to 20%). The amortisation period and the amortisation method for an intangible asset with a finite useful life are reviewed at least at the end of each reporting period.

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.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

<b>12 Current Liabilities - Payables</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Accrued salaries, wages and on-costs	311	345
Creditors	359	821
	<b>670</b>	<b>1,166</b>

Refer Note 20 for details regarding liquidity risk, including a maturity analysis of the above payables.

### *Recognition and Measurement*

Payables represent liabilities for goods and services provided to the Office and other amounts. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

Payables are financial liabilities at amortised cost, initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in net result when the liabilities are derecognised as well as through the amortisation process.

<b>13 Contract Liabilities</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Contract liabilities - current	68	-
Contract receivables (included in Note 8)	85	-

### *Recognition and Measurement*

Contract liabilities relate to consideration received in advance from customers in respect of training programs. The balance of contract liabilities at 30 June 2021 was result of payments received in advance, and it is the Office's obligation to deliver training programs to a customer for which the Office has received consideration. The initial liability is measured at the amount of consideration received from the customer.

Revenue recognised that was included in the contract liability balance at the beginning of the year	-	23
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<b>14 Current / Non-Current Liabilities - Borrowings</b>	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Lease liabilities (see Note 10)		
- Current	2,739	2,549
- Non-current	6,893	9,632
	<b>9,632</b>	<b>12,181</b>

Refer Note 20 for details regarding liquidity risk, including a maturity analysis of the above borrowings.

### *Recognition and Measurement*

Borrowing represents interest bearing liabilities mainly raised through lease liabilities.

Borrowings classified as financial liabilities at amortised cost are initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in net result when the liabilities are derecognised as well as through the amortisation process.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### 15 Current / Non-Current Liabilities - Provisions

	2021 \$'000	2020 \$'000
<b>Current provisions</b>		
Annual leave	1,055	898
Annual leave loading	134	148
Provision for related on-costs on annual leave	152	122
Provision for related on-costs on long service leave	527	623
<b>Total current provisions</b>	<b>1,868</b>	<b>1,791</b>
<b>Non-current provisions</b>		
Provision for related on-costs on long service leave	52	54
Restoration costs	962	948
<b>Total non-current provisions</b>	<b>1,014</b>	<b>1,002</b>
<b>Aggregate employee benefits and related on-costs</b>		
Provisions - current	1,868	1,791
Provisions - non-current	52	54
Accrued salaries, wages and on-costs (see Note 12)	311	345
	<b>2,231</b>	<b>2,190</b>

The value of annual leave and associated on-costs expected to be taken within 12 months is \$1.3 million (2020: \$1.2 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 \$69,000 (2020: \$81,000) and \$510,000 (2020: \$596,000) after 12 months.

	2021 \$'000	2020 \$'000
<b>Movement in restoration costs</b>		
Carrying amount at beginning of year	948	677
Additional provision recognised	-	263
Unwinding / change in the discount rate	13	8
<b>Carrying amount at end of year</b>	<b>961</b>	<b>948</b>

The restoration costs are non-current liabilities and were recognised for the estimate of future payments for restoration of the office fit out upon termination of the current accommodation lease. The lease was renewed for five years, commencing in October 2019.

### Recognition and Measurement

#### Salaries and wages, annual leave and 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 12 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 NSW Treasury has confirmed that using the nominal annual leave balance plus the annual leave entitlements accrued while taking annual leave (calculated using 8.4% of the nominal value of annual leave (2020: 7.9%)) 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. All annual leave is classified as a current liability even where the Office does not expect to settle the liability within 12 months as the Office does not have an unconditional right to defer settlement.

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.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### Long service leave and superannuation

The Office's liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. The Office accounts 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 certain superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employee's salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employee's superannuation contributions.

### Consequential on-costs

Consequential costs to employment are recognised as liabilities 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.

### Other provisions

Provisions are recognised when: the Office 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.

If the effect of the time value of money is material, provisions are discounted at 1.41% (2020: 1.41%), 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.

## 16 Commitments

### Capital commitments

Aggregate capital expenditure for the acquisition of computer hardware, software and office equipment contracted for at balance date and not provided for:

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Within one year	488	220
Later than one year and not later than five years	-	96
Later than five years	-	-
Total (including GST)	<b>488</b>	<b>316</b>

## 17 Contingent Liabilities and Contingent Assets

There are no contingent assets or liabilities for the year ended 30 June 2021 (2020: nil).

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### 18 Budget Review

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 are not reflected in the budgeted amounts. Major variances between the original budgeted amounts and the actual amounts disclosed in the financial statements are explained below.

#### Net result

The actual net result was lower than budget by \$1.3 million, primarily due to:

An impairment loss of \$1.6 million booked due to a reduction in market rental for the Sydney CBD area which impacts the carrying value of the Right of Use asset.

Lower appropriation revenue received of \$0.5 million due to the Office not requiring the full approved appropriation as a result of lower expenses.

Total expenses were lower than budget due to delayed filling of vacant positions and end of year actuarial adjustments of Crown Entity related expenses in employee-related expenses, offset partially by reclassification of Software as a Service from Intangible assets to operating expenses as a result of clarification to the appropriate treatment under accounting standards.

