



# Annual Report 2019–20

The NSW Ombudsman is an independent integrity agency that holds NSW government agencies and certain non-government organisations accountable to the people of NSW.

This report summarises the activities and performance of the Ombudsman's office for the 2019–20 financial year as well as reporting on our work during the year. The report addresses our obligations under the *Ombudsman Act 1974* and the *Annual Reports (Departments) Act 1985*.

This and earlier annual reports are available on our website: [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au)

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## Letter to the Legislative Assembly and Legislative Council

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

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

Dear Mr President and Mr Speaker

### NSW Ombudsman annual report 2019–20

I am pleased to present the NSW Ombudsman's office's annual report for 2019–20, outlining the work done by our office over the 12 months ending 30 June 2020. This is the 45th annual report to the NSW Parliament and is made under section 30 of the *Ombudsman Act 1974*.

The report also provides information that is required under the *Annual Reports (Departments) Act 1985*, *Annual Reports (Departments) Regulation 2010*, *Government Information (Public Access) Act 2009*, the *Public Interest Disclosures Act 1994* and the *Disability Inclusion Act 2014*.

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

Yours sincerely



Paul Miller  
**Acting NSW Ombudsman**

27 October 2020

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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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New South Wales, 27 October 2020

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# Annual Report 2019–20

27 October 2020

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## Ombudsman's message

It is my privilege as Acting Ombudsman to be presenting the 2019-20 Annual Report of the NSW Ombudsman.

Michael Barnes was the NSW Ombudsman throughout this reporting period (departing on 24 August 2020) and I would like to begin this message by acknowledging his leadership.

During his tenure Michael led major organisational restructure, and the delivery of a new strategic plan. Together, these initiatives will ensure our office is well placed to face the dynamic legislative, economic and social environment in which we operate.

On behalf of the office, I wish Michael all the best and thank him for his contribution, which will continue to benefit us (and by extension the people of NSW) for many years to come.

## Strategic reforms and initiatives

As part of the rollout of our strategic review (section 4.1), on 1 October 2019, we switched to a new organisational structure, arranged primarily along functional lines. We also developed a five-year strategic plan (section 4.2) that identified over 40 strategic initiatives grouped around five themes. Underpinning this work is our renewed vision: *Everyone receives the right services and fair treatment from those we oversee. Our Strategic Plan articulates the mission, purpose and values which guide how we operate and by which we focus our efforts.*

## Funding and independence

The Ombudsman is one of a small group of Parliamentary statutory offices that operate in New South Wales to provide independent oversight and to promote and protect the integrity of our public institutions. These agencies occupy a unique position in our Westminster system of Government: they are accountable directly to the NSW Parliament and fully independent from the Ministry and bureaucracy.

During this reporting year, renewed focus has been given to the status of these offices. A NSW Parliamentary Committee commenced an inquiry into the funding processes for independent oversight bodies, as well as the NSW Parliament itself. The Audit Office also separately

commenced a review, at the request of the NSW Government, into the financial arrangements applying to four key integrity agencies.

Both reviews were directed primarily to the processes by which funding is provided, rather than the *quantum* of funding. A key focus was on whether existing processes are consistent with the essential independence of these offices. In our submissions, we identified serious concerns with the current funding processes, noting that the current "budget process which makes an independent oversight agency dependent on Executive agencies and Ministers to set its funding inherently qualifies that independence". We suggested that Parliamentary statutory offices such as the NSW Ombudsman should have their funding recommended to Parliament through a transparent Parliamentary Committee approach (see section 6.1).

Both the Parliamentary Committee's inquiry and the Audit Office's review have been taking place at a time when serious questions are being raised about the adequacy of funding provided to bodies such as ours. Inadequacy of funding, particularly where that shortfall is chronic and worsening, points to a failure in the funding process itself.

Through actions like our strategic review, the NSW Ombudsman's office is doing what it can to optimise its own efficiency. However, the NSW Ombudsman has repeatedly made clear to the NSW Government that our current funding allocation is insufficient to deliver our required statutory obligations. As we said in our submission to the Parliamentary Committee:

*"Underfunding means that a body is unable to perform its mandate in accordance with the legislative terms, Parliamentary intent and community expectations. Underfunding also risks contributing to the very problems that these bodies exist to address – namely a lack of public trust and confidence in the integrity, capability and fairness of public institutions."*

## Responding to the COVID-19 pandemic

The role we have to play in maintaining oversight on behalf of the NSW Parliament and the people of NSW was visible in our response to the COVID-19 pandemic (chapter 7).

Despite a number of operational challenges brought on by our shift to remote working in March 2020, we met this challenge. A key activity was to monitor agencies' pandemic responses and

the rapidly evolving legislative landscape. We also prioritised our oversight of those services upon which the most vulnerable members of our community rely, especially our corrective and youth justice system. We also worked to ensure that those subject to hotel quarantine had an avenue of complaint.

One noticeable impact has been the significant fall in both total contacts and actionable complaints made to this office during the height of the COVID-19 pandemic. This is likely due to a combination of factors.

Restricted government and community activities meant that people may have accessed fewer services, leading to fewer complaints. Their focus is also likely to have been on more immediate concerns relating to the pandemic. Another potential explanation is that much of the front-line response to the pandemic was led by the NSW Police Force, which is outside of our jurisdiction. NSW also has a separate specialist body to handle health care complaints. The significant nature and extent of Government support related to COVID-19 may have played an additional role in reducing the volume of complaints.

Finally, contacts to our office were likely impacted by the initial disruption to our phone services and the reduction of our in-person custodial visits and direct community outreach activities.

## Our work in 2019-20

In addition to our COVID-19 response, we maintained our ongoing roles under the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act*. The main focus of this Report is on that work.

We report in full on the contacts to our office (chapter 8) and how we dealt with complaints (chapter 9). The volume of contacts is not a complete measure of either the demand for, or supply of, our services. Our Assessments Unit, which is responsible for the intake and assessment of those 30,000+ contacts, comprises just 21 staff in an office of around 120.

Most of our resources are dedicated to our other work, including undertaking investigations, monitoring systemic issues, assessing Aboriginal programs, receiving notifications of reportable incidents, providing education and training services, undertaking death reviews, providing oversight of the public interest disclosures system, and convening the Child Death Review Team (chapters 10 to 14).

One example of our impact is in asbestos management. Following special reports tabled in 2017, in 2019 the NSW government established a new statutory advisory committee to the NSW Environment Protection Authority, supported by the allocation of \$12.7 million funding for the NSW Asbestos Plan.

We continued to engage with NSW's diverse communities both through outreach activities but also programs aimed at increasing Aboriginal inclusion. Our review of the OCHRE scheme provided a comprehensive assessment of the manner in which the NSW government has worked with and supported Aboriginal communities. We made 69 recommendations through this review (chapter 13).

A major change in our jurisdiction was the transfer of the child-related reportable conduct scheme to the Office of the Children's Guardian on 1 March 2020 (chapter 12), and I wish the staff of that division well in their new agency.

## Looking forward

With the COVID-19 pandemic still current in NSW, we continue to work remotely: an over-riding priority is and will continue to be the safety of our staff and the community.

As such, I am pleased with the significant progress made across the organisation to upgrade our IT systems, and internal policies and procedures. This work means that we are now well positioned to continue delivering on our mandate while leveraging the many benefits afforded by flexible working.

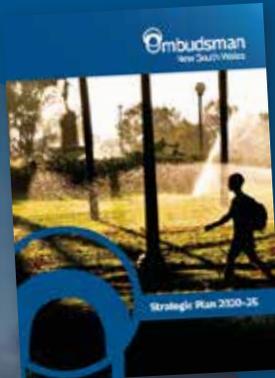
I'd like to end by thanking all the staff of the NSW Ombudsman's office. Their resilience and agility has been evident as they have been presented with the unique challenges of 2019-20. They have remained resolutely focused on delivering our statutory functions in pursuit of our vision.



Paul Miller  
Acting NSW Ombudsman

# Snapshot 2019–20

## Strategic reforms and projects



Developed a comprehensive five year Strategic Plan (2020-2025)

Completed an analysis to support the redesign and rebuild of our case management system

Implemented our new organisational structure

## Legislative changes

On 1 March 2020 transferred our functions under Part 3A of the *Ombudsman Act 1974* (employment-related child protection) to the Children's Guardian (*Children's Guardian Act 2019* Part 4).

On 1 July 2020, transferred coordination of the Official Community Visitors scheme to the Ageing and Disability Commissioner (*Ageing and Disability Commissioner Act 2019*)

## COVID-19 response

Transitioned to remote working as a result of the COVID-19 pandemic on 18 March 2020

While prioritising health and safety of our staff and the community, took actions to keep our services accessible, especially for vulnerable community members

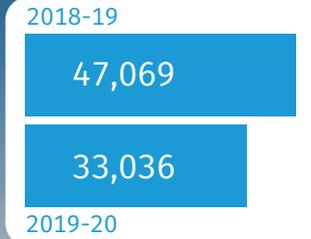
Helped to promote fair treatment for those affected by the pandemic response by monitoring government powers and restrictions, including those quarantined under public health orders and the homeless

Implemented a three-stage crisis management plan, *From Survive to Thrive*, enabling our office to regain full productivity

Received  
**33,036**  
contacts,

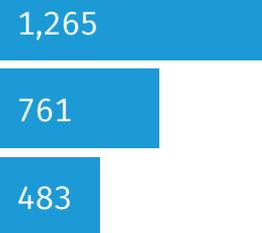
18% less than 2018-19, as a result of efforts to reduce misdirected or excluded contacts, changes in jurisdiction and a reduction in actionable complaints due to COVID-19

## Contacts to our office



### Received 2,271 notifications

- **1,265** notifications of reportable allegations or convictions against employees working with children in NSW
- **761** notifications from Youth Justice about segregation and/or separation of detainees for more than 24 hours
- **483** notifications of the deaths of children



Actionable complaints fell significantly in the last quarter of 2019-20. Reasons for this include the initial disruption to our phone service when the physical office was forced to close in March 2020, the reduction of in-person custodial visits and community outreach, as well as the general impact of restricted government and community activities in response to the pandemic. Complaint volumes are expected to normalise in 2020-21.

## Investigations and projects

NSW Government endorsed the establishment of a new statutory advisory committee to the EPA – the NSW Asbestos Coordination Committee (NACC) – in response to previous reports by our office

New dedicated Investigations Unit created to increase our capacity to undertake formal investigations or serious and systemic maladministration.

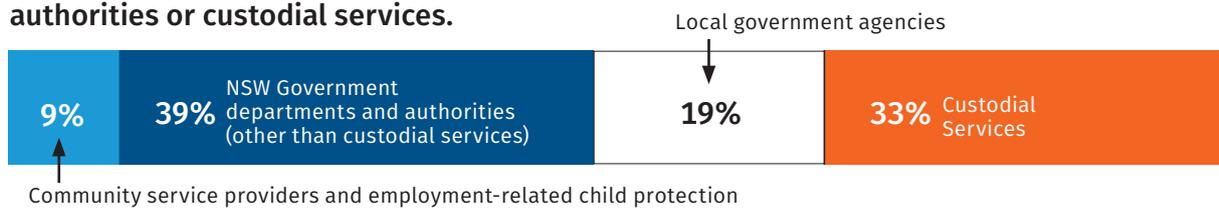
## Dealing with complaints

**68%**  
of complaints  
finalised within  
1 week

Finalised  
**13,674**  
open  
complaints



The majority of complaints we finalised relate to either NSW Government departments and authorities or custodial services.



## Public interest disclosures

Responded to  
**124 requests**  
for advice or assistance  
from agencies about  
managing a report or  
with a policy  
query

Assessed  
agencies we have  
previously audited  
about their  
implementation  
of our  
recommendations

Trained  
**1,015**  
public officials at  
**28** PID Management  
Training events  
**16** PID awareness  
sessions  
**2** PID executive  
briefings

## Reportable conduct

### Received

- 1,265 notifications of reportable allegations or convictions against employees working with children in NSW
- 61 notifications of reportable allegations for people with disability in supported group accommodation
- 12 employee-to-client notifications
- 41 notifications of unexplained serious injuries

Worked on  
*Engaging Sensitively  
with Survivors – A Guide  
for Faith Organisations*  
(published by Office of  
Children's Guardian in  
May 2020 following  
transfer of the  
Scheme)

## Reviewing deaths

Raised issues with five NSW Health services and two other NSW government agencies around reviewable deaths of people with disability

Contributed data to multiple research projects/papers, on deaths of people with a disability including **'Factors associated with death in people with intellectual disability'** (published December 2019)

Continued research projects into preventing or reducing likelihood of child deaths, including social determinants in child deaths and perinatal asphyxia

Tabled NSW Child Death Review Team Annual Report 2018-19

## Working with Aboriginal and CALD communities

Developed a cultural competency framework and **Aboriginal consultation protocol and guidance** for NSW Ombudsman staff



Tabled OCHRE Review Report, a comprehensive assessment of the OCHRE programs over the past five years that makes **69 recommendations to the NSW Government**

Continued to engage with people from culturally and linguistically diverse backgrounds, especially through information sessions, workshops and events

Delivered **127** workshops to **2,770** participants

## Education and training

Cancelled all workshops as of 18 March 2020 due to COVID-19, resulting in strong decline in total participant numbers

Initiated training modernisation project to deliver new blended and remote learning opportunities

# About us

## 1. Our role, purpose and values

The NSW Ombudsman is an independent integrity office that reports directly to the NSW Parliament. Since 1975 we have been handling complaints about, and investigating maladministration by, NSW government agencies and public officials.

Our jurisdiction has evolved over time. It now includes:

- NSW Government departments
- NSW local government authorities
- community service providers funded by NSW Government departments
- public and privately run correctional centres
- statutory bodies established under NSW law, such as NSW public universities
- other NSW public sector agencies

Our functions today also cover a range of activities beyond complaints and investigations – we monitor and assess certain government programs, oversight the NSW whistleblowing regime, conduct inquiries and reviews of systemic issues affecting the public and community sectors, and review the deaths of children and other vulnerable groups in NSW with a view to preventing similar deaths occurring in the future.

### 1.1. Our mission

We aspire to be a leader in complaint handling, investigations, reviews, and public and community sector monitoring and assessment. We seek to be trusted to hold the agencies we oversight to account and to make evidence-based recommendations that result in positive change.

### 1.2. Our purpose

We can broadly identify three limbs to our purpose:

- To protect citizens from abuse of power and unfair treatment
- To foster enduring system-wide change that will prevent future failings and improve public administration and service delivery
- To provide a trusted source of independent advice to the Parliament

These limbs are distinct but also interrelated and interdependent. They look at our role from three different perspectives – the citizen's, the government's and the Parliament's.

### 1.3. Our values

Our values describe the core behavioural principles that we apply to everything we do:

- **Integrity:** We are unfailingly ethical and honest. We apply to ourselves the same standards we demand of others.
- **Impartiality:** We are impartial. We operate independently from government and act in a non-partisan manner. We work only in the public interest.
- **Fairness:** We treat everyone fairly, and demand that others do the same.
- **Transparency:** We communicate openly, giving reasons for our decisions. We report publicly whenever possible.
- **Professionalism:** We achieve excellence through competence and diligence. We act with humility, courtesy and confidence.
- **Respect:** We respect diversity and promote inclusivity, appreciating the range and worth of human difference.

## 2. Our structure

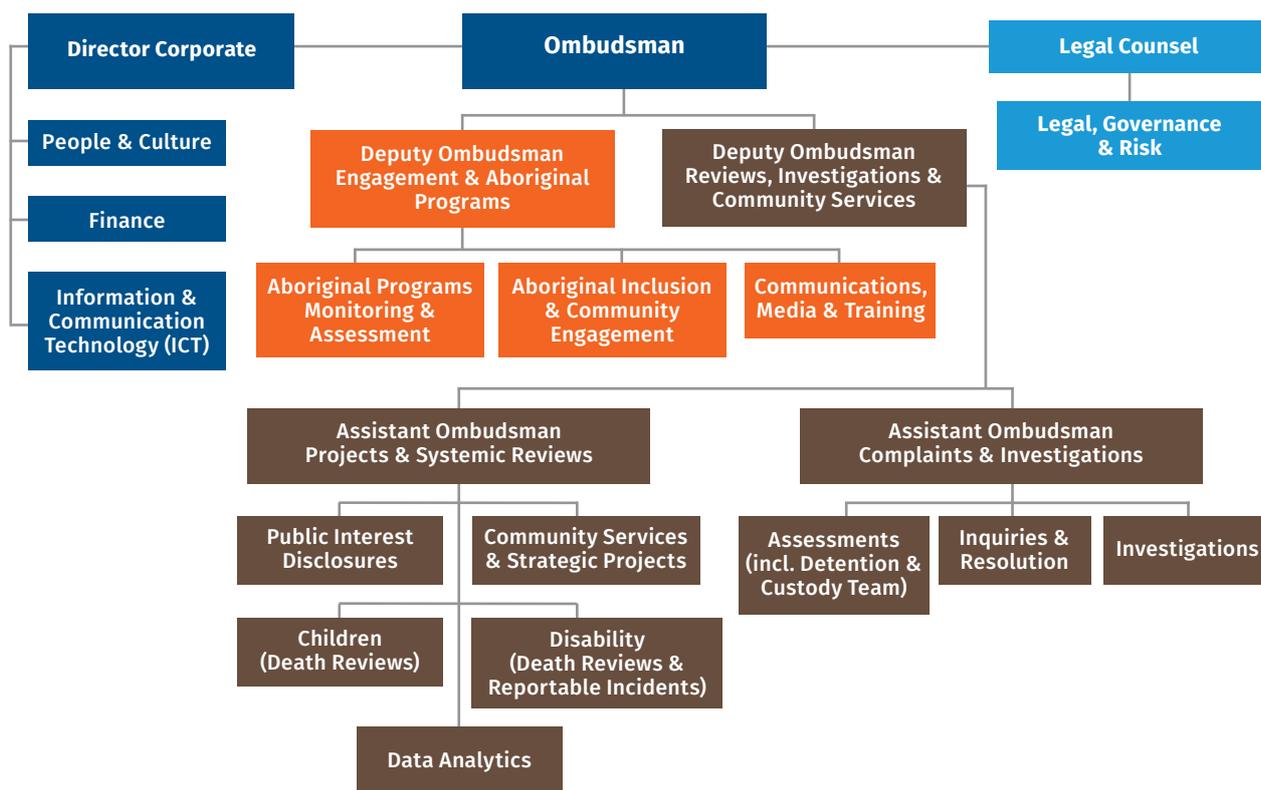
In 2019, the NSW Ombudsman initiated a strategic review of the office's direction and delivery arrangements. This strategic review delivered a new organisational structure (figure 1) that became effective on 1 November 2019. (A full account of our strategic review can be found in Strategic Review section 4.1.)

Adjustments to our structure are made from time to time as needed. Our current organisational structure as at the date of finalising this report is visualised in the chart on the next page.

Each division and branch is headed by either a deputy or assistant Ombudsman.

It is a statutory requirement for a Deputy Ombudsman to be appointed as Community and Disability Services Commissioner and for a Deputy Ombudsman to be appointed to support our function of assessing and monitoring Aboriginal programs.

**Figure 1:** Our organisation chart (as at the date of tabling this Annual report)



### 3. Our key functions and services

#### 3.1. What we do

**We take and resolve complaints** about the conduct of NSW public (state and local government) agencies, government and non-government community service providers, and private correctional centres. We aim to resolve complaints and we can do this through inquiry, conciliation or investigation.

**We conduct investigations**, if complaints raise questions of serious or systemic wrong conduct. We can also make conduct the subject of an investigation on our own initiative if we identify serious and/or systemic concerns in the absence of a complainant. We aim to make recommendations to agencies arising from our investigations to improve agency conduct and practice. If a complaint relates to the provision of community services, we can refer it to the agency for investigation, and oversight the investigation.

**We monitor and assess** Aboriginal programs, specifically those delivered under OCHRE – the NSW Government Aboriginal Affairs Strategy.

**We oversight, monitor and keep under scrutiny** certain systems, including the delivery of NSW government-funded community services and the NSW public interest disclosure regime.

**We conduct reviews of deaths** of children in NSW and convene and support the work of the NSW Child Death Review Team. We also review the deaths of persons with disability in supported group accommodation.

**We promote awareness and deliver training** in relation to the *Public Interest Disclosures Act 1994* and provide training to assist agencies in effective complaint handling and investigations.

**We undertake projects and research** related to our responsibilities, and publicly report our findings and recommendations.

A more detailed list of our functions is set out in the appendices ‘Our statutory mandate and functions’.

## 3.2. Our legislation

Our principal governing legislation is:

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

We also have responsibilities under the following legislation:

- *Child Protection (Working with Children) Act 2012*
- *Children and Young Persons (Care and Protection) Act 1998*
- *Government Information (Public Access) Act 2009*
- *Government Information (Information Commissioner) Act 2009*
- *Inspector of Custodial Services Act 2012*
- *Children (Detention Centres) Regulation 2015*.

## 3.3. Other annual reports

In addition to this annual report, we are also responsible for publishing a number of other separate annual and/or biennial reports:

- Public Interest Disclosure Steering Committee Annual Report
- Oversight of the *Public Interest Disclosures Act 1994* Annual Report
- NSW Child Death Review Team Annual Report
- Biennial Report of Reviewable Deaths: Persons with Disability in Residential Care
- Biennial Report of the Deaths of Children in NSW, Incorporating Reviewable Deaths of Children.



# Reforms, inquiries and reviews

In 2019–20, the NSW Ombudsman undertook a number of major strategic reforms through the implementation of a strategic review and the development of a five-year strategic plan. We also commenced a project to renew our core case-management system.

We contributed to a Parliamentary Committee inquiry into funding processes for the Ombudsman's Office and other oversight bodies, as well as a review by the Audit Office into the financial arrangements of those bodies.

## 4. Strategic reforms

### 4.1. Strategic review

In last year's Annual Report, we reported on a strategic review of our office that had commenced in late 2018. That review culminated in the development of a new, high-level Statement of Corporate Purpose and the design of a new, flatter organisational structure. This structure aligns business units primarily by function rather than by the subject matter over which they have oversight.

In 2019–20, we closed out the strategic review by implementing our new organisational structure and by replacing the high-level Statement of Corporate Purpose with a comprehensive five-year strategic plan (2020–2025).

### Organisational restructure

Our new structure came into effect on 1 October 2019. As shown in figure 1: our organisational structure, it now comprises three, frontline operational branches:

- Complaints and Investigations
- Projects and Systemic Reviews
- Engagement and Aboriginal Programs.

Those operational branches are supported by:

- Corporate
- Legal, Governance and Risk.

The change has meant generally larger, but fewer, individual business units. The primary organising principle for the new structure is function, rather than subject matter or jurisdiction, particularly in relation to our core functions of complaints resolution and investigation. However, certain specialised jurisdictions that involve systemic

oversight functions such as reviews, monitoring and auditing continue to be undertaken by specialist teams. These jurisdictions include child death review functions, public interest disclosures and Aboriginal programs.

### Constraints and challenges

Although the new structure was designed to enable and support improvements to the performance of our functions, it was also necessary to be mindful of budget constraints: our office's funding was reduced in the 2019 budget appropriations and the NSW Government indicated that further cuts may be made in future years. While these budget constraints were external to the restructure, it had to account for the associated saving requirements.

The new structure also had to allow for potential flexibility, including the ability to more efficiently scale up or scale down the performance of some of our functions, such as the volume of complaints that we can handle, or the number of investigations we can undertake, depending on our available resources.

Even though the restructure ultimately involved little immediate change to overall staffing numbers, its nature and scale meant that new roles and role descriptions needed to be created for all positions. This process was undertaken in accordance with a detailed Change Management Plan, as required by the GSE Act and policies. A five-step process was undertaken to match existing staff to new roles or, where that was not possible, to undertake internal or external merit-based selection processes.

### Corporate restructure in 2020-21

While the restructure involved the whole of the office, the restructure of the Corporate units was deferred to 2020–21. This was done to enable staff in those units to support the broader restructure (without being distracted by being part of it themselves). The deferral also enabled the Director, Corporate (who was appointed in June 2019) to review the organisational needs of that branch in consultation with the newly formed operational business units.

The subsequent restructure of the Corporate units is being undertaken presently, with completion expected in the second quarter of 2020–21.

## 4.2. Five-year strategic plan

On 1 July 2020 we launched a five year strategic plan that will see us through to our Golden Jubilee (50th anniversary) in 2025. The development of this plan occurred in the 2019–20 reporting period. The plan articulates our vision, mission and purpose, as well as reaffirming our core values.

### Context to the strategic plan

The Strategic Plan was developed in the context of a number of issues.

#### Significant changes to the ecosystem of oversight bodies in New South Wales in recent years

These changes reflect a trend toward greater sector-specialisation and include:

- establishment of the Law Enforcement Conduct Commission for Police oversight
- consolidation of child protection functions within the Children’s Guardian
- establishment of the Ageing and Disability Commission.

The Commonwealth Government has also introduced major reform through the creation of the NDIS. These changes have had significant impacts on the functions of our office.

Generally the changes have been positive and have been supported by our office. In some cases (such as the establishment of a dedicated Ageing and Disability Commission) they have come about as a direct result of our work and recommendations.

The Strategic Plan leverages these changes by allowing us to refocus on our core functions and provide an opportunity to refresh and reaffirm our unique mission as the state Ombudsman.

#### Dynamic changes in operational environment

The bodies we oversight, the services they provide and the way those services are being delivered continue to develop and change. The needs and expectations of the public, and especially vulnerable people and communities, also continue to evolve. The Strategic Plan shows how we will adapt and respond to these changes.

### Core and enduring principles of the democratic system

While our operational environment may be dynamic, the core and enduring principles that underpin our democratic system of government do not change:

- the rule of law
- fairness, transparency, accountability and integrity in the exercise of public power and the use of public resources
- respect for human rights and protection of vulnerable groups within our community.

Our challenge is to future proof our office to ensure that we can most effectively play an important role in safeguarding these principles. We are confident that the strategic outcomes and initiatives in this plan will enable us to meet that challenge.

### Strategic initiatives

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

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

These initiatives are summarised on the following pages “Plan on a Page”.

Given our limited resources, it will clearly not be possible to implement all strategic initiatives immediately. We also need to keep focus on our business-as-usual operations and services. We will therefore prioritise the strategic initiatives and drive them sequentially across the five-year planning horizon.

We will begin reporting against our new Strategic Plan in the 2020–21 annual report.

# Strategic Plan 2020–2025

## Vision

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

*This is the world we want to help make a reality*

## Mission

The NSW Ombudsman's Office will be a *leader in complaint handling, investigations and 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.*

*This is what we aspire to be*

To *protect citizens* from abuse of power and unfair treatment...

by helping them to voice and resolve complaints, and by investigating serious maladministration.

## Foundational qualities

*Statutory mandate, Royal-Commission type powers, Independence, Accessibility, Accountability, Necessary resources and expertise*

*These are the essential features that make us uniquely fit for our Purpose*

## Strategic Outcomes 2020–2025

### Services and impact

1. Consistency and best practice provision of services, with quality standards for all
2. High-quality evidence-based advice and recommendations, on issues that are important, timely and relevant, that lead to positive and practical change

### Engagement and Relationships

3. The public, including the most vulnerable members of our 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 and they know we will add value

## Purpose

To foster enduring system-wide change that will **prevent future failings** and **improve public administration and service delivery ...**

including by:

- helping government and service providers to learn from past complaints, incidents and failings
- 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...**

in order to provide assurance of Executive compliance with the Rule of Law and support the Parliament's functions to scrutinise the Executive and debate legislative reform.

*This is what our work is aimed toward*

## Values

*Integrity, Impartiality, Fairness, Transparency, Professionalism, Respect*

*These are our core behavioural principles, which express our organisational 'character'*

### Leadership and Governance

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

### People and Culture

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

### Systems and Processes

9. Modernised and continuously maintained systems and processes that give our people the tools they need and improve the customer experience
10. Rigorous evaluation processes and performance metrics that keep us on track and drive continuous improvement

## 5. Case Management System Gap Analysis Project

Following the NSW Ombudsman's strategic review and restructure, we identified that the current design of the core case management system used by our office was not meeting current business needs, nor would it support our future strategy. The Gap Analysis Project was established to identify what would be required to support the business and build analytics capability.

We engaged consultants Deloitte to work with us to identify the scope of our office's business needs and review the current state of the case management system.

The project highlighted various challenges with the current system, including:

- manual and time-consuming data entry processes
- lack of functionality to support certain processes
- lack of supporting workflows
- limited reporting and intelligence capabilities
- inconsistent data quality (due to changes over time).

The project delivered a future-state roadmap to remediate the existing challenges in the system.

In the coming year, we will seek funding to progress a redesign and rebuild of our system to ensure our system delivers more efficient and effective case management, improved service delivery for people who have contact with our office, and improved ability to measure and report on our work. We are also looking to enhance our analytic capacity to enable decisions across the organisation to be better informed by functional data analytics.

## 6. Parliamentary inquiries and reviews

### 6.1. Public Accountability Committee inquiry

On 14 October 2019, the Legislative Council's Public Accountability Committee established an inquiry into options for enhancing the process for determining the quantum of funding of independent oversight bodies, as well as the NSW Parliament.

The independent oversight bodies included within the inquiry were the Independent Commission Against Corruption (ICAC), the NSW Ombudsman, the Auditor-General, the Law Enforcement Conduct Commission (LECC) and the NSW Electoral Commission.

#### NSW Ombudsman submission

The NSW Ombudsman made a [detailed submission](#) and a [supplementary submission](#) to the inquiry. In our submission, we noted that:

'Underfunding [of an independent oversight body] means that a body is unable to perform its mandate in accordance with the legislative terms, parliamentary intent and community expectations. Underfunding also risks contributing to the very problems that these bodies exist to address – namely a lack of public trust in the integrity, confidence, capability and fairness of public institutions'.

The inquiry's focus was on the process by which funding for these bodies is set. Under the current process, the independent oversight bodies are treated by Government as part of its 'Department of Premier and Cabinet (DPC) Cluster'. Elements of the process include:

- their funding is, in effect, set by Treasury and Cabinet
- they are dependent on requests to DPC for any supplementary funding needed to meet unanticipated and unbudgeted financial expenses during the year
- their funding is reduced annually by so-called 'efficiency dividends' determined by Government
- they are required to report on their use of funding against outcomes and 'Premier's priorities' that are determined by the Government, rather than against those functions and objectives set out in their governing legislation.

In our submission, we recommended that the NSW budget process for independent oversight agencies be changed to recognise their unique status as parliamentary statutory officers. We made this recommendation with a view to protecting independence and assuring adequacy of funding, while also ensuring accountability and transparency.

We raised a number of concerns with the current process. These included:

- the appearance that oversight bodies are a part of ‘the Government’ rather than fully independent and reporting directly to Parliament
- the financial dependency of oversight bodies on government support
- a lack of transparency (as funding decisions are made behind the cloak of ‘Cabinet confidentiality’)
- a lack of any review processes
- limited attention being given to the funding needs of the independent oversight bodies
- a lack of clarity about the role of DPC and a dependency on it if supplementary funding is required
- a funding bias toward new initiatives and government priorities, at the expense of core and ongoing statutory mandates
- the application of ‘efficiency dividends’, with no reference to inefficiencies, inappropriately being applied to small agencies whose budgets comprise almost entirely of staffing costs, and effectively resulting in the reallocation of funding from independent oversight bodies to the Government’s own priorities.

## Committee report

The Public Accountability Committee delivered an [interim report](#) on 24 March 2020.

In its report, the Committee made a number of recommendations that, if implemented, will significantly improve the funding processes for the NSW Ombudsman and other independent oversight bodies. These include that:

- The annual budget submissions of these bodies be considered by a parliamentary committee:

‘This review process should be transparent: the committee should consult with relevant stakeholders including Treasury and the Department of Premier and Cabinet on the bodies’ budget submissions, with the consultation process to include inviting

submissions and holding public hearings. Each parliamentary oversight committee would table a report in both Houses recommending the annual appropriation for the body. If the Government did not support the body’s budget submission in full, the report would include the Government’s reasons as outlined during the consultation process. If the Government did not support the committee’s recommendation, it would table a statement of reasons in the Parliament.’ (para 3.101 at p 35-36)

- The annual budgets of the oversight bodies should include contingency amounts, accessible with the parliamentary committee oversight, to address unbudgeted financial needs
- Appropriations should be made to these bodies directly, rather than to the Premier or Minister (including so as to exempt them from ‘efficiency dividends’ in the future)
- The independent oversight bodies should be removed from the ‘DPC cluster’.

“The committee accepts that the four independent oversight bodies [the NSW Ombudsman, the ICAC, the LECC and the Electoral Commission] examined in this report, together with the Audit Office of New South Wales, are the bedrock of government accountability in New South Wales. It is vital that the oversight bodies are not prevented from performing their important work by inadequate funding.”

Public Accountability Committee, Budget process for independent oversight bodies and the Parliament of New South Wales, Report 5 - March 2020, para 3.94 at p 34.

The government responded to the Committee’s interim report on 24 September 2020, indicating that it will await the completion of a review by the NSW Audit Office (see below) before responding to the Committee’s recommendations.

