



Annual Report 2021-2022

25 OCTOBER 2022

Letter to the Legislative Assembly and Legislative Council

25 October 2022

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

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

Dear Mr President and Mr Speaker

I am pleased to present the 2021–22 annual report of the NSW Ombudsman’s Office, which covers the period of 12 months ending 30 June 2022.

This report is presented in accordance with section 30 of the *Ombudsman Act 1974* which includes the financial report for the period of 12 months ending 30 June 2022. It also addresses the office’s annual reporting requirements in the following:

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

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

Yours sincerely



Paul Miller
NSW Ombudsman

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Our Vision

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



Our Mission

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



Our purpose

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



Our values

Integrity • Impartiality • Fairness • Transparency • Professionalism • Respect

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Ombudsman's message

The continuing impact of the COVID-19 pandemic

COVID-19, and the government's response to it, was a defining feature of 2021–22 as it was the year before. When 2021–22 began, Greater Sydney had just entered another lockdown due to what would become known as the 'Delta wave'. That wave peaked in September/October 2021. It was followed by the 'Omicron wave', which at its peak saw over 200,000 new cases of COVID-19 in NSW in just one week in January 2022.

COVID again challenged our office, as we continued to operate with a primarily remote workforce and limited ability to engage in community outreach activities. However, with the investments made in the previous year, both in replacing outdated IT infrastructure as well as creating new business processes, we were far better placed in the face of these disruptions. That said, this year also saw many more of our staff personally impacted by COVID, with nearly 60% taking leave at some point for COVID-related reasons.

Our second special report on COVID-19

We recently published our special report on the second year of the pandemic. We reported again on what we observed, particularly through the complaints we received about the impact of both COVID and of the government agencies' responses to it, on individuals and the community.

That report was not an investigation of wrong conduct by any of the agencies we oversight. Indeed, as we observed in that report, we acknowledge the genuine dedication and efforts of those working on the front lines of the health response, those involved in planning and continuing to deliver normal government services in circumstances that were anything but normal, as well as those involved in the development and implementation of the rules and guidance that sought to limit the spread of COVID in the community. While our report noted the public faced significant challenges in keeping up to date with the complex and frequently changing rules and guidance, no adverse comment should be inferred about the commitment and diligent

efforts of those public officials working to draft, disseminate and communicate information to the public, throughout.

Those circumstances highlight, however, a key theme of this report and its predecessor — that in times of crisis, the need for visible, accessible and effective complaint-handling and oversight mechanisms becomes even more critical. This is because, among other things, those mechanisms can provide essential feedback to improve both the crisis response and the public's confidence in it.

Despite the many challenges and our limited ability to engage in-person with communities through outreach activities, we continued to work towards ensuring the right services and fair treatment were provided to the most vulnerable members of our community – including those in custody, whose conditions deteriorated this year because of COVID impacts. This is reflected in the volume of COVID-related complaints we have received from the custodial system, which were more than 5 times greater in the 2021–22 financial year compared to 2020–21.

Enhanced legislative functions

Some significant legislative changes have recently come into effect that will enhance our functions and enable us to provide more efficient and effective services in several areas. They include an express power to review the complaint-handling systems of public authorities proactively, which mirrors a power we already have to review the complaint-handling systems of community service providers. We have also been given additional powers to facilitate professional conciliation services to help resolve complaints, as well as to refer complaints back to a relevant agency for investigation. These are all important tools in a modern Ombudsman's toolkit.

We also have been given the function of monitoring the new mandatory disease testing regime, which commenced in July 2022, and enhanced functions to support the operation of the new *Public Interest Disclosures Act 2022*, due to commence in October 2023.

Together with these legislative changes, heading into 2022–23 we also received significant funding increases to allow us to deliver the expanded functions, as well as to support our continued efforts to update our legacy IT and other core infrastructure.

Looking to the future: automated decision-making technologies

Increasingly the government is employing digital technologies, both to promote efficiency and to improve services. In November 2021, we published a ground-breaking report examining the use of these new technologies in the context of administrative decision-making.

As Ombudsman, our primary focus is ensuring that government agencies and officials conduct themselves lawfully, make decisions reasonably, and treat all individuals equitably and fairly. To maintain effective oversight, it is imperative that we keep up with the new ways that government agencies operate. Whatever new technologies may be adopted, administrative law and good practice must always apply when government agencies and officials exercise their powers. Decision-makers must ensure that their decision-making systems are lawful, reasonable, just and non-discriminatory.

A key message of our report was that a current lack of visibility of automated decision-making (ADM) is an impediment to both meaningful debate about the future governance of such technologies and to effective oversight by relevant bodies. Our view is that agencies using ADM technologies to assist them in making administrative decisions that affect the public have a duty, at the very least, to inform those affected about the role that ADM has played in each decision.

This year we continue to build on this work by undertaking a project, with the support of all government departments, mapping the ways in which ADM is currently in use or development in the NSW public sector.

Long-lasting impacts

The work of an ombudsman will often have an immediate impact, particularly for the individuals who have come to us for help — for example, where an agency agrees to implement service improvements in response to our assessment of a complaint, completion of a review, or conduct of an investigation. That said, this impact may not always be well-publicised, as the bulk of our case work, including complaint handling and individual reviews, is generally required to take place in the absence of the public and does not lead to a public report.

Some of the deeper system impacts of our work may also not become apparent for some time. In last year's annual report, we highlighted how our

work in 2009 — reviewing the operation of the *Freedom of Information Act 1982* — was a seminal driver for the enactment of the *Government Information (Public Access) Act 2009* and the establishment of the Information and Privacy Commission, which last year celebrated its 10th anniversary.

Likewise, our 2016–18 inquiry into the abuse and neglect of vulnerable adults led to the enactment of the *Ageing and Disability Commissioner Act 2019* and the important and ongoing work of that new Commissioner.

In this year's annual report, we highlight the ongoing impact of work undertaken in our role as convenor of the Child Death Review Team, researching the role that seatbelts and child restraints can play in preventing deaths of children in vehicle crashes. Our review of the deaths of 66 children who had died in vehicle crashes between 2007 and 2016 found that more than half (35) had not been properly restrained, and almost a third could potentially have been saved if they had been properly restrained.

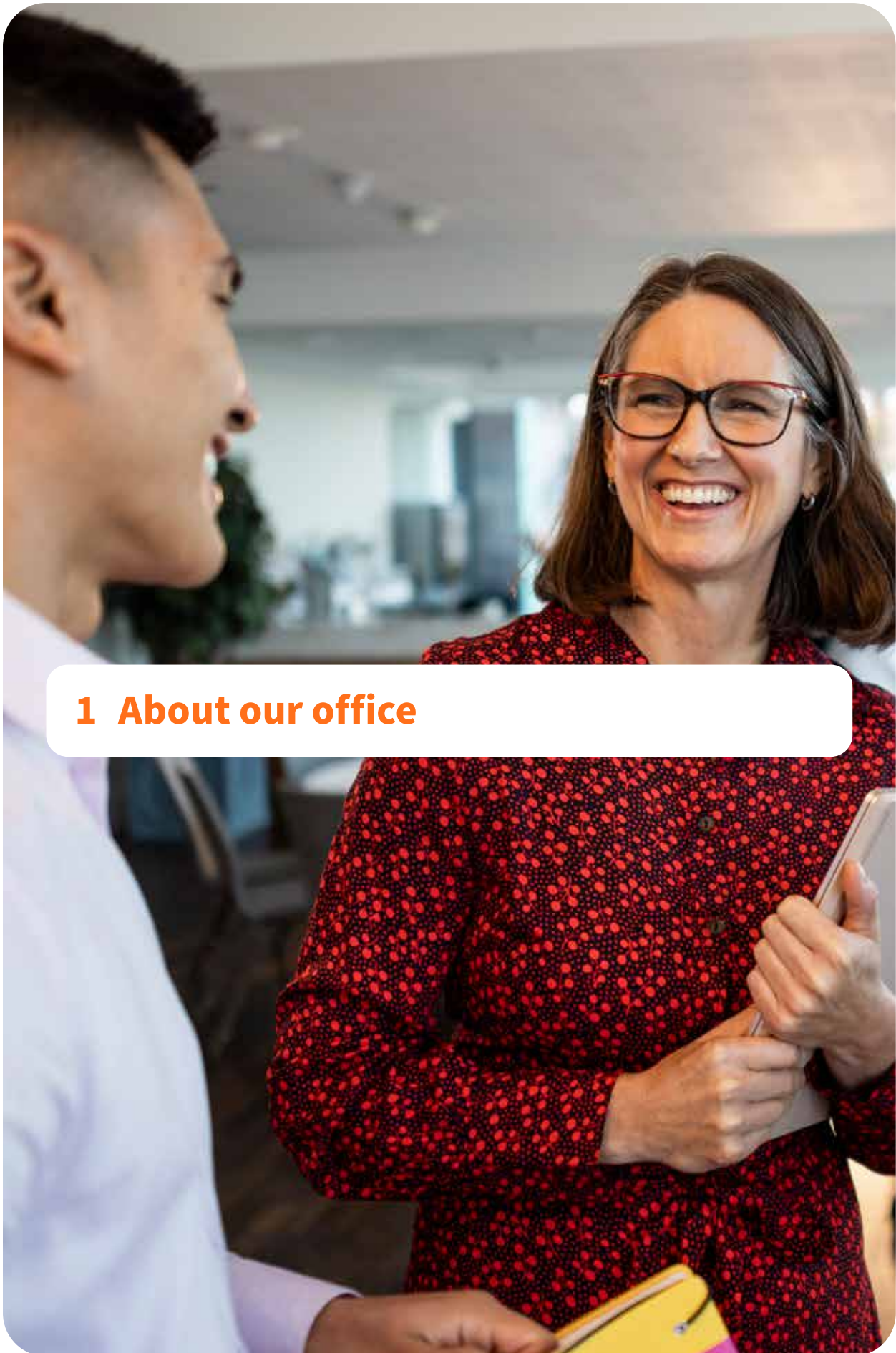
Inspired by this research and our report, the NSW Police Force in 2019 launched a child vehicle restraint program in Sydney's west to assist vulnerable families obtain and install the correct seats for their children. In March 2021 a state-wide rollout of the program began. Police are also now trialling a diversion program under which drivers who would otherwise be fined for having a child not properly restrained are instead assisted to obtain a compliant restraint, fitted by an authorised installer, and then issued with a caution rather than the fine.