Lower sale of good and services from contracts with customers revenue of \$0.2 million due to the impact of COVID-19 on our training program.

#### Assets and liabilities

The Office had Net Liabilities of \$0.7 million compared to a budget of Net Assets of \$0.6 million.

Total assets were lower than budget by \$4.3 million mainly due to omitted accumulated depreciation of \$2.7 million of Right-of-use assets in the budget, and the recognition of impairment loss of \$1.6 million this year.

Total liabilities were \$3.0 million lower than budget mainly due to omitted payment of \$2.5 million of principal portion of Lease liabilities in the budget, and lower payables of \$0.6 million due to timing.

#### Cash flows

Cash and cash equivalents were \$0.3 million higher than budget due to lower employee-related payments, as well as fewer purchases of intangible assets, as a result of the reclassification of Software as a Service to expenses, offset by the omitted payment of \$2.5 million of principal portion of Lease liabilities in the budget.

### 19 Reconciliation of Cash Flows from Operating Activities to Net Result

Reconciliation of cash flows from operating activities to the net result as reported in the Statement of Comprehensive Income as follows:	<b>2021 \$'000</b>	<b>2020 \$'000</b>
Net cash used on operating activities	3,428	3,035
Depreciation and amortisation expense	(3,537)	(3,572)
Adjustment on right-of-use assets	-	(241)
Increase in Make Good assets	-	263
Decrease / (Increase) in provisions	(89)	352
Increase / (decrease) in prepayments	219	22
Decrease/(increase) in payables	497	(756)
Increase / (decrease) in receivables	34	(52)
Decrease / (Increase) in contract liabilities	(68)	-
Decrease / (Increase) in other liabilities	-	454
Losses on disposal of assets	-	(63)
Equity transfer on fixed assets	-	(34)
Increase in net asset from equity transfer	-	(301)
Impairment loss	(1,581)	-
<b>Net result</b>	<b>(1,097)</b>	<b>(893)</b>

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### 20 Financial Instruments

The Office's principal financial instruments are outlined below. These financial instruments arise directly from the Office's operations or are required to finance the Office's operations. The Office does not enter into or trade financial instruments, including derivative financial instruments, for speculative purposes.

The Office's main risks arising from financial instruments are outlined below, together with the Office's objectives, policies and processes for 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 agrees policies for managing each of these risks. 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 Office on a continuous basis.

#### (a) Financial instrument categories

Class	Note	Category	Carrying Amount	
			2021 \$'000	2020 \$'000
<b>Financial Assets</b>				
Cash and cash equivalents	7	Amortised cost	1,148	911
Receivables <sup>1</sup>	8	Amortised cost	146	90
<b>Financial Liabilities</b>				
Payables <sup>2</sup>	12	Amortised cost	670	1,166
Borrowings	14	Amortised cost	9,632	12,181

Note:

1. Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7).
2. Excludes statutory payables and unearned revenue (not within scope of AASB 7).

The Office determines the classification of its financial assets and liabilities after initial recognition and, when allowed and appropriate, re-evaluates this at each financial year end.

#### (b) Financial risks

##### (i) Credit risk

Credit risk arises when there is the possibility that the counterparty will default 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 credit losses or allowance for impairment).

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.

Credit risk associated with the Office's financial assets, other than receivables, is managed through the selection of counterparties and establishment of minimum credit rating standards.

The Office considers a financial asset in default when contractual payments are 90 days past due. However, in certain cases, the Office may also consider a financial asset to be in default when internal or external information indicates that the Office is unlikely to receive the outstanding contractual amounts in full before taking into account any credit enhancements held by the Office.

##### *Cash and cash equivalents*

Cash comprises cash on hand and bank balances within the NSW Treasury banking system.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### Receivables – trade receivables

Collectability of trade receivables is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand.

The Office applies the AASB 9 simplified approach to measuring expected credit losses which uses a lifetime expected loss allowance for all trade receivables.

To measure the expected credit losses, trade receivables have been grouped based on shared credit risk characteristics and the days past due.

The expected loss rates are based on historical observed loss rates. The historical loss rates are adjusted to reflect current and forward-looking information on macroeconomic factors affecting the ability of the customers to settle the receivables. The Office has identified GDP and the unemployment rate to be the most relevant factors, and accordingly adjusts the historical loss rates based on expected changes in these factors.

Trade receivables are written off when there is no reasonable expectation of recovery. Indicators that there is no reasonable expectation of recovery include, amongst others a failure to make contractual payments for a period of greater than 365 days past due.

The loss allowance for trade receivables as at 30 June 2021 and 2020 was determined as follows:

	30 June 2021					Total
	Current	< 30 days	30-60 days	61-90 days	> 91 days	
Expected credit loss rate	-	-	-	-	-	-
Estimated total gross carrying amount	-	-	-	-	-	-
Expected credit loss	-	-	-	-	-	-
	30 June 2020					Total
	Current	< 30 days	30-60 days	61-90 days	> 91 days	
Expected credit loss rate	-	-	-	-	-	-
Estimated total gross carrying amount	-	-	-	-	-	-
Expected credit loss	-	-	-	-	-	-

The Office is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors as at 30 June 2021 and 2020.