The Public Accountability Committee is due to publish its final report in February 2021.

## 6.2. Audit Office review

Shortly after the Public Accountability Committee announced its intention to conduct an inquiry into the funding processes for independent oversight bodies, the government requested that one of them, the NSW Audit Office, undertake a performance review of the others.

The review was required to consider the effectiveness of the financial arrangements and management practices of the four other integrity agencies (NSW Ombudsman, ICAC, LECC and the Electoral Commission).

We welcomed the Audit Office's review. It not only included an examination of the high-level funding processes that were being considered by the Public Accountability Committee, but also included a close examination of offices' internal financial and management policies and practices.

We provided the Audit Office team with unfettered access to all of our relevant staff, systems and records for the purposes of their review.

The review by the Audit Office was also timely, as it occurred in the context of significant changes at the NSW Ombudsman's Office over the last 12 to 18 months (see chapter 4), and a focus on refreshing and enhancing internal governance policies and processes (see Appendix 17: Governance).

Our office has benefitted from the many conversations, observations and suggestions made by the staff of the Audit Office as it reviewed our systems. At the end of the reporting year we were awaiting the Audit Office's final report, and welcoming of any recommendations it might offer that could further improve our financial and management practices.

## Audit Office report

The Audit Office's report on its review was tabled on 20 October 2020.

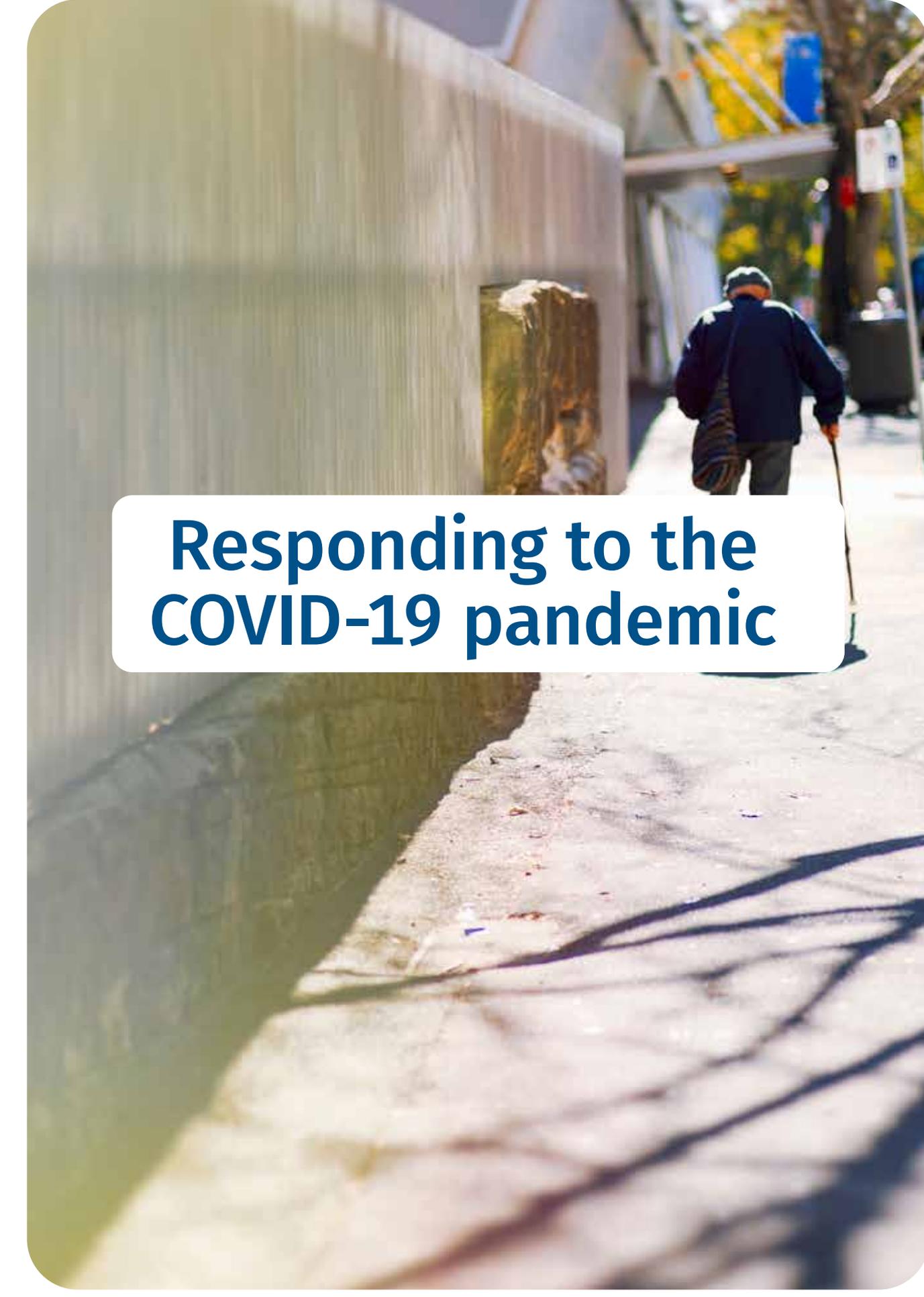
The Auditor-General's findings included: [TBC]

- 1) The current approach to determining annual funding for the integrity agencies presents threats to their independent status.
- 2) The legal basis for restricting the integrity agencies' to appropriation funding is contestable.
- 3) The system for providing additional funding to the integrity agencies creates potential threats to their independence.
- 4) Requiring the integrity agencies to report to DPC on their activities and outcomes is inconsistent with the independence of the integrity agencies.
- 5) Some comparable jurisdictions give Parliament a more direct role in funding for integrity agencies.

In relation to our financial arrangements and management practices, the Auditor-General found that 'NSWO's management practices are suitable for its needs'. The Auditor-General also acknowledged that our office 'has assessed its operational and corporate efficiency recently and has implemented major changes to its operating model in response to this.'

The report stated that our office's internal budgeting process is adequate but could be improved by being documented more thoroughly.

Our office accepts and is implementing this suggestion.

A photograph of a person with a cane walking away from the camera on a sidewalk. The person is wearing a dark jacket and a hat. To the left is a building with a wall that has a large, jagged hole. The scene is outdoors, with trees and a street sign visible in the background. The lighting suggests it's daytime.

# Responding to the COVID-19 pandemic

The COVID-19 pandemic had a significant impact on our operations this year. Our primary focus at all times has been ensuring the safety of our staff, as well as contributing to the state's broader public health and safety effort. We have also sought to maintain critical frontline services throughout, and have worked to restore our other services as quickly as possible in light of the changed working conditions.

## 7.1. Crisis response and adaptation to remote working conditions

### Office closure

In early March 2020, when COVID-19 was declared a global pandemic, we stood up an internal COVID-19 Preparation and Response Team to manage the potential impacts and to prepare for the possibility of significant future disruption.

On 18 March 2020, we closed our physical office. This action was taken following confirmation that an employee of another tenant in our building had tested positive for COVID-19. Up to that date, there had been just over 200 confirmed COVID-19 cases in New South Wales. Our action to close our office pre-empted subsequent Public Health Orders that would make it mandatory for all employers to allow staff to work from their place of residence if practicable.

In accordance with our business continuity policy, a Crisis Management Team (CMT) was then formed, replacing the Preparation and Response Team. The CMT comprised all senior executives, as well as the Manager, People & Culture and the Manager, Communications. Managers of other functional areas attended CMT meetings as necessary, and staff WHS representatives were invited to attend meetings on a regular basis to identify and consult on any staff concerns.

### Crisis response

The closure of our access significantly disrupted the continuity of our business operations, primarily as a result of legacy IT infrastructure and systems that were not capable of supporting general offsite operations.

Our immediate focus was maintaining the health and safety of staff, both in respect of COVID-19 risks as well as in relation to new or altered risks arising from the shift to home working. Relevant issues that were addressed included ergonomics, the impacts of isolation and stress, exposure to

potentially distressing work-related material (such as death review materials or challenging complainants behaviour) in a domestic environment, privacy and information security considerations, as well as the impact of parental and caring responsibilities.

### Prioritisation of essential services

Particularly in the initial phases of the pandemic's impact, it was necessary for us to rigorously prioritise our work. Our primary focus was maintaining services for those people who may be particularly vulnerable during the COVID-19 pandemic, and within that category we prioritised those issues and complaints that raised serious concerns requiring rapid response.

### Adaptation to remote working conditions

A key element of our crisis response has been to fast-track the implementation of IT solutions to support remote working. As a consequence, by the end of June 2020 all our services had been reinstated, with the exception of our training and community engagement programs.

We expect to launch remote learning options for our complaint handling and public interest disclosure workshops in November 2020 (see Chapter 15). We have also curtailed our community engagement activities due to COVID-19 restrictions, particularly our participation in events. Community engagement is continuing remotely, however, via various communication platforms (see Chapter 13).

### Crisis management – from 'survive' to 'thrive'

While necessarily responsive to uncertain and fluid external conditions, our response was managed under a staged approach developed in a 'COVID-19: Survive, Revive, Thrive' plan.

At 30 June 2020, we were continuing to operate remotely, with only a small number of staff in the office at any point. This is consistent with Public Health (COVID-19 Restrictions on Gathering and Movement) Order (No 4) 2020 which directs employers to continue to allow employees to work from home where reasonably practicable to do so.

Once this health order is lifted, we will seek to transition back to office-based work. However, we will do so in a manner that seeks to retain the innovation, flexibility and productivity benefits we have experienced from remote working.

## 7.2. Agency services during COVID-19: complaints and oversight

### Importance of maintaining oversight

A public health emergency of the kind faced with COVID-19 has clearly called for exceptional, even unprecedented, measures. Yet the rule of law, norms of reasoned decision making, and respect for human rights do not become optional, even in times of crisis. Adherence to those core values is not inconsistent with the taking of necessary measures. Indeed it is complementary as it helps to engender the trust, cooperation, and in some cases sacrifice, that will be needed for those measures to be effective.

Nor does government accountability cease during times of emergency. Particularly where extraordinary powers are conferred on government officials to deal rapidly and flexibly with a crisis in the absence of the usual mechanisms of parliamentary oversight, the role of Parliament's 'watchdog' agencies in assuring continued accountability may become even more acute.

### Inmates in adult correctional centres and detainees in youth justice centres

Throughout the pandemic we have given priority to ensuring continued oversight of the correctives and youth justice systems. We have done so because we know that those held in these systems are likely to be especially vulnerable in the event of an outbreak, given the close living quarters and, in the cases of the adult system, the significant number of elderly and health-compromised inmates. We were also conscious of the need to ensure that agency responses to protect inmates and staff from COVID-19 were reasonable and proportionate. Reduced in-person visits by families as well as by external bodies like us and the Inspector of Custodial Services and Official Community Visitors also meant that there would be fewer 'eyes' in the system.

We sought and have been obtaining regular briefings from senior officials. In the case of Corrective Services these briefings were initially daily, reducing in frequency over time to now being held on a weekly basis. Contact is also made immediately if and when specific issues or needs arise.

We also maintained dedicated phone lines into all adult and youth facilities and centres to enable inmates and detainees to contact senior staff of our office with any complaints or concerns.

Further details can be found in section 9.4: Complaints by people in detention or under court-order supervision.

### Maintaining an external complaint avenue

For our complaints about other matters, we initially deployed a small group of experienced officers to triage contacts (received by email or voicemail) and to allocate those complaints for response. Initially this was done by way of a call-back service, and we prioritised those people who were in crisis or needed urgent assistance.

Gradually, including through the rapid roll out of enhanced remote telephony and IT access, we have been able to resume direct call responses.

### Monitoring agencies' activities in relation to pandemic responses

For agencies about whom we have regular contact and/or receive significant volumes of complaints, we made direct inquiries to understand how they were responding to the pandemic and how they were continuing or, where necessary, expanding or varying, their services to meet changes in demand.

For example, we engaged with the Department of Communities and Justice (DCJ) to understand the impact of COVID-19 on community and housing services staff and the actions taken to ensure those staff could continue their work. We were told that DCJ's COVID-safe practices had been rapidly implemented to enable staff to keep local branches open and, in line with government directives, they also transitioned back office staff, such as the Housing Contact Centre (HCC) and Enquiries, Complaints and Feedback Unit (EFCU), to work remotely via a cloud-based communications system.

While contacts and complaints to us about DCJ's housing services fell during the COVID-19 crisis, as did those received by the HCC during the initial period, we did not notice any significant difference in the type of complaints we were receiving compared to those we would normally have expected to receive.

We provide more information in section 9.3 on complaints about NSW Government departments and authorities.

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## C1. Case study: Keeping Sydney's 'rough sleepers' safe

**In direct response to COVID-19, DCJ Housing implemented an urgent program to house 'rough sleepers' in and around the centre of Sydney. Homeless people in these highly populated areas were both at risk of COVID-19 and, in turn, potentially posed a risk to the broader community of contributing to its spread.**

The program aimed to combine ongoing temporary accommodation, including in hotels, using pop-up assessment centres to assist homeless people register for public housing with a view to fast tracking them and maintaining community supports to sustain a tenancy.

We learned about the system in May in its early phases, and visited a hotel in Sydney's CBD in June. There we found a group of people, many of whom had complex needs and circumstances. For example, some were suffering from mental illness; others were escaping situations of domestic violence. Many identified some common barriers to previously obtaining permanent housing, including a lack of proof of identification and a need for health screening for housing eligibility.

DCJ Housing had immediate success at encouraging many into ongoing temporary accommodation. Transitioning them to permanent housing proved to be more challenging.

DCJ Housing engaged with Neami National, a community mental health agency, and St Vincent's Health, to run their pop-up housing clinics in the hotels where they provided accommodation. At these clinics:

- individuals were interviewed
- medical assistance and screening was undertaken.
- identification documentation assistance was provided
- links were given to relevant ongoing supports.

While the initiative met a primary objective (of better protecting people and the community from COVID-19), the level of transition from the temporary accommodation to permanent housing solutions was disappointing. To date, the take up of accommodation options had only been about 10 per cent. The system expired at the end of July 2020, with services and supports returning to their previous levels.

DCJ Housing remains hopeful that the program will be shown to have resulted in a greater number of people in need of housing being matched to permanent housing solutions. We will follow up with DCJ Housing over the coming year.

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## 7.3. COVID-19 Public Health Orders, hotel quarantine and other restrictions

### NSW Government powers and restrictions

In the third week of March 2020, the NSW Government made the first series of Public Health Orders, which required overseas arrivals to self-quarantine and restricted the size of public events. In the following weeks and months, increasingly stringent Public Health Orders were made in response to the evolving COVID-19 pandemic.

They included:

- requiring people diagnosed with COVID-19 to self-isolate (later extending this to people who had contact with those diagnosed with COVID-19)
- the mandatory quarantine of overseas arrivals
- restricting access to residential aged care facilities
- imposing restrictions on public gatherings
- placing restrictions on businesses and premises open to the public
- implementing border controls to restrict entry into NSW.

The Public Health Orders authorised an extraordinary level of government restriction and intrusion into the life of the community. There was a strong public interest in ensuring that public agencies implemented these orders lawfully, and in a manner that was reasonable and proportionate in light of the public health crisis.

### Limitations on our jurisdiction

Public Health Orders are made by the Minister for Health. As conduct of a Minister is 'excluded conduct' under Schedule 1 of the Ombudsman Act, we were unable to handle complaints from the public that were generally about the making of those Orders or the terms in which they were made.

Many of the Public Health Orders conferred specific powers on the Commissioner of the NSW Police Force. For example, those persons required

to quarantine were placed by the Orders under the general control and direction of the Commissioner of NSW Police Force. The NSW Police Force was also the agency responsible for enforcing the Orders, including with discretion to issue warnings or fines for non-compliance.

As conduct of the NSW Police Force and its members is also 'excluded conduct' under Schedule 1 of the Ombudsman Act, we were unable to handle complaints about the NSW Police Force's implementation or enforcement of the Public Health Orders.

In this context we note that, despite the formal limits on our jurisdiction, we are frequently contacted by people about matters that we cannot deal with because they concern 'excluded conduct' under our Act. That is not surprising given the complexity of government agencies and operations, and the fragmentation of oversight bodies responsible for handling complaints about them. Where we are contacted about matters that we are not able to handle, we endeavour to assist would-be complainants with information or by referring them to the appropriate body. In the case of complaints about NSW Police Force, we generally refer complainants to the Law Enforcement Conduct Commission.

## People in hotel quarantine

In mid March 2020, a NSW Public Health Order was published that required certain categories of overseas arrivals to be quarantined at facilities designated by, and in accordance with other directions of, the Commissioner of the NSW Police Force.

In the days and weeks that followed, we took steps to identify and then engage with relevant government officials across various agencies to ascertain the legal status of the different quarantine hotels and the differing roles of the multiple agencies who were involved in their operation.

We liaised with colleagues at other oversight agencies, including the Commonwealth Ombudsman, the Law Enforcement Conduct Commission and the Health Care Complaints Commission to seek clarity on our respective jurisdictions, and to agree on referral avenues.

We also took steps to ensure that those detained in hotel quarantine in NSW were being pro-actively informed of their right to complain to relevant oversight bodies.

As noted above, we do not have jurisdiction to receive complaints about the conduct of the Minister (who made the Public Health Orders) or the NSW Police Force (which generally implemented and enforced them). However, to the extent that other agencies (such as NSW Health, NSW Treasury and DCJ) were involved in the quarantining arrangements or the provision of ancillary services to those held in quarantine, complaints about those agencies could be made to us.

From March to June 2020, we received 115 contacts about hotel quarantine, including:

- 25 actionable complaints about the Ministry of Health
- 13 requests for information, primarily about hotel quarantine requirements or support
- 41 excluded complaints about the NSW Police Force or Ministerial directions
- 36 misdirected contacts, primarily about the services provided by private hotels.

Issues most often raised in contacts about hotel quarantine include:

- food quality and options
- access to fresh air
- access to support services, for example mental health support or medical assistance
- quality of hotel facilities
- length of quarantine.

## Submission to the national review of hotel quarantine

Recently we were asked to provide information about the complaints we had received in relation to hotel quarantine to a review of hotel quarantine commissioned by the National Cabinet and being led by the Commonwealth Department of Prime Minister and Cabinet.

The quarantine system will clearly be in place for some time. It is also evident that the quarantining of overseas arrivals has played a crucial and highly-effective role in the state's response to the pandemic.

We took the opportunity in the national review to put forward a number of suggestions that we proposed would enhance the current system, and improve the design and implementation of any similar system in the future. We suggested that:

- **internal and external complaint handling mechanisms need to be considered and be part of the quarantine arrangements from the outset**

The right to complain about unlawful, unreasonable or unfair treatment at the hands of the state and its agencies is fundamental. This is certainly so when people are being held involuntarily.

- **complaint-handling mechanisms to be adopted and applied should conform with the NSW Government’s commitment to the Complaint Handling Improvement Principles (CHIP):**

- respect
- information and accessibility
- communication
- ownership
- timeliness
- transparency

- **the right to complain to the Ombudsman is essential, but should not take the place of internal mechanisms**

We have often received complaints in relation to quarantine about matters that, it appears, could and should have been resolved quickly at the local level.

- **internal complaint-handling mechanisms should be subject to monitoring by the relevant Ombudsman**

The function of monitoring or ‘keeping under scrutiny’ the internal complaint-handling systems of an agency or regime provides assurance that those systems are robust and functioning effectively. It also enables the oversight body to gain insight into potential systemic issues.

- **relevant independent oversight bodies should be briefed before the introduction of any new quarantining restriction if possible (and otherwise as soon as practicable after)**

By briefing the Ombudsman and other relevant oversight bodies in advance, agencies will be better able

- to perform their functions effectively
- support the public health response
- do so with a clear understanding of how oversight agencies can enhance the frontline response.

- **steps should be taken early to ensure coordination between relevant oversight bodies or consideration given to designating a single oversight body for that system**

Briefing all relevant oversight bodies together would be both expeditious and effective in terms of supporting the coordination of their

efforts. In the unusual circumstances of a public health emergency, consideration could be given to modifying the jurisdiction of one or more oversight bodies to ensure that a holistic approach can be taken.

- **any potential gaps in oversight should be identified from the outset through the early briefing of oversight bodies**

This would allow regulatory or legislative amendments to be considered to the jurisdiction and functions of the Ombudsman or other relevant oversight bodies to ensure that issues such as outsourcing do not inadvertently result in any loss of transparency or accountability.



# Our work in 2019–20

## 8. Contacts to our office

We categorise 'contacts' received by our office into six 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 the Community Services (Complaints, Reviews and Monitoring) Act (CS CRAMA Act).

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 the CS CRAMA Act 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 *Public Interest Disclosures Act 1994*).

### 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 the CS CRAMA Act), 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)
- or 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 12 Ombudsman Act).

### 3. Requests for information

People (including both members of the public and public officials) may contact our complaints service not to make a complaint but rather to seek information, advice or other assistance about a public authority or community service.

This includes requests for advice or assistance from public officials dealing with public interest disclosures, and requests for advice from agencies and service providers dealing with notifications of reportable allegations or convictions under Part 3A or Part 3C of the *Ombudsman Act 1974*.

### 4. Notifications

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

- notifications of reportable allegations or convictions under Part 3A of the *Ombudsman Act 1974* (employment-related child protection). (During the year this function transferred to the Children's Guardian – see section 12.1).
- notifications of reportable allegations or convictions under Part 3C of the *Ombudsman Act 1974* (protection of people with disability)
- 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 the CS CRAMA Act.

### 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 the CS CRAMA Act).

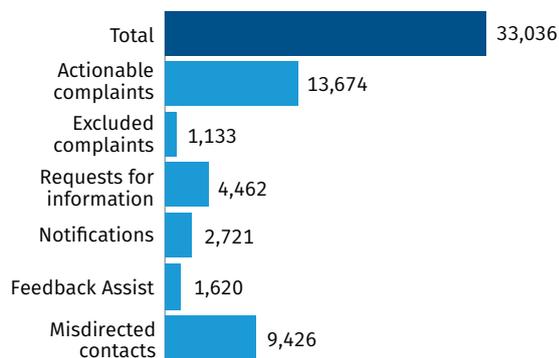
For example, if someone were to contact us wishing to complain about a Commonwealth agency or a private company, that would be a misdirected contact.

### 6. Feedback Assist

Feedback Assist is an online tool that enables members of the public to provide feedback via the [nsw.gov.au](http://nsw.gov.au) website. We receive, review and, where appropriate, refer feedback to agencies in accordance with our function under section 35E of the Ombudsman Act.

## 8.1. All contacts

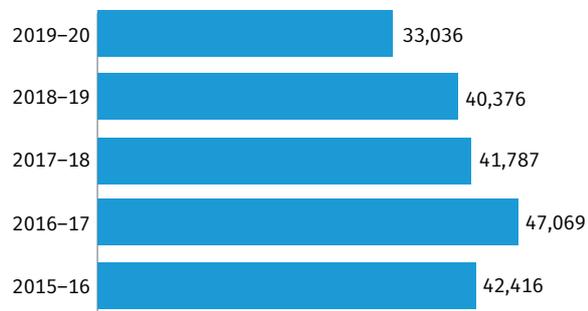
**Figure 2: Contacts received in 2019-2020**



In 2019–2020, we received 33,036 contacts.<sup>1</sup> Of these contacts:

- 41% were actionable complaints
- 3% were excluded complaints
- 14% were requests for information
- 8% were notifications
- 29% were misdirected contacts
- 5% were Feedback Assist complaints, compliments or suggestions

**Figure 3: Contacts received over five years**



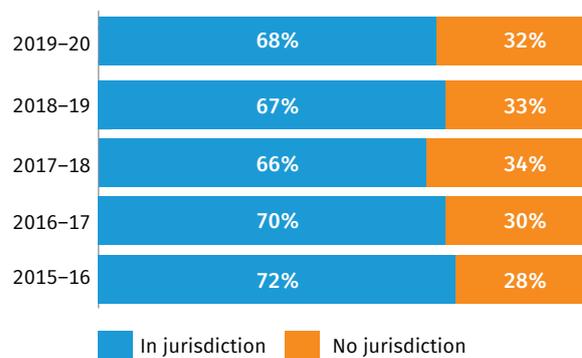
The number of contacts we received in 2019–20 was 18% less than in 2018–19.

We received fewer contacts that were not in our jurisdiction than we did in the previous year. We also received fewer actionable complaints this year. This appears to be attributable to a number of factors primarily relating to the COVID-19 pandemic. These include the initial disruption to our phone service when the physical office was forced to close in March 2020, the reduction of in-person custodial visits and

community outreach, as well as the general impact of restricted government and community activities in response to the pandemic.

Figure 6 shows the considerable decrease in contacts to our office between February and June 2020, compared to previous years.

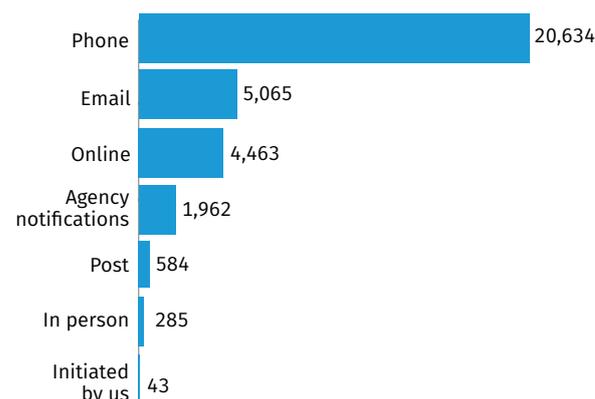
**Figure 4: Contacts received in jurisdiction over five years**



Over the past five years, the proportion of contacts that raised matters that were in jurisdiction and not in jurisdiction was similar each year (see Figure 4).

No jurisdiction contacts in figure 4 comprise both ‘excluded complaints’ and ‘misdirected contacts’. Although we are unable to investigate or otherwise action such matters, we nevertheless seek to provide effective guidance and referral where possible.

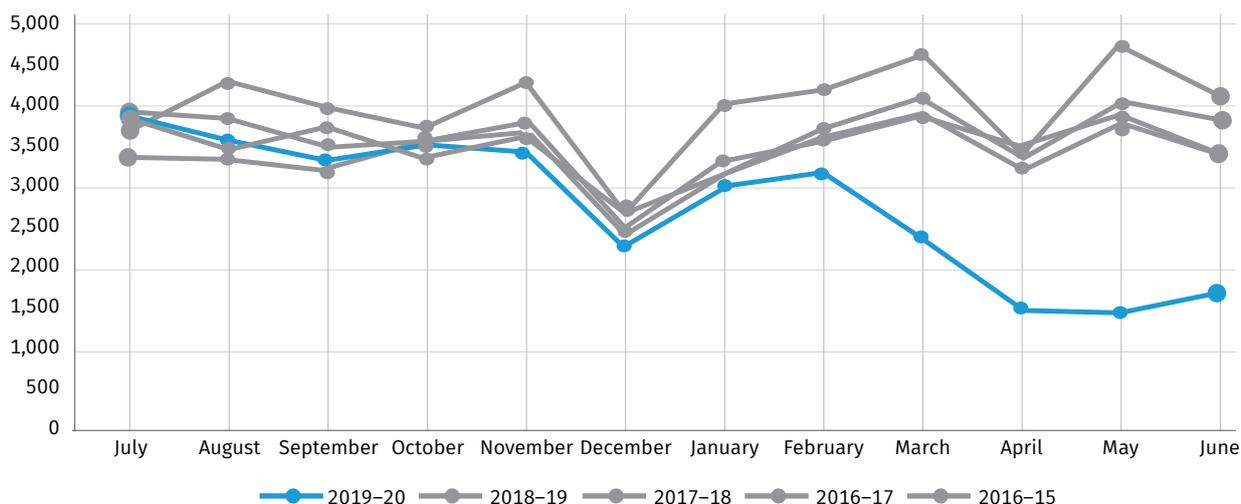
**Figure 5: How we receive contacts**



We received contacts most frequently by phone, followed by emails and online complaint forms.

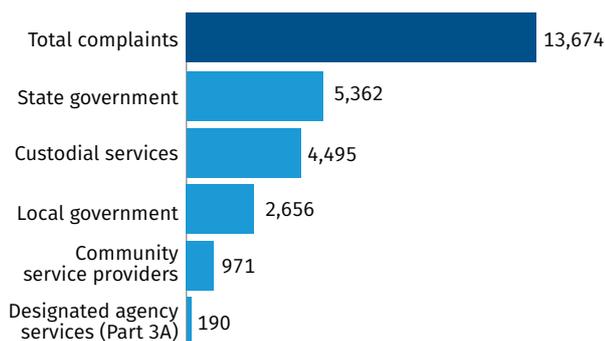
1. During this financial year, we have continued to refine how we classify contacts to our office. In the process of making changes, there may be some adjustments to the way data is classified over time. Last year, we included Feedback Assist contacts under complaints. We now report Feedback Assist separately. Misdirected contacts and excluded complaints were reported together in 2018–19 as contacts we have no jurisdiction to deal with.

**Figure 6:** Contacts received each month, over the past five financial years



## 8.2. Actionable complaints

**Figure 7:** Actionable complaints by sector



In 2019–20, we received 13,674 actionable complaints. Of these complaints

- 39% were about state government agencies, including departments, statutory bodies and other agencies but excluding custodial services
- 33% were about custodial services
- 19% were about local government
- 7% were about community service providers, including some Department of Communities and Justice services
- 1% were about designated agency services under Part 3A of the Ombudsman Act (employment-related child protection function). This function was transferred to the Office of the Children’s Guardian on 1 March 2020. Under Part 3A, designated agencies are government agencies and some non-government agencies that are required to notify the Ombudsman of ‘reportable allegations’.

## 8.3. Excluded complaints

In 2019–20, we received 1,133 complaints that are about a public authority or community service provider, but involve conduct that is not within our jurisdiction. Some examples are complaints about:

- the NSW Police Force, which we mostly refer to the Law Enforcement Conduct Commission
- recruitment decisions made by public authorities which, even though the agency may be in our jurisdiction, is excluded conduct.

Conduct of public authorities which is excluded from our jurisdiction is set out in Schedule 1 of the Ombudsman Act.

## 8.4. Requests for information

In 2019–20, we received 4,462 requests for information or other inquiries. Of these:

- 3,658 were general inquiries
- 680 were information or advice requests from agencies in relation to reportable allegations or convictions
- 124 were matters relating to public interest disclosures.

These contacts are not complaints, but nevertheless we work to understand their issues and to provide them with clear and helpful advice about what they can do.

## 8.5. Notifications

In 2019–20, we received 2,721 notifications, including:

- 1,265 notifications of reportable allegations or convictions against employees working with children in NSW received from 1 July 2019 to 29 February 2020 (see Section 12.1)
- 61 notifications of reportable allegations or convictions of reportable incidents or behaviour that may involve a reportable incident for people with disability living in supported group accommodation (see Section 12.2)
- 761 notifications from Youth Justice about segregation and/or separation of detainees for more than 24 hours (see Table 2)
- 483 notifications of the deaths of children (see Section 14.2)
- 151 notifications of the deaths of persons with disability in residential care (see Section 14.3)

### Reportable conduct by employees working with children

Table 1 shows the notifications of reportable conduct received from 1 July 2019 to 29 February 2020 by agency type. The total number of notifications received in this period is 6% lower, compared to the same period in 2018–19.

The majority of notifications of reportable conduct were from designated agencies providing statutory out-of-home care and the education sector (schools).

### Reportable incidents involving people with disability

Part 3C of the Ombudsman Act requires the Department of Communities and Justice (DCJ) and DCJ-funded disability services to notify us of any

allegations of serious incidents involving people with disability residing in supported group accommodation. We oversight the actions and systems of these providers to prevent, handle and respond to specified reportable incidents across four areas:

- employee-to-client incidents – any alleged sexual offence, sexual misconduct, assault, fraud, ill-treatment or neglect
- client-to-client incidents – any alleged assault that is a sexual offence, causes serious injury, involves the use of a weapon, or is part of a pattern of abuse of the person with disability by another person with disability living in the same accommodation
- contravention of an apprehended violence order (AVO) taken out to protect a person with disability, and
- an unexplained serious injury.

The 61 notifications of reportable incidents received in 2019–20 comprised:

- 59 notifications by DCJ of reportable incidents, involving residents in its accommodation services, and
- 2 were about non-government operators

Our Part 3C work in relation to the protection of people with disability is discussed in greater detail in section 12.2.

### Youth Justice segregations

A young person in custody may be segregated from other young people for their personal safety, or the safety of another detainee or person, including staff. They may also be separated because they belong to a specific class of detainee or for another specific reason (eg a young female being admitted into a centre for males, or several young people contracting an

**Table 1:** Notifications about reportable conduct by employees working with children

Type of agency	Number	%
Designated agencies – Children and Young Persons (Care and Protection) Act (non-government and government agencies)	653	52
Department of Education (schools)	335	26
Non-government schools (independent and Catholic)	93	8
Approved children's service	101	8
Department of Communities and Justice	44	3
All other agencies	39	3
<b>Total</b>	<b>1,265</b>	<b>100</b>

**Table 2: Notifications about segregation and separation**

Youth Justice Centre	Segregation	Separation	Total	Average daily occupancy	Rate (notifications per daily occupancy)
Cobham	42	154	196	75	3
Frank Baxter	28	145	173	55	3
Reiby	26	116	142	35	4
Acmena	15	103	118	20	6
Orana	16	66	82	15	5
Riverina	5	45	50	20	3
<b>Total</b>	<b>132</b>	<b>629</b>	<b>761</b>	<b>220</b>	<b>3</b>

infectious disease). Neither segregation nor separation are to be used as forms of punishment, but are intended to enable the assessment and mitigation of safety and risk.