These are important examples of how, as well as holding agencies to account for past conduct, our work can provide an important wellspring of evidence and information to assist agencies to improve their services and practices into the future.

Our people

Although the *Ombudsman Act 1974* establishes and refers to an individual office of 'Ombudsman', the reality is that the NSW Ombudsman is a 'we' and not an 'I'. It is through the collective contribution and commitment of the many people who work in our office that we seek to fulfil our statutory mandate and purposes.

My thanks to all staff of the office for their hard work and dedication, particularly during what has been yet another unusually challenging year.



1 About our office

1.1 The NSW Ombudsman

The NSW Ombudsman is one of NSW's key integrity offices.

These offices are sometimes also referred to as the independent 'watchdog' or oversight agencies. They have been established by Parliament to protect the public by keeping watch over government agencies and officials.

Integrity offices seek to:

- detect when these agencies and officials might be doing the wrong thing
- hold them to account where they are doing the wrong thing
- help to improve systems and practices to reduce the risk of wrongdoing in the future.

The kinds of wrongdoing we primarily focus on can broadly be referred to as maladministration. Maladministration occurs when decision making or other administrative practices are not lawful, reasonable or fair.

As an ombudsman, one of our most important functions is to receive and respond to complaints from the public about possible maladministration. We can receive complaints about most NSW government departments and agencies, local councils and government-funded community service providers.

Anyone can contact us to complain if they believe they have been treated unfairly by one of these bodies, or to report if they have concerns about possible maladministration.

We don't take sides, but work impartially to:

- assess any complaint
- assist the complainant to resolve their concerns
- investigate and report, where necessary, if there may be serious wrongdoing.

Our services are free to the public. We are fully independent and act impartially in the public interest.

People who complain to us are protected by law if anyone tries to retaliate against them. Additional protections apply for public official whistleblowers who report serious maladministration to us under the *Public Interest Disclosures Act 1994* (NSW).

As well as responding to complaints and reports of wrongdoing, we can also proactively monitor and review certain public and community sector activities. This includes looking at the systems and practices that agencies and service providers themselves use to deal with complaints they receive.

Other activities we monitor include the delivery of Aboriginal programs, provision of community services, and segregation of, and use of force against, young people in detention. We also review the deaths of certain children, and convene the Child Death Review Team, which registers and conducts research on all child deaths in NSW.

We work collaboratively with public sector agencies and community service providers to support them, through the provisions of guidance and training, to improve their services and prevent wrongdoing in the future.

We must conduct most of our complaint handling, investigations and other functions confidentially. However, we can report to Parliament at any time on matters in the public interest.

Through these activities, we pursue our vision that everyone, no matter who they are, should receive the right services and fair treatment from government agencies and the community services they fund.

The principal legislation under which we currently operate is:

- *Ombudsman Act 1974* (**Ombudsman Act**)
- *Community Services (Complaints, Reviews and Monitoring) Act 1993* (**CS CRAMA**)
- *Public Interest Disclosures Act 1994* (**PID Act**)
- *Mandatory Disease Testing Act 2021* (**MDT Act**).

Our statutory functions

Complaint handling

Any person can complain to us about:

- the conduct of a 'public authority'; any action or inaction, or alleged action or inaction, relating to a matter of administration (unless it is excluded conduct) — Ombudsman Act Pt 3
- the conduct of 'service providers' with respect to the provision, failure to provide, withdrawal, variation or administration of a community service — CS CRAMA Pt 4.

Some complaints we receive from public officials may also constitute ‘public interest disclosures’ under the PID Act.

We can generally deal with complaints about the conduct of:

- **NSW state government departments**

There are currently 10 principal departments in NSW:

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

- **Local health districts, health specialty networks and hospitals**

- **Public schools, TAFE NSW and other statutory education bodies**

These include TAFE Digital and the NSW Education Standards Authority.

- **Other NSW government entities**

Other government entities within our jurisdiction include:

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

- **Public universities established under NSW legislation**

- **Local government entities**

These include councils, county councils and joint organisations. We can handle complaints

about the conduct of councillors and council employees, and the administrative conduct of the council itself.

- **Custodial services**

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

We can also deal with complaints about the state’s privately-run correctional centres.

- **Community service providers**

We handle complaints about:

- services provided under community welfare legislation that are provided by DCJ
- services provided by entities that are funded, authorised or licensed by the Minister for Families and Communities, the Minister for Seniors and certain other entities.

These entities include many non-government organisations that provide community services including:

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

Own motion complaints

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

Resolving complaints

Agencies have their own complaint management systems. We usually expect people to contact the agency first about their complaint before making a complaint to us. If this is hard to do or someone does not feel safe doing this, we help them.

We have a range of approaches to help people with their complaints. We often provide information to complainants to help them understand the relevant agency's decision or actions. We can also help complainants understand the best way to resolve their complaint directly with the relevant agency (if they have not attempted to do so already) or provide information about appeal or review rights and where to seek legal support.

What we cannot do

Our Act prevents us from receiving and handling certain complaints.¹ For example, we cannot deal with complaints about the conduct of:

- government ministers
- Parliament and Members of Parliament
- judges and courts.
- The NSW Police Force (complaints about which can now be made to the Law Enforcement Conduct Commission)

We also cannot deal with complaints about the Australian Government and its agencies. The Commonwealth Ombudsman is the corresponding ombudsman at the Commonwealth level to receive complaints about Commonwealth agencies.

We generally cannot deal with complaints about private companies or individuals. In some industries there is a dedicated 'industry ombudsman' who can handle such complaints, such as the NSW Energy and Water Ombudsman and the Australian Telecommunications Industry Ombudsman.

If people contact us with a complaint that we are not able to handle, we will help them find the right place for their complaint.

Where the complaint raises serious concerns about maladministration or other wrong conduct by an agency, we can make inquiries to the relevant agency ('preliminary inquiries'), step in to help conciliate the dispute or monitor the issues raised in the context of other similar complaints.

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

Investigations

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

The Investigations and Major Projects Committee, which is a subcommittee of the NSW Ombudsman's Executive team, consider proposals to investigate.

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

Monitoring and assessment of Aboriginal programs

Since July 2014, we have had an express legislative function under Pt 3B of the Ombudsman Act to monitor and assess designated 'Aboriginal programs'. An Aboriginal Deputy Ombudsman discharges this function.

Under Pt 3B, the designated Aboriginal program we have responsibility for oversighting is OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment) — the NSW Government's overarching plan for Aboriginal affairs, which was launched in April 2013. OCHRE is coordinated by Aboriginal Affairs NSW (AANSW).

Key initiatives of OCHRE include:

- Connected Communities (Phase 1 — 16 schools, Phase 2 — up to 17 schools)
- Local Decision Making (9 Regional Alliances)
- Aboriginal Language and Culture Nests (7 locations)
- Opportunity Hubs (5 service areas)

1. See <<https://www.ombo.nsw.gov.au/Making-a-complaint/complaints-we-handle>>.

- Solution Brokerage (statewide)
- the Aboriginal Economic Prosperity Framework (AEPF).

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

Our office monitors and assesses OCHRE by engaging with key stakeholders, visiting communities and attending community forums, meetings, workshops, quarterly liaison meetings, specific meetings and forums.