### (ii) Liquidity risk

Liquidity risk is the risk that the Office will be unable to meet its payment obligations when they fall due. The Office continuously manages risk through monitoring future cash flows and maturities planning to ensure adequate holding of high quality liquid assets.

During the current and prior year, there were no defaults of borrowings. No assets have been pledged as collateral. The Office's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk. 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, where 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. The Office did not pay any penalty interest during the financial year.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

The table below summarises the maturity profile of the Office's financial liabilities based on contractual undiscounted payments, together with the interest rate exposure:

	Weighted Average Effective Int. Rate %	Interest Rate Exposure			Maturity Dates			
		Nominal Amount <sup>1</sup> \$'000	Fixed Interest Rate \$'000	Variable Interest Rate \$'000	Non- interest bearing \$'000	< 1 year \$'000	1 to 5 years \$'000	> 5 years \$'000
<b>2021</b>								
Payables <sup>2</sup>		670	-	-	670	670	-	-
Borrowings								
Lease liabilities	4%	9,632	9,632	-	-	2,739	6,893	-
Total		<b>10,302</b>	<b>9,632</b>	<b>-</b>	<b>670</b>	<b>3,409</b>	<b>6,893</b>	<b>-</b>
<b>2020</b>								
Payables <sup>2</sup>		1,166	-	-	1,166	1,166	-	-
Borrowings								
Lease liabilities	4%	12,181	12,181	-	-	2,549	9,632	-
Total		<b>13,347</b>	<b>12,181</b>	<b>-</b>	<b>1,166</b>	<b>3,715</b>	<b>9,632</b>	<b>-</b>

Note:

- The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities based on the earliest date on which the entity can be required to pay. These amounts include both interest and principal cashflows and therefore will not reconcile to the amounts disclosed in the statement of financial position.
- The amount disclosed here exclude statutory payables and unearned revenue (not within scope of AASB 7).

### (iii) 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. The Office's exposure to market risk are primarily through interest rate risk on the Office's borrowings. 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 2020. The analysis assumes that all other variables remain constant.

#### Interest rate risk

Interest rate risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market interest rates. A reasonably possible change of +/- 1% is used, consistent with current trends in interest rates (based on official RBA interest rate volatility over the last five years). The basis will be reviewed annually and amended where there is a structural change in the level of interest rate volatility

The following table demonstrates the sensitivity to a reasonably possible change in interest rates:

	2021 \$'000		2020 \$'000	
	-1%	+1%	-1%	+1%
Net Result	(11)	11	(9)	9
Equity	(11)	11	(9)	9

### (c) Fair value measurement

#### Fair value recognised in the Statement of Financial Position

Management assessed that cash, trade receivables, trade payables, and other current liabilities approximate their fair values, largely due to the short-term maturities of these instruments.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2021

### 21 Related Party Disclosures

There were 7 key management personnel (KMP) in the Office during the year (11 KMP in 2020). The reduction in KMP numbers was due to executive transfers as part of machinery government changes during 2020.

Compensation for these KMP are as follows:

	<b>2021</b>	<b>2020</b>
	<b>\$'000</b>	<b>\$'000</b>
Salaries	1,771	2,318
Other long-term employee benefits	-	127
Post-employment benefits	159	209
Termination benefits	-	128
Total remuneration	<b>1,930</b>	<b>2,782</b>

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:

- Insurance under Treasury Managed Fund 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
- Leasing of properties from Property NSW

### 22 Events after the Reporting Period

There were no events after the reporting period 30 June 2021.

End of audited financial statements

# Annexure

## **Investigations summaries 2020–21 (A special report under section 31 of the Ombudsman Act)**

This annexure constitutes a special report to Parliament under section 31 of the Ombudsman Act.

The following investigations were completed by the NSW Ombudsman since 1 July 2020 and up to the date of this Annual Report .



# SafeWork NSW: Asbestos compliance action taken against Blue Mountains City Council

(This investigation was the subject of a public report tabled on 21 August 2020 entitled [\*Investigation into actions taken by SafeWork NSW Inspectors in relation to Blue Mountains City Council workplaces.\*](#))

In 2018, Blue Mountains City Council complained to us that SafeWork had taken excessive and unreasonable compliance actions in relation to council's asbestos management practices. We investigated, finding SafeWork inspectors had acted contrary to law in issuing some compliance notices and had required council to take action that was not justified by legislation and relevant industry standards.

In August 2020 we tabled a special report to Parliament, recommending SafeWork apologise to council and provide compensation for the undue expenses caused by its actions.

## Background

SafeWork is NSW's work health and safety regulator. It plays a central role in ensuring safe workplaces, reducing work-related fatalities, serious injuries and illnesses.

Blue Mountains City Council complained to us that SafeWork had taken excessive and unreasonable asbestos compliance actions compared to what it would normally have done in similar circumstances. Council claimed that this was in response to media and political pressures, alleging that senior executives of SafeWork had inappropriately instructed SafeWork inspectors to issue compliance notices that were not otherwise warranted.