The Children (Detention Centres) Regulation 2015 requires Youth Justice to notify us if a young person has been segregated for more than 24 hours. Several years ago Youth Justice agreed they would also notify us when a young person is separated or confined for more than 24 hours, as the impact on them is similar to being segregated. The Youth Justice database – CIMS – automatically generates these notifications to us via email. The notifications allow us to review the current situation and the form of management for the young people we are notified about. We also contact the relevant centre if we have any specific queries or concerns.

In 2019–20, we received 761 notifications from Youth Justice across its six centres (see Table 2 above). Our monitoring of the segregation of detainees is discussed further in Section 9.5.

### Deaths of children and persons with disability

Part 5A and Part 6 of the CS CRAMA Act require agencies such as the Registrar of Births, Deaths and Marriages and the State Coroner to notify us of the deaths of children in NSW, and persons with disability in supported accommodation.

In 2019–20, we received 634 notifications, including:

- the deaths of 483 children that occurred in NSW (of which 14 were ‘reviewable deaths’)
- the deaths of 151 persons with disability in supported group accommodation.

Our work in relation to reviewing these deaths is described in Chapter 14.

## 8.6. Misdirected contacts

In 2019–20, we received 9,426 contacts that were not about a public authority or community service.

Where possible, we provide information, advice and/or referral to help direct the complainant to the right authority.

In 2020–21 we are proposing to implement a number of projects to reduce the number of misdirected contacts received by our office. These include improving our website’s information and user experience, improved voice referral systems and other technologies. These projects will help to improve our office’s productivity by maximising the time allocated to actionable complaints. Some of these projects will be dependent upon additional funding.

## 8.7. Feedback Assist

Our office is responsible for managing and directing feedback from the community that is received via the ‘Feedback Assist’ widget on the [www.nsw.gov.au](http://www.nsw.gov.au) as well as misdirected feedback that has been received by other agencies through the widget that is on their websites.

In 2019–20, we received 1,620 complaints, suggestions and compliments. Our role is to triage these inquiries to the appropriate agency and in some cases provide advice to the customer. We received far fewer contacts via the NSW Government’s Feedback Assist this year following a review and consolidation of NSW Government agency websites.

## 9. Dealing with complaints

The Ombudsman's complaint-related responsibilities are set out in Part 3 of the *Ombudsman Act 1974* and Part 4 of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*. Under these Acts, any person can make a complaint 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) or
- the conduct of certain community service providers with respect to service provision, failure to provide, withdrawal, variation or administration of a community service.

These complaints can include matters that are assessed as public interest disclosures.

We can also undertake inquiries or investigate conduct as above without receiving a complaint or referral. Complaints initiated by us ('own-motion complaints') can arise from information that comes to our attention through our oversight of reportable conduct, our death review functions, our various monitoring functions, and our community engagement activities.

We handle complaints about the conduct of:

- **NSW state government departments and authorities.** There are now nine principal departments in NSW. Each is made up of a range of agencies that fall within the jurisdiction of our office. They include:
  - NSW government bodies (eg. Department of Education, Department of Customer Service, Department of Communities and Justice – Housing Services, NSW Land and Housing Corporation, NSW Trustee and Guardian, Revenue NSW, Transport for NSW, Roads and Maritime Services, TAFE NSW)
  - statutory bodies<sup>2</sup> (eg. NSW Education Standards Authority, NSW Rental Bond Board, Building Professionals Board, Health Care Complaints Commission, NSW Trains, and State Transit Authority of NSW)
  - state-owned corporations<sup>3</sup> (eg Sydney Water Corporation, WaterNSW, Essential Energy and Landcom)
  - public universities in NSW

- **local councils, councillors and council staff.** We can look at the conduct of councillors and council employees and the administrative conduct of the council itself. Forty-eight local government areas in NSW cover 128 local councils and 10 county councils.

- **custodial services** (eg Corrective Services NSW, Justice Health and Youth Justice NSW). We also take complaints about private correctional centres, such as Junee and Parklea. In total, we take complaints from 46 correctional centres, and deal with complaints about a range of custodial services, such as court cell complexes.

- **community service providers**, including services provided, authorised or licensed by the Minister for Family and Community Services<sup>4</sup>. This covers non-government providers, including:

- community support and development (1,600 organisations)
- early intervention (295 organisations)
- child protection (51 organisations)
- short-term accommodation and homelessness supports (145 organisations), and out-of-home care and permanency support (494 organisations).

We have a range of options for dealing with complaints. These options include referral to another body that can deal with the issues at hand, preliminary inquiries (verbal and/or written), conciliation, and, in cases when we think the problem is very serious, formal investigation.

We also monitor issues arising from complaints to identify and respond to systemic issues.

### 9.1. Complaints we handled in 2019–20

In 2019–20, we received 13,674 new actionable complaints. The vast majority (13,327 or 97%) of complaints received in 2019–20 were closed within the same period. In 2019–20, we finalised 13,739 open complaints. The number of complaints finalised during the year includes some matters (577 or 4%) that were received in 2018–19. We finalised most complaints within 30 days (see Table 3).

2. Statutory authorities are listed in Schedule 2 of the Public Finance and Audit Act.

3. State-owned corporations are listed in Schedules 1 and 5 of the State Owned Corporations Act.

4. Sourced from the Department of Communities and Justice's Annual Report, [https://www.facs.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/637243/2017-18-Volume-3-Funds-granted-to-non-government-organisations.pdf](https://www.facs.nsw.gov.au/__data/assets/pdf_file/0007/637243/2017-18-Volume-3-Funds-granted-to-non-government-organisations.pdf)

**Table 3: Time taken to finalise complaints**

Timeframe	Number	%
Under 1 week	9,300	68
8 to 30 days	2,293	17
1 month or more	2,146	16

## 9.2. How we finalised complaints

Of the 13,739 complaints finalised, 11,021 (80%) were finalised after initial assessment and 2,718 (20%) were finalised after further action (see Table 4).

**Table 4: How we finalised complaints**

Action taken	Number	%
Finalised after initial assessment	11,021	80
Further action	2,718	20
<b>Total</b>	<b>13,739</b>	<b>100</b>

### Initial assessment

All complaints receive an initial assessment. In many cases, we are able to finalise complaints by providing advice, by referring a complainant to the relevant part of the relevant agency, or by connecting the complainant directly with a relevant officer within the relevant agency.

### Advice and referrals

Making a complaint should generally start with contacting the agency involved. This provides the agency with an opportunity to respond and resolve concerns at the local level.

If a complainant has not contacted the agency directly prior to contacting us, we may consider the complaint to us to be premature, and advise the person to raise their concern with the agency and come back to us if they are not satisfied with the response.

We have in place arrangements with a number of agencies allowing us to refer these complaints directly (a 'warm referral'), rather than asking the complainant to start over again (a 'cold referral'). We do this with consent, and advise the complainant about our referral. We also tell them that they can contact our office again if they are not satisfied with the response they receive from the agency.

Of the 13,739 actionable complaints finalised in 2019–20, we directly referred 897 complaints to agencies.

### Further action

#### Making preliminary inquiries

In handling a complaint, we can make preliminary inquiries under section 13AA of the Ombudsman Act. In making these inquiries, we ask agencies to provide us with answers to questions raised by the complaint. We may also seek documents that will help us to understand and address the concerns raised by a complainant. Our inquiries can be undertaken by telephone or in writing.

The majority of complaints are finalised following such inquiries. In some cases, the information we obtain results in us deciding that no further investigation is warranted. In other cases, our inquiries prompt agencies to take action to resolve the complaint, or the complainant is able to be given more substantive advice about the matter which addresses their concern.

#### Making comments and suggestions

Under section 31AC of the Ombudsman Act, we can provide information and comments to an agency with respect to a complaint. In practice, we use comments and suggestions to highlight issues that may affect other people in the same or similar circumstances as the complainant. We often make suggestions that may assist the agency to improve policy or practice and address the core issues that may have resulted in or contributed to a complaint.

### Conciliating complaints

Under section 13A of the Ombudsman Act, we may attempt to deal with a complaint by formal conciliation. Participation in a conciliation is voluntary, and either the complainant or conciliator can withdraw at any time.

In 2019–20, we formally conciliated two actionable complaints. Both were successfully resolved through conciliation.

#### Reviews of actionable complaint decisions

In 2019–20, we received 50 requests from complainants asking us to review a decision we had made about their complaint. In most cases the decision was to not investigate the complaint. These internal reviews are undertaken in accordance with our internal review policy. We upheld the original decision in 47 cases we reviewed. There are three open reviews.

## 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 otherwise wrong, the Ombudsman can choose to make the conduct the subject of formal investigation under section 13 of the Ombudsman Act.

Investigations can be conducted in response to complaints and/or in response to systemic issues, whether or not anyone has complained to us about the conduct.

The circumstances in which we might conduct an investigation and examples of our investigation work are detailed further in Chapter 10.

## 9.3. Complaints about state government agencies (excluding custodial services)

In 2019–20, we finalised 5,379 complaints about NSW Government departments and other public authorities.

**Table 5:** Finalised actionable complaints by area and department/authority (excluding complaints about Corrective Services NSW, Youth Justice NSW and the Justice Health and Forensic Mental Health Network, which are covered below in 9.5 Complaints by people in detention or under court-ordered supervision)

Area and department/authority	Actionable complaints finalised	Percentage of total actionable complaints
<b>Communities and Justice</b>	<b>1,548</b>	<b>29</b>
Department of Communities and Justice – Housing	936	17
NSW Trustee and Guardian	290	5
Legal Aid Commission of NSW	63	1
Other	259	5
<b>Transport</b>	<b>729</b>	<b>14</b>
Roads and Maritime Service	456	8
Transport for NSW	261	5
Other	12	<1
<b>Customer Service</b>	<b>614</b>	<b>11</b>
Service NSW	221	4
Fair Trading	194	4
Registry of Births, Deaths and Marriages	48	1
Other	151	3
<b>Planning, Industry and Environment</b>	<b>583</b>	<b>11</b>
Land and Housing Corporation	381	7
Department of Planning, Industry and Environment	50	1
Other	152	3
<b>Treasury</b>	<b>508</b>	<b>10</b>
Revenue NSW	438	8
icare	69	1
Other	1	<1

Area and department/authority	Actionable complaints finalised	Percentage of total actionable complaints
<b>Education</b>	<b>493</b>	<b>9</b>
Department of Education (including public schools)	280	5
TAFE NSW	184	3
Other	29	1
<b>Universities</b>	<b>478</b>	<b>9</b>
Macquarie University	65	1
University of New South Wales	62	1
Charles Sturt University	61	1
Western Sydney University	57	1
Other	233	4
<b>Health</b>	<b>170</b>	<b>3</b>
Health Care Complaints Commission	76	1
Ministry of Health	41	1
Other	53	1
<b>Local Health districts</b>	<b>160</b>	<b>3</b>
Hunter New England	34	1
South Western Sydney	18	0
Western NSW	17	0
Far West	15	0
Western Sydney	12	0
Other	64	1
<b>Premier and Cabinet</b>	<b>55</b>	<b>1</b>
Aboriginal land councils	20	<1
Electoral Commission NSW	12	<1
Department of Premier and Cabinet	11	<1
Other	12	<1
<b>Regional NSW</b>	<b>28</b>	<b>1</b>
NSW Local Land Services	7	<1
Rural Assistance Authority	6	<1
Department of Primary Industries	6	<1
Other	9	<1
<b>Other or agency not named</b>	<b>13</b>	<b>&lt;1</b>
<b>Total</b>	<b>5,379</b>	<b>100</b>

A higher number of complaints about an agency should not be taken necessarily to indicate that that agency is providing inferior service compared to others with lower numbers of complaints. For example, it might be reasonable to expect higher complaint numbers in respect of agencies that have high contact with large numbers of people, and where the services they provide have a significant impact on the daily lives of individuals.

### **Case studies: Departments and authorities**

## **C2. Substandard thesis due to lack of supervision**

**A part-time PhD candidate, who was studying at a university for five years, complained that lack of supervision had had a detrimental impact on their ability to complete their thesis to a satisfactory standard.**

Having completed the draft thesis, they submitted it for mock review by two internal university examiners. They identified substantial issues with the thesis in both scope and methodology and determined it did not meet either PhD or Masters level requirements.

The student considered that there had been poor supervision by university staff for their thesis preparation, and provided correspondence to show they had previously raised concerns with their supervisors. In response to the mock review, the university informed the student that they would need to complete substantial further work for the thesis to meet (at their option) either the PhD or the Masters standard.

The student submitted a complaint about the adequacy of supervision and requested compensation for the time they had spent on their thesis. The complaint was forwarded to the Pro Vice-Chancellor, who undertook to treat the matter as a priority. The student sought updates in the following months but received no information about the complaint's progress.

They lodged a complaint with the Ombudsman's office. In response to our inquiries, the university explained how the delay had arisen.

The parties also agreed to a conciliation of the substantive complaint, which was conducted by an independent and trained conciliator employed by the Ombudsman's Office. The dispute was settled to the satisfaction of both parties on confidential terms.

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## **C3. Driving fine incorrectly issued**

**A part-pensioner complained to us about receiving a penalty notice from Revenue NSW for disobeying a 'left turn only' sign.**

She queried it at her local police stations as:

- she was not the driver of the vehicle listed
- she did not know anyone with that vehicle registration
- she had never driven in that area.

The complainant received an overdue fine from Revenue NSW and was advised that her vehicle registration would be cancelled if she did not pay it.

Revenue NSW advised her to submit a statutory declaration about what had occurred, which she did. The proposed registration restriction was lifted but Revenue NSW advised her that enforcement action would be taken against her for non-payment of the fine.

In response to our inquiries, Revenue NSW told us that it had not received the advice from NSW Police to cancel the fine. NSW Police subsequently issued this advice and Revenue NSW cancelled their enforcement action against the complainant. An officer from Revenue NSW contacted her to explain the situation and to apologise for the inconvenience and distress.

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## **C4. Identity of whistleblower exposed**

**A staff member of a government agency complained about the agency's management of a report of wrongdoing he had submitted regarding suspected corrupt conduct and maladministration.**

We made inquiries with the agency, which advised that the matter had been dealt with under its 'grievance' procedures. Doing so meant that all of the people who were the subject of the allegations were provided with a copy of the complainant's internal report and were advised of their identity. The confidentiality guidelines in section 22 of the Public Interest Disclosures Act, however, provide that the identity of a person who has made a public interest disclosure (PID) should generally be kept confidential.

Disclosing the person's identity limited the options available to ensure that they would be protected from any possible detrimental action in reprisal for having made the report.

We made a number of suggestions to the agency about its management of internal reports about alleged or suspected wrongdoing, all of which were accepted by the agency. As a result, the agency:

- conducted a comprehensive review of the complaint and prepared a report setting out the results of the review and actions implemented
- referred the complainant's internal report to ICAC
- conducted a new assessment of the internal report, determining that the report was, in fact, a PID and subject to the Public Interest Disclosures Act
- notified the complainant of the updated assessment of his disclosure
- conducted a risk assessment of the likelihood that reprisal action would be taken against the complainant and offered additional support to the complainant
- provided additional training to PID officers to assist them to recognise and assess PIDs, including how to distinguish them from employment grievances
- reviewed its internal PID framework, which included:
  - updated PID policy
  - an intranet PID reference page for staff to consult
  - additional training for PID officers
  - briefing the executive to raise awareness of PID requirements
  - creation of PID assessment templates to assist staff in the identification and management of internal disclosures.

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## C5. Management of intestate estate

**When a complainant's partner died intestate, she and their children had been living with the partner in a property owned by him. Shortly after her partner's death, the complainant and the children travelled interstate. She also organised for her personal belongings inside the property to be packed up by a friend, with a plan to collect them at a later date.**

The NSW Trustee and Guardian (NSWTG) was appointed as the administrator of the deceased estate and changed the locks on the property. When the complainant sought to access her belongings she was unable to do so.

Until then, she had been unaware that NSWTG was administering the estate. When she contacted NSWTG, a client service officer told her that the property had already been cleared of all belongings and the house would be sold.

As the complainant was not satisfied with NSWTG's response, we made inquiries and found that the information the complainant received was incorrect – her personal belongings had still been inside the property at the time of her inquiries. However, they were disposed of by NSWTG shortly after.

As a result of our involvement, NSWTG apologised to the complainant and reimbursed her for the estimated costs of the destroyed items. We also provided information to the complainant about NSWTG's processes for identifying next of kin.

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## C6. Decision to allow aged-care resident to return home delayed

**A resident of a nursing home, who was the subject of a guardianship order, wanted to return to live at home with her spouse.**

A request was made to the Office of the Public Guardian (OPG), which neither decided in favour nor against the request. As a consequence, the resident was required to remain in the nursing home. Had the OPG made a decision against the request, the resident's spouse could have lodged an appeal. However, the delay in making a decision meant that no appeal could be lodged unless and until a decision was made. There was no express provision in the relevant statutory scheme for a prolonged delay by the OPG to constitute a 'deemed refusal'.

As a result of the spouse's complaint to us, we suggested a thorough file review to determine the cause of the delay. The OPG advised:

- The review identified areas for improvement including communication and responsiveness.
- A decision in this matter could have been made earlier, which would have allowed the complainant to appeal the decision. If a decision had been made, a reason for decision document would have been provided to the complainant with information about what was required for the OPG to make a decision.

The person under guardianship moved from supported accommodation to a private residence, in accordance with the wishes of the family member who complained to our office.

The recommendations of the review included new policy development, additional training of staff and improvements to induction processes, and prescribed timeframes were included for those recommendations to be implemented.

## 9.4. Complaints about local government

In 2019–20, we finalised 2,604 actionable complaints about local government agencies. The vast majority of these actionable complaints (2,595) were about local councils. The average number of actionable complaints was 21 per local council in NSW. We finalised nine actionable complaints about county councils.

Table 6 shows the top 13 councils with the highest number of actionable complaints and corresponding rate of actionable complaints per 100,000 residents. The actionable complaints about these councils represent more than one-third (36%) of all local government actionable complaints in 2019–20.

The average rate of actionable complaints for all local councils in NSW was 32 per 100,000 residents (see table 7). Some councils receive a low number of actionable complaints but have a higher rate of actionable complaints due to low resident populations.

It is not unusual for metropolitan councils to rank in the top 10 of overall number of council complaints received by the Ombudsman. This is due to their size and population.

### Issues raised in local government complaints

The types of issues people raised with us in 2019–20 were similar to earlier years. The most frequently raised issues include actionable complaints about:

- standards of customer service
- council enforcement action
- charges and fees
- councils reasoning for a decision.

Occasionally we receive a complaint where a council has made a decision that was simply wrong and refuses to change it.

Table 7 groups councils according to regions (see note) in the Sydney area and outside of Sydney. There was no significant difference in the number of actionable complaints for councils in Sydney (48%) versus regional NSW (50%).

The rate of actionable complaints however, was 68 per cent higher for councils outside of Sydney compared to councils in the Sydney area (42 and 25 actionable complaints per 100,000 residents respectively).

A significant number of complaints we received about local government authorities related to delays and inaction contributing to poor customer service and complaint handling. We also experienced delays ourselves, when seeking responses to our inquiries about those complaints. In one case, we wrote to the council asking them to explain how they would improve their customer service – see case study C7.

We finalised 7 complaints about the use of water restrictors by council water authorities. See case study C8 as an example of where we have attempted to resolve such concerns.

## Case studies: local government

### C7. Neighbour dispute

**Neighbours in dispute made complaints about each other's property to the council. The council's delays and reluctance to make a decision resulted in more and escalating complaints and counter-complaints from the neighbours.**

We contacted the council's internal ombudsman service to encourage finalisation of the matter. After protracted delays, we suggested to the council that it improve the timeliness, consistency and effectiveness of its decision making and complaint handling. In response, the council told us that they:

- established a complaints team leader customer feedback role to triage all complaints and follow up complaints not actioned
- advised that it was also moving to introduce a new document management system.

**Table 6:** Finalised actionable complaints about local councils (Top 13 by number)

Council	Number of complaints	% of total complaints	Resident population	Rate-complaints per 100,000 residents
Central Coast	141	5	342,047	41
Canterbury-Bankstown	83	3	373,931	22
Blacktown City	73	3	366,534	20
Sutherland Shire	69	3	229,213	30
Northern Beaches	67	3	271,278	25
Inner West	66	3	198,024	33
City of Sydney	66	3	240,229	27
Mid-Coast	62	2	93,288	66
Bayside	60	2	174,378	34
Lake Macquarie City	58	2	204,914	28
Liverpool City	58	2	223,304	26
City of Parramatta	58	2	251,311	23
Wingecarribee Shire	55	2	50,493	109
<b>Total</b>	<b>916 of 2,540</b>	<b>35</b>	<b>3,018,944</b>	<b>30</b>

Note: Resident population sourced from Australian Bureau of Statistics 2019, Cat no 1410.0 Data by Region 2014–19. Rates are calculated from 2018 population data as 2019 data is not available in latest release.

## C8. Child with advanced hygiene needs

**A single parent of a child with disability, and struggling with financial hardship, found themselves in significant rates arrears with a council.**

The council applied a water restrictor to their property. While this action was lawful, the child's reasonable access to their advanced hygiene requirements was put at risk.

We contacted the council seeking information about the matter's history. We provided information to the complainant about the council's hardship policy and how to apply for hardship relief. We were able to assist the complainant with obtaining an achievable payment plan with the council and negotiated the removal of the water restrictor.

While resolving the immediate issue regarding the child's hygiene needs, we were also able to reconnect the complainant with the council, encouraging them to face the very significant debt that they were not previously addressing.

## C9. Liability for previous homeowner's rates

**We assisted a new homeowner in reversing a council's decision to make them liable for unpaid rates debts.**

Prior to purchasing a property, the complainant obtained pre-purchase certification from the council to confirm there were no outstanding rates debts.

After the property settled, the council realised a rate payment had been incorrectly assigned to that property and reversed that payment. The new homeowner then became liable for the remaining debt. Despite their attempts to reason with the council, the council refused any relief from the debt, which had also begun to accrue interest.

We contacted the council officer involved to seek their reasons and advised them that we thought they had made a mistake. They initially refused to accept our view, but once we obtained internal advice that demonstrated the legal basis for our position, the council reversed its decision.

**Table 7: Finalised actionable complaints about local councils by region**

Region	Number	% of total complaints	Resident population	Rate-complaints per 100,000 residents
<b>Outside Sydney</b>				
Central Coast	141	5	342,047	41
Richmond- Tweed	138	5	251,002	55
South Coast	126	5	227,876	55
Mid North Coast	111	4	225,857	49
Newcastle and Lake Macquarie	100	4	369,018	27
Central West	99	4	208,121	48
Coffs Harbour - Grafton	97	4	141,161	69
Southern Highlands and Shoalhaven	91	4	154,864	59
New England and North West	75	3	183,799	41
Hunter Valley excluding Newcastle	73	3	278,370	26
Illawarra	70	3	311,317	22
Far West and Orana	63	2	117,441	54
Riverina	61	2	151,602	40
Murray	49	2	113,777	43
<b>Subtotal</b>	<b>1,294</b>	<b>50</b>	<b>3,076,252</b>	<b>42</b>
<b>Sydney</b>				
Inner West	139	5	378,212	37
North Sydney and Hornsby	131	5	501,672	26
Inner South West	130	5	532,342	24
City and Inner South	126	5	414,607	30
Parramatta	96	4	488,204	20
Outer South West	89	4	314,528	28
Eastern Suburbs	82	3	287,343	29
South West	80	3	433,916	18
Blacktown	73	3	366,534	20
Sutherland	69	3	229,213	30
Northern Beaches	67	3	271,278	25
Outer West and Blue Mountains	58	2	288,470	20
Ryde	55	2	142,355	39
Baulkham Hills and Hawkesbury	50	2	239,556	21
<b>Subtotal</b>	<b>1,245</b>	<b>48</b>	<b>4,888,230</b>	<b>25</b>
Council not named in complaint	56	2	-	-
<b>Total/average rate</b>	<b>2,595</b>	<b>100</b>	<b>7,964,482</b>	<b>32</b>

Note: Regions are approximate to statistical area 4 (SA4) and sourced from Australian Bureau of Statistics 2019, Cat no 1410.0 Data by Region 2014–19. Rates are calculated from 2018 population data as 2019 data is not available in latest release.

## 9.5. Complaints by people in detention or under court-order supervision

People who are in detention (whether on remand or sentenced) or who are under court-order supervision, such as community-based offenders, can complain to us about the conduct of:

- Corrective Services NSW (CSNSW)
- the privately managed centres at Grafton, Junee and Parklea
- Youth Justice NSW (YJNSW)
- Justice Health.

There are 36 adult correctional centres in NSW accommodating around 13,000 inmates. There are also 60 community corrections offices supervising many thousands of offenders on a range of orders such as parole or intensive corrections orders.

Youth Justice NSW has six youth justice centres across the state where they manage several hundred young people in custody, as well as 35 community offices providing community-based intervention and support for young offenders.

### Avenues of complaints to our office

Complaints to our office from people in detention or under court-order supervision account for about a third of all the actionable complaints we receive (4,495 of 13,674 total complaints). We provide a frontline phone service to people in custody, which is free and unmonitored by correctional or youth justice staff, and which inmates and detainees can readily access in their accommodation units and other areas of their centre. Inmates and youth detainees can send us letters with the postage paid by CSNSW or YJNSW and staff in their centres cannot read mail sent to or from the Ombudsman.

We recognise the vulnerability of people complaining about those who have a large amount of control over their lives, such as correctional and youth justice staff have with inmates and detainees. We visit correctional and youth justice centres across the state and meet with inmates and detainees, as well as staff and centre management, to take complaints, learn about conditions and gain an understanding of the custodial environment.

### Impact of COVID-19

In 2019–20, we finalised 4,487 actionable complaints about custodial services, including adult and youth custodial systems. While we maintained a phone service to people in custody when our physical office closed due to the start of the COVID-19 pandemic in March 2020, our services were reduced and we also were unable to visit centres for several months. Each of these factors affected the number of contacts and actionable complaints we received in the latter part of this year.

### Finalised actionable complaints about the adult correctional system

The majority (3,186 or about 71%) of the actionable complaints we received from people in detention or under court-order supervision involved adult correctional centres.

The average number of actionable complaints was 84 per adult correctional centre in NSW. The average rate of actionable complaints for the adult correctional centre population in NSW was 25 actionable complaints per 100 daily occupants.

The highest number of actionable complaints were:

- Parklea Correctional Centre (447)
- Metropolitan Remand and Reception Centre (MRRC) (338)
- Metropolitan Special Programs Centre (255).

These are the three largest correctional centres in the metropolitan area, with Parklea and MRRC receiving the bulk of people remanded into custody as fresh receptions. People who have just come into custody often have high needs and little knowledge of the correctional system – including how to go about resolving complaints themselves. Our work includes providing that information to them or otherwise assisting them to navigate these processes.

Silverwater Women’s Correctional Centre had the highest rate of actionable complaints of all correctional centres, with 77 actionable complaints per 100 occupants. The centre is the main metropolitan reception centre for women in the state and manages women with the highest security needs and most challenging behaviours while they are in custody. Both these factors contribute to the high level of contacts we receive from the centre.

Of all correctional centres' actionable complaints, 74% were from maximum security classified centres. Given the restrictions that come with maximum security classification, it is unsurprising that these inmates are also likely to have higher numbers of complaints.

### Issues raised in complaints about adult correctional services

The main issues we received complaints about in adult correctional centres related to (in order of the number of complaints):

- daily routine
- property
- medical
- alleged officer misconduct
- visits.

These main issues vary little from year to year and are explained in detail below.

#### Daily routine

Daily routine can lead to inmate frustration, and results in the most contacts as this is where inmates regularly experience frustration. This will include issues such as:

- recreation areas being unavailable
- spending more time in cells for unexpected operational reasons, for example, staff shortages
- being unable to access telephones
- insufficient hygiene items.

This year there were additional impacts on daily routine flowing from changed separation arrangements and sometimes the need for medical isolation as Corrective Services NSW took measures to keep the custodial system free of COVID-19. During the pandemic, each inmate has been:

- separated from others for 14 days from the time of their arrival into custody
- questioned about locations visited and activities carried out before coming into custody
- assessed if they present with COVID-like symptoms
- tested for COVID-19.

This approach has helped to ensure that the system has remained free of COVID-19 this year apart from two instances of health staff testing positive (presumably from exposure outside of the system).

#### Visits

Another area of regular complaint is visits. The start of the year saw the focus of these complaints mostly being about visitor bans or restrictions. This shifted in March 2020 to lack of visits when CSNSW suspended all social visits for inmates in response to COVID-19. As the decision was a policy decision based on medical advice and we had no basis for considering that decision to be unreasonable in the circumstance, our office did not take action on these complaints. We remain in regular contact with CSNSW about their plans for recovery from pandemic imposed restrictions on inmates, including visits.

We note, however, that in response to the suspension of visits, CSNSW brought forward their planned roll out of the use of digital visits, both on tablets set up in visiting areas at centres, and by using the audio visual link (AVL) suites when they were not in use for professional visits or court. Since then many inmates have told us how they enjoy the use of technology to have visits with their family and friends 'in their home' and the fact they are more convenient for their visitors. Most, however, would like to see a mix of 'in person' and virtual visits so they can have necessary human interaction with their significant others, particularly for those who have children.

#### Alleged officer misconduct

While allegations of officer misconduct also appear as a main complaint issue, this category encompasses relatively minor allegations ranging from an officer speaking inappropriately to an inmate to more serious matters, such as excessive use of force or assault.

We refer the more serious complaints to the Commissioner seeking an internal investigation which we oversight. We maintain oversight of the investigation to the point where we consider all avenues of inquiry have been covered and satisfactory outcomes determined.

#### Property

Every month thousands of inmates relocate within their current centre or move to other centres across the state. Each time this creates an opportunity for property to go missing. This can be due to an inmate not following proper process but the problem also arises when staff do not follow their processes. We advise inmates on how to pursue lost property internally. We only intervene in those matters where there is some urgency or the internal process has not provided a proper resolution.

## Systemic issues

The case studies we have included give an insight into the issues we work with in the adult correctional system. While many are about our work with individuals, we may receive the same complaint from several inmates in one centre – or even from several inmates across a range of centres. Where we identify systemic problems, we may conduct a formal investigation. However, we aim to resolve both individual and systemic issues through less intensive means, while still driving positive change where needed.

## Other work with the adult correctional system

In June 2019 ICAC issued a report on Operation Estry, an investigation into corrupt conduct around the use of force in Corrective Services. In that report they made 19 corruption prevention recommendations some of which built on recommendations we had made in earlier investigations. These recommendations also covered areas about which we receive complaints. During this past year we received briefings from CSNSW as they continued to implement changes

to their internal reviews of use of force. This is relevant to how we assess these complaints going forward.

In May 2020 we attended the Metropolitan Remand and Reception Centre along with the Inspector of Custodial Services to review the field hospital built as a precaution when the COVID-19 pandemic started. It was clear from early 2020 that if the virus made its way into the correctional system it could be devastating as people live and work in close proximity. In addition, many inmates have compromised health and complex health needs. The hospital presented an impressive and appropriate response to the threat of COVID-19 in the correctional setting.

When the COVID-19 pandemic began, we started having teleconferences with an Assistant Commissioner at CSNSW several times a week. The frequency has reduced as we move through the pandemic but they are still held at least weekly to ensure both agencies keep abreast of any changes, particularly those related to COVID-19.

See case studies C10 to C13.