Oversight of the PID Act

The Ombudsman is the lead integrity agency responsible for overseeing the PID Act. In accordance with s 6B(3) of the PID Act, the Ombudsman is required to prepare and furnish an annual report to Parliament about these oversight activities. Our most recent report was published in December 2021 and is available on our website.²

The Ombudsman also chairs and provides secretariat support to the PID Steering Committee, which provides advice on the operation of the PID system. The PID Steering Committee prepares a separate annual report on its work, which is required to be tabled by the minister in Parliament. The Steering Committee's 2020–21 annual report was presented to the minister on 21 October 2021 and is available on our website.³

Community services monitoring, reviews and inquiries

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

In particular, we can:

- review and report on the systems of community service providers for handling complaints

- review, on application or on the Ombudsman's initiative, the situation of a child or a person in care (or a group of children or people in care)
- monitor and review the delivery of community services, and inquire into matters affecting service providers and receivers, and make recommendations for improvements in the delivery of community services.

Mandatory disease testing

The MDT Act commenced on 29 July 2022.

Under the Act we are responsible for monitoring and reporting on the Act's operation and administration, including how agencies exercise their functions under the Act.

The Act provides for the mandatory blood testing of a person. This can occur when the person's bodily fluid comes into contact with a health, emergency or public sector worker as the result of the person's deliberate action, and the worker may be at risk of contracting a blood-borne virus.

Our first report under the MDT Act is required to be prepared as soon practicable 12 months after the commencement of the Act.

Reviews of deaths

Reviews of the deaths of children

Under Pt 6 of CS CRAMA, we review deaths of children in care or detention, and children who died as a result of abuse or neglect, or whose death occurred in suspicious circumstances. Under Pt 5A of CS CRAMA we also convene and support the NSW Child Death Review Team, which examines and maintains a register of the deaths of all children in NSW. For further detail, see section 2.4 'Systemic review of deaths of children at risk of harm or in care' and 'Convening the NSW Child Death Review Team'.

Reviews of the deaths of persons with disability

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

The *Disability Inclusion Amendment Act 2022*, which commenced on 1 July 2022, has clarified that the Ombudsman no longer has jurisdiction

2. NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994: Annual Report 2020–2021](#) (Report, 13 December 2021).

3. NSW Ombudsman, [Public Interest Disclosures Steering Committee Annual Report 2020–21](#) (Report, 21 October 2021).

to review the deaths of adults with disability. Later this year, we will table our final public report about our disability death function.

Monitoring the segregation of detainees in youth detention

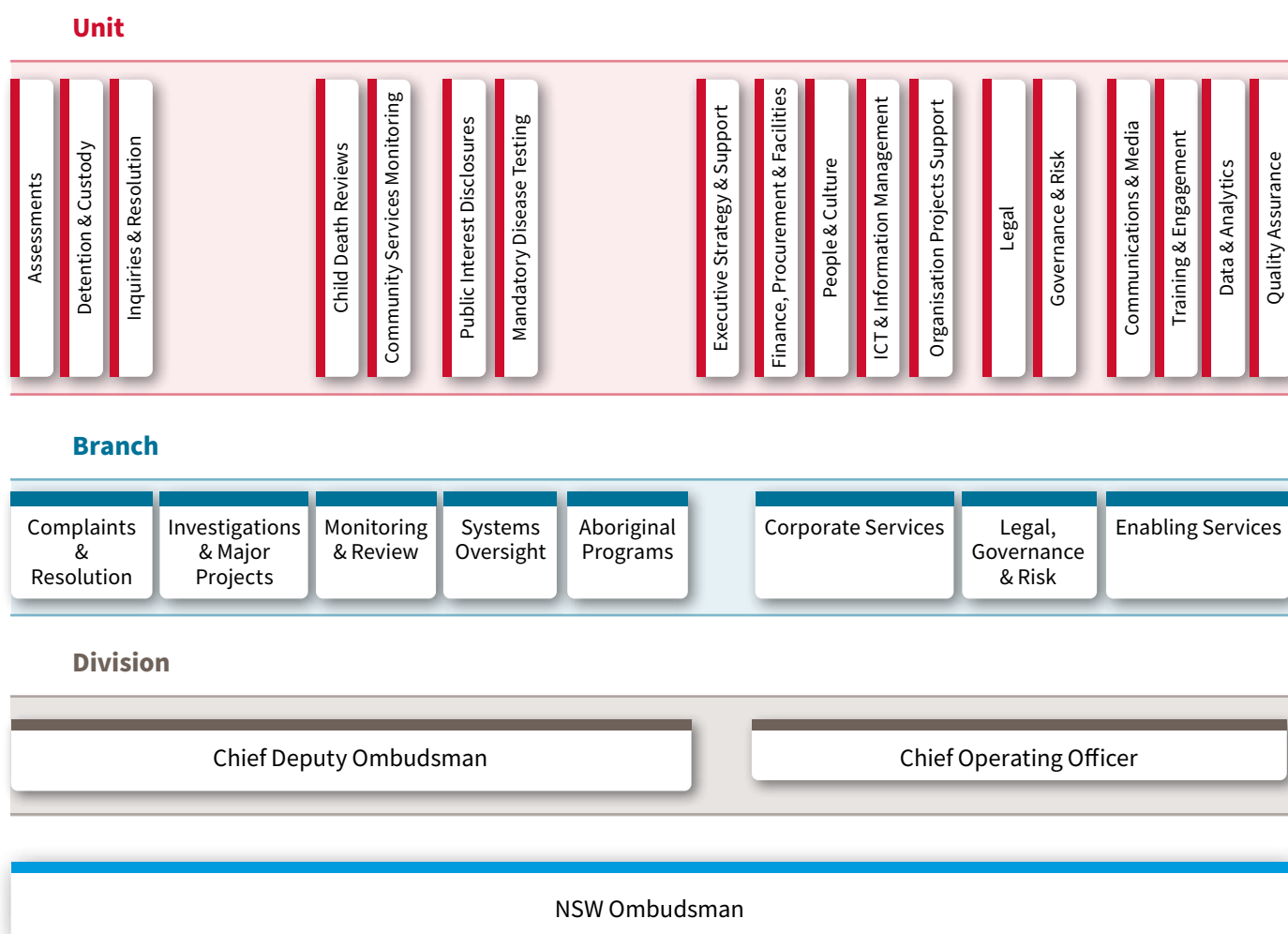
Under the *Children (Detention Centres) Act 1987*, children and young people detained in a Youth Justice centre may be segregated from others for safety reasons, or may be separated, for example, due to medical reasons or to keep male and female detainees apart. They may also be placed in confinement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

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

1.2 Organisational structure

Below is our organisational structure as of 1 October 2022.

Figure 1. Organisational structure



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

Executive team

As at 1 October 2022 there are 10 senior executive in the organisation, not including the Ombudsman.

This includes 2 temporary Assistant Ombudsman appointed since 1 July 2022 to lead:

- the implementation of the new mandatory disease testing function and preparation for the commencement of the new *Public Interest Disclosures Act 2022 (PID Act 2022)*
- a review of complaint-handling practices arising from the 2019 *Family Is Culture* report.

Executive team as at 1 October 2022

Paul Miller PSM — Ombudsman



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

Paul was appointed Ombudsman in May 2021, having acted in the role since August 2020.

Paul joined the Ombudsman in April 2019 as Deputy Ombudsman (Reviews, Investigations and Community Services) and Community and Disability Services Commissioner. Paul has previously served as a Deputy Secretary with the Department of Justice and the Department of Premier and Cabinet.

Monica Wolf — Chief Deputy Ombudsman and Commissioner for Community Services



BA, GradDipEdSt, GradCertPublicPolicy,
GradCertPSM
(she/her)

Monica was appointed Chief Deputy Ombudsman in August 2021.

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

Chris Clayton — Chief Operating Officer



BComm, GradDipCA, GradCertIA, CA
(he/him)

Chris was appointed Chief Operating Officer in August 2021.

Prior to joining our office, Chris had an extensive career at the Audit Office of NSW, where he held a range of executive positions. Most recently, this included supporting the Auditor-General in overseeing audit quality, provision of audit-related technical support, innovation of audit practices and corporate governance functions.

Leanne Townsend — Deputy Ombudsman, Aboriginal Programs



BA (Soc), MA
(she/her)

Leanne was appointed Deputy Ombudsman, Aboriginal Programs in March 2022. Leanne is a proud Aniwana woman from Uralla in north-western NSW.

Leanne previously held the position of Chief Executive Officer of the National Aboriginal Sporting Chance Academy and prior to that was CEO of the NSW Reconciliation Council. Leanne's experience also includes Indigenous Advisor to Her Excellency Quentin Bryce, and Senior Public Affairs Officer and Executive Officer with the federal Department of Families, Community Services and Indigenous Affairs.

Jacqueline Fredman — Deputy Ombudsman, Complaints and Resolution



BA, LLB, EMPA, Solicitor of the Supreme Court of NSW
(she/her)

Jacqueline was appointed Deputy Ombudsman in April 2022.