## Why did we investigate?

Regulatory agencies such as SafeWork must act and be seen to be acting independently, impartially and consistently. Workers, employers and the community rely on SafeWork to make enforcement decisions and actions that are based on professional expertise, evidence and relevant standards. These decisions and actions must reflect the seriousness of the risk and the potential for harm in the workplace.

Employers, workers and the community need to be able to place their trust in a regulator to act lawfully and reasonably, and to provide certainty and consistency in enforcement.

We recognise that asbestos presents a significant danger, and we have previously reported on the need for even more rigorous management of asbestos in the community. However, where risks such as asbestos raise legitimate and significant community concerns, it is even more critical that a regulator acts in a rigorous, consistent and proportionate manner. It must act in accordance with its legislative powers, with decisions made on the basis of relevant standards and the best available evidence.

After council complained to us in 2018, we investigated:

- the lawfulness of notices that SafeWork issued to council regarding asbestos at 4 sites
- whether SafeWork inspectors issued any notices because they were instructed to do so, rather than because they independently believed the notices were warranted
- whether SafeWork required council to comply with standards that were higher than those recommended by legislative guidelines and industry standards – and if so, whether this was reasonable
- whether administrative practices around the issuing of notices were adequate, and conflicts of interests appropriately managed
- whether the compliance actions were consistent, and whether SafeWork assessed and communicated the risk from asbestos exposure consistently when it decided to issue notices.

## What did we find?

On a number of occasions, SafeWork inspectors issued notices even though they did not hold the reasonable belief that is required under legislation. Instead, they issued the notices because they were directed or felt obliged to do so.

In some cases, SafeWork required council to take action that was not justified by legislative guidelines and relevant industry standards, and failed to provide clear and documented evidence as to why different standards were being applied. SafeWork also applied asbestos risk management guidelines inconsistently, with different SafeWork inspectors assessing asbestos risks differently across the same scenarios.

SafeWork's conduct imposed significant undue financial costs on Blue Mountains City Council, and therefore indirectly on its ratepayers.

### **What did we recommend?**

This investigation highlighted a need to strengthen the independence of SafeWork inspectors to ensure the compliance actions it takes are free from irrelevant considerations caused by external pressures. It also highlighted the need to improve the way risks from asbestos exposure in real life scenarios are assessed and communicated to the affected community.

We recommended that SafeWork apologise to council and provide compensation for the undue expenses caused by its actions.

We also recommended improvements to SafeWork's policies, procedures and training to help ensure that future compliance actions are applied consistently and reasonably.

SafeWork has reported that it has implemented all recommendations made. It apologised to the council for its actions and made an ex-gratia payment to it in July 2021 for the unnecessary expenses council incurred. SafeWork has updated relevant policy guidelines, developed practice notes and decision-making templates for inspectors and delivered training to them. It has also designed a quality assurance program for the decisions of inspectors which is being piloted.

## Wollongong City Council: Responsibilities regarding potentially contaminated land

In 2019, a purchaser of land, 'Mr B', complained to us that Wollongong City Council had issued him planning certificates and development consent without disclosing that the land he was proposing to purchase may have been contaminated due to past land use. He told us he subsequently spent over \$100,000 investigating the source of the contaminant and remediating the land.

We investigated, finding council had acted unreasonably by failing to assess contamination when it approved the development and by not including information about past development consents for the land that indicated it was potentially contaminated. We recommended council apologise to Mr B, make an ex-gratia payment for part of the expenses he incurred, and update and review its processes and training to help ensure a similar situation doesn't happen in future.

### Background

Mr B complained that council could have – and should have – notified him of a known fuel contaminant on his land when it issued him planning certificates and granted development consent to build a health clinic and car park on the site. He told us that council's omission had caused him significant and ongoing financial losses.

In 2016, Mr B noticed oil seeping through concrete joints in the car park. 2 weeks later council told Mr B it had reviewed its records and located historical building approvals for a petrol bowser on the site.

Council directed Mr B to investigate the source of the contaminant. He eventually located an underground storage tank (commonly used to store petroleum products or waste oil) under the car park. Council then directed Mr B to clean up and remediate the land, which included payment of ongoing environmental management costs.

### Why did we investigate?

It is important that councils build up information on land use history, contamination and remediation in their local areas, and accurately record and manage it. This information is vital to provide accurate advice to the community and especially to prospective purchasers of land.

Although development applicants are responsible for compiling and lodging development applications with the required reports and plans, they should be able to rely on council's systems and staff to fully consider the need to disclose council's knowledge of earlier development consents if they point to possible land contamination.

As we were concerned about council's handling of Mr B's matter, we decided to investigate. We considered whether it was lawful and reasonable for council:

- to issue planning certificates and development consent without turning its mind to whether it had information indicating the land may potentially be contaminated
- to hold Mr B fully responsible for investigating the source of the contaminant, remediating it and paying the ongoing environmental management costs.

### What did we find?

We found that council acted unreasonably<sup>21</sup> when it determined Mr B's development application because it failed to assess potential contamination in accordance with the relevant planning guidelines and council's policies. Having failed to assess contamination, council did not require remediation before the development started, which led to an unjust outcome for Mr B when he was required to remediate the land after the development had already been completed.

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21. Within the meaning of s 26(1)(a) of the *Ombudsman Act 1974*.