**Table 8: Finalised actionable complaints about adult correctional centres**

	Number of actionable complaints	% of total actionable complaints	Average daily inmate population	Rate (complaints per 100 daily occupants)
<b>Maximum security</b>	<b>2,343</b>	<b>74</b>	<b>7,582</b>	<b>31</b>
Parklea Correctional Centre	447	14	1,174	38
Metropolitan Remand Reception Centre	338	11	785	43
Metropolitan Special Programs Centre	255	8	1,055	24
South Coast Correctional Centre	212	7	770	28
Silverwater Women's Correctional Centre	184	6	238	77
Mid North Coast Correctional Centre	184	6	750	24
Shortland Correctional Centre	180	6	510	35
Wellington Correctional Centre	151	5	565	27
Lithgow Correctional Centre	142	4	391	36
Goulburn Correctional Centre	69	2	460	15
High Risk Management Correctional Centre	56	2	93	60
Mary Wade Correctional Centre	47	1	69	68
Macquarie Correctional Centre	42	1	339	12
Hunter Correctional Centre	30	1	345	9
Special Purpose Centre	6	0	38	16

	Number of actionable complaints	% of total actionable complaints	Average daily inmate population	Rate (complaints per 100 daily occupants)
<b>Medium security</b>	<b>547</b>	<b>17</b>	<b>2,421</b>	<b>23</b>
Junee Correctional Centre	189	6	810	23
Bathurst Correctional Centre	105	3	530	20
Dillwynia Correctional Centre	90	3	225	40
Grafton Intake Centre	47	1	85	55
John Morony Correctional Centre	38	1	410	9
Cooma Correctional Centre	24	1	177	14
Tamworth Correctional Centre	18	1	62	29
Berrima Correctional Centre	14	0	35	40
Kariong Correctional Centre	13	0	20	65
Broken Hill Correctional Centre	9	0	67	13
<b>Minimum security</b>	<b>296</b>	<b>9</b>	<b>2,212</b>	<b>13</b>
Cessnock Correctional Centre	82	3	413	20
Dawn De Loas Correctional Centre	60	2	424	14
Emu Plains Correctional Centre	42	1	117	36
Geoffrey Pearce Correctional Centre*	39	1	254	15
Kirkconnell Correctional Centre	22	1	257	9
St Heliers Correctional Centre	22	1	238	9
Oberon Correctional Centre	17	1	128	13
Illawarra Reintegration Centre**	7	0	N/A	N/A
Glen Innes Correctional Centre	4	0	158	3
Mannus Correctional Centre	1	0	161	1
Compulsory Drug Treatment Centre	0	0	42	0
Ivanhoe Correctional Centre	0	0	13	0
Brewarrina 'Yetta Dhinnakkal'	0	0	7	0
<b>Total</b>	<b>3,186</b>	<b>100</b>	<b>12,215</b>	<b>26</b>

\* Outer Metropolitan MultiPurpose Correctional Centre changed its name to Geoffrey Pearce Correctional Centre this year.

\*\* Illawarra Reintegration Centre was decommissioned part way through 2019–20.

Note: Many correctional centres have multiple levels of security, which for this table are grouped according to their highest level.

Note 2: Daily average inmate population for the month of June 2020. Information supplied by Corrections Research, Evaluation and Statistics, Corrective Services NSW. 'Rate per 100 population' is based on the occupancy rate provided to us by CSNSW as at 30 June.

## Finalised actionable complaints about the youth justice system

In 2019–20, we finalised 137 actionable complaints about youth justice centres. The average rate of complaints for the juvenile justice centre population in NSW was 62 complaints per 100 daily occupants.

Young people in detention do not contact us as regularly as adults in custody. In that context, our visits to youth justice centres, and our monitoring of notifications about segregation and separation exceeding 24 hours, are particularly important.

As with the adult correctional system, there was an impact on our service when our office closed in March 2020 due to COVID-19. We maintained a phone service for young people in custody but we postponed our visits for a few months.

We actively monitor the notifications we receive from Youth Justice about segregation/separation of young people. In 2019–20, we received 761 segregation/separation notifications from Youth Justice across its six centres.

Notifications reporting separation of over 24 hours increased with the necessary introduction of routine separation for new receptions in response to COVID-19, as well as for the isolation of those who display symptoms. While these separations may be considered 'routine' in the current times, it is still a significant impact on a young person in custody and we review those notifications with the same approach as those which occur in other situations, such as for a person's safety.

### Issues of complaint in the youth justice system

We categorised the main issues of the actionable complaints we received about the youth justice system this year (in order of the number of complaints) as:

- daily routine
- alleged officer misconduct
- medical
- food and diet.

#### Food

Food is an important focus for young people and especially so when they are unable to make choices about what they eat. When we make inquiries, we usually find that complaints are about individual preferences rather than concerns about the quality or safety of food. Occasionally young people want more food than they receive, which may suggest that quality is not their primary concern.

#### Alleged officer misconduct

Officer misconduct is a broad category from rudeness or perceived favouritism by staff to serious allegations of assault or force used excessively or unnecessarily. While we record it as one of the main areas of contact with us, few involve the use of force or assault.

#### Other work with the youth justice system

We met regularly with senior staff at Youth Justice NSW and centre managers. The second part of 2019 saw some unrest in one of the youth justice centres. We visited that centre to establish how the young people and staff were managing, and were being managed, after the incident.

We attended briefings and provided feedback on the Enhanced Support Unit for young people at the Frank Baxter Youth Justice Centre, and the High Risk Management Units at both Frank Baxter and Cobham Youth Justice Centres.

We participated in the Voice2Action Steering Committee, which is a project jointly initiated by Youth Justice NSW and the Department of Customer Service to bring the voices of children and young people into decision-making processes. This is a part of the YJNSW policy to ensure that Youth Justice is a child safe agency.

Youth Justice continued to implement recommendations made by the Inspector of Custodial Services in her 2018 report. Use of Force, Separation, Segregation and Confinement in NSW juvenile justice centres published in November 2018.

One of the recommendations led to the introduction of a new module on the YJNSW database to allow us to run reports to show if any young person has had cumulative periods of segregation, separation or confinement. The system was previously unable to generate this level of information.

We now also have full access to the incident module in the client information management system (CIMS) database providing us with the ability to proactively oversight the use of force in youth justice centres.

We were consulted in Youth Justice's review of their internal complaint-handling process and were pleased to see the initiative taken to ensure the voices of young people has been included and they are well supported when making a complaint.

See case study C14.

**Table 9:** Finalised actionable complaints about juvenile justice centres

Youth Justice Centre	Number of actionable complaints	% of total actionable complaints	Average daily inmate population	Rate (complaints per 100 daily occupants)
Cobham	46	34	75	61
Frank Baxter	34	25	55	62
Reiby	22	16	35	63
Acmena	14	10	20	70
Orana	12	9	15	80
Riverina	9	7	20	45
<b>Total</b>	<b>137</b>	<b>100</b>	<b>220</b>	<b>62</b>

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

Agency	Number	%
Justice Health	611	52
Corrective Services NSW*	324	28
Long Bay Hospital	89	8
Community Offender Services	65	6
State Parole Authority	22	2
The Forensic Hospital	19	2
Court Escort/Security Unit	17	1
Youth Justice*	8	1
Amber Laurel Transitional Centre	4	0
Corrective Services Academy	2	0
Women's transitional centres	1	0
The Balund-a (Tabulam) Program	1	0
Serious Offenders Review Council	1	0
<b>Total</b>	<b>1,164</b>	<b>100</b>

\* Corrective Services and Youth Justice refer to the agency itself, rather than to correctional or detention centres.

## Finalised actionable complaints about other custodial services and agencies

In 2019–20, we finalised 1,164 actionable complaints about other custodial and corrections-related services, mainly Justice Health and Corrective Services NSW.

Complaints we categorise as being about Corrective Services NSW or Youth Justice NSW are those where the issue relates to the system rather than a specific correctional or youth justice centre.

### Our work with Justice Health

While the number of actionable health-related complaints fell this year, they still comprised 53% of all 'other' finalised complaints about other custodial services, which is the same as for the previous year.

### Opioid substitution therapy

Opioid substitution therapy (OST) is generally administered daily to the inmates and must be observed by clinic staff to be taken by them.

Justice Health began to move inmates who were receiving various forms of OST to a form which is delivered by a monthly injection. Inmates initially viewed this change with some caution and they contacted us to establish if this was 'allowed'. Once the benefits of the new system became clear, we received more contacts from inmates who felt their access to the program was taking too long.

The delivery by a depot injection removes:

- the possibility of diversion of the medication
- the standovers for the diverted medication
- the potential for assault or other intimidation from such standovers.

We initiated specific contact with the Client Liaison Unit at Justice Health to ensure we were able to connect with them regularly to obtain advice about the OST changes, provide feedback we were receiving from inmates, and request information about some specific complaints. We took the same approach with the medical providers at the privately managed correctional centres.

### Correspondence policy

This year Justice Health consulted us about their correspondence policy for patients at The Forensic Hospital. As persons detained by a public authority these patients are given privilege in their correspondence with us under the Ombudsman Act. Due to the symptoms of their illnesses, some patients are not permitted to write to some people. We provided comment to ensure their privileged access to this office was properly considered in the correspondence policy review.

### Our work with the Inspector of Custodial Services

We maintain a strong working relationship with the Inspector of Custodial Services. Under the Ombudsman Act, we have an established information-sharing agreement which allows us to share relevant information, and provides for the Inspector to refer to us matters she considers could be complaints under the Ombudsman Act. The Inspector has made several referrals of this kind and we continue to provide relevant information drawn from our complaints database at the Inspector's request where this can assist in their preparation for inspections or reviews.

## Case studies: Complaints about custody

### C10. Inmate's right to examine or cross-examine witnesses

**We received a complaint that an inmate had not been afforded the right to examine a witness in circumstances where the inmate was alleged to have committed a correctional offence.**

Section 52(2)(c) of the *Crimes (Administration of Sentences Act) 1999* allows an inmate 'to examine or cross-examine witnesses' where the inmate is being alleged to have committed a correctional offence in their correctional centre. Our review of complaints, under s 13AA of the *Ombudsman Act 1974*, indicated the policy and procedure of Corrective Services NSW (CSNSW) did not provide sufficient clarity about this entitlement of an inmate to call witnesses.

We raised this matter with CSNSW, which reviewed its procedures. These procedures require that, as part of the inmate misconduct process, the officer conducting an inquiry into an alleged correctional centre offence make a record of the proceedings. The record is made on a form called the Inmate Discipline Action Form (IDAF) and comprises:

- evidence relied on to bring the charge
- the finding (guilty/not guilty)
- any punishment

In this case CSNSW amended the IDAF to make a record about the involvement of any witness in the hearing, including the reasons why a witness was disallowed. The IDAF was also amended to record the time of day the hearing was conducted.

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### C11. Inmate discipline process

**As part of this case, we reviewed the discipline process, particularly the need for an inquiry prior to punishment.**

We received five separate complaints about how a correctional centre managed the inmate discipline process. The inmates complained that they had been found guilty of a correctional offence without a hearing having been conducted. Our preliminary inquiries identified potential concerns regarding the administration of the discipline process, particularly its compliance with policy.

This includes a requirement that an inquiry is to be held into an alleged correctional centre offence before any punishment may be imposed.

We referred the cases to the Corrective Services NSW (CSNSW) Operational Performance Review Branch (OPRB), which is responsible for monitoring the performance of the privately-managed correctional centre. The OPRB review found evidence of deficiencies in the way the inmate discipline process had been administered. The OPRB discussed the compliance issues with the governor and a decision was taken to quash the guilty findings.

The correctional centre was made aware of the necessary improvements to the way in which they administer inmate discipline.

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## C12. Excessive force used on inmate

**Our review of excessive force used on an inmate led to misconduct charges against the officers involved.**

An inmate was at Long Bay Hospital Correctional Centre for medical reasons. He refused to go on an escort and was forcibly moved by officers. He claimed that officers used excessive force when they moved him, and that they assaulted him.

We referred the allegations to Corrective Services NSW (CSNSW) for a professional standards review. CSNSW conducted a fact-finding inquiry and sent us that report, CCTV footage and the documents relied on in the inquiry. CSNSW advised misconduct charges would be laid against an officer as a result of the fact-finding inquiry; the misconduct related to how the inmate received an injury to his eye and also about the reports submitted by the officer.

We reviewed the reports, documents and footage and suggested to CSNSW that misconduct charges should also be considered against other officers involved in the incident who also submitted reports that appeared to be incorrect.

CSNSW acted on our suggestion. Once the misconduct process was complete, the Commissioner advised us that four officers had been formally reprimanded, and one officer was reduced in his classification for 12 months and permanently removed from a role in an immediate action team.

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## C13. Urine sample procedure not correctly followed

**Our review of the procedure for capturing a urine sample resulted in a charge on an inmate's record being removed.**

An inmate from the Metropolitan Remand and Reception Centre complained about being unfairly disciplined following a urinalysis test. He alleged that the procedure for capturing samples was not followed correctly and that his sample was not tested within the seven-day period, as required by the Custodial Operations Policy and Procedures (COPP).

We reviewed the relevant COPP and made initial inquiries with the governor who agreed to reduce the penalty imposed on the inmate. We requested copies of relevant documents when we contacted the governor. After reviewing those documents, we wrote to the Commissioner making more inquiries about the testing process and the procedures set out in the COPP.

Following our inquiries, the Commissioner agreed with our view that the inmate should not have been charged, as the testing of the specimen was conducted outside of the period allowed for the testing to take place. The Commissioner advised us the charge had been removed from the inmate's custodial record.

Our inquiries also pointed to some inconsistency in the published procedures which CSNSW has now rectified.

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## C14. Young person told she could not attend school

**Our inquiries regarding a young person being prevented from going to school if she self-harmed led to a review.**

A young person at a youth justice centre told us that she had been informed she could not go to school because of self-harming. She disputed that claim and asked us to intervene about the perceived unfairness of the decisions about who can go to school and when.

We made contact with the centre and raised her concerns, as it appeared that the reason she was given for not being able to go to school (the incidence of self-harm) may not have justified that decision. We were told by the centre there had been some issues with the young person's behaviour and that self-harm was not the only

consideration in whether she was allowed to go to school. The centre manager told us they would discuss her concerns with the school principal to make sure young people are given clear and consistent reasons for any removal from school by both centre and school staff.

We visited the centre shortly after this contact and heard from more young people about similar problems. We had a response from the school about these issues, but it did not fully address our concerns, and we discussed this with the centre manager. We also discussed the process for when young people wanted to complain about school staff or related issues and it was confirmed that youth justice staff would assist them with those complaints.

The centre manager had further meetings with the school. The principal later provided us with a comprehensive response to the issues raised, including the importance of providing reasons to young persons for not being allowed to attend school, and providing information about how young people can complain about issues relating to the school.

**Table 11:** Finalised actionable complaints about community service providers

Service area	Number	%
Out-of-home care - foster care	347	33
Statutory child protection	324	31
Out-of-home care – kinship care	205	19
Out-of-home care – intensive therapeutic care	59	5
Early intervention/family support	52	5
After care/leaving care	18	2
Specialist homelessness services – adult	14	1
Disability services	12	1
Adoption	9	1
Specialist homelessness services – youth	7	<1
Voluntary out-of-home care	3	<1
Neighbourhood centres	2	<1
Out-of-home care – other	3	<1
<b>Total</b>	<b>1,055</b>	<b>100</b>

## 9.6. Complaints about community service providers

We handle and resolve complaints about community services under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* CS CRAMA Act and monitor and review how these services are delivered. Community service providers include:

- some Department of Communities and Justice (DCJ) services including child protection, out-of-home care (OOHC) and leaving care support
- organisations funded, licensed or authorised by the Minister for Families, Communities and Disability Services, including
  - assisted boarding houses
  - child protection and OOHC services
  - early intervention and family support services, and
  - homelessness services.

In 2019–20, we finalised 1,055 complaints about community service providers.

### Child and family services

Most community service complaints are about child and family services. In 2019–20, we finalised 1,027 complaints about child and family services.

### Complaints about statutory child protection and early intervention services

Thirty-one per cent of finalised complaints about community service providers during 2019–20 related to DCJ’s management of statutory child protection functions and five per cent related to the adequacy of early intervention and family support services.

Most of these complaints were from parents who objected to having their children removed. The decision to remove a child from their family is made by the Children’s Court and our office cannot review a decision made by a court. However, we can review the support provided to a family before a child is removed. This is particularly relevant for Aboriginal and Torres Strait Islander families.

During 2019–20, we made a number of inquiries with DCJ about how it supported families to stay together. If that was not possible, our inquiries focused on the extent to which DCJ consulted with wider family networks regarding the

placement of children, and provided support to families after the removal of children, with a view to restoring children when and where possible (see case study C15).

### **Out-of-home care issues**

Out-of-home care services (OOHC) include foster care, kinship care and intensive therapeutic care. Sixty per cent of complaints about community service providers that we finalised during 2019–20 related to out-of-home-care services.

The most common complaints raised during 2019–20 included:

- case management of children and young people in OOHC
- the adequacy of responses to inquiries and requests
- complaint handling by OOHC agencies
- the adequacy of planning for children and young people in OOHC.

### **Family contact arrangements**

Several complaints raised during 2019–20 related to contact arrangements between children in OOHC and their families. When we receive these complaints, we make inquiries with the service provider about how the provider is supporting the children and young people to maintain cultural and family connections (case study C16).

### **Financial assistance for carers**

We continued to receive complaints from kinship and foster carers about the provision of financial assistance.

Grandparents often step in to provide kinship care to their grandchildren when parents are not able to care for their children. Caring for grandchildren can have a significant financial impact on grandparents and other kin carers.

We make inquiries about financial assistance, particularly when it appears that financial concerns are affecting the stability of the placement (see case study C17).

### **Intensive Therapeutic Care**

Intensive Therapeutic Care (ITC) is for children and young people over 12 years with complex needs, who are unable to be supported in kinship or foster care or need specialised and intensive support. The ITC service providers must make sure there are therapeutic specialists available to

address the young people's individual needs, develop and monitor case plans and support their transition to independence.

We finalised 59 complaints about ITC services during 2019–20. Several of these complaints were made by the young people accessing the services. When young people complain to us, we can visit them to discuss their concerns and then raise these concerns with the service provider.

Several of the complaints were submitted by Official Community Visitors (OCVs). OCVs are appointed by the Minister for Community Services to regularly visit ITC service providers. Issues raised about ITC included:

- whether the young people had been placed in a household which appropriately matched their needs
- whether the ITC service provider appropriately addressed the young people's complex needs, and
- how ITC services were managing complex behaviours, including absconding, substance abuse and lack of engagement in education (case study C19).

### **Support for young people leaving care**

Young people exiting OOHC require additional support to transition to independent living, because they may not have any assistance or support from their family. Case management agencies are responsible for completing a Leaving Care Plan in consultation with the young person, their carers, their family members and other key stakeholders. Leaving Care Plans should address health care, education and accommodation needs. We received several complaints about leaving care support during 2019–20 (case study C19).

### **Adoption process**

In NSW, adoption orders are made by the Supreme Court and our office cannot review these decisions. However, we do receive complaints about how accredited adoption agencies manage the process leading up to the Supreme Court application.

Under the *Adoption Act 2000*, adoption services are provided by or on behalf of the Secretary of the Department of Communities and Justice. Adoption agencies are accredited by the Children's Guardian.

Accredited adoption agencies are responsible for making sure that:

- applications for adoption are screened and assessed, and
- applications are lodged in the Supreme Court.

Our office received nine complaints about adoption during 2019–20. The complaints mainly related to delays by the accredited adoption agency in screening and assessing adoption (see case study C18).

### Homelessness services

DCJ funds a number of providers in NSW to provide specialist homelessness services.

We received 21 complaints about homelessness services during 2019–20. Issues included:

- difficulty in gaining access to homelessness services
- the services delivered to clients
- complaint handling by homelessness services.

### Assisted boarding houses

DCJ authorises and licenses boarding houses accommodating two or more people with additional needs. Additional needs are defined as disability, mental illness or age related frailty. The Boarding Houses Regulation 2013 places obligations on assisted boarding houses as to minimum staffing levels, employment screening, complaint handling and provision of food and nutrition. Our office receives complaints about these issues from residents, disability advocacy organisations and OCVs.

## Case Studies: Community services

### C15. Culturally appropriate placement for baby and support for parents

**The Department of Communities and Justice (DCJ) removed the baby of a young Aboriginal woman with a disability soon after his birth. A member of her community lodged a complaint on her behalf that DCJ had not complied with the Aboriginal Placement Principles.**

The woman wanted support to care for her baby but if that was not possible, she wanted her baby placed with kin.

We asked DCJ to provide detailed information about casework conducted prior to and after the removal of the baby. DCJ advised:

- Some casework had been conducted while the woman was pregnant, but it had not established that the woman identified as Aboriginal.
- An Aboriginal consultation was not held until after the baby's removal, when NSW Health advised DCJ that the woman was Aboriginal.

After removing the baby, DCJ transferred case management to an Aboriginal OOHHC agency and the baby was placed with an Aboriginal carer. The two agencies worked together with the National Disability Insurance Scheme (NDIS) complex care coordinator to provide support to develop the mother and father's parenting and independent living skills and both parents spent time with the baby twice a week.

We established:

- The complainant and her advocate were satisfied that the baby was in a culturally appropriate placement and that the mother had adequate contact with the baby.
- The mother was happy to continue to work with involved agencies to build her parenting and independent living skills.
- There was no evidence that DCJ breached the Aboriginal Placement Principles.

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## C16. Regular contact between sisters both in care

**An Aboriginal young person in an out-of-home care (OOHC) foster placement complained that she was not having regular contact with her sister, who was also in care.**

As a result of our inquiries, the OOHC agency sought a resolution to the young person's concerns and advised that contact had not occurred regularly and that there had been a number of difficulties in maintaining the contact arrangements, including that contact had been dependent on the young person's carer funding travel and other necessary arrangements.

The agency agreed:

- to fund the young person's travel
- to take a more active role in ensuring contact occurred between the young person and her sister, including putting in place a contact schedule between the young person and her sister, which we provided to the young person
- to consider overnight contact for the young person and her mother
- to contact the young person directly to apologise for failing to ensure regular contact occurred.

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## C17. Carers allowance ceased after moving interstate

**The grandparents of a child, whose mother had died and whose father was not involved in the child's life, were provided with financial assistance by way of the Supported Carers Allowance (SCA) provided by DCJ. However, when the grandparents and the child moved to an interstate location, the payments ceased.**

As a result of our inquiries, DCJ acknowledged it had not contacted the grandparents prior to ceasing the payments and their community services centre had not provided them with the application form that would have enabled them to continue the SCA after their move interstate.

DCJ apologised to the grandparents for the lack of communication and delays and advised their SCA would be reinstated and backdated.

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## C18. Delays in adoption application

**We received a complaint from the carers of two children about delays in their adoption application.**

The children were under the parental responsibility of the Minister for Families, Communities and Disability Services and there was no prospect of them being restored to their birth family. The carers had applied to adopt the children, but four years had passed. The delay by the adoption agency in progressing the adoption application had a significant impact on the prospective adoptive parents and the children.

After making inquiries we ascertained that six different managers had overseen the children's case management and there had been seven caseworkers and three different regional managers in the four years from when the application was made to when the complainants contacted our office. Through this process we:

- established that a question about the children's Aboriginal heritage had been raised but not investigated.
- made suggestions about how the agency's services could be improved including that information concerning possible delays be escalated to an appropriate level of management so that delays could be minimised.

As a result of our inquiries, the agency:

- reviewed the matter and put in place systems that enabled the organisation to better track adoption and other case plans
- took the decision to investigate the children's Aboriginal heritage
- ensured that the adoption application was lodged with the Supreme Court.

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## C19. Transition difficulties with new Intensive Therapeutic Care placement

We received a complaint from a young person who had recently transitioned from one Intensive Therapeutic Care (ITC) placement to another ITC placement. The young person said she was not happy at the new placement. When we asked her why, she said she did not know who to ask about assistance with transport to medical appointments and how to manage her personal budget.

We asked the provider for more information about why the young person had been moved. We also asked about the support they were providing to the young person in her new placement.

The provider advised that the young person had expressed dissatisfaction with her previous placement. The provider set up a new ITC residence and considered that the young person would be a good match with the other residents moving into the new ITC service.

As a result of our inquiries, the service provider arranged a meeting with the young person and her Department of Communities and Justice (DCJ) caseworker to discuss concerns, including her transition to the new placement, her needs regarding assistance with appointments and her budget.

We called the young person after this meeting and she reported that she was happy in her new placement.

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## 9.7. Complaints related to employment-related child protection

This annual report covers the Ombudsman's administration of the Scheme for the period 1 July 2019–29 February 2020, under Part 3A of the Ombudsman Act. On 1 March 2019, we transferred 54 open actionable complaints about reportable conduct matters to the Office of the Children's Guardian, when the reportable conduct scheme moved under the new *Children's Guardian Act 2019*.

Between 1 July 2019 and 29 February 2020, we finalised 209 actionable complaints about agencies conduct and/or handling of reportable conduct matters, including 28 actionable complaints that we initiated.

More than three quarters of the actionable complaints were about approved children's services, government and non-government schools, and non-government out-of-home care (OOHC) providers (see Table 12).

We made inquiries into 48 cases before finalising, and closed three investigations that we initiated in previous years.

A full account of the reportable conduct scheme, including its transfer, can be found in Chapter 12: Reportable conduct.

**Table 12:** Finalised actionable complaints about agency conduct and handling of reportable allegations or convictions

Type of agency	Number	%
Approved children's service	61	30
Non-government schools - (independent and catholic)	53	25
Non-government designated agency	34	16
Department of Education (schools)	24	11
Other agencies	37	18
<b>Total</b>	<b>209</b>	<b>100</b>

## 10. Investigations, monitoring and systemic reviews

Formal investigations are resource and time-consuming activities. We only use them for the more complex and serious cases where the alleged conduct, if proven, would meet the threshold set out in section 26 of the Ombudsman Act.

In most cases, we investigate systemic issues and look to make recommendations that can influence change in the future. In deciding to investigate, we consider:

- the scope and impact of the alleged conduct, especially whether the issues are likely to affect others and/or affect people who are vulnerable and have few other avenues of redress
- how the responsible agency or service provider has responded to the concerns raised, and whether any action has been taken that may address the concerns
- whether there are alternative actions to investigation that would effectively resolve the issue, or other reasonable avenues of redress.

Not all systemic issues we identify meet investigation thresholds, and in some cases we do not need to use formal investigation powers to collect the information needed to consider an issue. These issues are still very important and can have an impact on the effective delivery of government and community services. In these cases, we may undertake targeted project work.

### 10.1. Investigations

A new Investigations Unit was created within the Ombudsman as part of a recent restructure. It forms part of the Complaints and Investigations Branch. This is the first time the Ombudsman has had a dedicated group of staff tasked with conducting investigations under the *Ombudsman Act 1974* and the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS CRAMA).

**Investigations can result from individual complaints or conduct. Where it appears that the conduct of a public authority or a community service provider could reach a threshold for investigation, the Ombudsman can also investigate whether or not any person has complained to us. We refer to these**

**investigations as being of our ‘own motion’.** Relevant conduct may come to our attention through our various functions, for example, reviewing deaths or providing assistance with public interest disclosures.

In 2019–20, we managed 16 investigations. Of these, we:

- initiated seven investigations that remained open as at 30 June 2020
- had four ongoing investigations that were initiated in previous years and remained open as at 30 June 2020
- finalised five investigations that were initiated in previous years. One of these investigations was discontinued.

Under section 17 of the Ombudsman Act, our investigations have to be conducted in the absence of the public. This is to ensure privacy to individuals and afford procedural fairness to those we make adverse comments or findings about. Where the Ombudsman makes a finding of wrong conduct under the Ombudsman Act, we prepare a report and provide it to the relevant agency. The Broken Hill investigation case study is an example of this type of work.

It is a matter for the relevant Minister and agency whether a report from the Ombudsman is made public. However, under section 31 of the Ombudsman Act, the Ombudsman can prepare a special report which is tabled in Parliament and the Ombudsman will usually do this when an investigation has raised a systemic issue or a matter of public interest.

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### C20. Broken Hill City Council

**In 2017, the Ombudsman became aware of the possibility that Broken Hill City Council had breached the *Environmental Planning and Assessment Act 1979* (EP&A Act) by allowing its civic centre, which was undergoing refurbishment, to be used for public functions without an occupation certificate as required by the EP&A Act. The council was the consent authority for the centre’s development and was therefore the regulatory authority under the EP&A Act. The civic centre was classed ‘high risk’ by the Building Code of Australia as it was a public assembly building and an entertainment venue.**

We investigated and found that the civic centre had been used on multiple occasions without either an interim or a full occupation certificate in place for all the areas used.

This investigation has highlighted a potential issue within the current regulatory regime under the EP&A Act. An inherent conflict of interest exists when a local council is responsible for regulating a development for which is also the proponent and the consent authority. We plan to issue a report to Parliament dealing with this issue shortly.

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## 10.2. Monitoring and systemic reviews

### 'More than shelter' review

In June 2018 in our report, *More than shelter – addressing legal and policy gaps in supporting homeless children*, we made recommendations to improve services for children presenting alone to homelessness services in NSW.

Shortly after we tabled the report in Parliament, the Department of Family and Community Services (now the Department of Communities and Justice (DCJ)) confirmed it was working on or planning to address each of our recommendations. The children affected by our recommendations are aged 12–15. The scope of DCJ's policy excludes children under 12, because they are deemed too young to be in a youth refuge, and young people over 16.

In December 2019, we asked DCJ to provide a progress report on:

- how DCJ had dealt with the lack of decision-making authority for homelessness services where parental consent for children is unobtainable or limited
- whether DCJ had made much-needed improvements to the policy, data collection and monitoring arrangements for these children.

DCJ responded to our questions in January 2020. Because DCJ did not provide what we considered sufficient evidence of progress, we decided to prepare an analysis and report to Parliament about DCJ's progress in implementing our recommendations, and addressing the substantive issues of our original inquiry. Our report will be tabled in late 2020.

### Access to specialist homelessness services by people with complex needs.

A single complaint to our office can be enough to raise concerns about systemic problems. This was the case in late 2018, when we received a complaint about a young woman's difficulties in accessing homelessness services.

She had very complex needs, challenging behaviour and a lengthy child protection history. She was either evicted from homelessness services or denied access to them because of her previous behaviour.

Her case raised questions about whether the service system was functioning as intended, including by providing integrated responses to people with high or complex needs.

Her case had parallels with an Ombudsman inquiry in 2004, which examined people with complex needs being excluded from homelessness services or leaving them early including those with mental illness, disability, drug and alcohol abuse and a history of violent behaviour.

Our inquiry recommended reforms aimed at ensuring that services maintained non-discriminatory and fair access and exit practices.

Over the past year, as part of our response to the recent complaint, we have collected information from specialist homelessness services and DCJ about policy and practice issues relating to access to services. We have decided to prepare a discussion paper on the issues and to seek submissions on it from DCJ, the providers and the peak groups – Homelessness NSW and Yfoundations. We expect to report publicly on our research in due course.

### Monitoring community services

One of our functions under the CS CRAMA Act is to monitor and review the delivery of community services and related programs.

Since 2014, we have used a process – known as the integrated governance framework – for tracking progress by the former Department of Family and Community Services (FACS) in achieving systemic reform and addressing issues we identified through our work. In 2018–19, we used this process to publish a Joint Ombudsman and FACS Report card on those systemic and practice issues.

This year, we and DCJ agreed that the process could be improved. We have decided to replace our previous process with a new approach that

focuses on contemporary reform initiatives across the community services sector, including areas such as child protection and out-of-home care. In recent years, these areas have been subject to numerous inquiries and reforms.

Next year, we intend to apply this new approach by examining how well the child protection system is delivering on its main goals of keeping vulnerable children safe and reducing entries to out-of-home care.

### 10.3. Asbestos management

Asbestos management responsibilities extend across multiple NSW government agencies and local government. The potential danger of asbestos as a public safety issue is widely recognised.

In 2010 and again in 2017, we tabled special reports in Parliament about asbestos management. Our 2017 report, *Asbestos – How NSW government agencies deal with the problem*, noted substantial progress on asbestos management but that some key issues had not been resolved. The report included over 20 recommendations and highlighted the need for a coordinated approach to asbestos management across government. We called for the NSW Environment Protection Authority (EPA) to take a lead role and for dedicated funding to be provided. Our office also considered the need for evaluation and remediation of sites containing friable asbestos.

In response to our recommendations, in 2019 the NSW Government endorsed the establishment of a new statutory advisory committee to the EPA – the NSW Asbestos Coordination Committee (NACC) – which replaces the previous asbestos coordination body. The NACC is taking a cross-sector whole-of-government approach to asbestos issues. Its working group, chaired by the EPA, meets frequently and is working on a range of issues including: the coordination of bushfire communications about asbestos; remediation of legacy asbestos in Aboriginal communities; regulatory arrangements surrounding the management of asbestos in soils; and social research to gauge which approaches would be the most effective in ensuring community safety. The government has allocated \$12.7 million over four years for delivery of a range of programs relating to the statewide NSW Asbestos Plan, such as community behaviour change campaigns.

Our work was instrumental in strengthening coordination of asbestos management with the establishment of the NACC and securing dedicated government funding. Most of our report recommendations have now been completed or are well underway, and the EPA and the NACC will continue to progress this significant public safety issue.

Certain recommendations relating to remediation of asbestos will take some time to be finalised given the cost and complexity of the issues involved. We will continue to watch closely how the government manages asbestos issues.

## 11. Public interest disclosures: Promotion, monitoring and advice

The *Public Interest Disclosures Act 1994* (PID Act) encourages public officials to report serious wrongdoing by providing them with certain legal protections when they do. The term 'public official' refers to public sector staff, contractors of agencies and people performing statutory functions, including volunteers. The PID Act also deters detrimental action from being taken in reprisal for a person making a public interest disclosure (PID), by providing that such action constitutes a criminal offence, grounds for disciplinary action, and grounds for seeking compensation.