Jacqueline had been a senior executive in the Australian Public Service for 9 years, where she was Chief Corporate Officer (and previously Divisional Registrar) at the Administrative Appeals Tribunal. She previously worked as the Manager, Assessments at the NSW Independent Commission Against Corruption (ICAC). Jacqueline began her career as a solicitor and later practised as a member of the NSW Bar.

Helen Wodak — Deputy Ombudsman, Monitoring and Review



BA, LLB, Solicitor of the Supreme Court of NSW
(she/her)

Helen was appointed Deputy Ombudsman in March 2022.

Helen's previous role was Manager, Public Interest Disclosures and before that Principal Investigator of the Complaints team in the Community Services division of the Ombudsman's Office.

Sanya Silver — Acting Deputy Ombudsman, Investigations and Major Projects



BA (Hons), DipGov (Investigations), GradCertBus
(she/her)

In April 2022, Sanya was appointed Acting Deputy Ombudsman to lead the establishment of an Investigations and Major Projects Branch (IMPB).

Prior to this role, Sanya has been in several senior complaint-handling and investigation management roles within our office. Most recently she was Investigation Manager of the Investigation Team established in 2019 to lead complex and systemic investigations across the Ombudsman's public sector and community services jurisdictions.

Ainslee Scott — Director, Corporate

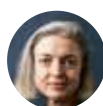


BComm, EMBA, MAICD, FCPA
(she/her)

Ainslee joined the NSW Ombudsman as Director, Corporate in July 2019.

Ainslee has held several executive and senior positions across both the public and private sectors, including with the Australian Curriculum Assessment and Reporting Authority, NSW Treasury, TransGrid and Colonial First State. Ainslee is also a member of the Australian Network on Disability Board.

Megan Smith — Legal Counsel



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

Megan has been the Ombudsman's Legal Counsel since February 2016.

Prior to this she was a solicitor at a large commercial law firm. Megan has also co-authored a textbook on equity.

George Blacklaws — Assistant Ombudsman, Complaint Systems Review



(he/him)

George is a proud Yuwaalaraay man from north-western NSW. He has been appointed to lead a review of the Department of Communities & Justice (Community Services) complaint-handling systems, with a focus on recommendations that were made in the *Family Is Culture* report in 2019.

George has more than 15 years' experience in leadership roles across a range of human service sectors. Until recently, George worked with the Office of the Children's Guardian delivering a review of critical reforms in the child protection system. He has previously worked in senior roles with the Secretariat of National Aboriginal and Islander Child Care, the Healing Foundation, and across other state and local government agencies.

Louise Lazzarino — Assistant Ombudsman, Systems Oversight



BA, LLB, LLM, GradDipLP, Solicitor of the Supreme Court of NSW
(she/her)

Louise was appointed as an Assistant Ombudsman in July 2022. Louise has been appointed for a period of 18 months to help lead the implementation of the new *Public Interest Disclosures Act 2022* and our new function to oversee the *Mandatory Disease Testing Act 2021*.

Most recently, she was the Director of Enforcement and Prosecutions at the State Insurance Regulatory Authority. She has previously held senior leadership positions at the Law Enforcement Conduct Commission, the Department of Immigration and Border Protection and the Office of the Migration Agents Registration Authority.

1.3 Factors affecting us in 2021–22

Strategic plan 2020–25

We are in the second year of our 5-year strategic plan, which articulates our vision, mission and purpose, as well as reaffirming our core values.

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

- services and impact
- engagement and relationships
- leadership and governance
- people and culture
- systems and processes.

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

Our second action plan was developed early in 2021–22 and we have been reporting to staff each quarter about how we are progressing against identified actions. We have committed to reporting publicly on the progress of our Strategic Plan through our annual reports.

In this report:

- Chapter 2 summarises our operations during 2021–22 and the work we are doing to achieve our purpose, including:
 - protecting citizens from abuse of power and unfair treatment
 - fostering enduring reforms
 - providing a trusted source of independent advice to Parliament.
- Chapter 3 outlines key activities we have undertaken in 2021–22 to achieve our strategic initiatives.

Operational impacts of the COVID-19 pandemic

COVID-19 continued to impact our operations during 2021–22. Direct impacts included staff contracting COVID-19, having caring responsibility for others who did, or being required to isolate as a close contact.

From 1 January 2021 to 1 July 2022, 73 staff members (58.4%) were directly impacted in this way by COVID-19 resulting in a total of 213 days of absence. This consisted of 171 days COVID-19-related sick leave, and 42 days of other COVID-19-related leave, including special leave.

The pandemic also required the development and implementation of new or evolving operational processes for our office, including the maintenance of a COVID-safe plan for office attendance. We also experienced difficulties with staff vacancies, and difficulties in recruiting and onboarding new staff, due to the tight labour market that arose during the reporting period.

The Executive team regularly consults with our work health and safety (WHS) representatives and the Public Service Association in our response to the COVID-19 pandemic. At all times, the paramount consideration has been the health, safety and wellbeing of our staff and the community.

During the pandemic, following risk assessments, we directed that certain activities could only be undertaken by staff who are vaccinated. As at October 2022, the activities for which vaccination remains mandatory are visiting correctional and Youth Justice centres (consistent with the requirements applying to staff working in those centres), as well as visiting Aboriginal communities, aged care or other health facilities, or other regional or remote areas.

We otherwise encourage all staff to be and remain up to date with their COVID-19 vaccinations, and as at October 2022, 100% of our staff have had at least 2 vaccinations.

Funding matters

The budget process for independent integrity bodies

On 9 May 2022, the government provided its substantive response to the February 2021 Public Accountability Committee's final report⁵ on the budget process for independent oversight bodies in NSW.

Consistent with its first report published in March 2020, as well as with recommendations made by the Auditor-General in her separate

5. Public Accountability Committee, [Budget Process for Independent Oversight Bodies and the Parliament of New South Wales – Final Report](#) (Report, February 2021).

report of 20 October 2020, the committee had recommended that the Ombudsman (and the other relevant integrity bodies) should have their annual appropriation bids presented to relevant parliamentary oversight committees for consideration and recommendation to parliament, rather than those bids being assessed through a Treasury and Cabinet-led process.

The government's response⁶ rejects that key recommendation.

The response instead provides that a Treasurer's Direction with a 'charter of independence' will be issued to codify some changes to the existing funding process, including that:

- The integrity agencies will be removed from the Department of Premier and Cabinet cluster for financial management purposes (but not otherwise).
- Efficiency dividends will not be imposed on the integrity agencies.
- A specialist integrity agency unit will be established in Treasury.
- The integrity agencies will be invited to review Treasury's advice on their funding bids to Cabinet (Expenditure Review Committee) and given an opportunity to provide their own advice to Cabinet.
- The integrity agencies, and their parliamentary oversight committees, will be provided with Cabinet's funding decisions in writing, including reasons for variation from funding bids.
- Annual Appropriation Acts will include contingency funding for the integrity agencies, to be approved by the Treasurer on request (with the request and response also provided to the relevant parliamentary oversight committee).

The response indicated that these would take effect in the 2022–23 budget process and that Treasury officials would engage with the integrity agencies shortly. At the time of preparing this annual report there has been no consultation with our office regarding the drafting of the proposed Treasurer's Direction.

On 13 May 2022, the NSW Ombudsman wrote to the government⁷ advising that:

- The Ombudsman is supportive of the proposed changes (above) as they are an improvement to the previous processes.
- The government's response does not implement the recommendations of the Parliamentary Accountability Committee or the Auditor-General, but the Ombudsman's views remain as set out in detail in the submissions we made to the Parliamentary Accountability Committee (which are consistent with the views of the committee and the Auditor-General).
- The Ombudsman notes (contrary to what appears to be suggested in the government's response) that the committee's recommendations can be implemented in a manner that would be fully consistent with the Constitution's principles of 'responsible government'.

2022–23 Budget requests

On 21 June 2022 the NSW Government tabled the state budget for 2022–23. The state budget allocated funding to the Premier of \$44.5 million recurrent expenditure and \$2.1 million capital expenditure for the services of the NSW Ombudsman.

This is a material increase to the previous year's budget, as a result of additional funding approved following requests made by NSW Ombudsman for:

- one-off funding to replace or modernise multiple legacy IT systems and the website, and to enhance cyber security
- new funding to support preparations for the new *Public Interest Disclosures Act 2022*, which was enacted in April 2022 (and will commence in October 2023)
- new funding to support the Ombudsman's new functions under the *Mandatory Disease Testing Act 2021 (MDT Act)*, which commenced on 29 July 2022
- an increase in base funding for some existing statutory functions that had been critically under-resourced and were not otherwise able to be performed to a minimum adequate standard, or at all.

6. NSW Attorney General, [Government Response Budget Process for Independent Oversight Bodies and the Parliament of New South Wales](#) (Response, 9 May 2022).