Council also acted unreasonably by not including more information on the planning certificates, as suggested by the planning guidelines, about the relevant historical uses of the site (ie as a petrol station) that indicated potential contamination. The relevant guidelines stated that, as a minimum, planning certificates should list activities that may cause contamination. Council's own policy stated that it should 'consider the likelihood of contamination upfront in the planning and development process'.

Historic development consents indicating the land was potentially contaminated were uploaded onto council's property database system in November 2003. This information should have been accessible to staff who assessed the development application and issued the planning certificates.

Given the information about potential contamination was available to council before the development commenced, it was unreasonable to require Mr B to meet the full cost of remediating the site after the development was completed. Some of the remediation costs could have been prevented had council acted on the contamination at development application stage.

### **What did we recommend?**

We recommended that council:

- apologise to Mr B for the consequences of failing to assess the potential contamination of his land at development application stage, and as a result failing to provide him with relevant information before development was carried out
- ensure the records in its various systems accurately reflect the current contamination status of land
- review and make necessary amendments to its processes for considering and granting planning certificates and development applications to ensure it considers prior listed uses of the land
- review the information it provides to future applicants for planning certificates and development consents, to ensure they are given sufficient information about possible contamination
- provide training and guidance to relevant staff around changes resulting from the above recommendations.
- provide a copy of the final report issued at the conclusion of this investigation to its Audit and Risk Committee.

We are awaiting council's response to our recommendations.

## Broken Hill City Council: Occupying unfinished council premises without an occupation certificate

(This investigation was the subject of a public report tabled on 15 December 2020 entitled [An inherent conflict of interest: councils as developer and regulator.](#))

On 15 December 2020 we reported on an investigation we had conducted into Broken Hill City Council (BHCC) that found council had breached the law by allowing large public events to be hosted in its unfinished civic centre, despite not having the necessary certification that it was safe to do so.

This investigation led to a broader review of how councils in NSW manage situations where they are the developer, and at the same time regulate that development. We found that while this type of conflict of interest arises relatively frequently, it is not adequately dealt with by relevant planning laws or council policies. In December 2020 we tabled a special report to Parliament recommending that the Department of Planning, Industry and Environment (DPIE) convene a working group to consider options that can be implemented to avoid or better manage these types of conflicts of interest.

### Background

For important reasons of public safety, use of a building without the necessary occupation certificate is strictly prohibited by the *Environmental Planning and Assessment Act 1979* (EP&A Act).

In May 2017 we received a public interest disclosure informing us that BHCC had allowed the use of their unfinished civic centre for large public functions prior to an occupation certificate being approved for the building.

BHCC was both the developer and the consent authority. Under the EP&A Act, it was also the regulatory authority. The role of the regulatory authority is to ensure a development is carried out in accordance with the development consent and all applicable planning laws. BHCC's decision to allow use of the civic centre without an occupation certificate (and to take no enforcement action in respect of that unlawful conduct) highlighted a conflict between BHCC's interest as the owner and developer, and its public duty to uphold and enforce the law as the regulator.

As well as finding BHCC's actions were wrong, the investigation highlighted a broader systemic problem: councils being responsible for enforcing their own compliance with the EP&A Act and other regulations.

Following our investigation into BHCC we sought to examine how widespread the problem might be across the state, and what different councils did to address it.

We conducted a survey of councils and requested information to determine whether they had adequate policies and procedures to deal with the inherent conflicts of interest in situations where councils enforced their own compliance with laws and regulations.

### What did we find?

While DPIE has wide-ranging compliance powers under the EP&A Act, its ability to act against councils for contravening the Act is limited. While councils' own codes of conduct do set out a general framework for ethical conduct and can increase transparency in decision-making, they do not prohibit councils from making regulatory decisions on their own developments – nor do they address the resulting conflict of interest when they have both roles.

In 2007, the Independent Commission Against Corruption (the ICAC) recommended that individual councils take steps to manage such conflicting roles. Our survey of councils suggests their adoption of the ICAC's recommendation has been inadequate and inconsistent. While some councils have adopted specific policies to assist with these types of conflicts, there is no common, consistent approach, and policies do not specifically address the risks that can arise where councils act as their own regulator.

## What did we recommend?

We proposed a range of options to resolve the conflict in councils' roles in enforcing compliance in relation to their own developments, including:

- establishing a new statewide panel or commission
- making the Secretary of DPIE, the Minister for Planning, or an independent external body or individual responsible for assessment and determination
- making council staff responsible for assessment, with strict role separation.

We recommended that the Secretary of DPIE convene a working group of relevant agencies, including the Office of Local Government and representatives from a cross-section of councils, to consider options (including but not limited to those above) to avoid or, if necessary, manage these kinds of conflicts of interest. We recommended the working group consult relevant stakeholders to further inform the options considered. We asked it to implement any agreed-to options within 12 months of the date of tabling the report.

DPIE accepted our recommendations in November 2020. It has formed a working group that is currently consulting with stakeholders about the proposed options.

## Wingecarribee Shire Council: Charging developers water and sewerage management contribution fees in pre-2007 development consents

We received a complaint alleging that Wingecarribee Shire Council had imposed water and sewerage management fees on a developer that were substantially higher than those specified in the development consent issued to her in 2006. We investigated, finding that the council had treated this developer (and others in a similar situation) unreasonably.