Our functions under the PID Act include:

- promoting public awareness and understanding of the PID Act
- providing information, advice, assistance and training to agencies, investigating authorities and public officials on any matters relevant to the PID Act
- issuing guidelines and other publications to assist agencies, investigating authorities and public officials
- auditing and monitoring the exercise of functions under, and compliance with, the PID Act by agencies
- providing reports and recommendations about proposals for legislative and administrative changes to further the objectives of the PID Act
- supporting staff who are handling and investigating PIDs made to our office about maladministration
- convening and supporting the work of the PID Steering Committee.

All public authorities are required to collect and report certain information in relation to their handling of public interest disclosures. This information has to be reported directly to our office every six months and included in the public authority's annual report.

We also chair and convene the Public Interest Disclosures Steering Committee, which provides advice to the Minister on the operation of the PID Act, and recommendations for reform. The Steering Committee also provides advice to the Minister on reports we prepare in discharging our functions under the Act.

The Act requires us to table an annual report on our oversight functions, and separately, an annual report of the activities and recommendations of the PID Steering Committee. Reports for 2019–20 are being prepared and will be tabled in Parliament and published on our website.

In the PID annual report, we will detail our activities in the following areas:

- **Monitoring systems:** auditing and monitoring the exercise of functions under and compliance with the PID Act by agencies.
- **Engagement and advice:** developing and maintaining good professional relationships with agencies to promote awareness of the PID Act, provide support and guidance, identify any problems and respond appropriately.

## 12. Reportable conduct

### 12.1. Children

#### Overview of reportable conduct scheme

The NSW child-related reportable conduct scheme (Scheme) requires government agencies and some non-government agencies to notify the Ombudsman of 'reportable allegations' against or 'reportable convictions' of their employees, and to take appropriate steps to respond to those allegations.

Until March 2020, Part 3A of the *Ombudsman Act 1974* set out the Ombudsman's responsibilities in relation to the Scheme, which were:

- to receive notifications of reportable allegations and convictions and, where it is in the public interest, monitor the progress of agencies' handling of those notifications of allegations or convictions
- to receive complaints about and, if necessary, investigate, reportable allegations and convictions, or any inappropriate handling of or response to reportable allegations or convictions (either in response to a complaint or on the Ombudsman's own motion)
- to keep under scrutiny employers' systems for preventing, handling and responding to reportable allegations and reportable convictions.

Reportable allegations are allegations of 'reportable conduct', or allegations of conduct that might involve 'reportable conduct'. 'Reportable conduct' includes sexual offences or sexual misconduct committed against, with or in the presence of a child; assault, ill-treatment or neglect of a child; or behaviour that causes psychological harm to a child. A 'reportable conviction' is defined as a conviction (including a finding of guilt without the court proceeding to a conviction), whether in NSW or elsewhere, of an offence involving reportable conduct.

#### Transfer of Scheme to Children's Guardian

The Royal Commission into Institutional Responses to Child Sexual Abuse recommended that a single oversight body be responsible both for the Scheme and for monitoring and enforcing Child Safe Standards. In October 2018, the NSW Government announced its intention, in line with that recommendation, to transfer the Scheme to the Children's Guardian.

Throughout 2019–20, our office worked with the Children's Guardian and other stakeholders to support and assist with the transfer of the Scheme to the Guardian, and to provide input on proposed legislative reforms to the Scheme. Those reforms, and the transfer, were effected by the *Children's Guardian Act 2019*, which passed responsibility for the administration of the Scheme to the Children's Guardian on 1 March 2020.

This annual report covers the Ombudsman's administration of the Scheme for the period 1 July 2019–29 February 2020, under Part 3A of the Ombudsman Act, prior to the transfer of and changes to the Scheme. The Children's Guardian will report on the administration of the Scheme in the period 1 March 2020–30 June 2020 in its next annual report.

Information about notifications is set out below. Information about complaints related to the Scheme is set out in section 9.6.

#### Notifications of reportable conduct

From 1 July 2019–29 February 2020, we received 1,265 notifications of reportable allegations or convictions. Consistent with previous years, notifications of reportable conduct most frequently involved allegations of physical assault of a child (33%) and allegations of a sexual nature (30%). The types of allegations notified varied by sector. For example:

- approximately two-thirds (67%) of the physical assault and neglect allegations were from the out-of-home care sector
- Nearly half (44%) the sexual offence allegations and nearly three quarters (71%) of sexual misconduct allegations involved education sector employees.

We closed 737 notifications. Of those, we:

- assessed 108 as not being in jurisdiction or exempt from notification and we therefore had no role in these matters
- actively oversaw 289, of which we monitored 113
- assessed 340 as not warranting ongoing monitoring.

On 1 March 2020, when the Scheme transferred to the Children's Guardian, we also transferred 1,954 open notifications.

## Child safety standing committee work

As reported in our 2018–19 annual report, we established the Child Safety Standing Committee for Survivor and Faith Groups. The committee was created to assist in extending the reportable conduct scheme to the faith sector, in line with a recommendation of the Royal Commission into Institutional Responses to Child Sexual Abuse. We worked on a guide to help faith organisations in their engagement with survivors of abuse. The resource was developed in close consultation with individual survivors of abuse in faith settings and survivor support and advocacy groups. We also received valuable insights and information from several faith organisations. We would like to take this opportunity to thank all those organisations and individuals for their expert advice and thoughtful contributions.

The guide aims to increase understanding of:

- how faith organisations can support survivors of abuse
- how faith organisations can use the knowledge and experience of survivors to improve their current child safe practices
- the importance of using a trauma-informed approach.

When we transferred the Scheme to the Children’s Guardian, it became responsible for the finalisation of the guide. *Engaging Sensitively with Survivors – A Guide for Faith Organisations* was published in May 2020 and can be accessed at [www.kidsguardian.nsw.gov.au](http://www.kidsguardian.nsw.gov.au).

## 12.2. Disability reportable incidents

Under Part 3C of the *Ombudsman Act 1974*, certain service providers are required to notify the Ombudsman of reportable incidents and allegations involving people with disability in supported group accommodation. Our role is to oversee or monitor agency investigations into reportable incidents. The purpose of this function is to help improve the systems for preventing, handling and responding to reportable disability incidents.

Since July 2018, the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission has required NDIS registered service providers to notify it of any reportable incidents and allegations. The Ombudsman has continued to handle reportable incident matters notified

prior to July 2018 and oversees reportable incidents involving people with disability living in supported group accommodation operated by the Department of Communities and Justice (DCJ).

We anticipate that DCJ will transfer all residents to NDIS registered providers by the end of 2020.

## People with disability in supported group accommodation

### Notifications received

In 2019–20, we received 61 notifications of reportable allegations. With the exception of one notification from an NDIS registered provider involving an incident which allegedly occurred before 1 July 2018, all notifications involved people with disability living in DCJ operated supported group accommodation. We received a total of 231 notifications in the previous year and 837 notifications in 2017–18. The reduction in the number of notifications received by the Ombudsman over the last three years is due to the commencement in July 2018 of the NDIS Quality and Safeguards Commission.

We finalised 130 notifications with 69 of those matters involving DCJ operated accommodation and 61 involving NDIS registered service providers.

### Notifications of employee-to-client allegations

We received 12 employee-to-client notifications in 2019–20, 11 of which were in jurisdiction. Allegations of neglect were the most frequently reported allegation against employees (4 notifications, followed by ill treatment (3), physical assault (3) and sexual offence (1).

Our oversight of employee-to-client allegations involves:

- an assessment of the agency’s risk management in relation to the employee who is the subject of the allegation
- a review of the client support given in regards to their safety, access to medical assistance and ongoing care
- an assessment of the investigation’s adequacy, the appropriateness of the agency’s finding based on the available evidence and the reasonableness of any action taken once the investigation is complete.

## Notifications of unexplained serious injuries

Serious injury may include fractures, burns, deep cuts, extensive bruising or concussion. In 2019–20, we received 41 notifications of unexplained serious injuries. Incidents of serious bruising and unexplained fractures were the leading type of injury notified. See Table 13.

We work with providers to help ensure that their review into the person’s injury considers all possible contributing factors such as:

- any identified client health care risks or behaviours
- environment factors, such as equipment or trip hazards
- whether the injury may have been caused by another client or an employee.

We also assess the risk management action taken by the provider to help prevent or reduce the likelihood for the client of further injuries.

**Table 13:** Notifications of unexplained serious injury

Issue	Number	%
Serious bruising	21	52
Fracture	9	22
Serious laceration	5	12
Other	4	10
Eye injury (including black eye)	1	2
Serious burn	1	2
<b>Total matters</b>	<b>41</b>	<b>100</b>

## Notification of client-to-client incidents

In 2019–20, we received eight notifications for client-to-client reportable incidents, which included four notifications for a pattern of abuse by clients towards their co-resident(s); two of assault causing serious injury; and two of sexual offence.

We focus on the action taken by the provider to manage any identified risks for the clients. This may include a review of client compatibility, care needs and supervision arrangements.

We look at the steps taken by the provider to meet the client’s ongoing support in areas such as:

- behaviour management
- medical or allied health
- community participation.

Often, pattern of abuse notifications involve circumstances where a person’s behaviour affects other residents by causing physical or emotional harm. These notifications have consistently been a leading type of client-to-client notifications reported to the Ombudsman since 2015–16. See Table 14.

**Table 14:** Notifications of client-to-client matters

Year	Total number of client-to-client notifications	Pattern of Abuse	% of total
2015–16	246	134	54
2016–17	234	117	50
2017–18	238	115	48
2018–19	35	23	66
2019–20	8	4	50

## 13. Working with communities

### 13.1. Community engagement

#### Our work with Aboriginal communities

The NSW Ombudsman works with Aboriginal communities across a range of areas, including in relation to the provision of community services and child protection, out-of-home care, disability services, local council services, Aboriginal land councils, housing, youth justice and corrections.

Our work with Aboriginal communities is led by our Aboriginal Inclusion and Community Engagement Unit (AICEU). That unit provides Aboriginal strategic and cultural expertise and guidance across the office, undertakes community and stakeholder engagement and outreach, and pursues systemic projects to identify areas of improvement. In particular, we look at ways the government can work with communities on the changes needed to deliver real and lasting improvements to the lives of Aboriginal people. We also review the efficiency and effectiveness of service delivery to some of the most disadvantaged locations in NSW.

#### Aboriginal protocols, cultural competency framework and consultation

We have in place an office-wide cultural competency framework that:

- aims to enhance professional competence through the introduction of cultural protocols training for all NSW Ombudsman staff, in addition to cultural awareness and cultural competency training
- is underpinned by key performance indicators to track satisfaction from our Aboriginal stakeholders and complainants
- ensures a minimum level of cultural competency in relation to handling complaints received from or that concern Aboriginal people

The framework is supported by an Aboriginal consultation protocol and guidance. This protocol ensures that our Aboriginal Inclusion team is informed and consulted whenever we handle complaints about Aboriginal people's experiences with:

- child protection and out-of-home care
- Aboriginal land councils
- Stolen Generation – access to records
- Aboriginal sites of cultural significance

- NSW Education (including its Connected Communities Strategy).

Our Aboriginal Inclusion team is also involved in projects or investigations across the office that directly affect Aboriginal people and their communities.

#### Increasing Aboriginal participation in child protection decision making

We have previously reported on the partnership between the Grandmothers Against Removals NSW (GMAR NSW), DCJ and our office. This partnership resulted in the development of the Guiding Principles for strengthening the participation of local Aboriginal communities in child protection decision making. After the launch of the Guiding Principles, the Guiding Principles Yarning Circle (GPYC) was formed to drive and oversee the implementation of the principles.

We are an observer on the group, which has been meeting regularly since September 2016. It includes representatives from GMAR NSW, DCJ, AbSec, the Aboriginal Legal Service and an Aboriginal child and family service.

We have provided advice to the GPYC relating to:

- data – noting the importance of establishing robust data collection and analysis to understand how DCJ districts are implementing the principles in practice and whether they are having an effect for Aboriginal children and their families
- governance – stressing that regular reporting of data by districts is critical, together with continued strong buy-in from the secretary and deputy secretary responsible for the performance of individual community services centres (CSCs) and districts
- complaints – continuing to share and analyse data about complaint trends
- connecting reforms – emphasising the need for the Guiding Principles and related work to implement the recommendations from the 'Family is Culture' review to be well integrated.

## Case studies: Working with Aboriginal communities

### C21. Maintaining cultural connections for Aboriginal children

**The complainant's two children had been removed from their care. They expressed concern over the quality of the children's cultural plans.** We worked with the non-Aboriginal complaints officer to review the cultural plans and consulted with an Elder from the children's country. We then provided detailed feedback to DCJ including, that the children's cultural plans needed to provide a specific link back to their country and needed to provide resources and experiences from the children's country. DCJ acknowledged our suggestions and undertook to make the necessary changes.

### C22. Consulting local Aboriginal women in decisions about their children

**We met with a group of strong Aboriginal women in a regional area who wanted to be considered as a Local Aboriginal Reference Group under the Guiding Principles.** There had been two newborn removals in the community and the Aboriginal children had not been placed with kin. We supported the group to approach their local Department of Communities and Justice office to work collaboratively with them to provide much needed local knowledge about appropriate family members who can take children whilst their parents work with DCJ. We will continue to encourage and support these engagements.

### Connecting with young people and with people from culturally and linguistically diverse backgrounds

We continue to engage with diverse stakeholders to identify and address issues relating to the delivery of services to people from culturally and linguistically diverse backgrounds. We have undertaken extensive consultations and

participated in various outreach activities to identify the issues for youth and for the broader community of newly arrived migrants and refugees. The outcomes of these engagements inform the broader project work of our office, ensure we are accessible to these groups, and help to identify systemic issues.

During this reporting period we:

- Hosted several information stalls – including two events for Mission Australia's Family Fun Day; EWON's Anti-Poverty Forum; CMRC Community Services Expo and the St George Migrant Information Day.
- Delivered a workshop to Tamil refugee women to inform them of our services and support them to overcome the barriers to access.
- Delivered an information session to staff at CORE Community Services in Fairfield on how to support their clients from a refugee background to make complaints.
- Developed new fact sheets about how to make complaints for people from a migrant or refugee background.
- Attended Multicultural NSW's Regional Settlement Workshop in Albury and participated in discussions focused on identifying and addressing issues for newly arrived migrants and refugees.
- Attended the Moree and Central Coast Cooperative Legal Service Delivery Program to discuss and identify local community issues for vulnerable groups.

Over the past year we have focused on building relationships with government and non-government service providers that work in the settlement context. Actions include:

- face-to-face consultations with policy staff at the Department of Premier and Cabinet to gain insight into their policy position in relation to regional settlement issues and the needs of new arrivals
- liaising with Legal Aid's Community Legal Education Team and with staff at EWON to discuss opportunities to collaborate on the delivery of initiatives to improve outcomes for vulnerable groups
- ongoing communication with staff at Multicultural NSW to inform our project work with people from culturally and linguistically diverse communities

- participating in events organised by the Multicultural Youth Advocacy Network (MYAN) and hearing from youth ambassadors discuss issues for young people from a migrant or refugee background.

## 13.2. Aboriginal programs

Since July 2014, we have had legislative responsibility under Part 3B of the *Ombudsman Act 1974* for monitoring and assessing designated Aboriginal programs. The first program we are responsible for overseeing is OCHRE, the NSW Government's plan for Aboriginal affairs, which was launched in April 2013. OCHRE stands for:

- opportunity
- choice
- healing
- responsibility
- empowerment

OCHRE 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. It includes the following key initiatives: Connected Communities (15 Schools), Local Decision Making (8 Regional Alliances), Aboriginal Language and Culture Nests (5 locations), Opportunity Hubs (5 service areas), and the Aboriginal Economic Prosperity Framework (AEPF). These initiatives are underpinned by a mandate of 'solution brokerage' coordinated by Aboriginal Affairs NSW and there is a commitment to advance the dialogue in NSW about trauma and healing.

Since commencing our function, our approach has involved providing strategic and timely feedback to agencies to enable them to address any shortcomings or gaps that may limit the capacity of OCHRE to meet its objectives. Our observations have been informed by regular engagement with:

- Aboriginal peak bodies
- leaders and communities
- the agencies and partners responsible for implementing and coordinating.

A key priority in discharging our responsibilities is directly observing progress in locations where OCHRE initiatives are being implemented. To do this, we regularly visit regional and remote communities to hear from Aboriginal community members and other stakeholders about how OCHRE is working 'on the ground'. During 2019–20

we have made 16 visits to different communities across NSW and held 29 meetings with relevant agencies and stakeholders.

While we can handle complaints and formally require agencies to provide us with information we need to carry out our role, we aim to facilitate practical solutions before problems escalate. We also implement proactive engagement principles to identify good or promising practices that could be considered for wider implementation across the government sector.

On 28 October 2019, our OCHRE Review Report was tabled in the NSW Parliament. This was a significant piece of work, which provides a comprehensive assessment of the OCHRE programs over the past five years. Most notably the first five years of OCHRE's implementation clearly demonstrated:

- what can be achieved when individuals with sufficient clout, authority and accountability are given a role to lead particular initiatives and solve intractable problems, such as:
  - the officers in charge of Solution Brokerage declarations
  - Executive Principals in Connected Communities schools
  - the Executive Sponsors for Local Decision Making
- the critical need for robust governance arrangements across agency portfolios in seeking to achieve results – significantly, the Aboriginal Economic Prosperity Framework targets that are on track to be met are those with the strongest governance arrangements in place
- the vital importance of systematically collecting quality outcomes data that is closely tracked at senior levels within government and shared with community leaders to inform decision making and ongoing service planning and delivery
- the importance of government agency staff demonstrating cultural competency – evidenced by them showing respect for, and a deeper understanding of, the Aboriginal communities they serve and delivering on the promises they make.

At the time of writing this report we are waiting for the government to respond to our 69 recommendations.

Other significant achievements made this year include those outlined in the cases studies to this chapter.

## Assessing how OCHRE initiatives address Aboriginal re-offending.

Our office has long highlighted the need for healing, education and employment to address intergenerational trauma and disadvantage that continues to plague Aboriginal communities.

In 2019, the NSW Coalition of Aboriginal Regional Alliances (NCARA) raised the issue of the increasing population of Aboriginal men and women in NSW cycling through the criminal justice system, which is contrary to the intentions of the NSW Aboriginal Affairs Plan - OCHRE. NCARA noted that healing, education and employment opportunities for inmates are essential to break this cycle and its members see this as a major priority area for the NSW Government to address.

Given our office is tasked with reviewing the NSW Government's implementation of OCHRE, we are now considering:

- the impact current programs are having on reducing Aboriginal recidivism
- how the government's Aboriginal Affairs Strategy - OCHRE and other government initiatives might be directed towards addressing Aboriginal recidivism

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## C23. Strengthening accountability - Aboriginal procurement policies.

**The intent of the Aboriginal Procurement Policy (APP) and the Aboriginal Participation in Construction (APiC) policy objectives is to provide an enhanced social, economic and cultural opportunity for Aboriginal people and Aboriginal businesses.** For this reason we established in 2018 the Aboriginal Procurement Advisory Committee (APAC) as part of our monitoring function. A focus area for this committee is to provide timely advice to the government on the strategic application of these two policies and the procurement rules that allow agencies to directly source Aboriginal businesses. To date, there has been several enhancements to the government's strategic application as a result of APAC. These include:

- strengthened focus on implementation at the local/regional level and increasing government accountability through data-driven actions

- increased collaboration and sharing of effective approaches to increasing Aboriginal participation and procurement
- NSW Procurement advise that it would establish a guidance tool and build greater capability in the cluster networks

implementation of appropriate operational structures (such as Regional Leadership Executive) to achieve relevant targets in specific regions and clusters. In addition to the APAC, we will continue to meet regularly with NSW Treasury and NSW Procurement to monitor and assess the progress of these two policies targets.

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## C24. Addressing longstanding issues

**We continue to monitor each Solution Brokerage (OCHRE initiative) declaration that is under the facilitation of Aboriginal Affairs NSW. These declarations aim to address issues affecting Aboriginal communities which no single government agency has a clear mandate to resolve and which consequently may 'fall between the cracks.' The intent of Solution Brokerage is to provide a structured way forward, encouraging fresh and innovative proposals to solve difficult issues.**

At the time of writing this report, the Roads to Home program (managed by NSW Department of Planning), a program declared via the 'Solution Brokerage', is on track to deliver on both community and government expectations for the first roll out phase. Outcomes include a genuine working partnership between Aboriginal people/communities and NSW public servants to deliver on community expectations. These outcomes relate to issues such as roads upgrades and building maintenance, as well as longer term outcomes, notably improved land and housing management options.

Through our monitoring we have been able to support improved governance arrangements including greater data-driven accountability. These arrangements will continue to show benefits as the initiative's roll out continues into the next phase.

## 14. Reviewing deaths

The Ombudsman has two independent statutory functions to review deaths under the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (CS CRAMA):

- (a) The Ombudsman convenes the NSW Child Death Review Team under Part 5A of the CS CRAMA Act. The team registers the deaths of all children in NSW and undertakes specific research and reporting functions to prevent or reduce the deaths of children in NSW.
- (b) Separately, under Part 6 of the CS CRAMA Act, the Ombudsman monitors and reviews 'reviewable' deaths. The deaths that are reviewable are:
  - a child in care or detention
  - a child whose death may be due to abuse or negligence or that otherwise occurred in suspicious circumstances, and
  - a person (child or adult) with disability who was living in supported group accommodation.

### 14.1. NSW Child Death Review Team

The NSW Child Death Review Team (CDRT) is established under Part 5A of CS CRAMA to prevent or reduce the deaths of children in NSW. The CDRT consists of experts in healthcare, child development, child protection and research, as well as representatives of key government agencies. The Ombudsman is the CDRT's Convenor, and Ombudsman staff provide support and assistance for its work, including conducting research and undertaking reviews. Approximately 500 children aged 0–17 years die in NSW each year. The main functions of the CDRT are to:

- maintain a register of child deaths in NSW
- classify those deaths according to cause, demographic criteria and other relevant factors, and to identify trends and patterns relating to those deaths
- undertake, alone or with others, research that aims to help prevent or reduce the likelihood of child deaths and to identify areas requiring further research
- make recommendations that may assist in preventing or reducing the likelihood of
- child deaths.

### Reports to Parliament 2019–20

The CDRT reports directly to the NSW Parliament. In 2019–20, we tabled one report (on 31 October 2019):

#### NSW Child Death Review Team Annual Report 2018–19

Section 34F of CS CRAMA requires the CDRT to report on an annual basis about its operations and activities during the preceding financial year. In CDRT annual reports we include information about the extent to which our recommendations have been accepted and the extent to which those recommendations have been implemented in practice.

This report is available on the [NSW Ombudsman website](#).

The CDRT also reports biennially on data and analysis of all child deaths in NSW, including information about cause of death and trends in deaths over time. The CDRT's most recent biennial report was tabled in Parliament in 2019, and can be accessed on the [NSW Ombudsman website](#).

The CDRT's next biennial report of child deaths will be published in 2021.

### Recommendations

One of the key functions of the CDRT is to make recommendations arising from our work as to legislation, policies, practices and services that could be implemented by government and non-government agencies and the community to prevent or reduce the likelihood of child deaths.

In 2019–20, the CDRT had 19 open recommendations relating to Sudden Unexpected Death in Infancy (SUDI), private swimming pools, road safety (safer vehicle choices, child seatbelt and restraint practices, crash surveillance, low speed run-over incidents and quad bikes) and suicide prevention.

### Research

Research is an important way of examining causes and trends in child deaths, and considering measures to prevent or reduce the likelihood of child deaths. CS CRAMA requires the CDRT to table a research report in Parliament on a triennial basis.

The CDRT currently has several research projects that are either underway or in the planning stage. Two of these projects are:

- social determinants in child deaths – this project aims to examine the nature of links between socio-economic disadvantage and child death

- perinatal asphyxia – this project will examine infant deaths associated with perinatal asphyxia to identify opportunities to improve practice and prevent similar deaths in future.

Further information about these projects is contained in CDRT annual and biennial reports, available on [our website](#).

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## **C25. System reform – working with agencies to prevent the deaths of children.**

**Every year on average in NSW between 40 and 50 infants under the age of 12 months die suddenly and unexpectedly. The CDRT has been working with the government and agencies to improve the response to these types of infant deaths over a number of years, focusing on the roles of police, health, coronial and forensic medicine professionals.**

The CDRT’s work has focused on:

- gathering information about factors associated with, or that may contribute to, sudden unexpected death in infancy
- identifying families who may be at increased risk and working with agencies to ensure they have strategies in place that target support to those most in need
- raising awareness among agencies responsible for responding to these deaths of the importance of a timely, expert-led and comprehensive investigation in order to increase the likelihood that a cause of death can be determined. Understanding why an infant died is crucial to prevention efforts, as well as for parents and carers to understand their loss.

CDRT recommendations have been aimed primarily at addressing gaps identified in the investigation process – starting at the point when emergency services attend an unresponsive infant, through to the role of hospital staff, and on to forensic services. Our work in this area has been reported extensively in CDRT biennial child death and annual reports and we have worked closely with the NSW Coroner’s Office and Forensic Services on a range of issues related to SUDI.

On 29 November 2019, the State Coroner released the findings of an inquest into the deaths of two such infants.<sup>5</sup> The inquest was held in order to determine ‘not only the manner and cause of the deaths ... but also to consider any recommendations as to the adequacy of the policy and procedures of the relevant agencies in responding to [sudden unexpected death in infancy] in NSW’.

The findings acknowledged the work of the CDRT in this area. Four members of the CDRT also directly assisted the inquest as part of a multidisciplinary ‘expert conclave’. A number of the significant issues considered at the inquest addressed previous recommendations made by the CDRT, such as the importance of gathering detailed information about the death incident and the completion of a comprehensive medical history at the hospital, which is provided to the forensic pathologist to assist their ability to determine a cause of death.

The inquest findings noted a number of changes made by agencies over the past few years as a result of the CDRT’s work, and also identified further practical improvements to be made in regard to the management of sudden unexpected death in infancy in NSW. The CDRT will continue to monitor systemic reform in this area and the implementation of its recommendations.

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## **14.2. Reviewable deaths: children**

The Ombudsman has a separate responsibility for reviewing the deaths of children in circumstances of abuse or neglect, and the deaths of children in care or detention. Each year, around 25 deaths of children are reviewable. Under Part 6 of CS CRAMA, the Ombudsman’s functions are to:

- maintain a register of reviewable deaths
- monitor and review reviewable deaths
- undertake, alone or with others, research that aims to help prevent or reduce, or remove risk factors associated with, reviewable deaths that are preventable
- make recommendations as to policies and practices for implementation by government and non-government service providers to prevent or reduce the likelihood of reviewable child deaths.

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5. See [https://coroners.nsw.gov.au/content/dam/dcj/ctsd/coronerscourt/documents/findings/2019/Inquest\\_into\\_the\\_deaths\\_of\\_Kayla\\_Ewin\\_and\\_Iziah\\_OSullivan\\_Findings\\_Final.pdf](https://coroners.nsw.gov.au/content/dam/dcj/ctsd/coronerscourt/documents/findings/2019/Inquest_into_the_deaths_of_Kayla_Ewin_and_Iziah_OSullivan_Findings_Final.pdf). Accessed 31 August 2020.

## Reports to Parliament in 2019–20

Section 43(1) and (2) of CS CRAMA requires the Ombudsman to report to the NSW Parliament on a biennial basis about data collected and information relating to reviewable deaths, any recommendations made and the implementation or otherwise of previous recommendations. In 2019–20, we did not table any reports. The next biennial child death review report will be tabled in 2021.

Since 2019, the CDRT biennial report and the Ombudsman's report of reviewable child deaths have been combined in the one report. The focus of both functions is to help prevent the deaths of children. The combined report brings together the work and findings of both statutory functions and provides for a holistic and contextual approach to the analysis and consideration of trends and issues.

## Recommendations

One of the main functions of our reviewable death function is to formulate recommendations to prevent or reduce the deaths of children in care, children at risk of death due to abuse or neglect and children in detention.

The *Biennial report of the deaths of children in New South Wales: 2016 and 2017, incorporating reviewable deaths of children* (tabled June 2019) included two recommendations that relate to reviewable child deaths. One related to the risks for young people in care and the other to children of parents with mental illness.

Further information about progress by agencies in implementing those recommendations will be included in our upcoming biennial report of child deaths in 2018 and 2019, to be tabled in 2021.

The Ombudsman's most recent biennial report of child deaths was [published in 2019](#).

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## C26. Adding value to a coronial inquest

**On 20 December 2019, the Deputy State Coroner (DSC) released the findings of an inquest into the deaths of a mother and child in the context of suspected murder–suicide.<sup>6</sup> The inquest findings highlight the work and value of our office in relation to an individual case and how our work can assist the work of other organisations, such as the NSW Coroner's Office.**

By way of background, the child's death occurred in 2015 and was identified as a 'reviewable death' under Part 6 of CS CRAMA. In the months immediately after the deaths occurred, our office reviewed the circumstances that led to the fatal incident, and identified significant concerns about the conduct of several agencies involved with the family: the (then) Department of Family and Community Services, Sydney Local Health District and the Sydney Day Nursery Brighter Futures program.

We decided to investigate the conduct of these agencies. The DSC's findings document the numerous issues we identified as part of our investigation, as well as the subsequent acknowledgement by agencies that the issues needed to be addressed. The inquest findings also include a key recommendation from our final investigation report about the need for the three agencies to meet to consider the practice issues and lessons to be learned from the case, particularly those relating to inter-agency practice. The DSC noted our investigation recommendation that the agency discussion should consider:

- the identification of, monitoring of and response to child protection risks – particularly in the context of service provision that is focused on resolving parental vulnerabilities
- inter-agency communication and coordination of service delivery to families with complex needs, in the context of individual services being engaged to target discrete aspects of the family's function
- how the principle of shared responsibility should have applied in practical terms in the case, given the multi-agency involvement and high level of service intervention and activity.

The inquest examined the work of agencies since our investigation, and the findings document shows various initiatives and changes that have occurred in each agency due to our work.

Coroners can make recommendations to seek to address systemic issues, which are highlighted and examined during the course of an inquest. However, in this case the DSC found that, 'having regard to the appropriate remedial action taken by [the agencies] in response to the issues identified in the NSW Ombudsman and coronial investigation, it is unnecessary to make any further recommendations'.

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6. See [https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/TC\\_\\_SN\\_-\\_Findings\\_-\\_redacted.pdf](https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2019/TC__SN_-_Findings_-_redacted.pdf). Accessed 31 August 2020.

### 14.3. Reviewable deaths: people with disability

Under Part 6 of CS CRAMA, we review the death of any person living in, or temporarily absent from, supported group accommodation or an assisted boarding house. This includes supported group accommodation provided by a registered NDIS provider. We focus on identifying issues relating to preventable deaths and making recommendations aimed at helping to reduce preventable deaths. From 1 July 2019–30 June 2020, 151 deaths fell within our remit. This is an increase from the 115 deaths reported in the 2018–19 financial year.

#### Our reviewable deaths function

From 1 July 2019, the National Disability Insurance Scheme (NDIS) Quality and Safeguards Commission (Commission) assumed responsibility for considering the actions of NDIS service providers, including with regard to deaths of NDIS participants, as part of its reportable incidents function. The Commission does not, however, have jurisdiction over state-funded and operated services.

Our death review function includes deaths that occur of people living in supported group accommodation provided by an NDIS service provider or by the Department of Communities and Justice (DCJ) currently provided supported accommodation to a small number of people with disability while they transition to new NDIS providers).

However, where the death occurs in a facility operated by an NDIS service provider, our reviews now largely focus on the person's involvement with the NSW service system and in particular with NSW Health.

In some cases, our reviews highlighted issues that warranted action. Between July 2019 and June 2020, we raised issues with five NSW health services and two other NSW Government agencies. We sought advice from our expert advisory panel on two occasions. We have continued to monitor NSW Health's implementation of recommendations arising from our last biennial report in which we made seven recommendations to NSW Health, focusing on a range of issues and to monitor the implementation of these recommendations. We will provide more detail about NSW Health's progress on disability deaths in our next biennial report, which will be issued in 2021.

#### Research

As part of our research functions, we have contributed to a number of research projects by providing data and acting as a joint investigator.

- (1) In April 2019, we contributed data to the Centre for Health Records Linkage (CHeReL) for a research project on understanding health service system needs for people with intellectual disability. The research aimed:
  - to comprehensively characterise the health of people with intellectual disability
  - examine the impact of the NDIS roll out on health resource use
  - assist relevant government agencies to develop better health policies and service systems for people with intellectual disability.

In September 2019, the results of the research were published in the *British Medical Journal* and, relevant to the reviewable death function, concluded that adults with intellectual disability experience premature mortality and are over-represented in respect of potentially avoidable deaths compared with the general population.

- (2) In early 2019 the NDIS Quality and Safeguards Commission engaged Professor Julian Trollor, Chair, Intellectual Disability Mental Health, Department of Developmental Disability Neuropsychiatry, University of NSW to undertake a national scoping review of the deaths of people with disability in receipt of specialist disability supports and services. NSW data was drawn from our 2012–17 reviewable disability deaths biennial reports.
- (3) We have been acknowledged as a partner organisation and contributed data to a research project, *Factors associated with death in people with intellectual disability*, which was undertaken by the Department of Developmental Disability Neuropsychiatry, University of NSW as part of a National Health and Medical Research Council Australia Partnerships for Better Health Grant: Improving the Mental Health Outcomes of People with an Intellectual Disability. The results of this research were published in December 2019 in the *Journal of Applied Research in Intellectual Disabilities*.