7. [Letter to Premier and Attorney General - Government response to PAC's budget process for independent oversight bodies and NSW Parliament](#) - (Letter, 13 May 2022).

Digital restart funding

The NSW Ombudsman did not request any additional funding under the Digital Restart Fund (DRF) in 2021–22 but has continued to expend funding obtained in the previous year for enhanced digital capability to support compliance with minimum cyber security standards set by the Cyber Security Policy (CSP) and the Australian Government Information Security Manual (ISM).

Legislative and legal matters

Recent and prospective legislative amendments

Mandatory Disease Testing Act 2021

The MDT Act, which commenced on 29 July 2022, provides for the Ombudsman to monitor the operation and administration of the mandatory disease testing scheme, including how agencies exercise their functions under the Act.

Agencies must notify the Ombudsman after determining a mandatory testing order application. The Chief Health Officer must also notify the Ombudsman following determination of a review. Until we create a purpose-built portal, we will receive notifications by email.

We must prepare a report on our monitoring as soon as practicable 12 months after the MDT Act's commencement. We must then report every 3 years. To prepare our reports we may require certain people to provide information, including demographic information.

We can also receive complaints about mandatory disease testing, where the agency issuing the order is subject to our complaints jurisdiction. For more information about the Act, refer to 'Mandatory Disease Testing' in section 1.1.

Public Interest Disclosures Act 2022

The NSW Government undertook a complete rewrite of the *Public Interest Disclosures Act 1994* (**PID Act**) to implement recommendations made in October 2017 by the Joint Parliamentary Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission.⁸

The *Public Interest Disclosures Act 2022* (**PID Act 2022**) received assent in April 2022 and will commence in late 2023. The object of the current PID Act is to encourage and facilitate the disclosure, in the public interest, of wrongdoing in the public sector. The PID Act 2022 has the same broad objectives and includes some of the same concepts as the current Act (for example, the categories of serious wrongdoing). However, it will implement other significant changes.

The new Act:

- is simpler and easier to navigate
- contains fewer trip hazards for would-be whistleblowers, including by:
 - expanding the permissible recipients of PIDs to include a person's manager
 - protecting PIDs even if they are made to the wrong agency
- provides more comprehensive protections, including for witnesses and those involved in investigating PIDs
- imposes a clear duty on agencies to take appropriate steps to deal with the disclosures they receive
- introduces enhanced measures to encourage a 'speak up culture' within agencies, for example, by enhanced requirements around policies and training
- facilitates more comprehensive and meaningful reporting of data about PIDs.

Details on our work to implement the new Act can be found under 'Improving the public interest disclosures system' in section 2.4.

Ombudsman Legislation Amendment Act 2022

The *Ombudsman Legislation Amendment Act 2022* was introduced in June 2022 and was assented to and commenced on 19 August 2022.

This new legislation:

- gives our office an express function to review the systems of public authorities for handling complaints. We will now be able to also review public authorities' handling of complaints, and report and make recommendations to the relevant minister. This function allows us to work proactively with authorities to improve their own complaint handling

8. Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, [Review of the Public Interest Disclosures Act 1994](#) (Report, October 2017).

- permits our office to refer a complaint made to us back to the relevant public authority for them to investigate. This is also a function that our office has under CS CRAMA in relation to community services complaints. We will be able to make recommendations to, and monitor, the authority's handling of a referral, and require the authority to report to us on the outcome of its investigation. A referral will not prevent us from also dealing with the complaint or part of the complaint
- enhances our conciliation function, by permitting us to charge a reasonable fee to the public authority for a voluntary conciliation provided by our office (including, if required, the engagement of a mediator to assist)
- alters the secrecy obligations in the Ombudsman Act, for example, to permit information sharing with NSW royal commissions and special commissions of inquiry, or to correct the public record about the exercise of an Ombudsman function or an investigation under the Ombudsman Act.

The Act also includes amendments to clarify some of our existing functions and powers, including:

- clarification that the Ombudsman may investigate the conduct of a person who was a public authority at the time of that conduct, even if they are no longer a public authority at the time of the investigation, for example, because it has been abolished (if an agency) or they have resigned (if an individual)
- an amendment to make clear that anyone responding to our preliminary inquiries will not be in breach of any obligation of confidentiality or non-disclosure
- specification that, under s 18 of the Act, the Ombudsman can require a public authority to give an oral (as well as a written) statement at an arranged time and place
- an amendment to make clear that, when an inmate or detainee makes an oral complaint to us, corrective services staff or others must not monitor or record that conversation.

Pt 3B of the Ombudsman Act/Ombudsman Regulation 2016

The Ombudsman Regulation 2016 is due to be automatically repealed and remade on 1 September 2023.

We have proposed that cl 8 of the Regulation, which prescribes the Aboriginal programs that are to be monitored by the Ombudsman (under Pt 3B of the Ombudsman Act) be amended.

In 2014, the strategy known as OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment) was prescribed as an 'Aboriginal program' under Pt 3B. OCHRE was launched as 'the Government's plan for Aboriginal Affairs',⁹ and the term 'OCHRE' became shorthand for the government's entire Aboriginal Affairs program. Over time, as new programs and initiatives are emerging that are not OCHRE-related (for example, NSW Government initiatives under the auspices of its Closing the Gap Implementation Plan), the current Regulation has ceased to have the ambit that was intended at the time Pt 3B was enacted (that is, to extend to all of the government's significant Aboriginal Affairs programs).

We have therefore proposed to government that the prescription of 'Aboriginal programs' only by reference to OCHRE be reviewed and expanded, so that the Ombudsman can continue to provide comprehensive and independent oversight of Aboriginal Affairs programs in NSW.

Voluntary Assisted Dying Act 2022

This Act was assented to on 27 May 2022 and will come into effect 18 months from that date (23 November 2023).

The Act will create the Voluntary Assisted Dying Board, which has a number of functions related to the administration of the Act. The Act also amends the Ombudsman Act to make clear that the Ombudsman will have jurisdiction to investigate the conduct of the Board.

Casino Legislation Amendment Act 2022

This legislation was assented to on 19 August 2022 and the amendment relevant to the Ombudsman's jurisdiction also came into operation on that day.

This Act makes several changes to the governance of casinos. Prior to the commencement of this Act, the Ombudsman was not permitted to investigate conduct of the Casino Control Authority or any other public authority when exercising functions under the *Casino Control Act 1992*. The Act has removed this restriction from the Ombudsman's jurisdiction, meaning the

9. Second Reading Speech, Ombudsman Amendment (Aboriginal Programs) Bill 2014.

Ombudsman may now investigate the conduct of the Independent Gaming and Liquor Authority and the newly established NSW Independent Casino Commission.

Optional Protocol to the Convention Against Torture implementation

The Optional Protocol to the Convention Against Torture (OPCAT) is due to commence in Australia by 20 January 2023. It requires all Australian jurisdictions to appoint National Preventive Mechanism(s) (NPM) to inspect and report on places of detention.

We have periodically sought updates from the government on any progress in preparing NSW for the implementation of OPCAT obligations. While the matter is obviously one for Parliament and the government, the NSW Ombudsman is an appropriate body to be designated an NPM.

The Commonwealth Ombudsman has been nominated as an NPM and designated as the Australian NPM Coordinator, including for states and territories. New Zealand has also nominated its Ombudsman as an NPM.

NSW is the only Australian jurisdiction that has not introduced any legislation in response to the commencement of the Protocol. The following steps have been taken by other states and territories:

- WA has nominated 2 NPMs (Ombudsman and Office of the Inspector of Custodial Services).
- The NT has nominated the Ombudsman as an interim coordinating NPM and enacted the *Monitoring Places of Detention (OPCAT) Act 2018* (NT) to facilitate Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**SPT**) visits to places of detention.
- The ACT has nominated 3 NPMs (the Ombudsman, the Inspector of Correctional Services and the ACT Human Rights Commission) and enacted the *Monitoring of Places of Detention (OPCAT) Act 2018* (ACT).
- Tasmania has nominated the Ombudsman (who is also the Custodial Inspector) as NPM and enacted the *OPCAT Implementation Act 2021* (Tas).
- Queensland has introduced the *Inspector of Detention Services Bill 2021*, under which the Ombudsman will be appointed as the Inspector

of Detention Services (with the apparent intention that the Inspector will be nominated as NPM).

- South Australia has established the Official Visitor as an NPM and introduced the *OPCAT Implementation Bill 2021* which will add the Training Centre Visitor and Principal Community Visitor to its list of NPMs.
- Victoria has passed the *Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022* which will, once commenced, facilitate a visit by the UN Subcommittee on the Prevention of Torture (**SPT**).

The UN SPT has announced it will visit Australia in the second half of 2022 to inspect places of detention and examine the treatment of people held there (as part of Australia's OPCAT obligations).

Disability Inclusion Amendment Act 2022

The *Disability Inclusion Amendment Act 2022*, which commenced on 1 July 2022, has amended CS CRAMA to reflect the cessation of the Ombudsman's jurisdiction to review the deaths of adults with disability residing in supported group accommodation or assisted boarding houses. Later this year, we will table our final public report about our disability death function.