### Background

When a local council is the water supply authority, it has the power to require developers to pay a contribution towards water and sewerage management works. Some councils choose to include a condition in development consents specifying that this contribution must be paid at the time the developer applies for a construction or subdivision certificate, which can often be some years after the development had been approved.

Lawyers acting on behalf of a property developer, 'Ms X', told us that in 2018 Wingecarribee Shire Council had charged her water and sewerage management fees that were more than \$150,000 higher than the amount originally specified in the development consent she obtained in 2006. The relevant condition in Ms X's development consent listed the charges and did not include any notice, express or implied, that the fees might increase in the future (to align with the charges specified in the Development Servicing Plan (DSP) current at the time she applied for a construction certificate). This meant she had no prior notice that the fees could increase – in this case, substantially.

We had already investigated council about largely the same issue in 2008, following a complaint from a different developer. At that time, council agreed to note in its records that anyone holding a development consent dated before 1 January 2007 would not have to pay increased water and sewerage contributions when they became due – instead, they would be charged the fees set out in the consent. Council also agreed to write to any affected developers to inform them of this decision. In addition, any consents that were issued after 1 January 2007 would include a notice informing developers that their future water and sewerage contributions would align with the fees specified by the DSP current at the time the payment became due. This was to provide notice of likely future increases to prevent a similar situation from reoccurring.

Contrary to its undertaking to us, council only wrote to some of the affected developers and instead of saying they would be charged the fees set out in the consent, they were told they would be required to pay fees as specified by the DSP in place at the time they applied for a construction certificate. This meant that developers who had consents issued before 1 January 2007 would still be charged fees higher than those specified in their consents, as in the case of Ms X's.

### Why did we investigate?

We had a number of concerns about the reasonableness of some of the actions taken by the council. These included concerns that:

- although council was technically authorised by law to increase the fees in line with its DSP, it had done so without providing any notice to the developer in the consent that was issued to her
- council had failed to abide by the undertaking it had made to us in 2009 that anyone holding a development consent dated before 1 January 2007 would not have to pay an increased fee.

### What did we find?

Council acted unreasonably in its treatment of Ms X and other developers who had development consents issued before 1 January 2007. The standard condition in the development consents, which stated water and sewerage management fees would have to be paid before either a construction or a subdivision

certificate was obtained also specified the amounts for the fees. The standard condition did not state that the fees were subject to future increases. This was inconsistent with the relevant 'development control plan' that requires the consent to include a note making it clear that the fees were subject to change.

During our 2008 investigation, council had also agreed to refund the difference in fees paid by all the developers who were affected by council's failure to notify them of future increases. Some, but not all affected developers received refunds.

### **What did we recommend?**

We recommended that Ms X be reimbursed the fees she paid over and above what was set out in her development consent. We also recommended that council:

- publicly invite developers in the same situation as Ms X to contact council to be considered for a fee refund
- write to any developers with development consents containing the pre-2007 standard condition who had not yet paid their water and sewerage charges, to tell them they will only be required to pay the fees listed in their consents

The council has agreed to implement all our recommendations.

# Department of Communities and Justice, Corrective Services NSW and Youth Justice NSW: Strip searches at Frank Baxter Youth Justice Centre

(This investigation was the subject of a public report tabled on 8 June 2021 entitled [Strip searches conducted after an incident at Frank Baxter Youth Justice Centre](#).)

Following an incident at Frank Baxter Youth Justice Centre, 3 young people were subjected to fully naked body strip searches – a type of search that is normally only permitted in the adult correctional system. We investigated, finding that while the strip searches were technically legal, they were not justified in the circumstances.

We recommended legislative change to ensure that in future, no young person will be subjected to this type of search.

## Background

In January 2020, the Inspector of Custodial Services made a referral to our office<sup>22</sup> reporting that Correctives Services NSW (CSNSW) officers, ‘may have carried out unauthorised strip searches’ of 3 young people while attending a disturbance at Frank Baxter Youth Justice Centre in November 2019.

The disturbance involved 3 young people climbing onto the roofs of several buildings, gaining access to building materials and tools and refusing to come down. While they were on the roof, they made a series of serious threats to the safety of Youth Justice NSW (YJNSW) staff.

A Memorandum of Understanding (MoU) between CSNSW and YJNSW provides that CSNSW’s Security Operations Group (SOG) can be called in to take control of a youth justice centre to quell a riot or disturbance. The MoU authorises SOG officers to exercise the same powers in respect of young people as they can exercise in respect of adults in the adult correctional system. Although it does not explicitly mention searches, it appears that the MoU includes the power to conduct fully naked body strip searches – the kind of searches that can happen in adult prisons but which are ordinarily not allowed in youth justice centres.

In youth justice centres, the only strip searches that are ordinarily permitted are ‘partially clothed searches’.<sup>23</sup> These involve the young person first removing all of the top half of their clothing, putting it back on, then removing the bottom half. This means that the young person’s entire body can be subject to visual inspection, but the young person is never completely naked.