## 15. Education and training

### 15.1. Complaints and notifications

Through our training and community education program, we seek to improve the administration and delivery of public and community services in NSW. Our role in monitoring, overseeing and receiving complaints and notifications about a diverse range of government and non-government service providers gives us unique insights into the challenges they face and an understanding of how they can better meet their responsibilities.

The bulk of the training we delivered relates to complaint handling and was undertaken through the following workshops:

- Frontline complaint handling
- Managing unreasonable conduct by a complainant
- Effective complaint management systems.

We developed tailored training for Indigenous Business Australia:

- Handling difficult conversations (a half-day workshop combining complaints handling and Aboriginal cultural appreciation).

We also delivered specific training in relation to our functions under the Public Interest Disclosures Act and the Ombudsman Act, including training in:

- Investigating misconduct in the public sector
- Public interest disclosures
- Handling serious incidents in the disability sector
- Responding to child protection allegations against employees
- Administrative law in the public sector.

We also delivered training workshops in the following areas:

#### Access and equity

- Aboriginal cultural appreciation
- Disability awareness training

#### Community and disability services

- Speak up
- Supporting young people to make complaints and advocate for systemic change.

We delivered training to a wide variety of organisations, with the majority being state government agencies (see table 16).

**Table 15:** Training workshops delivered by topic

Topic	Workshops	Participants
Public interest disclosures	49	1,345
Complaint handling	65	1,184
Community and disability services	2	50
Employment related child protection	1	18
Investigation skills	6	85
Other	4	88
<b>Total</b>	<b>127</b>	<b>2,770</b>

**Table 16:** Workshops by sector

Sector	Workshops
<b>Total training workshops</b>	<b>127</b>
State government agencies	53
Community service providers	7
Local government	29
Public agencies outside NSW	3
Mixed community service and public agency	12
Federal government agencies	9
International public	10
Private organisations	4

During 2019–20, 89% of participants completed evaluations of our training. Of these,

- 97% rated our training overall as excellent/good.
- 97% rated our trainers as excellent/good.
- 97% rated the content covered in the training as excellent/good.
- 97% strongly agreed they could implement what they had learnt at training in their workplace.
- 97% would recommend our training to others.

## 15.2. Education and training highlights

### Cancellation of workshops due to COVID-19

Due the COVID-19 pandemic, we had to cancel all training workshops from 18 March. All of our workshops are delivered face to face and were not viable due to health restrictions and government guidelines. This cessation was still effective as of 30 June.

The impact on our training operations was significant and accounts, in part, for the following:

- registrations across all aspects of our training programs fell from 5,579 to 2770
- total workshops fell from 307 to 127.

### Training modernisation project

In response to the pandemic we fast-tracked our training modernisation project, which will allow us to optimise the delivery of our sector-leading training programs. The scope of this project includes:

- engaging eCreators through an open tender process to deliver a learning management system and instructional designer services
- adapting our complaint-handling workshops for remote and blended learning delivery, beginning with Managing Unreasonable Complainant Conduct
- procuring other remote learning tools such as video conferencing tools
- developing a go-to-market strategy

This work will continue into 2020–21, with the relaunch of training programs using remote and blended learning technologies scheduled for the second half of 2020. These new learning opportunities will complement our existing face-to-face workshops.

### International engagements

Our reputation as an expert in complaint-handling training is international. We provided nine Managing Unreasonable Complainant Conduct workshops to organisations in the USA and Canada including:

- United States Ombudsman Association
- Ontario Securities Commission
- Canadian Human Rights Commission
- Office of the Foster Care Ombudsperson California, Department of Social Services.

We also received an international delegation from Gyeongsangnamdo Office of Education, South Korea.

### Community education

As well as delivering training in structured learning environments, we actively share our expertise and exchange information in other settings, including community forums and events. We are dedicated to reaching as many people as possible, particularly vulnerable groups who might otherwise have difficulty accessing our services.

In 2019–20 we attended 15 community events or presentations. An additional three events were cancelled due to COVID-19. Highlights include:

- Migrant Information Day
- Aboriginal Legal Access Program and Daramu Youth Justice Program
- Mission Australia Family Fun Day
- Carers Day Out
- Anti-Poverty Week
- Community Services Expo 2019
- Yabun 2020
- Mardi Gras 2020.

### E-learning modules

Last year we released three e-learning training modules aimed at improving understanding and awareness of the importance of good complaint handling, and particularly raising awareness of the [six complaint handling commitments](#) that go across the public sector.

These courses are an introduction to the core components of good complaint handling.

A large number of agencies requested the e-learning module to upload to their LMS including councils, NSW Government departments and authorities and independent schools.

We are grateful for their feedback and assistance in improving these resources.



# Appendices

## 16. Our people and workplace

### 16.1. Senior executive

As at 30 June 2020 we have six senior executives, not including the Ombudsman.

All of those executives are employed under the *Government Sector Employment Act 2013* (GSE Act) as public service senior executives (PSSEs). Four of them also hold statutory offices under the *Ombudsman Act 1974*.

For the Ombudsman, the remuneration of statutory officers is aligned to the public service senior executive remuneration framework.

During the year, four executives transitioned out of the organisation (see below).

#### Executive team (as at 30 June 2020)

**Michael Barnes** – Ombudsman  
BA, LLB, LLM

Michael was appointed NSW Ombudsman in December 2017. He has been the NSW State Coroner and the inaugural Queensland State Coroner, and has presided over high-profile inquests, including deaths arising from the sinking in the Torres Strait of the Department of Immigration vessel *Malu Sara*, and the Lindt café siege. Michael specialised in criminal and administrative law and has carried out research in and taught criminal justice, health law and the investigation of corruption and organised crime. He was adjunct professor of the Faculty of Law at the Queensland University of Technology and of the Australian Institute of Suicide Research and Prevention at Griffith University. Michael joined the office in a period of significant change. Michael resigned from his position as NSW Ombudsman in August 2020.

**Paul Miller PSM** – Deputy Ombudsman, Reviews, Investigations and Community Services/  
Community and Disability Services Commissioner  
BEcon, LLB (Hons), LLM, MBA, MA (Phil), Solicitor of the Supreme Court of NSW

Paul has responsibility for the Ombudsman's core operations, including complaint handling and investigations, and reviews and monitoring functions. Paul was previously a senior public servant with the NSW Government, having served as Deputy Secretary (Strategy and Policy) with the Department of Justice and as Deputy Secretary (Legal and Cabinet) and General Counsel with the

Department of Premier and Cabinet. Before joining the public service, Paul was a lawyer in private practice.

**Danny Lester** – Deputy Ombudsman (Aboriginal Programs) EMPA, BAdEd, DipBus

A proud Wonnarua man, Danny was appointed Deputy Ombudsman in 2014. Danny is the inaugural Deputy Ombudsman responsible for the monitoring and assessment of Aboriginal programs in NSW. Prior to this role, Danny worked in frontline positions in Commonwealth and NSW agencies and the non-government sector. He worked at the Aboriginal Employment Strategy (AES) – including as its CEO for eight years – and with the Australian Employment Covenant. Danny has served on boards and advisory committees, including as a member of the advisory council for the Centre for Social Impact.

**Nicole Lawless** – Assistant Ombudsman, Complaints and Investigations  
BA (Psych) PostGradDip (ForPsyc), LLB, LLM, Solicitor of the Supreme Court of NSW

Nicole was appointed as Assistant Ombudsman in July 2019. Nicole leads the Complaints and Notifications Branch, which is responsible for handling inquiries, complaints and youth justice notifications and undertaking monitoring activities and investigations. Nicole previously worked in the Ombudsman's office as a legal advisor and Counsel Assisting the Ombudsman. Nicole was admitted as a solicitor in 2002 and has had a varied career, including working as a prosecutor at the NSW Department of Public Prosecutions, as the Deputy Director of the Criminal Law Review Division in the NSW Attorney General's Department, as a policy advisor in the Department of Premier and Cabinet on the prevention of violence against women and leading the legal and strategy team representing the Department of Family and Community Services in the Royal Commission into Institutional Responses to Child Sexual Abuse.

**Monica Wolf** – Assistant Ombudsman, Projects and Systemic Reviews  
BA, GradDipEdSt, GradCertPublicPolicy, GradCertPSM

Monica was appointed Assistant Ombudsman in July 2019. Monica leads teams responsible for systemic reviews and monitoring functions, and projects, research and data analytics. Prior to this, Monica held a number of executive roles in our Community Services Division, including leading teams responsible for reviews of the

deaths of children, policy and systemic projects and complaints and investigations. Monica worked for a two-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.

**Ainslee Scott** – Director, Corporate BComm, EMBA, MAICD, FCPA

Ainslee joined the executive team of the NSW Ombudsman in June 2019. She has the responsibility for the Ombudsman’s Corporate Services Division, which includes financial management, human resources, ICT, procurement and other varied support functions. Prior to joining the Ombudsman, 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 (ACARA), NSW Treasury, TransGrid and Colonial First State. She has a strong and diverse background in accounting, strategic and corporate planning, governance, project management and business transformational change. Ainslee’s strong commitment to workplace diversity, inclusion and accessibility has enabled her appointment to the Australian Network on Disability (AND) 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 that she was a solicitor at a large commercial law firm. She has also worked as a research assistant at the Supreme Court of NSW and in legal publishing, and has co-authored a textbook on Equity.

## Outgoing executive

**Julianna Demetrius** – Assistant Ombudsman (Strategic Projects) (to August 2019), DipLaw

**Anita Whittaker** PSM – Assistant Ombudsman (Corporate) (to June 2020), BComm

**Natasha Mewing** – Director, Employment Related Child Protection (to June 2020), BA, LLB (Hons)

**Kathryn McKenzie** - Director, Disability (to July 2019), BEd

## Executive levels and remuneration

Executive gender and remuneration profiles during the year are represented in table 17, including the NSW Ombudsman position. Our statutory officers are paid in accordance with the determinations of the Statutory and Other Offices Remuneration Tribunal. Of our employee-related expenditure, 15.38 per cent was related to senior executives, in comparison to 12.19 per cent in 2018–19.

**Table 17:** Senior executive levels (all executives employed during financial year 2019–20)

Band	2019		2020	
	Female	Male	Female	Male
Band 4	0	1	0	1
Band 3	0	1	0	1
Band 2	0	0	0	0
Band 1	8	1	8	1
<b>Total</b>	<b>8</b>	<b>3</b>	<b>8</b>	<b>3</b>
<b>Total both male and female</b>	<b>11</b>		<b>11</b>	

**Table 18:** Senior executive remuneration

Band	Range \$	Average range \$	
		2018–19	2019–20
Band 4	475,151 – 548,950	490,050	502,300
Band 3	337,101 – 475,150	390,489	400,273
Band 2	268,001 – 337,100	0	274,701
Band 1	187,900 – 268,000	233,148	238,904

## 16.2. Staff

The office continues to focus on building a broad and diverse workforce with a variety of backgrounds, skills and expertise. As at 30 June 2020 our workforce consists of 122 people who are either full-time or part-time employed. Our staff apply to their work a variety of different skills which they draw upon from their experiences and industry knowledge including from the legal profession, community and social work, planning, investigative, law enforcement and child protection.

There were no exceptional movements in wages, salaries or allowances during 2019–20.

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 19: Full-time equivalent staff levels since 1 October 2019 when new structure introduced**

Division	2020
Executive	8
Projects and Systemic Reviews Branch	25
Complaints and Investigation Branch	47
Engagement and Aboriginal Programs Division	13
Legal, Governance and Risk Branch	4
Corporate Branch	25
<b>Total</b>	<b>122</b>

In addition, we offer a range of flexible work arrangements to enable staff to balance work and personal commitments. This includes part-time work, flexible working hours and working at home arrangements.

### Staff satisfaction

The 2019 PMES survey took place at a time of significant structural and operational change. This had a significant impact on the overall results of the survey (see Table 21).

The level of staff satisfaction within the NSW Ombudsman’s Office was 7 percentage points lower than the public sector average and represented a decrease of 11 percentage points from our 2018 survey.

Flexible working was ranked significantly higher (19 percentage points) by our staff than the public sector average, while diversity and inclusion and taking action on results continued to be on par with the public sector average.

Our full 2018 PMES survey results are published on the [Public Service Commission website](#).

**Table 20: Full-time equivalent staff levels – four-year comparison**

	As at 30 June			
	2016	2017	2018	2019
Statutory officer	8.00	7.00	6.00	6.00
Investigative, systemic review, project, research and legal	135.96	114.23	129.94	104.58
Inquiries and assessment	11.00	12.14	11.07	10.00
Investigative and administrative support	41.56	30.97	22.97	21.77
Community engagement and training	4.00	4.10	4.20	4.50
Corporate – Human resources, finance, information technology and governance	14.14	15.20	18.60	17.80
<b>Total full-time equivalent</b>	<b>214.66</b>	<b>183.64</b>	<b>192.78</b>	<b>164.65</b>

**Table 21: PMES 2019 results – comparison against the public sector average**

Satisfaction area	2019 Ombudsman %	2019 Public sector average %
Flexible working	78	59
Diversity and inclusion	68	69
Engagement with work	64	73
Employee engagement	59	66
High performance	55	65
Communication	51	62
Public sector values	50	62
Action on results	36	39
Senior managers	28	50

## 2020 NSW Ombudsman staff survey

Due to the Public Service Commission (PSC) delaying the opening of the 2020 PMES as a consequence of COVID-19, our organisation undertook its own employee 'pulse survey' in May 2020. The survey had a participation rate of 86% of staff, indicating a fair representation of the views of our workforce.

The survey identified generally positive staff feedback in the areas of:

- Flexibility and remote working: staff felt strongly that they were able to maintain a reasonable work/life balance whilst managing carer duties (including home schooling commitments). Additionally, staff felt able to continue to work productively in a remote environment that was ergonomically supported.
- COVID-19 crisis management response: staff felt strongly that management had responded to the COVID-19 pandemic in a coordinated way, with clear communication and engagement with staff.
- Health and wellbeing: staff felt supported by the organisation with various strategies implemented so staff could stay connected with their teams, promote positive mental health and were provided with support services to access.

Management continue to focus on key improvement areas identified by the surveys and use available resources to improve upon staff satisfaction results that are important to our workforce. These areas include:

- Modernising systems and technology: staff felt they experienced difficulties in working/communicating/collaborating whilst working remotely due to deficiencies in technology infrastructure to support a non-office, based working environment.
- Modified policies and working conditions: explored new ways to support staff working flexibly, including expanding the staff's core hours of operating during the pandemic.

## Performance and development

The performance of our staff and maintaining their skills is a critical factor in our ability to achieve our mission and strategic objectives.

### Performance management

Our learning and development (L&D) approach ensures our staff have the skills and capability they need to do their job well, and that they are supported to meet their career goals.

Specific L&D activities in 2019–20 included:

- **Rolling out access to on-demand courses or platforms**
  - LinkedIn Learning platform providing a broad suite of business skills
  - SBS Cultural Competency Course focused at enhancing our ability to meet the needs of the public we service.
- **Supporting professional qualifications**
  - developing our managers through tailored leadership development programs
  - continuing to roll out accredited certificate IV and diploma in government investigations training to relevant staff
  - developing the professional skills of our staff more broadly through attendance at conferences and forums, as well as internal and external training courses
  - providing relevant and effective induction programs for new staff
  - continued to support staff to maintain professional qualifications in 2019–20 within relevant industries, eg legal and accounting practising certificates
  - supported staff attending training courses that contribute to their certified professional development (CPD) hours and encouraged staff to undertake professional qualifications that support future career opportunities.
- **Providing mobility and career opportunities**
  - seconded a number of staff to various sectors of government including the state, federal and not-for-profit sector
  - supported numerous internal secondments between branches to encourage career development.
- **Investment in training and professional network development**
  - staff attendance at a range of conferences, seminars and forums, including the International Women's Day Conference, Government Solicitors Conference and the Australian Housing and Urban Research Institute (AHUR) seminar
  - staff also attended a range of internal and external training courses.

## Staff recognition

In 2019–20, several staff from across the agency were formally recognised for going above and beyond in performing their duties, particularly in demonstrating our organisational values during the COVID-19 pandemic. These staff were nominated on the basis of their performance against the following criteria:

- innovation
- collaboration and team spirit
- commitment to clients and serving the community
- making a difference
- professionalism throughout.

## Technology infrastructure and systems

In 2019–20, we appointed a Chief Information Officer (CIO) to support our organisational commitment to modernising our technology and systems. This year we conducted a comprehensive review of our IT infrastructure and systems to seek alignment with the NSW Government's Digital Strategy and cybersecurity requirements. This work was continuing as at 30th June with a view to delivering a Digital Roadmap (ICT Strategy), which is customer centred and will enable our office to work more flexibly, collaboratively and efficiently, within a cyber-secure safe environment.

Additionally this year, in response to COVID-19, we accelerated many of our smaller pipeline initiatives, which delivered a variety of enhancements to our current systems. Our focus this year has been strategically planning and identifying the specific digital enablers that will be fit-for-purpose for our office, including in the areas of technology, legislative and governance requirements.

Another major technology project was our case management system review (refer to our chapter on Strategic reforms).

## Digital information security

We regularly review our information systems to ensure they are as stable, secure and resilient to external attacks and threats as possible. The office seeks to maintain a robust cybersecurity control framework and conducts regular intrusion testing on our systems to ensure any known risks are mitigated.

Significant actions in the reporting period include:

- continuing our review and update of Digital Information Security policies & procedures
- rewriting our Cybersecurity policy to align with the guidelines specified by the NSW Government in February 2019

- updating our network proxy infrastructure to protect NSW Ombudsman data. This action was a response to our office shifting to remote working due to COVID-19 with all staff working from home they were no longer protected by in-office data controls.
- upgrading antivirus environment and firewalls to improve security.

## 16.3. Access, equity and diversity

### Workforce diversity

Our organisation is committed to promoting, supporting and implementing diversity and inclusion initiatives in alignment with the *Government Sector Employment Act 2013* and public sector policy.

Our recruitment practises and the diversity of our staff support this commitment. The workforce profile of the office has a broad representation of cultural background; our employees were born in over 21 different countries and speak 12 different languages.

Table 22 represents the diverse workforce profile which we support.

### Diversity and Inclusion Framework & Action Plan

This year we launched our Diversity and Inclusion Framework, which included a 2019–22 Diversity and Inclusion Action Plan. Initiatives and focus areas under the action plan included:

#### Indigenous employment

Addressing barriers to employment and progression while providing both a supportive and inclusive workplace:

- We established protocols for:
  - Welcome to Country
  - Acknowledgement of Country.
- We revised our procurement strategy to ensure that we direct at least 3% of addressable spend to Aboriginal-owned business by 2021 where possible.
- We engaged CareerTrackers to maintain our commitment to Indigenous peoples and address the barriers to employment. The CareerTrackers program is an internship program to assist Indigenous high school and university students accelerate their professional development through internships. We are looking forward to our intern starting in November.

## Cyber security attestation statement for the 2019-20 financial year for the NSW Ombudsman

I, Paul Miller, am of the opinion that the NSW Ombudsman's Office has identified and seeks to manage 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 compliant with all of 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, but was not tested during the 2019-20 reporting period as originally scheduled due to Covid-19 related disruption. The plan will be updated and tested during the 2020-21 reporting period.

An Information Security Management System (ISMS) is in place, but has not yet been audited. An independent review of the Office's ISMS and the effectiveness of controls against the requirements of the Policy, including compliance with ISO 27001, is proposed to be undertaken in the 2020-21 reporting period.

The Ombudsman's Office made some progress towards greater compliance with the Policy during 2019-20. However, there has been some disruption and delay as a result of the Covid-19 pandemic and the changed working environment and technology usage associated with the pandemic.

The NSW Ombudsman's Office is currently documenting the program of work that will be needed to achieve full compliance with the Policy and the ACSC Essential Eight. Delivery of this program of work will require additional investment and a business case will shortly be submitted to the NSW Government seeking that funding.



Paul Miller

**NSW Ombudsman (Acting)**

28 August 2020

**Table 22:** Trends in the distribution index for workforce diversity groups per calendar year

Workforce diversity group	Benchmark	2017	2018	2019	2020
Women	100	100	99	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	92	90	89	89
People with disability	100	100	92	94	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.

**Table 23:** Trends in the representation of workforce diversity groups

Workforce diversity group	Benchmark	2017	2018	2019	2020
Women	50%	74.1 5%	76.50%	77.70%	69.67%
Aboriginal and/or Torres Strait Islander people	3.3%	2.45%	2.30%	2.70%	3.28%
People whose first language spoken as a child was not English	23.2%	19.62%	21.20%	19.70%	22.95%
People with disability	5.6%	9.80%	10.14%	10.60%	8.20%
People with disability requiring work-related adjustment	N/A	1.48%	1.38%	1.38%	1.64%

**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 24:** Workforce diversity actual staff numbers at census date 2020

Remuneration level of substantive position	Total staff (men, women & unspecified)	Male	Female	Unspecified Gender	Aboriginal and/or Torres Strait Islander people	Minority Group	People whose language first spoken as a child was not English	People with disability	People with a disability requiring work-related adjustment
\$0 – \$70,425	4	0	4	0	0	2	2	1	1
\$70,426 - \$79,297	9	4	5	0	0	3	4	2	0
\$79,298 - \$94,327	26	11	15	0	0	7	7	2	0
\$94,328 - \$107,541	28	6	22	0	1	4	4	2	0
\$107,542 - \$122,038	26	7	19	0	1	6	5	2	1
\$122,039 - \$148,134	21	6	15	0	1	4	5	1	0
\$148,135 (Executive)	8	3	5	0	1	0	1	0	0
<b>Total</b>	<b>122</b>	<b>37</b>	<b>85</b>	<b>0</b>	<b>4</b>	<b>26</b>	<b>28</b>	<b>10</b>	<b>2</b>

## Gender equity

Addressing gender discrimination and removing barriers to equal participation internally and externally:

- accelerate their professional development through internships. We are looking forward to our intern starting in November.
- We celebrated International Women's Day and organised for three female employees interested in gender equity to attend the IWD conference.
- We analysed the gender representation in our leadership and middle management roles. We are proud that we have 57% female representation at the executive leadership level and 70% of our middle management managers are female.

## Disability

Meeting the needs of employees with disability and increase accessibility in our workplace:

- We engaged the Australian Network on Disability (AND) Stepping into Internship program, which helps talented university students with disability take on roles in leading Australian businesses, thus gaining vital work experience during study. We are looking forward to our intern joining our People and Culture team in November.
- We continued our membership with AND.
- We engaged with AND to become a Disability Confident Recruiter program.
- Our Director, Corporate secured a seat on the AND board to ensure accessibility to the workforce for people with disability is front of mind.

## Cultural and linguistic diversity

Providing an inclusive workplace that embraces diverse culture, perspectives and experiences to improve services:

- We launched the SBS inclusion eLearning program to develop skills and knowledge in diversity and inclusion and to help integrate those skills internally and externally. The program includes video interviews with prominent Australians and activities about diversity and inclusion practice, LGBTIQ, disability, gender, age and Indigenous cultures.

## Other diversity groups

Providing a collaborative, supportive and respectful environment to increase the participation and contribution of employees from a range of groups including carers, LGBTIQ, young people and mature workers:

- We established a diversity and inclusion advisory forum which represents employees and leaders from diverse groups across the organisation and provides governance to drive project outcomes contained in the diversity and inclusion framework.
- We established a diversity and inclusion intranet page with a diversity and inclusion calendar of events.

We encourage our employees to participate in events that promote diversity and inclusion. In 2019–20, we celebrated many cultural festivals to create awareness and recognise the diversity of our workplace.

## 16.4. Workplace health, safety and wellbeing

We are committed to providing the best possible standards of work health and safety for all staff and visitors to our office. We are subject to the provisions and responsibilities of the *Work, Health and Safety Act 2011* and Regulations as well as public sector work health and safety policies.

### Work health safety committee

We have a Work Health 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. This proactive approach ensures the office complies with, and actively supports, our overarching Work Health and Safety Framework. We are currently reviewing our consultative arrangement with staff to ensure we are engaging with our workforce in the most effective way to address concerns from staff.

### Health and wellbeing framework and policy

This year we launched our health and wellbeing framework and policy. The framework was a commitment of the executive leadership team to improve the health, safety and wellbeing

of all staff and was supported by a comprehensive action plan. It consists of five main focus areas of health and wellbeing – physical, psychological, social and community engagement, occupational and financial.

Since the launch of the framework, we have implemented a number of the health and wellbeing initiatives (Table 27).

### Work health and safety - COVID19 response

The health and wellbeing framework was of particular importance to our employees as we entered the unprecedented times of COVID-19. We continued to support people working from home while focusing on employee health and wellbeing. COVID-19 also resulted in changes to our WHS priorities, with some items identified in last year’s annual report still pending.

Additional support and resources offered during COVID-19 were:

#### Leave and employment arrangements

We communicated to staff the COVID-19 leave and employment arrangements to provide guidance to our employees of the categories of special leave as a consequence of the pandemic. We also established a buddy system and provided ergonomic assessments for staff working remotely for extended periods.

### Flexible working arrangements

We promote flexible work arrangements to enable staff to balance work and their personal commitments. As well as part-time work, we offer flexible working hours, working-at-home arrangements, and a range of leave options – including personal carers’ leave. During the pandemic, we provided an extra layer of flexibility to assist staff managing work/life balance by removing our bandwidth and core hours.

We invited staff to attend both I LEAD Flexibility (for managers) and I Am FlexABLE workshops, which covered how to embrace flexible working practices and how to access such arrangements.

### Work health safety injuries and incidents

There was one work-related injury, one work-related incident and two non-work related incidents during 2019–20. These were immediately reported and addressed. Our main safety hazard this reporting period was repetitive strain pain due to excessive typing.

#### Notifiable injuries

We had one notifiable injury in 2019–20. This was due to an employee receiving treatment for sciatica due to ergonomic circumstances.

#### Workers’ compensation claims

We are part of icare Treasury Managed Fund, a self-insurance scheme for the NSW public sector. There was one new claim reported to our insurer during the reporting period. As at 30 June 2020, there is one open claim.

**Table 25: Workers’ compensation – five-year comparison**

	2015–16	2016–17	2017–18	2018–19	2019–20
Claims brought forward	0	1	0	1	0
New claims	1	0	1	0	1
Claims closed	0	1	0	1	0
Open claims 30 June	1	0	1	0	1

**Table 26: Workers’ compensation incidence rate – five-year comparison**

	2015–16	2016–17	2017–18	2018–19*	2019–20
Number of submitted claims	1	0	1	0	1
FTE staff number	214.66	183.44	192.78	164.65	103.23
Incidence rate (%)	0.46	0.00	0.00	0.00	0.97%

Note: in 2017-18, the incidence rate is recorded as 0 as the claim relates 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.

**Table 27: Work health, safety and wellbeing initiatives**

Category	Initiative
<b>Consultation</b>	<ul style="list-style-type: none"> <li>• Work Health and Safety Committee met three times</li> <li>• WHS Committee actively consulted and engaged with all workgroups throughout the year</li> </ul>
<b>Ergonomics</b>	<ul style="list-style-type: none"> <li>• Provided reasonable adjustments, including new monitors with larger screen</li> <li>• Communicated to staff how to set up the desk ergonomically remotely during the pandemic</li> <li>• Provided office equipment and reasonable adjustable equipment during the pandemic to support staff to work remotely</li> <li>• Our workstation self-assessments checklist was reviewed and updated and issued to staff for completion in the office and whilst working from home</li> </ul>
<b>Information, education and training</b>	<ul style="list-style-type: none"> <li>• Wardens attended training about their role in an emergency</li> <li>• Four staff attending St Johns Ambulance first aid and CPR training</li> </ul>
<b>Policies and procedures</b>	<ul style="list-style-type: none"> <li>• Drafted a new WHS consultation plan</li> <li>• Working at home policy reviewed and updated</li> <li>• Overtime policy reviewed and updated</li> <li>• Travel policy reviewed and updated</li> <li>• Drafted new Bullying, Harassment and Discrimination policy and procedure</li> <li>• Drafted a Returning to Office Framework and a COVID-19 safety plan</li> </ul>
<b>Safety alerts</b>	<ul style="list-style-type: none"> <li>• Participated in the emergency evaluation drill</li> <li>• Monthly testing of evacuation alerts</li> </ul>
<b>Electrical</b>	<ul style="list-style-type: none"> <li>• Annual check done to ensure all electrical equipment is tested and tagged</li> </ul>
<b>Physical</b>	<ul style="list-style-type: none"> <li>• The WHS committee did one workplace inspection and addressed all issues and hazards identified</li> <li>• Became a COVID-safe workplace</li> </ul>
<b>Mental health and wellbeing</b>	<ul style="list-style-type: none"> <li>• Developed the health and wellbeing framework and policy and communicated it to staff with a 12-month action plan</li> <li>• Provided staff dealing with sensitive and distressing material in-house professional counselling and wellbeing sessions with a psychologist specialising in trauma</li> <li>• Commenced monthly short seminars covering a range of topics all aimed at assisting and equipping staff with tools to support managing their health and wellbeing</li> <li>• Systems implemented by management for supporting and checking on staff working remotely during pandemic</li> </ul>
<b>Programs</b>	<p>Flu vaccination (four strain) offered to staff</p> <p>Employee Assistance Program (EAP) available to all staff. EAP details formally communicated twice, and information updated and made available on our intranet</p>

## 16.5. Workplace and environment

### Reducing our environmental impact

The NSW Government Resource Efficiency Policy (GREP) will reduce the cost of providing core services and make resource-efficient products and services more accessible to the people of NSW. Adopting simple, cost-effective technologies and practices can reduce these costs. The NSW Ombudsman is committed to reducing operating costs as well as increasing the efficiency of the resources we use.

In 2019–20 we have continued to reduce our environmental footprint through a range of strategies, including:

- A new paint product has been used in our office fit out that complies with the Australian paint approval scheme by using low-volatile organic compound (VOC) surface coatings to potentially reduce VOC emissions.
- We have reduced our use of office printing machines and have achieved that by publishing all of our publicly available reports online and moving from physical to electronic records.
- We have invested in modernised systems to support a digital working environment thus making access to our services easier and more efficient.
- We have focussed on reducing emission and greenhouse gases by recycling toner cartridges. This has considerably reduced cartridges waste going to landfill.

- We only use 100 per cent recycled paper for printing.
- All our cardboard is recycled through the building recycle program and our clean waste paper of 92 bins equalling 5000kgs is recycled through an external contractor.
- We have purchased six per cent green electricity while efficiently using timers on photocopiers, printers and computers.
- We enable power-management features such as lights fitted with motion sensors and energy-saving features when installing office equipment.

### Greenhouse performance

In 2019–20, the NSW Ombudsman achieved a greenhouse building rating of 4.5 stars. We achieved this by supporting our building's environment programs which has:

- Australia's first NABERS 4 star ratings for waste diversion efforts
- NABERS 6 star ratings energy base building, based on 7.9% Green Power usage (Without the green power the ratings would be 5 stars.)
- NABERS 3.5 star ratings for water, which is valid until January 2021.
- Electricity consumption for our offices at 580 George Street Sydney NSW 2000 is shown in Table 27. The data is sourced from our energy provider.

**Table 28:** Electricity consumption at NSW Ombudsman's office

	2014–15*	2015–16	2016–17	2017–18	2018–19	2019–20
Electricity (kWh)	384,186	312,417	240,780	212,861	185,734	180,226
Kilowatts converted to gigajoules	1383	1,124	866	766	669	648
Occupancy (people)	199	215	205	215	183	153
Area (m2)	3,133	3,133	3,133	3,133	3,133	3,133
Gigajoules per person	6.95	5.23	4.22	3.56	4.10	4.24

\* Base Year

## Internal Audit and Risk Management Attestation Statement for the 2019 – 2020 Financial Year for the NSW Ombudsman

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

<b><u>Core Requirements</u></b>	<b><u>Status</u></b>
<b>Risk Management Framework</b>	
1.1 The agency head is ultimately responsible and accountable for risk management in the agency	Compliant
1.2 A risk management framework that is appropriate to the agency has been established and maintained and the framework is consistent with AS/NZS ISO 31000:2009	Compliant
<b>Internal Audit Function</b>	
2.1 An internal audit function has been established and maintained	Compliant
2.2 The operation of the internal audit function is consistent with the International Standards for the Professional Practice of Internal Auditing	Compliant
2.3 The agency has an Internal Audit Charter that is consistent with the content of the 'model charter'	Compliant
<b>Audit and Risk Committee</b>	
3.1 An independent Audit and Risk Committee with appropriate expertise has been established	Compliant
3.2 The Audit and Risk Committee is an advisory committee providing assistance to the agency head on the agency's governance processes, risk management and control frameworks, and its external accountability obligations	Compliant
3.3 The Audit and Risk Committee has a Charter that is consistent with the content of the 'model charter'	Compliant

### **Membership**

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

- Independent Chair – Ms Christine Feldmanis, 24 May 2017 – 23 May 2022
- Independent Member – Mr David Roden, 27 June 2016 – 26 June 2021
- Independent Member – Ms Vicki Allen, 23 August 2017 – 22 August 2022



Paul Miller  
**Acting NSW Ombudsman**

15 October 2020

## 17. Governance

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

In 2019–2020 Governance responsibilities and resources moved into the newly formed Legal, Governance and Risk Branch, enabling greater independence of the internal audit function from the corporate and business areas. We also engaged KPMG to undertake a fraud risk assessment across the organisation. In 2020–21 they will finalise our new fraud control plan and provide any recommendations for improvement of fraud control within the office. We also reviewed and updated the NSW Ombudsman Code of Ethics and Conduct and the way we manage conflicts of interests, gifts and benefits and secondary employment.