When the function was originally conferred on us in 2002, the NSW Government provided or funded accommodation services for people with disability. Our reviews scrutinised the supports and services provided by accommodation and support service providers, as well as any government services involved with people who had died.

The transfer of this function to the National Disability Insurance Scheme (NDIS) and the NDIS Quality and Safeguards Commission has had a significant impact on the scope and focus of our work. The NSW Government no longer operates nor directly funds disability accommodation services or in-home support services for people with disability.

We continue to review the deaths of children in care, children whose death was or may be due to abuse or neglect or that occurs in suspicious circumstances, and children who, at the time of their death, were in or temporarily absent from a children's detention centre, a correctional centre or a lock-up.

Parliamentary committee inquiries and reports

Ombudsman committee report on our 2019–20 annual report

In October 2021 the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission published its report on its 2021 review of the annual reports of oversight bodies.¹⁰ No recommendations were directed to the Ombudsman.

The Committee has not yet completed its review of our 2020–21 annual report. At the time of preparing this annual report, hearings for that review were scheduled to take place on 17 October 2022.

Parliamentary committee inquiry into rural, regional and remote health services

The Legislative Council's Portfolio Committee No 2 (Health) recently completed an inquiry into health outcomes and access to health and hospital services in rural, regional and remote NSW. Its report¹¹ was published in May 2022.

During the inquiry, on 18 March 2021, the Ombudsman wrote to the committee to provide advice on the application of the PID Act to staff of local health districts and hospitals,¹² following media reports that evidence given in the committee had raised issues about the handling of disclosures by whistleblowers. The committee did not respond to our correspondence and did not refer to it in its report (other than to note its receipt in the minutes of its proceedings). The committee's report did not otherwise refer to the NSW Ombudsman or its functions as they apply to health and hospital administration.

In its report, the committee made a recommendation (recommendation 41) that an independent 'Health Administration Ombudsman' should be established to receive and review concerns about the administrative conduct of local health districts and NSW Health from staff, doctors, patients, carers and the public.

On 31 May 2022, the Acting Ombudsman wrote to the relevant ministers¹³ noting the committee's recommendation and advising that:

- The NSW Ombudsman has jurisdiction to receive and handle complaints about the administrative conduct of NSW Health and local health districts, as well as the ability to investigate in the absence of a complaint.
- In 2020–21, the Ombudsman finalised 329 complaints about NSW Health and 170 complaints about local health districts.
- In the context of constrained resources, it is likely the Ombudsman is not investigating all matters that warrant further scrutiny.
- Providing sufficient funding to be more accessible for complainants, and to investigate more matters, would allow the NSW Ombudsman to fulfil the intent of recommendation 41.

The government's response¹⁴ to the committee's report 'noted' recommendation 41. The government indicated that it supports independent review of complaints, and that the NSW Ombudsman and Health Care Complaints Commission (HCCC) are existing bodies that can investigate decision-making by NSW Health, including clinical and administrative decisions. It acknowledged that action is required to ensure better access for NSW Health staff to these existing oversight bodies. It stated that, as an immediate first step, the Ministry of Health would meet with the HCCC and the Ombudsman to identify strategies to make sure their roles are understood, and they are more available to staff, and that it would look to their expertise to support improving how we deal with complaints at the frontline.

To this end, an initial meeting between representatives of NSW Health, the HCCC and the NSW Ombudsman took place on 19 September 2022.

10. Committee on the Ombudsman, [the Law Enforcement Conduct Commission and the Crime Commission 2021 review of annual and other reports of oversight bodies](#).

11. Portfolio Committee No 2 — Health, [Health Outcomes and Access to Health and Hospital Services in Rural, Regional and Remote New South Wales](#) (Report, May 2022)

12. [Letter from Acting Ombudsman to Portfolio Committee No. 2 - Health](#) (Letter, 18 March 2021).

13. [Letter from Acting Ombudsman to Minister for Regional Health and Minister for Health](#) (Letter, 31 May 2022).

14. NSW Government Response — [Inquiry into Health Outcomes and Access to Health and Hospital Services in Rural, Regional and Remote New South Wales](#) (Response, September 2022).

Significant judicial decisions and legal proceedings

Significant judicial decisions

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

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

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (announced on 5 April 2019) has been extended until September 2023. The terms of reference cover:

- what should be done to prevent, and better protect, people with disability from experiencing violence and abuse
- achieving best practice in reporting, investigating and responding to violence and abuse
- promoting a more inclusive society.

We continue to support the work of the Royal Commission, and will continue to provide what assistance we can, consistent with our legislative obligations.

We have voluntarily provided the Royal Commission with records relating to former and current functions, while ensuring the Royal Commission is aware of the sensitive personal nature of those records. We are confident that the privacy and confidentiality of those persons referred to in those records is being protected.

Our office has voluntarily provided the Royal Commission with records relating to specific case studies examined by the Royal Commission in public hearings.

We have been able to provide records under s 34(2) of the Ombudsman Act, which provides an exception to our non-disclosure obligations where we are providing information to a federal body exercising similar functions to those we exercise. We are, however, taking steps to ensure the Royal Commission is aware when it is necessary to protect sensitive personal information that may be contained in our records.

To date, records and information we have provided has been used in 2 public hearings: Public Hearing 13, which concluded in May 2021, and Public Hearing 20, which concluded in December 2021.

Under the Ombudsman Act, the Ombudsman (and our staff) are neither 'competent' nor 'compellable' to give evidence in legal proceedings about matters arising from the exercise of our statutory functions. Noncompellability means we cannot be required to give evidence. Noncompetence means we are not allowed to give evidence.

For that reason, the NSW Ombudsman has not given evidence before the Commission. In any event, as the relevant records we hold pre-date the current Ombudsman, the only relevant evidence that we expect the Ombudsman could usefully provide to the Commission would be the documentary records we hold. However, we have sought and been granted leave to appear at each of these hearings, for the purposes of being represented by Senior Counsel and to make submissions where appropriate.

On 5 April 2022, the Commission published its report on Public Hearing 13¹⁵, in which it found that in 2018 the Ombudsman should have disclosed to the operator of a disability support group home information that the Ombudsman had been provided about a disability support worker employed by that operator. We have acknowledged the Commission's finding and have issued apologies to those most directly impacted by the actions of the support worker.

The Commission has not yet published a report into Public Hearing 20.

15. Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Report - Public hearing 13 - Preventing and responding to violence, abuse, neglect and exploitation in disability services (a Case Study)*



2 Our operations: Achieving our purpose

2.1 Highlights

Appointed
3 new Deputy
Ombudsman
to existing
positions

Changes to our executive



Appointed 2 temporary Assistant Ombudsman and
1 Acting Deputy Ombudsman to new positions



Protecting citizens from abuse of power and unfair treatment

2020-21	24,758
2021-22	24,874

Received
24,874
contacts to our office
similar to the number of
contacts we received
in 2020-21.

Community engagement

- Resumed outreach, including **12 visits to custodial facilities**, and face-to-face training for community organisations following COVID-19 lockdowns
- Developed a **Youth Action Plan**

While the overall number of complaints we received about NSW public authorities remained relatively stable, the number that were 'excluded complaints' (which the law prevents us from dealing with) rose by 40%. This includes complaints about NSW Police (which we now refer to the LECC).

2020-21	1,028
2021-22	1,435

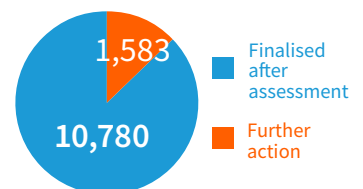
Dealing with complaints

Finalised **12,363 actionable complaints**,
with **61% finalised within 1 week**.



Took further action on 1,583 complaints

including preliminary
inquiries, suggestions and
comments, conciliations
and investigations.