In relation to the November disturbance, after the CSNSW officers entered the centre and spoke to the 3 young people, they came down from the roof without any use of force and with no further incident. The young people were handcuffed, and officers conducted a pat down search of each of them. No weapons or contraband were found.

The young people were then taken to cells where CCTV was in operation and subjected to fully naked body strip searches. This included CSNSW officers requiring 1 young person to bend over whilst naked while they inspected his buttocks area and then inspected his genital area. Again, nothing was found.

## Why did we investigate?

After reviewing footage of the incident, we decided to conduct an own-motion investigation. We investigated whether:

- the strip searches of the young people by CSNSW officers were contrary to law
- the strip searches complied with relevant policies and procedures
- the strip searches preserved the privacy and dignity of the young people or were unjust, unreasonable, oppressive or otherwise wrong

22. Under s 26 of the *Inspector of Custodial Services Act 2012*.

23. *Children (Detention Centres) Regulation 2015*.

- adequate training had been provided to CSNSW officers and YJNSW staff in relation to searching young people
- adequate records were kept in relation to the conduct of the searches.

We did not examine the decision to call in CSNSW officers, nor the conduct of the CSNSW or YJNSW staff preceding the 3 strip searches.

### What did we find?

Although the searches were legally authorised by the MoU, the way the searches were conducted was not justified by the circumstances and was therefore oppressive. The fully naked body searches were disproportionate to the risk posed, did not consider any potential detrimental impact on the particular young people, did not include an assessment of options for less intrusive searches, and did not sufficiently preserve the dignity of the young people.

We also found that it was wrong to conduct the strip searches in view of operational CCTV cameras, as it was inconsistent with policy and constituted an unnecessary invasion of the young people's privacy.

We concluded that young people in detention should never be subject to these kinds of strip searches.

### What did we recommend?

We recommended the government consider making legislative amendments to provide that:

- young people in detention should never be subjected to fully naked body strip searches, including by CSNSW officers
- searches (such as pat down searches and partially clothed strip searches) should otherwise only be conducted when necessary, in private, with the removal of no more clothing than is reasonably necessary for the search, and with other appropriate safeguards in place
- YJNSW should maintain a digital record of all searches of young people that involve the removal of some or all of a young person's clothing.

We also recommended that SOG officers be trained about how to conduct searches of young people in line with YJNSW search policy and procedure.

In response to the recommendations, YJNSW has updated several policies and procedures to minimise the circumstances under which a full naked body strip search would be conducted. CSNSW officers will be trained to conduct partially clothed body searches as an alternative. However, YJNSW and CSNSW have rejected the recommendations aimed at providing legislative protections for young people who might be subject to strip searches. They have also rejected any policy or practice changes that would limit the removal of clothing and visual inspection to what is reasonably necessary in the individual circumstances stating this would be operationally unfeasible and would compromise the security, safety and good order of the centres.

## (Former) Department of Planning and Environment: Procurement of an acting executive director

(This investigation was the subject of a public report tabled on [19 October 2021](#).)

The NSW Department of Planning and Environment (DPE)<sup>24</sup> engaged the services of an external contractor ('C') as an executive director using emergency procurement provisions. We investigated, finding that DPE had acted unreasonably and contrary to law and government procurement policy in the way it engaged C for the role.

### Background

C was acting executive director for around 10 months. Instead of employing them personally through an employment contract, DPE contracted them through 'Company A'. Company A employed C and C was also its director.

DPE used 'emergency procurement' provisions to engage C's services through company A for a 3-month period. It then extended the 'emergency' appointment for another 3 months. Use of emergency procurement provisions meant that built-in procurement safeguards (such as dollar limits) did not apply.

DPE then further extended C's time in the role by entering into a contract with a contingent labour hire firm. In turn, the firm entered into a contract with company A (which employed C). This arrangement lasted approximately 5 months.

### Why did we investigate?

After receiving a complaint about the procurement activity from 2 former DPE executive employees, we decided to investigate whether:

- the vacant executive director role warranted an 'emergency' procurement, and what effect the emergency procurement provisions had in these circumstances
- DPE reported the emergency procurement to the NSW Procurement Board, as it is legally required to do
- DPE kept adequate records around the procurement
- the further engagement of C represented value for money.

### What did we find?

We found DPE acted unreasonably in using emergency procurement provisions to fill the executive director role. Filling the vacant position did not constitute an emergency – there was no threat to public health and safety, risk of damage to the environment or serious legal or financial risk, and the departure of the incumbent executive director was also not sudden or unforeseen.

Use of emergency provisions also meant DPE's procurement was not subject to legislative requirements, including that it must comply with certain statutory conditions relating to probity and value for money.<sup>25</sup> It also meant that other safeguards (such as a dollar limit on procurement) did not apply. Subsequently, the total cost of engaging C exceeded the scheme's monetary limit for procuring 'base level suppliers'.

We also found DPE breached the law<sup>26</sup> by failing to notify the NSW Procurement Board of the emergency procurement.<sup>27</sup>

DPE also breached NSW procurement policy by engaging C through a labour hire firm for the additional 5 months, as the engagement did not demonstrate value for money. It also failed to keep adequate records of its decision-making around the hiring and continued engagement of C.