### 17.1. Measuring our performance

We track our performance across all areas of our work. This includes individual case management, our systems and processes. We use data from our case management system to monitor and identify where there may be backlogs, delays or issues. Our executives meet quarterly to review how our organisation is performing against agreed targets and identify any remedial action required to ensure we are meeting our objectives.

### 17.2. Risk management and insurance activities

Our risk management framework provides the principles and processes for all risk management activities across the office. In 2019–20, we continued to implement strategies to mature our approach to risk management. Our Audit and Risk Committee (ARC) provides us with independent assistance about our risk management practices. The Committee met five times and operated in accordance with NSW Treasury requirements.

Key activities include:

- Following large scale organisational change and the office restructure, the new executive refreshed the key risks across the organisation
- We engaged KPMG to work collaboratively with the Office to continue to uplift risk management maturity. This work continues into 2020–2021.
- We experienced a high-risk environment due to the COVID-19 pandemic. In response we formed a Critical Management Team (CMT), which closely monitored and managed organisational risks in the context of the office's response to the pandemic.

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

### Completing internal audits

The Audit and Risk Committee continue to receive updates on, and provide advice about, the Internal Audit Program, in partnership with an independent outsourced provider and the Executive. The ARC have closely monitored the development of the internal audit strategy and the completion of audits.

Key activities include:

- engaging a new internal audit provider (KPMG) via a competitive tender process
- executive review of organisational risks and based upon this, we developed a new three-year internal audit strategy
- commencement of three internal audits but only one was completed due to difficulties accessing the office and the changing internal audit needs in the context of the office's response to the COVID-19 pandemic.
- risk management review which helped us to develop a program of work to continue to raise maturity of the office's approach to risk management.

### 17.3. Organisational policy and system review

During the year we reviewed and refreshed a number of policies and developed new ones.

Policies issued during the year included:

- code of ethics and conduct
- disclosure of information
- diversity and inclusion framework
- health and wellbeing framework and policy
- internal audit policy and charter
- overtime

- performance development framework and policy
- procurement
- secondary employment
- travel
- work health and safety
- working at home.

## 17.4. Internal public interest disclosures

As a public authority, the Ombudsman is required to have policies and procedures in place to facilitate the reporting of wrongdoing by staff.

The Ombudsman is responsible for ensuring staff are aware of the *Public Interest Disclosures Act 1994* (PID Act) and that they will be given protection and support if they make a public interest disclosure.

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 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.

## 17.5. 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.

This section provides information only about public interest disclosures made within or about our office. Information about the public interest disclosures we have dealt with as an investigating authority will be included in the separate publication – Oversight of the *Public Interest Disclosures Act 1994* Annual Report 2019–20.

In 2019–20, we received three public interest disclosures from members of staff about our office. Two of those disclosures concerned alleged or suspected corrupt conduct and we took appropriate action in response to these disclosures. The investigation of those disclosures was ongoing at the end of 2019–20. One of the disclosures concerned alleged or suspected maladministration and that matter was finalised during 2019–20.

## 17.6. Improving the way we do business

### Complaints about us

The NSW Ombudsman is an integrity agency and we take any complaints about our own services and decisions very 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.

Other complaints about us alleged that staff had not listened to the complainant, provided advice that was not clearly understood, and not acted in a timely manner.

Some complaints were made in the context of a disagreement with decisions we had made and a request for a review of our decision (see section 9.2 How we finalised complaints). In one such case, the complainant also alleged that a staff member had failed to respond to their request for a further telephone call to discuss the decision. We responded to the complaint as well as reviewing the decision to decline to investigate.

In cases where a complaint is substantiated or we have not met a complainant's reasonable expectations, we will apologise to the complainant and counsel staff as necessary.

In 2019–20, we received nine new complaints about the services we provided or the actions of our staff. We responded to all nine complaints and resolved them without the need for further action.

## 18. GIPA

### 18.1. Public access to our information

The *Government Information (Public Access) Act 2009* (GIPA Act) generally promotes the disclosure of government information. It establishes a presumption in favour of public access to government information unless there is an overriding public interest. There is, however, a conclusive overriding public interest against 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.

The GIPA Act also requires:

- mandatory proactive release of 'open access information' such as an agency information guide, policy documents, and reports tabled in Parliament
- regular yearly reviews of the kinds of other government information held that should be made publicly available.

#### Review of our information release program

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. We continue to carefully consider informal information requests from the public and other agencies to decide whether particular circumstances might warrant disclosure under GIPA Act s 8 or other legislation.

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.

**Table 29:** Publications released in 2019–20

#### Reports

- Oversight of the *Public Interest Disclosures Act 1994*. Annual Report 2018–19 (19 December 2019)
- Public Interest Disclosures Steering Committee Annual Report 2018–19 (12 November 2019)
- OCHRE Review report (24 October 2019)
- NSW Child Death Review Team Annual Report 2018-19 (31 October 2019)
- NSW Ombudsman Annual Report 2018-19 (31 October 2019)

#### Fact sheets (new and updated)

##### New:

- Direct referral
- Supporting culturally & linguistically diverse people to make complaints
- Got a problem with a NSW Government agency? (Culturally and Linguistically Diverse People and Communities)
- About the Commitments to Effective Complaint Handling

##### Updated:

- Community services complaints
- The Ombudsman's role in community services
- Reports of serious wrongdoing. A quick guide to public interest disclosures for local Aboriginal land councils

#### Speeches

- 'Policies and procedures are all well and good, but...' Chris Wheeler (4 December)
- 'Nudging management reactions with behavioural insights.' Jane Olsen (4 December)

#### Brochures

- Acknowledgement of Country card
- Talk to Us

#### Newsletters

- PID eNews, Issue 39, January 2020

### 18.2. Statistical information about access applications

This year we received five GIPA applications for information, all of which were for information which was 'excluded information' (information relating to our complaint handling, investigative

and reporting functions) (refer tables 30, 31 and 32). For that reason, those applications were invalid under GIPA Act s 43. As we received no valid applications for the reporting period we have not included tables relating to valid applications in this report.

**Table 30: Invalid GIPA applications**

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

**Table 31: 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)	0	0	0	0	0	0	0	0

\* More than one 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 32: 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	0	0	0	0	0	0	0
Access applications (other than personal information applications)	0	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).

## 19. Legislative and other changes

The *Children's Guardian Act 2019* commenced on 1 March 2020. That Act transferred our functions under Part 3A of the *Ombudsman Act 1974* (employment-related child protection) to the Children's Guardian (*Children's Guardian Act 2019* Part 4).

The *Community Services (Complaints, Reviews and Monitoring) Act 1993* was amended to implement changes to the oversight and coordination of the Official Community Visitor scheme:

- On 1 July 2019, the *Ageing and Disability Commissioner Act 2019* commenced, and our coordination of the Official Community Visitors scheme for people with disability living in supported accommodation and people living in assisted boarding houses was transferred to the Commissioner.
- On 1 March 2020, the *Children's Guardian Act 2019* commenced, and our remaining responsibility for coordination of Official Community Visitors (for children and young people living in out-of-home care) was transferred to the Children's Guardian.

The following minor amendments were also made to the *Ombudsman Act 1974*:

- the removal of the bar precluding a person of or over the age of 65 years being appointed or continuing to serve as the Ombudsman. This age bar was removed years ago from other legislation creating statutory officeholders: s 6
- amendments permitting the Ombudsman and Ombudsman officers to give evidence in relation to offences against the Act: s 35(2).
- confirmation that the Ombudsman's jurisdiction applied to building and development certifiers (following significant reforms of the certification system): s 5.

### 19.1. Significant judicial and other decisions

There were no significant judicial or other decisions to which the Ombudsman was party.

### 19.2. Economic and other factors

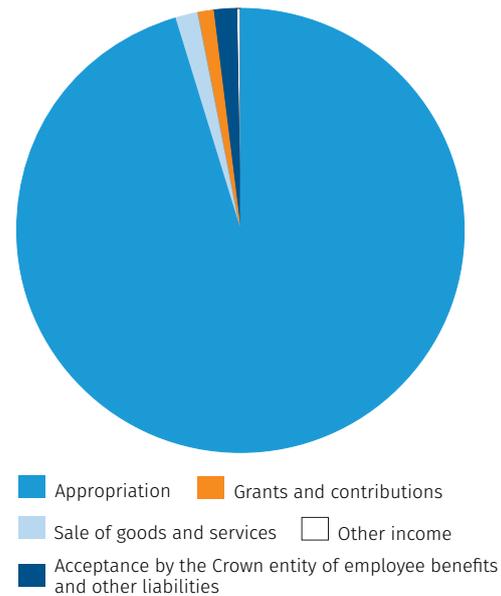
Our operations were impacted by COVID-19. These impacts are detailed under the chapter Our Response to COVID-19.

## 20. Finance

The financial statements (pages 94-122) provide an overview of our financial activities during 2019–20. The Audit Office has reviewed these statements together with our systems and processes and have provided an unqualified audit report.

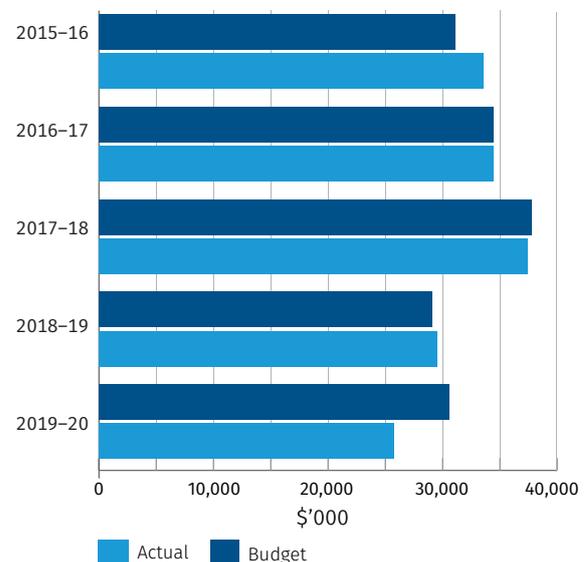
### 20.1. Revenue

**Figure 8:** 2019–20 Revenue \$25.778 million



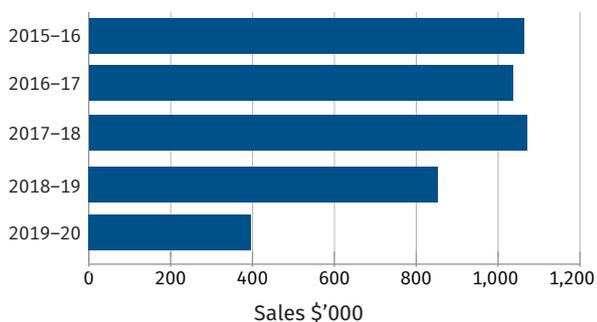
The majority of our revenue comes from the NSW Government in the form of a consolidated fund appropriation. This is used to meet both recurrent and capital expenditure. Note 3 within the financial statements provides details of the revenue received for the year \$25.778 million.

**Figure 9:** Revenue



Due to impact of COVID-19, training revenue received was lower in 2019–20 compared to previous year.

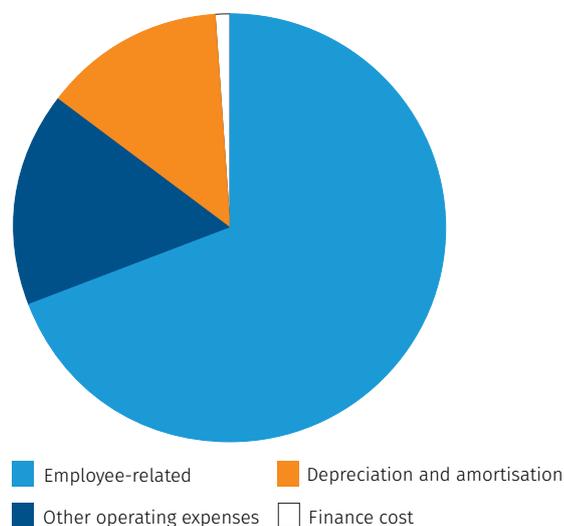
**Figure 10: Training revenue**



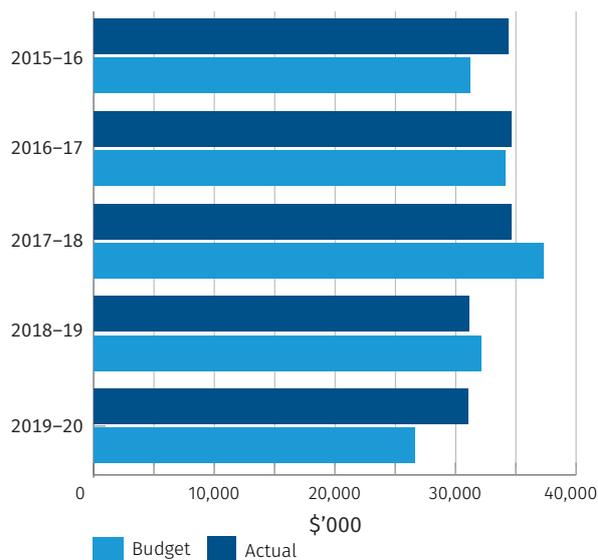
## 20.2. Expenses

The total expenses recorded was \$26.608 million, which was \$4.44 million less than budget primarily due to the transfers of the Official Community Visitors program to the Ageing and Disability Commission and the Reportable Conduct scheme to the Children’s Guardian during the year. Employee-related expenses accounted for 69.3 per cent of total expenses.

**Figure 11: 2019–20 - Expenses \$26.608 million**



**Figure 12: Expenditure**



The significant operating expenses include contractors (\$1.165 million), consultants (\$1.028 million), maintenance (\$0.592 million) and fees (\$0.51 million).

## 20.3. Financial position as at 30 June 2020

The net profit and loss result for the year ended 30 June 2020 is a deficit of \$0.893 million.

With the introduction of AASB 16 leases in this financial year, both the total assets and total liabilities have increased compared to the previous year.

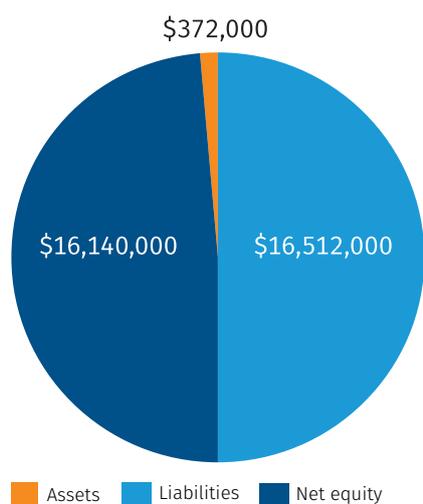
The net asset has reduced from \$0.964 million in 2018–19 to \$0.372 million in 2019–20.

**Table 33: Consultancies valued at less than \$50,000**

Category	Count	Cost \$*
Finance and accounting/tax	0	0
Information technology	8	147,697
Legal	0	0
Management services	1	4,213
Environmental	0	0
Engineering	0	0
Organisational review	4	124,742
Training	0	0
<b>Total (inc GST)</b>	<b>13</b>	<b>276,652</b>

\* figure rounded to whole dollars

**Figure 13:** Financial position as at 30 June 2020



## 20.4. Financial statements

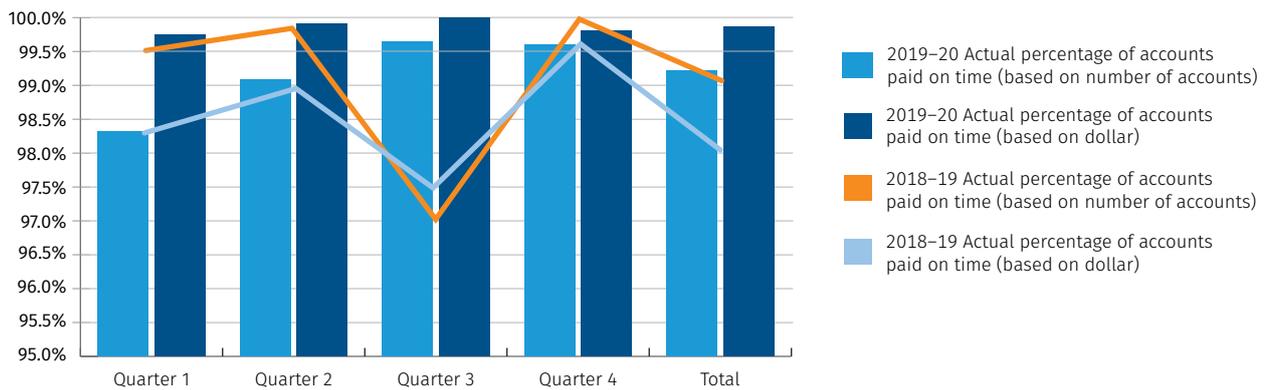
The financial statements are prepared in accordance with legislative provisions and accounting standards, and are audited by the Audit Office of New South Wales. The independent auditor's report and financial statement are in the next section.

**Table 34:** Consultancies valued at \$50,000 or more

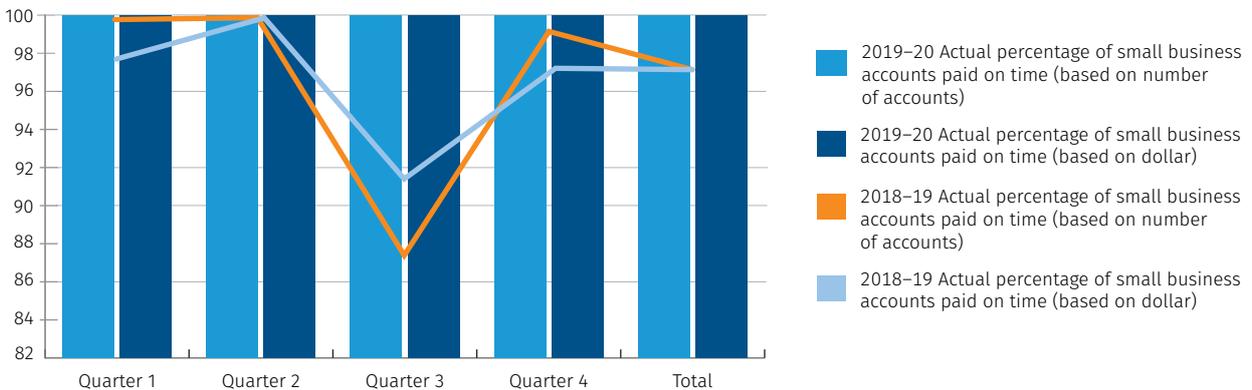
Category	Consultant	Nature	Cost \$*
Information technology	The Frame Group Pty Limited	Develop 5-year ICT Strategy & Cybersecurity Policy (service over two years - total cost \$87,450)	66,000
Information technology	CICS Pty Ltd	Windows 10 with Microsoft Modern Management Autopilot and Support (Service over two years - total cost \$90,530)	82,610
Information technology	eCreators Pty Ltd	eLearning Configuration and Implementation	89,122
Information technology	iQ3 Pty Ltd	Microsoft 365 Migration & Implementation - Phase 1 (service over two years - total cost \$223,639)	91,630
Information technology	Deloitte Touche Tohmatsu	Resolve Case Management Gap Analysis Project	222,530
Management services	Plain English Foundation Pty Ltd	Investigations Writing Program	64,414
Management services	Deloitte Touche Tohmatsu	Biennial Report of Deaths of Children aged between birth - 17 years in NSW during 2018-19	82,500
Organisational review	Business As Usual	Business Continuity Plan Redevelopment, Review and Test (service over two years total cost \$75,790)	60,632
Training	BENDELTA PTY LTD	Performance Development Booster Program	94,468
<b>Total (inc GST)</b>			<b>853,906</b>

\* figure rounded to whole dollars

**Figure 14: 2019–20 All suppliers accounts paid on time comparison**



**Figure 15: 2019–20 and 2018–19 Small business suppliers accounts paid on time comparison**



**Table 35: 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 2019	149,103	0	0	0	0	<b>149,103</b>
December 2019	4,049	0	0	0	0	<b>4,049</b>
March 2020	100,422	0	0	0	0	<b>100,422</b>
June 2020	648,611	0	0	0	0	<b>648,611</b>
<b>Small businesses</b>	\$	\$	\$	\$	\$	\$
September 2019	0	0	0	0	0	<b>0</b>
December 2019	0	0	0	0	0	<b>0</b>
March 2020	174	0	0	0	0	<b>174</b>
June 2020	0	0	0	0	0	<b>0</b>

# **Ombudsman's financial statements**

In this part, we provide the audited financial statement 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, which comprises the Statement of Comprehensive Income for the year ended 30 June 2020, the Statement of Financial Position as at 30 June 2020, the Statement of Changes in Equity and the Statement of Cash Flows for the year then ended, notes comprising a Statement of Significant Accounting Policies and other explanatory information.

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Ombudsman's Office as at 30 June 2020, and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards
- are in accordance with section 41B of the *Public Finance and Audit Act 1983* (PF&A Act) and the Public Finance and Audit Regulation 2015

My opinion should be read in conjunction with the rest of this report.

## Basis for Opinion

I conducted my audit in accordance with Australian Auditing Standards. My responsibilities under the standards are described in the 'Auditor's Responsibilities for the Audit of the Financial Statements' section of my report.

I am independent of the Ombudsman's Office in accordance with the requirements of the:

- Australian Auditing Standards
- Accounting Professional and Ethical Standards Board's APES 110 'Code of Ethics for Professional Accountants (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 Ombudsman's Office's annual report for the year ended 30 June 2020 includes other information in addition to the financial statements and my Independent Auditor's Report thereon. The Ombudsman 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.

## The 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 and the PF&A Act, and for such internal control as the Ombudsman determine(s) is necessary to enable the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Ombudsman is responsible for assessing the Ombudsman's Office's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting.

## Auditor's Responsibilities for the Audit of the Financial Statements

My objectives are to:

- obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error
- issue an Independent Auditor's Report including my opinion.

Reasonable assurance is a high level of assurance, but does not guarantee an audit conducted in accordance with Australian Auditing Standards will always detect material misstatements. Misstatements can arise from fraud or error. Misstatements are considered material if, individually or in aggregate, they could reasonably be expected to influence the economic decisions users take based on the financial statements.

A description of my responsibilities for the audit of the financial statements is located at the Auditing and Assurance Standards Board website at: [www.auasb.gov.au/auditors\\_responsibilities/ar4.pdf](http://www.auasb.gov.au/auditors_responsibilities/ar4.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.



Dominika Ryan  
Director, Financial Audit

Delegate of the Auditor-General for New South Wales

28 September 2020  
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)



14 September 2020

## Statement by the Ombudsman

Pursuant to section 45F of the Public Finance and Audit Act 1983 and to the best of my knowledge and belief I state that:

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the Australian Accounting Standards (which include Australian Accounting Interpretations), the requirements of the *Public Finance and Audit Act 1983*, the *Public Finance and Audit Regulation 2015* and Treasurer's Directions issued under the Act.
- (b) the statements exhibit a true and fair view of the financial position of the Ombudsman's Office as at 30 June 2020, and the financial performance for the year then ended; and
- (c) there are no known circumstances which would render any particulars included in the financial statements to be misleading or inaccurate.

A handwritten signature in black ink, appearing to read "Paul Miller". The signature is stylized and cursive.

Paul Miller  
**Acting Ombudsman**

# Ombudsman's Office

## Statement of Comprehensive Income for the year ended 30 June 2020

	Notes	Actual 2020 \$'000	Budget 2020 \$'000	Actual 2019 \$'000
<b>Expenses excluding losses</b>				
Employee related expenses	2(a)	18,433	24,384	25,148
Operating expenses	2(b)	4,326	2,707	5,174
Depreciation and amortisation	2(c)	3,572	3,625	780
Finance costs	2(d)	277	332	7
<b>Total Expenses excluding losses</b>		<b>26,608</b>	<b>31,048</b>	<b>31,109</b>
<b>Revenue</b>				
Appropriations	3(a)	25,554	29,045	26,584
Sale of goods and services	3(b)	-	-	853
Sale of good and services from contracts with customers	3(b)	396	599	-
Grants and other contributions	3(c)	295	-	505
Acceptance by the Crown Entity of employee benefit and other liabilities	3(d)	(489)	913	1,432
Other income	3(e)	22	-	142
<b>Total Revenue</b>		<b>25,778</b>	<b>30,577</b>	<b>29,156</b>
Losses on disposal	4	(63)	-	(1)
<b>Net Result</b>		<b>(893)</b>	<b>(491)</b>	<b>(1,594)</b>
<b>Other comprehensive income</b>				
Total other comprehensive income		-	-	-
<b>TOTAL COMPREHENSIVE INCOME</b>		<b>(893)</b>	<b>(491)</b>	<b>(1,594)</b>

The accompanying notes form part of these financial statements.

# Ombudsman's Office

## Statement of Financial Position as at 30 June 2020

	Notes	Actual 2020 \$'000	Budget 2020 \$'000	Actual 2019 \$'000
<b>ASSETS</b>				
<b>Current Assets</b>				
Cash and cash equivalents	6	911	1,353	763
Receivables	7	906	971	936
<b>Total Current Assets</b>		<b>1,817</b>	<b>2,324</b>	<b>1,699</b>
<b>Non-Current Assets</b>				
Property, plant and equipment				
- Plant and equipment		2,465	719	2,265
Total property, plant and equipment	8	2,465	719	2,265
Right-of-use assets	9	11,430	11,356	-
Intangible assets	10	800	910	1,010
<b>Total Non-Current Assets</b>		<b>14,695</b>	<b>12,985</b>	<b>3,275</b>
<b>Total Assets</b>		<b>16,512</b>	<b>15,309</b>	<b>4,974</b>
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Payables	11	1,166	506	411
Borrowings	13	2,549	2,653	-
Provisions	14	1,791	2,705	2,395
Other current liabilities	15	-	99	454
<b>Total Current Liabilities</b>		<b>5,506</b>	<b>5,963</b>	<b>3,260</b>
<b>Non-Current Liabilities</b>				
Borrowings	13	9,632	8,838	-
Provisions	14	1,002	1,049	750
<b>Total Non-Current Liabilities</b>		<b>10,634</b>	<b>9,887</b>	<b>750</b>
<b>Total Liabilities</b>		<b>16,140</b>	<b>15,850</b>	<b>4,010</b>
<b>Net Assets/(Liabilities)</b>		<b>372</b>	<b>(541)</b>	<b>964</b>
<b>EQUITY</b>				
Accumulated funds	16	372	(541)	964
<b>Total Equity</b>		<b>372</b>	<b>(541)</b>	<b>964</b>

The accompanying notes form part of these financial statements.

## Ombudsman's Office

### Statement of Changes in Equity for the year ended 30 June 2020

	Notes	Accumulated Funds 2020 \$'000	Accumulated Funds 2019 \$'000
<b>Balance at 1 July</b>		<b>964</b>	<b>2,558</b>
Net result for the year		(893)	(1,594)
<b>Total comprehensive income for the year</b>		<b>71</b>	<b>964</b>
<b>Transaction with owners in their capacity as owners</b>			
Increase in net assets from equity transfers	16	301	-
<b>Balance at 30 June</b>		<b>372</b>	<b>964</b>

The accompanying notes form part of these financial statements.

# Ombudsman's Office

## Statement of Cash Flows for the year ended 30 June 2020

	Notes	Actual 2020 \$'000	Budget 2020 \$'000	Actual 2019 \$'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Payments</b>				
Employee related		(19,099)	(23,281)	(23,825)
Suppliers for goods and services		(1,783)	(3,028)	(3,185)
Office leases		-	-	(2,748)
Consultancy		(1,028)	-	(377)
Contractors		(1,165)	-	(478)
Maintenance		(592)	(477)	(477)
Finance costs		(269)	(309)	-
<b>Total Payments</b>		<b>(23,936)</b>	<b>(27,095)</b>	<b>(31,090)</b>
<b>Receipts</b>				
Appropriations		25,554	29,045	26,584
Sale of goods and services		396	599	853
Grants and other contributions		295	-	505
Other		726	543	1,248
<b>Total Receipts</b>		<b>26,971</b>	<b>30,187</b>	<b>29,190</b>
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	20	<b>3,035</b>	<b>3,092</b>	<b>(1,900)</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Purchase of property, plant and equipment		(544)	(210)	(51)
Purchase of intangible assets		(106)	(90)	(395)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>		<b>(650)</b>	<b>(300)</b>	<b>(446)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Payment of principal portion of lease liabilities		(2,237)	(2,527)	-
<b>NET CASH FLOWS FROM FINANCING ACTIVITIES</b>		<b>(2,237)</b>	<b>(2,527)</b>	<b>-</b>
<b>NET INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS</b>				
		<b>148</b>	<b>265</b>	<b>(2,346)</b>
Opening cash and cash equivalents		763	1,088	3,109
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	6	<b>911</b>	<b>1,353</b>	<b>763</b>

The accompanying notes form part of these financial statements.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### 1 Summary 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 the Office has no major cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts.

The financial statements for the year ended 30 June 2020 have been authorised for issue by the Ombudsman on 14 September 2020.

#### (b) Basis of preparation

Our financial statements are general purpose financial statements, which have been prepared on an accrual basis in accordance with:

- applicable Australian Accounting Standards (AAS) (which include Australian Accounting Interpretations);
- the requirements of the *Public Finance and Audit Act 1983* (the Act) and the *Public Finance and Audit Regulation 2015*; and
- Treasurer's Directions issued under the Act.

Property, plant and equipment are measured at fair value. 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 us 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 component 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) Revenue

##### (i) Parliamentary appropriations

###### Until 30 June 2019

Except as specified below, 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. Lapsed appropriations are recognised as liabilities rather than income, as the authority to spend the money lapses and the unspent amount must not be controlled by the Office. The Office has no lapsed appropriations.

###### From 1 July 2019

After AASB 15 and AASB 1058 became effective on 1 July 2019, the treatment of appropriations remain the same, because appropriations do not contain an enforceable sufficiently specific performance obligation as defined by AASB 15.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### (ii) Rendering of services

#### Until 30 June 2019

Revenue from rendering of services such as conducting training programs, is recognised when the service is provided.

#### From 1 July 2019

Revenue from rendering of services such as conducting training programs, is recognised when the Office satisfies the performance obligation by delivering training workshops. The Office typically receives payments in advance, which creates a contract liability. A contract liability is the Office's obligation to deliver training programs to a customer for which the Office has received consideration or an amount of consideration is due from the customer.

The revenue is measured at the transaction price agreed under the contract, and the initial liability is measured at the amount of consideration received from the customer.

### (iii) Grants and other contributions

#### Until 30 June 2019

Income from grants (other than contribution by owners) is recognised when the Office obtains control over the contribution. The Office is deemed to have assumed control when the grant is received or receivable.

Contributions are recognised at their fair value. Contributions of services are recognised when and only when a fair value of those services can be reliably determined and the services would be purchased if not donated.

#### From 1 July 2019

Revenue from grants with sufficiently specific performance obligations is recognised as when the Office satisfies a performance obligation by transferring the promised goods. During the financial year, the Office received Crown Entity funded redundancies, and satisfied its performance obligation when redundancy payments were made.

Revenue from these grants is recognised based on the grant amount specified in the funding approval, 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.

## (g) Expenses

### (i) Maintenance

The costs of day-to-day servicing 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.

### (ii) Insurance

Our 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.

### (iii) Lease expenses

#### Until 30 June 2019 (Operating leases)

Up to 30 June 2019, operating lease payments are recognised as an operating expense in the Statement of Comprehensive Income on a straight-line basis over the lease term. An operating lease is a lease other than a finance lease.

#### From 1 July 2019

From 1 July 2019, the Office recognises the lease payments associated with the following types 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.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### (iv) Finance costs

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.

### (h) Assets

#### (i) Receivables

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.

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.

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.

#### (ii) Property, plant and equipment

##### (a) Acquisition of property, plant and equipment

Property, plant and equipment are initially measured at cost and subsequently revalued at fair values 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 receivable to sell an asset in an orderly transaction between market participants at measurement date.

##### (b) 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.

##### (c) 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.

##### (d) 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.

##### (e) 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 and 2019)
- Furniture & fittings                                10% (2020 and 2019)

##### (f) Right-of-Use Assets acquired by lessees (under AASB 16 from 1 July 2019)

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. Therefore, at that date property, plant and equipment recognised under leases previously treated as finance leases under AASB 117 are derecognised. The right-of-use assets arising from these leases are recognised and included in the separate line item together with those right-of-use assets arising from leases previously treated as operating leases under AASB 117.