Providing a trusted source of independent advice to Parliament

Advice to Parliament on legislative proposals

- Provided advice on the following proposals:
 - Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022
 - Public Interest Disclosures Bill 2022
 - Draft Animal Welfare Bill 2022



Tabled
5
special reports
to Parliament

Contribution to other parliamentary inquiries

- Contributed to inquiries on:
 - Public Accountability Committee's Inquiry into the NSW Government's management of the COVID-19 pandemic
 - Legislative Council Portfolio Committee No 1 Inquiry into the Public Interest Disclosures Bill 2021
 - Select Committee Inquiry into the response to major flooding across NSW in 2022

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



Improving complaint-handling capability and systems

- Wrote to all government agencies and local councils to encourage them to participate in a review of Standards Australia's *Guidelines for Complaint Management in Organizations*

Promoting improvements through investigations and reports

- Commenced 1 investigation and **completed 5 investigations**
- Tabled **5 reports to Parliament**, including **3 reports on investigations**
- National and international media coverage and conference appearances following our report on the use of automated decision-making tools in the public sector

Monitoring and assessment of Aboriginal programs

- Conducted **88 Aboriginal engagement meetings**, despite COVID-19 lockdowns
- Facilitated the annual Aboriginal Procurement Advisory Committee Forum in May 2022



Monitoring the delivery of community services and related programs

- Appointed an Assistant Ombudsman to undertake an independent review of qualitative experience and needs of Aboriginal complainants with regards to Aboriginal Children in out-of-home care

Improving agency responses to the COVID-19 pandemic

- Continued to monitor NSW Government's response to the COVID-19 pandemic
- Received **1,046 actionable complaints relating to COVID-19**, more than double the number received in 2020-21, including a fivefold increase in complaints concerning the custodial system

Monitoring implementation of our recommendations

- Monitored implementation of our recommendations from 4 investigations, noting that many recommendations have been actioned
- Key actions include amendments to the Environmental Planning and Assessment Regulation 2022 to strengthen transparency and accountability in the planning system

Improving the Public Interest Disclosures system

- Received enhanced oversight functions under the new *PID Act 2022*
- Initiated preparations for commencement of the Act in October 2023

Supporting agencies and service providers through training

- Commissioned a review of our training business that will guide its sustainable evolution over 5 years

Delivered
**16 PID
training sessions**
to **335 NSW
public officials**

Delivered **106**
complaint-handling, access
and equity, and investigation
skills workshops to
1,426 participants

90%
of our complaint-handling
workshop participants
**rated our training
good or excellent**



2.2 The 3 limbs of our purpose

We broadly identify 3 limbs to our purpose:

Protection

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



Prevention and improvement

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



Independent advice and public accountability

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

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

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

In the following pages, we have outlined our work in 2021–22 by reference to each of the 3 limbs. Each workstream is placed under whichever of the 3 limbs of our purpose it most clearly relates.

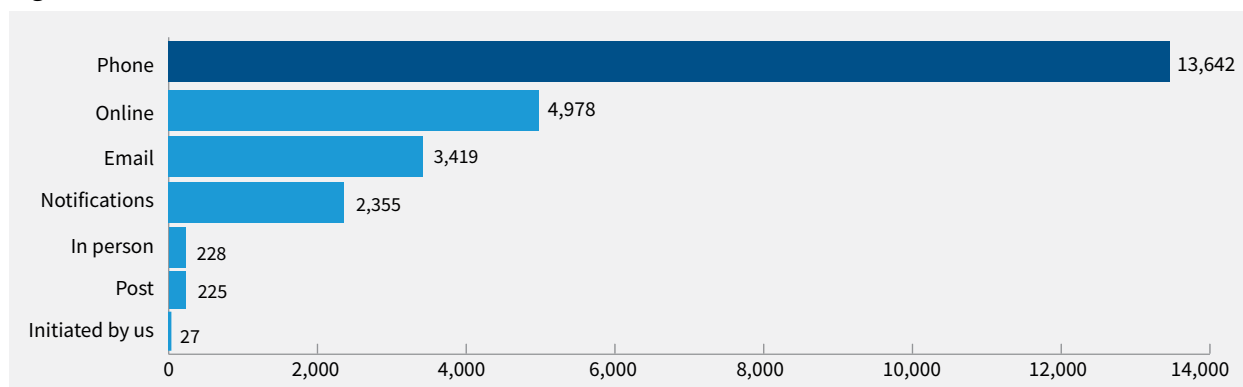


2.3 Protecting citizens from abuse of power and unfair treatment

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

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

Figure 2. How we received contacts ¹⁶



Accessing our services

We seek to be accessible to all members of the public and can be contacted in several ways including by phone, email and online complaint form.

People can also visit our office in person or speak to our staff when we undertake community or correctional visits. However, in-person visits were restricted during parts of 2021–22 due to public health orders responding to COVID-19 (see section 1.3 ‘Factors affecting us in 2021–22’).

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

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

Contacts to our office

We categorise contacts received by our office into 6 categories (see Appendix B.1 for more detail):

- **Actionable complaints** — complaints about a public authority or community service provider that we are authorised to deal with under the *Ombudsman Act 1974* (**Ombudsman Act**) or *Community Services (Complaints, Reviews and Monitoring) Act 1993* (**CS CRAMA**)
- **Excluded complaints** — complaints about a public authority or community service provider that we are not authorised to deal with because the complaint is about ‘excluded conduct’
- **Requests for information** — where someone is not complaining but asking for our help or advice
- **Notifications** — where agencies report things to us because they are legally required to do so (for example, when a young person is segregated alone in a Youth Justice centre for 24 hours or more)
- **Misdirected contacts** — where someone contacts us about a person or body that is not a public authority or a community service provider, and over which we have no jurisdiction (such as an Australian government department or a private utility company)
- **Feedback Assist** — where our office assists with identifying the appropriate agency to manage feedback (complaints, compliments or suggestions) provided by the public via a Feedback Assist widget on the nsw.gov.au or another agency’s website.

16. ‘In-person’ contacts include contacts received by personal visits to the office, our visits to custodial facilities and community visits.

Community engagement

We are committed to serving all people and communities in NSW. Our vision is to ensure that everyone receives the right services and fair treatment from those we oversight. In 2020–21, we launched our Community Engagement Strategy, which includes a specific focus on the communities who we will work with, including:

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

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

While COVID-19 had an impact on our work during 2021–22, we continued to work remotely to strengthen our relationships with key stakeholders and ensure vulnerable groups in the community are aware of our services and know how to make complaints.

We participated in various interagency meetings and continue to promote our services via these networks. We continued to track and monitor new and emerging issues for vulnerable members in the community and use this information to plan targeted outreach and identify systemic issues.

During 2021–22 we:

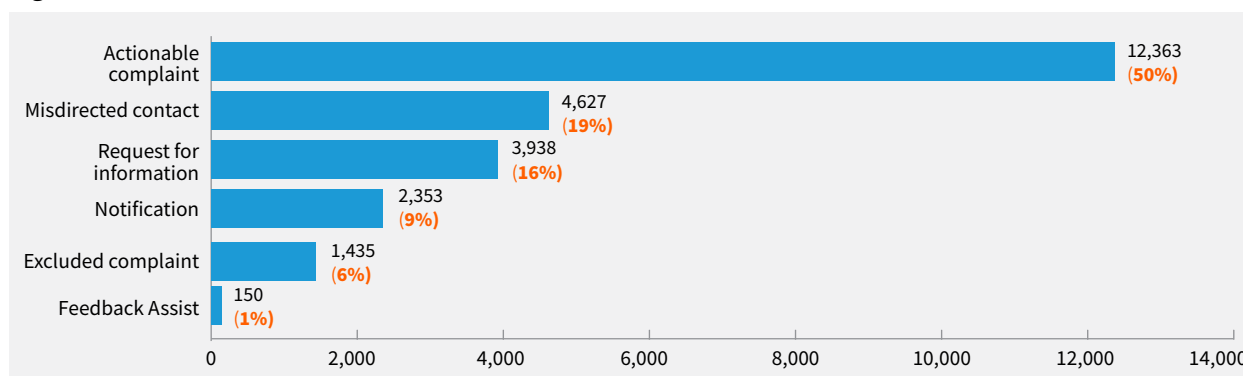
- developed a youth action plan
- resumed outreach following COVID-19 lockdowns
- held information stalls to inform the public about our services at:
 - the Royal Easter Show for Seniors' Day
 - an event in Broken Hill hosted by the National Recovery and Resilience Agency
- developed a range of targeted training workshops to inform vulnerable members of the community about our services and of their right to make a complaint
- commenced distribution of our new translated fact sheets
- continued to progress the development of our youth video
- continued to collaborate with other government agencies to deliver outreach activities.

Other notable 2021–22 activities included:

- resuming some community visits and face-to-face training
- delivering 4 face-to-face training sessions and 1 workshop
- participating in 7 community forums and roundtables
- attending 21 interagency meetings.

Given the particular vulnerability of people in custody, and their unique dependency on the proper performance of functions by public officials, we maintain a regular program of visits to correctional centres and Youth Justice centres throughout the year. During visits we receive complaints and ensure that people in custody are aware of how we can assist them. This work is led by our specialist Detention and Custody Unit. A list of visits to custodial facilities can be found in Appendix B.5.

Figure 3. Contacts received



Contacts received in 2021–22

In 2021–22, we received 24,874 contacts. This is similar to the number of contacts we received in 2020–21 (24,758). We experienced a 7% drop in actionable complaints; however, the number of notifications and misdirected contacts stayed the same. The number of excluded complaints increased by 40%.