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24. DPE's functions have since been taken over by the Department of Planning, Industry and Environment (DPIE).

25. Set out in s 176 of the *Public Works and Procurement Act 1912*.

26. Clause 4 of the *Public Works and Procurement Regulation 2014*.

27. Required under clause 4.

## What did we recommend?

We recommended that DPE:

- retrospectively report the emergency procurement to the NSW Procurement Board
- send us a copy of its procurement guidelines (that it told us it was updating as a result of our investigation) when they are complete
- provide us with a copy of the internal procurement audit it commenced as a result of our investigation
- tell us what it will do to address any issues identified in that internal audit.

DPE accepted all of our recommendations. It has reported the emergency procurement to the NSW Procurement Board and updated its procurement guidelines. It has also advised us that all of the recommendations from the internal procurement audit have now been implemented.

We also wrote to the NSW Public Service Commissioner suggesting that consideration be given to the development of additional guidance to the public sector regarding the circumstances (if any) under which contractors may be engaged to 'act in' employment roles.

## Transport for NSW: The scrapping of a derelict boat

In 2018 Transport for NSW (Transport) attempted to recover nearly \$100,000<sup>28</sup> from the former owner of a derelict boat to cover the cost of the boat's disposal – despite the fact he had sold it weeks earlier. We investigated, finding that the conduct of Transport in pursuing enforcement action against the former owner was unreasonable and contrary to law.

### Background

The boat in question was rundown and unseaworthy. Transport had ordered the owner to clean it up, using powers vested in it under the *Marine Safety Act 1998*. Around the same time, the owner advertised the boat for sale.

When he sold the boat, the registration was transferred to the new owner. On the same day, and prior to Transport registering the ownership transfer, the 2 men together met with Transport's compliance officers, who also reissued the order to clean up the vessel from the former owner to the new one.

Some weeks later the new owner told Transport he couldn't carry out the required work, claiming the former owner had misrepresented the condition of the boat to him. Transport allowed the new owner to relinquish registration, ceased compliance action against him, and then restarted action against the former owner – ordering him to remove the boat from navigable waters.

Because the former owner maintained he was not responsible for the boat – and in any case, had no right to board it to carry out the required work or to remove it from waters – Transport eventually assumed custody of it and had it scrapped. Transport issued an invoice to the former owner to cover the cost.

The former owner insisted he was not responsible for Transport's costs in scrapping the boat because he had already sold it to someone else. He believed the registration transfer, the cancellation of the accompanying mooring licence and Transport's reissuing of the 'clean-up notice' to the new owner had represented the end of his dealings with the boat and with Transport.

### Why did we investigate?

Derelict vessels pose a hazard to the state's waterways. Transport is empowered by legislation to enforce the relevant laws to protect the waterways from pollution and unsafe vessels. However, compliance action must be conducted fairly and in accordance with laws and policies.

We considered whether Transport could lawfully:

- require the former owner to remove the boat from navigable waters after he no longer owned it and the boat was not registered to him
- recover its costs and expenses for removing the boat.

We also considered the adequacy of the relevant policies that guide compliance and vessel registration.

### What did we find?

The compliance action taken against the former owner was unreasonable and contrary to law.<sup>29</sup>

The notice to the former owner to remove the boat from navigable waters was issued contrary to the requirements of the *Maritime Safety Act*, which empowers Transport to direct an owner of a vessel that obstructs navigation, or a person responsible for the obstruction, to remove that obstruction. The former owner no longer owned or had control of the boat when it became an obstruction and was not, at that time, the person responsible for the obstruction. This being the case, Transport also could not recover the costs and expenses it incurred when it later removed the boat and disposed of it.

28. Under the *Maritime Safety Act 1998*.

29. Within the meaning of s 26(1)(a) of the *Ombudsman Act 1974*.

If Transport compliance officers had had doubts about the new owner's capacity to repair the boat in line with the statutory clean-up order issued to him, they could have refused to transfer the registration (in which case the former owner would have remained the registered owner). Equally, Transport could have refused to reissue the statutory order to the new owner when the 2 men met with Transport's compliance officers, which would have allowed them to continue to hold the former owner responsible under the previous order.

Although Transport may have later come to regret its decisions, it did not have the option to pursue the former owner. Having transferred the boat's registration and clean-up order to the new owner, when Transport later decided to allow the new owner to relinquish the boat and to not repair or remove it from waters, its only option was to take responsibility for the boat itself.

We also found that Transport did not have adequate policies or procedures in place to deal with derelict vessels at the time of the events under investigation. The existing policies did not include sufficient guidance on taking compliance action under what is a complex legislative environment. These issues were compounded by the fact that vessel registration renewal in NSW does not require any proof of seaworthiness, and that disposing of end-of-life vessels is cumbersome and expensive.

### **What did we recommend?**

We recommended that Transport:

- withdraw the invoice and apologise to the former owner for its actions
- develop more comprehensive guidance on when and how enforcement powers under different acts should be used
- review its notice and internal appeal procedures and train staff on revised guidelines.

We also recommended Transport consider ways to resolve the issue of ongoing registration of derelict vessels, including how registration of such vessels is transferred.

We are awaiting Transport's response to our recommendations.

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