Further information on leases is contained at Note 9.

##### (g) Revaluation of property, plant and equipment

We value our physical non-current assets in accordance with the 'Valuation of Physical Non-Current Assets at

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

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.

### (h) 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 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.

### (iii) Intangible assets

We recognise intangible assets only if it is probable that future economic benefits will flow to the Office and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition. 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 life of intangible assets are assessed to be finite. Our intangible assets are amortised using the straight-line method over a period of five to ten years. The amortisation rates used for computer software are 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.

## (i) Liabilities

### (i) Payables

Payables represent liabilities for goods and services provided to us 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.

### (ii) Contract liabilities

Contract liabilities relate to consideration received in advance from customers in respect of training programs. The balance of contract liabilities at 30 June 2020 was zero due to the Office not receiving any payments in advance for training programs.

Revenue recognised that was included in the contract liability	<b>2020</b>
balance (adjusted for AASB 15) at the beginning of the year	<b>\$'000</b>
	23

### (iii) Borrowings

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

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

effective interest method. Gains and losses are recognised in net result when the liabilities are derecognised as well as through the amortisation process.

Finance lease liabilities are determined in accordance with AASB 117 until 30 June 2019. From 1 July 2019, lease liabilities are determined in accordance with AASB 16.

### (iv) Provisions - employee benefits and related on costs

#### (a) 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 twelve months after the end of the annual reporting period in which the employees render the related service is required to be measured at present value in accordance with AASB 119 *Employee Benefits* (although short-cut methods are permitted).

Actuarial advice obtained by Treasury has confirmed that using the nominal annual leave balance plus the annual leave entitlements accrued while taking annual leave (calculated using 7.9% of the nominal value of annual leave (7.9% 2019)) 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.

#### (b) Long service leave and superannuation

Our liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity.

We account for the liability as having been extinguished, resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown Entity of employee benefits and other liabilities'.

Long service leave is measured at the present value of expected future payments to be made in respect of services provided up to the reporting date. Consideration is given to certain factors based on actuarial review, including expected future wage and salary levels, experience of employee departures, and periods of service. Expected future payments are discounted using Commonwealth government bond rate at the reporting date.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for 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.

#### (c) 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.

### (v) 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% (2019: 3%), 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.

### (j) Equity

#### (i) Accumulated funds

The category 'Accumulated Funds' includes all current and prior period retained funds.

#### (ii) Equity transfer

The transfer of net assets between entities as a result of an administrative restructure, transfers of programs/ functions and parts thereof between NSW public sector entities and 'equity appropriations' are designated to be treated as contributions by owners and recognised as an adjustment to 'Accumulated Funds'. This treatment

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

is consistent with AASB 1004 *Contributions* and Australian Interpretation 1038 *Contributions by Owners Made to Wholly- Owned Public Sector Entities*.

Transfers arising from an administrative restructure involving not-for-profit and for-profit government entities are recognised at the amount at which the assets and liabilities were recognised by the transferor immediately prior to the restructure. Subject to the following paragraph, in most instances this will approximate fair value.

All other equity transfers are recognised at fair value, except for intangibles. Where an intangible has been recognised at (amortised) cost by the transferor because there is no active market, the Office recognises the asset at the transferor's carrying amount. Where the transferor is prohibited from recognising internally generated intangibles, the Office does not recognise that asset.

### (k) Leases

#### **Under AASB 117 until 30 June 2019**

The determination of whether an arrangement is (or contains) a lease is based on the substance of the arrangement at the inception of the lease. The arrangement is, or contains, a lease if fulfilment of the arrangement is dependent on the use of a specific asset or assets and the arrangement conveys a right to use the asset (or assets), even if that asset (or those assets) is not explicitly specified in an arrangement.

Until 30 June 2019, a lease was classified at the inception date as a finance lease or an operating lease. A lease that transferred substantially all the risks and rewards incidental to ownership to the entity was classified as a finance lease.

An operating lease is a lease other than a finance lease. Operating lease payments were recognised as an operating expense in the statement of comprehensive income on a straight-line basis over the lease term.

#### **Under AASB 16 from 1 July 2019**

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.

#### **(i) 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 (refer b below), 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.

#### **(ii) 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 do 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.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### (iii) 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.

### (l) Budgeted amounts

The budgeted amounts are drawn from the original budgeted financial statement presented to Parliament in respect of the reporting period. Subsequent amendments to the original budget (e.g. adjustment for transfer of functions between entities as a result of Administrative Arrangement Orders) are not reflected in the budgeted amounts. Major variances between the original budgeted amounts and the actual amounts disclosed in the financial statements are explained in Note 19.

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

#### (i) Effective for the first time in FY2019-20

The Office applied AASB 15 *Revenue from Contracts with Customers*, AASB 1058 *Income of Not-for-profit Entities*, and AASB 16 *Leases* for the first time. The nature and effect of the changes as a result of adoption of this new accounting standard is described below.

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

#### AASB 15 Revenue from Contracts with Customers

AASB 15 supersedes AASB 111 *Construction Contracts*, AASB 118 *Revenue* and related Interpretations and it applies, with limited exceptions, to all revenue arising from contracts with customers. The standard establishes a five-step model to account for revenue arising from contracts with customers and requires that revenue be recognised at an amount that reflects the consideration to which an entity expects to be entitled in exchange for transferring goods or services to a customer.

AASB 15 requires us to exercise judgement, taking into consideration all of the relevant facts and circumstances when applying each step of the model to contracts with their customers. The standard also specifies the accounting for the incremental costs of obtaining a contract and the costs directly related to fulfilling a contract. In addition, the standard requires relevant disclosures.

Revenue from rendering of services such as conducting training programs is assessed as sale of goods and services from contracts with customers under AASB 15.

In accordance with the transition provisions in AASB 15, the Office has adopted AASB 15 retrospectively with the cumulative effect of initially applying the standard recognised at the date of initial application, i.e. 1 July 2019.

The effect of adopting AASB 15 is as follows:

Impact on the Statement of Comprehensive Income (increase/(decrease)):

	30 June 2020 AASB 15 \$'000	30 June 2020 Without adoption of AASB 15 \$'000	30 June 2020 Impact of AASB 15 \$'000
<b>Revenue</b>			
Sale of goods and services	-	396	(396)
Sale of goods and services from contracts with customers	396	-	396
<b>Net Result</b>	<u>-</u>	<u>-</u>	<u>-</u>

The nature of this adjustment is to reclass Sale of goods and services to Sale of goods and services from contracts with customers.

The adoption of AASB 15 did not have an impact on the Statement of Financial Position and the Statement of Cash Flows for the financial year.

#### AASB 1058 Income of Not-for-Profit Entities

AASB 1058 replaces most of the existing requirements in AASB 1004 *Contributions*. The scope of AASB 1004 is now limited mainly to contributions by owners (including parliamentary appropriations that satisfy the definition of a contribution by owners), administrative arrangements and liabilities of government departments

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

assumed by other entities.

AASB 1058 applies to income with a donation component, i.e. transactions where the consideration to acquire an asset is significantly less than fair value principally to enable a not-for-profit entity to further its objectives, and volunteer services. AASB 1058 adopts a residual approach, meaning that entities first apply other applicable Australian Accounting Standards (e.g. AASB 1004, AASB 15, AASB 16, AASB 9, AASB 137) to a transaction before recognising income.

The Office has determined no transaction during the financial year was or contained a donation and accounted for under AASB 1058.

The adoption of AASB 1058 did not have impact on the Statement of Comprehensive Income, the Statement of Financial Position and the Statement of Cash Flows for the financial year.

### AASB 16 Leases

AASB 16 supersedes AASB 117 *Leases*, Interpretation 4 *Determining whether an Arrangement contains a Lease*, Interpretation 115 *Operating Leases – Incentives* and Interpretation 127 *Evaluating the Substance of Transactions Involving the Legal Form of a Lease*. The standard sets out the principles for the recognition, measurement, presentation and disclosure of leases and requires lessees to recognize most leases on the balance sheet.

#### Lessee accounting

AASB 16 requires us to account for all leases under a single on-balance sheet model similar to the accounting for finance leases under AASB 117. As the lessee, the Office recognises a lease liability and right-of-use asset at the inception of the lease. The lease liability is measured at the present value of the future lease payments, discounted using the lessee's incremental borrowing rate. The corresponding right-of-use asset is measured at the value of the lease liability adjusted for lease payments before inception, lease incentives, initial direct costs and estimates of costs for dismantling and removing the asset or restoring the site on which it is located.

The Office has adopted the partial retrospective option in AASB 16, where the cumulative effect of initially applying AASB 16 is recognised on 1 July 2019 and the comparatives for the year ended 30 June 2019 are not restated.

In relation to leases that had previously been classified as 'operating leases' under AASB 117, a lease liability is recognised on at 1 July 2019 at the present value of the remaining lease payments, discounted using the lessee's incremental borrowing rate at the date of initial application. The weighted average lessee's incremental borrowing rate applied to the lease liabilities on 1 July 2019 was 2%.

The corresponding right-of-use asset is initially recorded on transition at an amount equal to the lease liability, adjusted by the amount of any prepaid or accrued lease payments relating to that lease recognised in right-of-use assets that are subject to accelerated depreciation. The asset are measured at its fair value at 1 July 2019.

In applying AASB 16 for the first time, the Office has used the following practical expedients permitted by the standard:

- not reassess whether a contract is, or contains, a lease at 1 July 2019, for those contracts previously assessed under AASB 117 and Interpretation 4.
- applying a single discount rate to a portfolio of leases with reasonably similar characteristics
- relying on its previous assessment on whether leases are onerous immediately before the date of initial application as an alternative to performing an impairment review
- not recognise a lease liability and right-of-use-asset for short-term leases that end within 12 months of the date of initial application
- excluding the initial direct costs from the measurement of the right-of-use asset at the date of initial application

The effect of adoption AASB 16 as at 1 July 2019 increase is, as follows:

<b>Assets</b>	<b>\$'000</b>
Property, plant and equipment	14,418
<b>Total assets</b>	<b>14,418</b>
<b>Liabilities</b>	
Borrowings	14,418
<b>Total liabilities</b>	<b>14,418</b>
<b>Equity</b>	
Accumulated funds	-
	-

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

The lease liabilities as at 1 July 2019 can be reconciled to the operating lease commitments as of 30 June 2019, as follows:

	<b>\$'000</b>
Operating lease commitments as at 30 June 2019 (GST included)	25,102
(less): GST included in operating lease commitments	<u>(2,282)</u>
Operating lease commitments as at 30 June 2019 (GST excluded)	22,820
<b>(less): Motor vehicles lease and purchasing commitments</b>	<b>(129)</b>
<b>(less): Lease-related outgoings</b>	<b>(1,922)</b>
<b>(less): Lease incentive</b>	<b>(3,337)</b>
<b>(less): Adjustment on lease commitments</b>	<b><u>(2,192)</u></b>
Property lease commitments as at 30 June 2019 (GST excluded)	<b>15,240</b>
Weighted average incremental borrowing rate as at 1 July 2019	<u>2%</u>
Lease liabilities as at 1 July 2019	<b><u>14,418</u></b>

The difference between the Operating Lease Commitments disclosed in applying AASB 117 at the end of the annual reporting period immediately preceding the date of initial application (i.e. 30 June 2019), discounted using the incremental borrowing rate at the date of initial application; and (b) lease liabilities recognised in the statement of financial position at the date of initial application (i.e. 1 July 2019) is primarily the result of:

- exclusion of open purchase order commitments that are not within the scope of AASB 16
- exclusion or cleaning, car park, management fee and ongoing expenses (lease related outgoings) that are not within the scope of AASB 16
- exclusion of short term leases (less than 12 months) related to Motor vehicle leases
- deduction of lease incentive
- base price of lease being updated to reflect changed lease terms

### (ii) Issued but not yet effective

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

- AASB 17 *Insurance Contracts*
- AASB 1059 *Service Concession Arrangements: Grantors*
- AASB 2018-5 *Amendments to Australian Accounting Standards – Deferral of AASB 1059*
- AASB 2018-6 *Amendments to Australian Accounting Standards – Definition of a Business*
- AASB 2018-7 *Amendments to Australian Accounting Standards – Definition of Material*
- AASB 2019-1 *Amendments to Australian Accounting Standards – References to the Conceptual Framework*
- AASB 2019-2 *Amendments to Australian Accounting Standards – Implementation of AASB 1059*
- AASB 2019-3 *Amendments to Australian Accounting Standards – Interest Rate Benchmark Reform*
- AASB 2019-7 *Amendments to Australian Accounting Standards – Disclosure of GFS Measures of Key Fiscal Aggregates and GAAP/GFS Reconciliations*

The Office has assessed above new standards, AASB 2018-7 *Amendments to Australian Accounting Standards – Definition of Material*, AASB 2019-1 *Amendments to Australian Accounting Standards – References to the Conceptual Framework*, AASB 2019-7 *Amendments to Australian Accounting Standards – Disclosure of GFS Measures of Key Fiscal Aggregates and GAAP/GFS Reconciliations* may impact the Office's Financial Statements upon adoption. The impact will only be on the disclosure of Financial Statements, and pending on Treasury's specific directions.

### (n) 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 2019-2020 on an 'as needs' basis from the Crown Entity.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

	<b>2020</b>	<b>2019</b>
	<b>\$'000</b>	<b>\$'000</b>
<b>2 Expenses</b>		
<b>(a) Employee related expenses</b>		
Salaries and wages (including annual leave)*	16,170	20,742
Superannuation – defined benefit plans	188	226
Superannuation – defined contribution plans	1,189	1,641
Long service leave	(688)	1,194
Workers' compensation insurance	46	60
Payroll tax and fringe benefit tax	969	1,285
Redundancy	559	-
	<b>18,433</b>	<b>25,148</b>
<b>(b) Operating expenses include the following:</b>		
Auditor's remuneration – audit of the financial statements	40	36
Operating lease rental expenses – minimum lease payments	-	1,821
Finance lease outgoings	239	-
Insurance	31	28
Fees	510	746
Telephones	67	71
Stores	95	73
Training	163	278
Printing	25	21
Travel	90	474
Consultants	1,028	377
Contractors	1,165	478
Maintenance – non-employee related*	592	477
Other	281	294
	<b>4,326</b>	<b>5,174</b>
* Reconciliation - Total maintenance expense		
Maintenance expense - contracted labour and other (non-employee related), as above	592	477
Employee related maintenance expense included in Note 2(a)	82	82
Total maintenance expenses included in Notes 2(a) and 2(b)	<b>674</b>	<b>559</b>
<b>(c) Depreciation and amortisation expense</b>		
<b>Depreciation</b>		
Right-of-use assets	2,746	-
Leasehold improvements	367	324
Plant and equipment	183	184
Furniture and fittings	22	22
<b>Total depreciation expense</b>	<b>3,318</b>	<b>530</b>
<b>Amortisation</b>		
Software	254	250
<b>Total amortisation expense</b>	<b>254</b>	<b>250</b>
<b>Total depreciation and amortisation expense</b>	<b>3,572</b>	<b>780</b>
<b>(d) Finance costs</b>		
Interest expense from lease liabilities	269	-
Unwinding of discount and effect of changes in discount rate on provisions	8	7
	<b>277</b>	<b>7</b>

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### 3 Revenue

(a) Appropriations and transfers to the Crown Entity	2020 \$'000		2019 \$'000	
	Appropriation	Expenditure	Appropriation	Expenditure
<b>Summary of Compliance</b>				
Original Budget per Appropriation Act	29,045	25,554	27,113	26,584
Other Appropriations/Expenditure				
- Section 24 PFAA – transfers of functions between entities	(2,537)	-	263	-
- Section 22 PFAA – expenditure for certain works and services	303	-	-	-
<b>Total Annual Appropriations / Expenditure on Annual Appropriations</b>	<b>26,811</b>	<b>25,554</b>	<b>27,376</b>	<b>26,584</b>
Amount drawn down against Annual Appropriations		25,554		26,584
Liability for Lapsed Appropriations drawn down		-		-
<b>Appropriations (per Statement of Comprehensive Income):</b>				
Recurrent	26,061	24,894	26,936	26,139
Capital	750	660	440	445
	<b>26,811</b>	<b>25,554</b>	<b>27,376</b>	<b>26,584</b>

The Office receives its funding under appropriations from the Consolidated Fund. Appropriations for each financial year are set out in the Appropriation Bill that is prepared and tabled for that year. Due to COVID-19, the State Budget and related 2020-21 Appropriation Bill has been delayed until November/December 2020. However, pursuant to section 4.10 of the GSF Act, the Treasurer has authorised Ministers to spend specified amounts from Consolidated Fund. This authorisation is current from 1 July 2020 until the release of the 2020-21 Budget or Appropriation Bill.

	2020 \$'000	2019 \$'000
<b>(b) Sale of goods and services from contracts with customers / Sale of goods and services</b>		
Rendering of services	396	853
	<b>396</b>	<b>853</b>
<b>(c) Grants and other contributions</b>		
Crown Entity funded redundancies	295	-
Disability Reportable Incidents - Grant from Department of Family & Community Services	-	505
	<b>295</b>	<b>505</b>
<b>(d) Acceptance by the Crown Entity of employee benefits and other liabilities</b>		
The following liabilities and / or expenses have been assumed by the Crown Entity:		
Superannuation - defined benefit	188	226
Long service leave provision	(688)	1,194
Payroll tax on superannuation	11	12
	<b>(489)</b>	<b>1,432</b>

The credit balance of \$688k in long service leave provision reflect the annual actuarial adjustment of \$1.45m in long service leave assumed by the Crown due to transfer of functions under section 24 of PFAA.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

	2020 \$'000	2019 \$'000
<b>(e) Other income</b>		
Miscellaneous	22	142
	<b>22</b>	<b>142</b>

#### 4 Losses on Disposal

Losses on disposal of plant and equipment	(63)	(1)
	<b>(63)</b>	<b>(1)</b>

#### 5 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.

	2020 \$'000	2019 \$'000
<b>6 Current Assets - Cash and Cash Equivalents</b>		
Cash at bank and on hand	911	763
	<b>911</b>	<b>763</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)	911	763
Closing cash and cash equivalents (per Statement of Cash Flows)	<b>911</b>	<b>763</b>

Refer Note 21 for details regarding credit risk and market risk arising from financial instruments.

	2020 \$'000	2019 \$'000
<b>7 Current Assets - Receivables</b>		
Sale of goods and services (Workshops and other)	-	37
GST receivable	256	76
Long service leave refundable	89	95
Lease incentives receivables	-	190
Other receivables	1	-
	346	398
Less Allowance for expected credit losses*		
- Trade receivables from contracts with customers	-	-
Total expected credit losses	-	-
Prepayments	560	538
	<b>906</b>	<b>936</b>

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

Balance at the beginning of the year	(37)	(53)
Amounts written off during the year	-	-
Amounts recovered during the year	37	53
Increase/(decrease) in allowance recognised in net results	-	-
Balance at the end of the year	<b>-</b>	<b>-</b>

Details regarding credit risk of trade receivables that are neither past due nor impaired, are disclosed in Note 21.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

	Leasehold Improvements \$'000	Plant and Equipment \$'000	Furniture and Fittings \$'000	Total \$'000
<b>8 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>At 30 June 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>

### Reconciliation

A reconciliation of the carrying amount of each class of property, plant and equipment at the beginning of and end of the reporting period is set out below:

	Leasehold Improvements \$'000	Plant and Equipment \$'000	Furniture and Fittings \$'000	Total \$'000
<b>Year ended 30 June 2020</b>				
Net carrying amount at beginning of year	1,700	409	156	2,265
Purchase of assets	267	524	16	807
Disposals	-	(35)	-	(35)
Depreciation expense - assets owned	(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 2018 - fair value</b>				
Gross carrying amount	5,055	1,490	390	6,935
Accumulated depreciation	(3,074)	(904)	(212)	(4,190)
<b>Net carrying amount</b>	<b>1,981</b>	<b>586</b>	<b>178</b>	<b>2,745</b>
<b>At 30 June 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>

### Reconciliation

A reconciliation of the carrying amount of each class of property, plant and equipment at the beginning of and end of the reporting period is set out below:

	Leasehold Improvements \$'000	Plant and Equipment \$'000	Furniture and Fittings \$'000	Total \$'000
<b>Year ended 30 June 2019</b>				
Net carrying amount at beginning of year	1,981	586	178	2,745
Additions	43	8	-	51
Disposals	-	(1)	-	(1)
Depreciation expense	(324)	(184)	(22)	(530)
<b>Net carrying amount at end of year</b>	<b>1,700</b>	<b>409</b>	<b>156</b>	<b>2,265</b>

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### 9 Leases

#### Office as a lessee

The office leases two and half floors of office building space. 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.

From 1 July 2019, 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 when new.

#### 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</b>
	<b>\$'000</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>Balance at 1 July 2019</b>	<b>14,418</b>
Additions	-
Interest Expenses	269
Payments	(2,506)
<b>Balance at 30 June 2020</b>	<b>12,181</b>

The following amounts were recognised in the Statement of Comprehensive Income for the year ending 30 June 2020 in respect of leases where the Office is the lessee:

	<b>\$'000</b>
Depreciation expense of right-of-use assets	2,746
Interest expense on lease liabilities	269
Total amount recognised in the Statement of Comprehensive Income	<b>3,015</b>

The total cash outflows for lease was \$2.506 million for the year ending 30 June 2020.

Future minimum lease payments under non-cancellable leases as at **30 June 2019** are, as follows:

	<b>Operating lease</b>
	<b>\$'000</b>
Within one year	4,193
Later than one year and not later than five years	19,494
Later than five years	1,415
Total (including GST)	25,102
Less: GST recoverable from the Australian Tax Office	2,282
Total (excluding GST)	<b>22,820</b>

	<b>1 July 2018</b>	<b>30 June 2019</b>	<b>1 July 2019</b>	<b>30 June 2020</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>10 Intangible Assets</b>				
<b>Software</b>				
Gross carrying amount	2,467	2,789	2,789	2,541
Accumulated amortisation	(1,602)	(1,779)	(1,779)	(1,741)
<b>Net carrying amount</b>	<b>865</b>	<b>1,010</b>	<b>1,010</b>	<b>800</b>

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### Reconciliation

A reconciliation of the carrying amount of software at the beginning of and end of reporting period is set out below:

	<b>2020 \$'000</b>	<b>2019 \$'000</b>
Net carrying amount at beginning of year	1,010	865
Additions	106	395
Disposals	(62)	-
Amortisation	(254)	(250)
<b>Net carrying amount at end of year</b>	<b>800</b>	<b>1,010</b>

### 11 Current Liabilities - Payables

Accrued salaries, wages and on-costs	345	234
Creditors	821	177
	<b>1,166</b>	<b>411</b>

Details regarding liquidity risk, including a maturity analysis of the above payables are disclosed in Note 21.

	<b>2020 \$'000</b>	<b>1 July 2019 \$'000 adjusted for AASB 15</b>
12 <b>Contract Liabilities</b>		
Contract liabilities - current	-	23
	<b>-</b>	<b>23</b>

Contract receivable (included in Note 7)	-	37
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### 13 Current / Non-Current Liabilities - Borrowings

	<b>2020 \$'000</b>	<b>2019 \$'000</b>
<b>Lease liabilities (see Note 9)</b>		
- Current	2,549	-
- Non-current	9,632	-
	<b>12,181</b>	<b>-</b>

### 14 Current / Non-Current Liabilities - Provisions

	<b>2020 \$'000</b>	<b>2019 \$'000</b>
<b>Current provisions</b>		
Annual leave	898	1,173
Annual leave loading	148	224
Provision for related on-costs on annual leave	122	155
Provision for related on-costs on long service leave	623	843
<b>Total current provisions</b>	<b>1,791</b>	<b>2,395</b>
<b>Non-current provisions</b>		
Provision for related on-costs on long service leave	54	73
Restoration costs	948	677
<b>Total non-current provisions</b>	<b>1,002</b>	<b>750</b>

### Aggregate employee benefits and related on-costs

Provisions - current	1,791	2,395
Provisions - non-current	54	73
Accrued salaries, wages and on-costs (see Note 11)	345	234
	<b>2,190</b>	<b>2,702</b>

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

The value of annual leave and associated on-costs expected to be taken within 12 months is \$1.168 million (2019: \$1.552 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 \$81,000 (2019: \$92,000) and \$596,000 (2019: \$824,000) after 12 months.

	<b>2020 \$'000</b>	<b>2019 \$'000</b>
<b>Movement in restoration costs</b>		
Carrying amount at beginning of year	677	670
Additional provision recognised	263	-
Unwinding / change in the discount rate	8	7
<b>Carrying amount at end of year</b>	<b>948</b>	<b>677</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. We have reviewed and increased this provision based on updated advice from Property NSW.

	<b>2020 \$'000</b>	<b>2019 \$'000</b>
<b>15 Current Liabilities - Other Liabilities</b>		
Unearned revenue	-	23
Lease incentive liability	-	431
	<b>-</b>	<b>454</b>

### 16 Equity Transfer

On 1 July 2019, the Ageing and Disability Commission (ADC) was established. The official community visitor (OCV) program, which was administered by the Ombudsman's Office, was transferred to ADC in August 2019. The transfer included a budget transfer of \$859,000, and an equity transfer of \$27,000 made up of the Office's leave liabilities provision for staff which were transferred to ADC.

In October 2018, the NSW government announced it would transfer the reportable conduct scheme under Part 3A of the Ombudsman Act 1974 from the Ombudsman's Office to the Children's Guardian (OCG). The transfer commenced in March 2020 which included a budget transfer of \$1.68 million and an equity transfer of \$274,000, made up of the Office's leave liabilities provision for staff transferred to OCG and transfer of property, plant and equipment.

The total increase in net assets was \$301,000 as a result of equity transfers during the year.

### 17 Commitments

#### Capital commitments

Aggregate capital expenditure contracted for the acquisition of equipment, consultancy, and projects at balance date and not provided for:

	<b>2020 \$'000</b>	<b>2019 \$'000</b>
Within one year	220	4,193
Later than one year and not later than five years	96	19,494
Later than five years	-	1,415
Total (including GST)	<b>316</b>	<b>25,102</b>

### 18 Contingent Liabilities and Contingent Assets

There are no contingent assets or liabilities for the year ended 30 June 2020 (2019: nil).

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### 19 Budget Review

#### Net result

The actual net deficit of (\$893,000) was lower than budget by \$402,000 primarily due to:

- Expenses

Total expenditure was lower than budget by \$4.44 million primarily due to lower employee related expenses recorded. This was attributed to the transfers of the Official Community Visitors program to ADC and Reportable Conduct Scheme to OCG during the year, causing a \$2.25 million variance. There was also an extended leave actuarial adjustment of \$1.45 million at the end of year which was unanticipated in the original budget.

Further decreases in employee-related expenses due to staff turnover were offset by increases in consultants and contractors expenses to support core work including capability building and technology modernisation projects.

- Revenue

Total revenue was lower than budget by \$4.78 million due to lower appropriations received. This was due to the transfers of the Official Community Visitors program and Reportable Conduct Scheme function, and a non-cash reduction of \$1.27 million in acceptance by the Crown Entity of employee which related to the extended leave actuarial adjustment.

The Office obtained \$303,000 to compensate the impact of COVID-19 pandemic with the cancellation of on-site training programs.

The Office also received \$295,000 from Crown to fund redundancies.

#### Assets and liabilities

The Office had Net Assets of \$372,000 compared to a budget of Net Liabilities of (\$541,000).

Total assets were higher than budget by \$1.2 million due to higher plant and equipment by \$1.75 million, offset by lower cash by \$442,000.

Total liabilities were \$290,000 higher than budget due to higher borrowings as a result of recognising lease liabilities in accordance with AASB 16 by \$690,000, and higher payables due to timing by \$660,000, offset by \$961,000 decrease in provisions in line with a temporary shortage in workforce.

#### Cash flows

Cash and cash equivalents were \$442,000 lower than budget mainly due to lower net cash in operating activities and an increase in capital expenditure of \$350,000 for the technology modernisation program.

### 20 Reconciliation of Cash Flows from Operating Activities to Net Result

	2020 \$'000	2019 \$'000
Reconciliation of cash flows from operating activities to the net result as reported in the Statement of Comprehensive Income as follows:		
Net cash used on operating activities	3,035	(1,900)
Depreciation and amortisation expense	(3,572)	(780)
Adjustment on right-of-use assets	(241)	-
Increase in Make Good assets	263	-
Decrease in provisions	352	178
Increase / (Decrease) in prepayments	22	(171)
Decrease/(increase) in payables	(755)	181
Decrease in receivables	(52)	(285)
Decrease in other liabilities	454	1,184
(Loss) on disposal of assets	(63)	(1)
Equity transfer on fixed assets	(34)	-
Increase in net asset from equity transfer	(301)	-
<b>Net result</b>	<b>(892)</b>	<b>(1,594)</b>

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### 21 Financial Instruments

#### (a) Financial instrument categories

The Office's principal financial instruments are outlined below. These financial instruments arise directly from the Office's operations or are required to finance our operations. The Office does not enter into or trade financial instruments, including derivative financial instruments, for speculative purposes.

Our main risks arising from financial instruments are outlined below, together with the Office's objectives, policies and processes 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 Audit and Risk Committee on a regular basis.

Class	Note	Category	Carrying Amount	
			2020 \$'000	2019 \$'000
<b>Financial Assets</b>				
Cash and cash equivalents	6	Amortised cost	911	763
Receivables	7	Amortised cost	90	322
<b>Financial Liabilities</b>				
Payables	11	Amortised cost	1,166	411
Borrowings	13	Amortised cost	12,181	-

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 of our debtors 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 debtors 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, we may also consider a financial asset to be in default when internal or external information indicates that we are unlikely to receive the outstanding contractual amounts in full before taking into account any credit enhancements held by us.

##### *Cash and cash equivalents*

Cash comprises cash on hand and bank balances within the Treasury banking system.

##### *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 debtors 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.

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

The loss allowance for trade debtors as at 30 June 2020 and 30 June 2019 was determined as follows:

	30 June 2020					Total
	Current	< 30 days	30-60 days	61-90 days	> 91 days	
Expected credit loss rate	-	-	-	-	-	-
Estimated total gross carrying amount at default	-	-	-	-	-	-
Expected credit loss	-	-	-	-	-	-
	30 June 2019					Total
	Current	< 30 days	30-60 days	61-90 days	> 91 days	
Expected credit loss rate	-	-	-	-	-	-
Estimated total gross carrying amount at default	8	29	-	-	-	37
Expected credit loss	-	-	-	-	-	-

Notes

The analysis excludes statutory receivables, prepayments, as these are not within the scope of AASB 7. Therefore, the 'total' will not reconcile to the receivables total in Note 7.

The Office is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors as at 30 June 2020 and 30 June 2019.

### (ii) Liquidity risk

Liquidity risk is the risk that the Office will be unable to meet its payment obligations when they fall due. We continuously manage risk through monitoring future cash flows 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.

The table below summarises the maturity profile of our financial liabilities based on contractual undiscounted payments, together with the interest rate exposure:

	Weighted Average Effective Int. Rate %	Nominal Amount \$'000	Interest Rate Exposure			Maturity Dates		
			Fixed Interest Rate \$'000	Variable Interest Rate \$'000	Non-interest bearing \$'000	< 1 year \$'000	1 to 5 years \$'000	> 5 years \$'000
<b>2020</b>								
Payables		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>
<b>2019</b>								
Payables		411	-	-	411	411	-	-
Total		<b>411</b>	<b>-</b>	<b>-</b>	<b>411</b>	<b>411</b>	<b>-</b>	<b>-</b>

# Ombudsman's Office

## Notes to the financial statements for the year ended 30 June 2020

### (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. Our exposure to market risk are primarily through interest rate risk. The Office has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on profit and equity due to a reasonably possible change in risk variable is outlined in the information below for interest rate risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Office operates and the time frame for the assessment (i.e. until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the Statement of Financial Position reporting date. The analysis is performed on the same basis as for 2019. 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:

	2020		2019	
	\$'000		\$'000	
	-1%	+1%	-1%	+1%
Net Result	(9)	9	(8)	8
Equity	(9)	9	(8)	8

### (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.

## 22 Related Party Disclosures

There were eleven key management personnel (KMP) in the Office during the year (Eight KMP in 2019). Two executives transferred to ADC and OCG during the current financial year were not included in KMP in 2019, and one executive in legal branch is accounted as KMP in the current financial year, as part of the new organisation structure.

Compensation for these KMP are as follows:

	2020	2019
	\$'000	\$'000
Short term employee benefits	2,318	1,976
Termination benefits	128	49
Post-employment benefits	209	164
Other long term employee benefits	127	145
Total Remuneration	<b>2,782</b>	<b>2,334</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:

- Payments into the icare TMF Scheme
- Long Service Leave and Defined Benefit Superannuation assumed by the Crown
- Appropriations (and subsequent adjustments to appropriations)
- Transactions relating to the Treasury Banking System
- Payment for the audit of our financial statements
- Receipts from the provision of training and related services
- Grants and contributions related to funding specific programs and projects

## 23 Events after the Reporting Period

There were no events after the reporting period 30 June 2020.

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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)