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

Changes in contacts over time

In last year's annual report, we observed that the total contacts to our office had been declining over the past 5 years. This decline was primarily due to:

- the transfer of responsibility for police oversight to the Law Enforcement Conduct Commission (LECC) on 1 July 2017
- the transfer of disability services to National Disability Insurance Scheme (NDIS) service providers from 1 July 2018
- the transfer of the NSW child-related reportable conduct scheme to the Children's Guardian on 1 March 2020
- a significant drop in misdirected contacts in 2020–21, following the introduction of an Interactive Voice Response (IVR) phone system which assists callers to self-refer to more appropriate complaint organisations
- in 2020–21, a decrease in custodial services complaints coinciding with the COVID-19 pandemic, which likely related to both the sizeable drop in the adult inmate population and the general restriction of activities within centres.

In 2021–22, the number of contacts to our office appeared to have stabilised.

In our last annual report, we noted that the proportion of contacts we received that are within our jurisdiction increased in 2020–21. This was primarily a result of a reduction in misdirected contacts. In 2021–22, there was a slight increase in the number of contacts outside our jurisdiction due to an increase in the number of excluded complaints and a drop in the number of actionable complaints.

Handling actionable complaints

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

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

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

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

Figure 4. Contacts received over 5 years

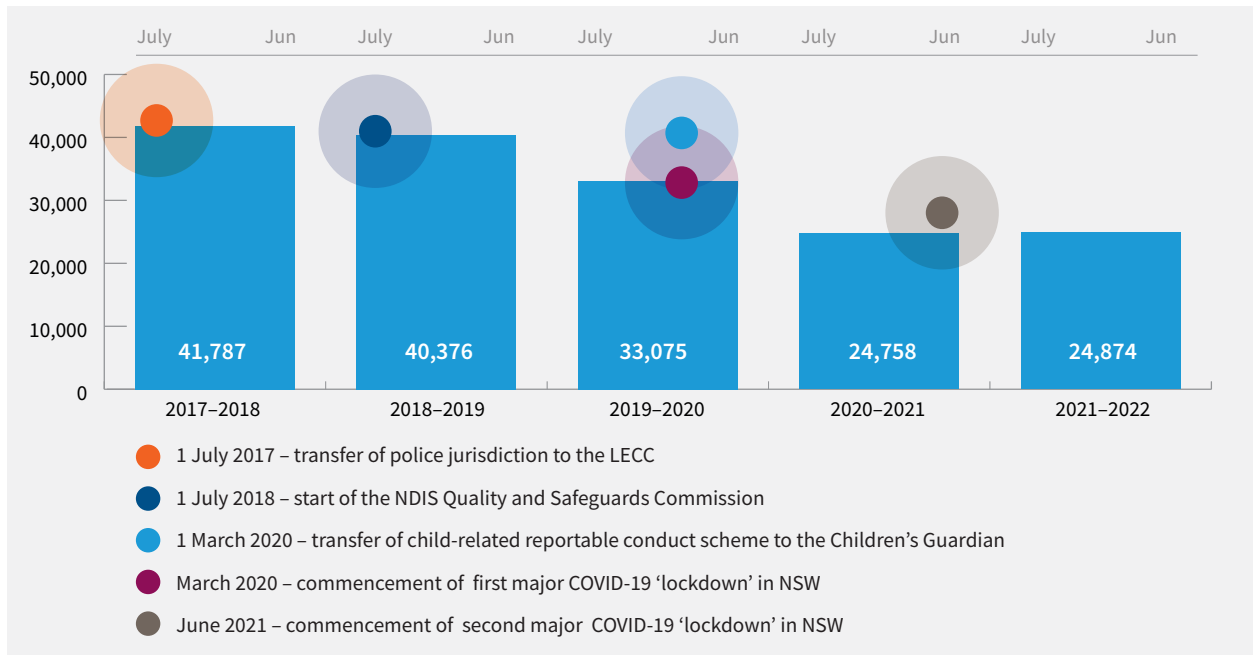


Figure 5. Contacts received each month over past 5 financial years

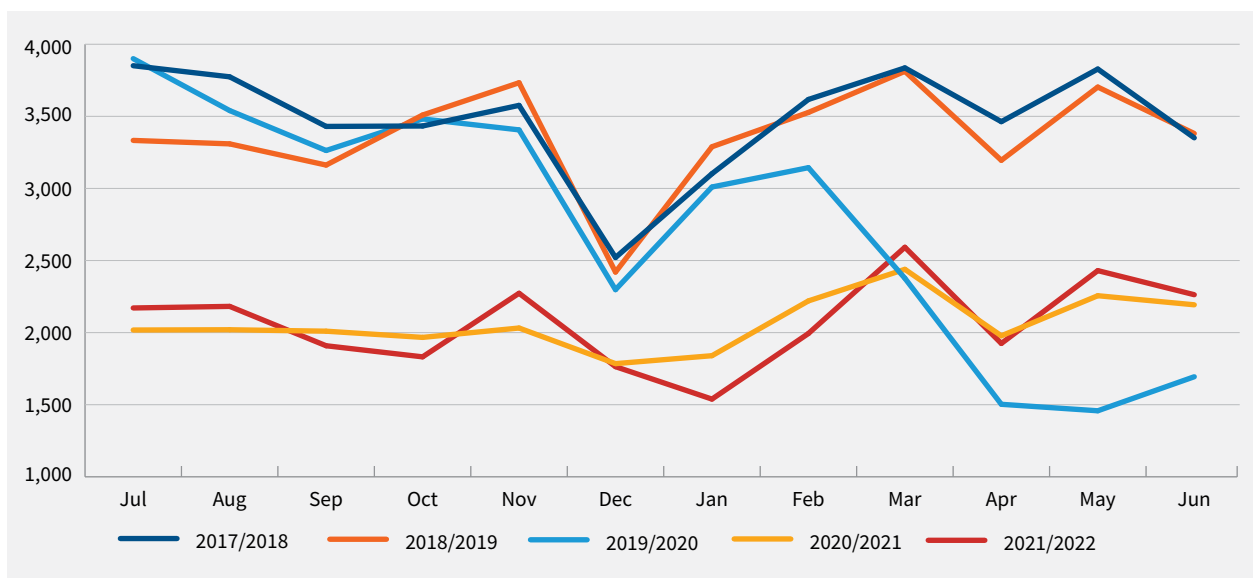
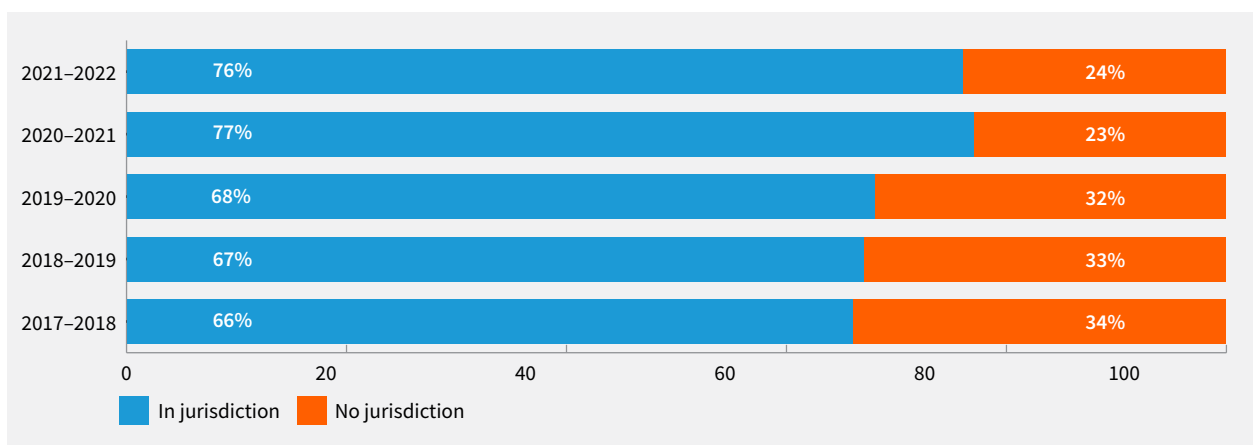


Figure 6. Contacts received in jurisdiction over 5 years



How we finalised actionable complaints in 2021–22

Initial assessment — undertaken in respect of 100% (12,363) of the actionable complaints finalised in 2021–22

We assess all the complaints we receive and can finalise the majority of complaints at this stage by:

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

We also have arrangements in place with most of the larger agencies allowing us to 'warm refer' complaints to them directly, with the complainant's consent. We do this where we assess that the agency has not had a reasonable chance to address the complaint. This is helpful as it means the complainant does not have to start the process of complaint again by contacting the agency directly, and the agency is aware that the issues have already been raised with us. Of our actionable complaints, 12% (1446) were finalised in this way.

After assessment, we may progress the complaint to further actions. These actions include preliminary inquiries, suggestions, conciliations and formal investigations.

Table 1. How we finalised actionable complaints

Action taken	Number	%
Finalised following assessment and without needing to take further investigatory action	10,780	87
Further action taken	1,583	13
Total	12,363	100

Preliminary inquiries — 13% (1,569) actionable complaints finalised this way in 2021–22

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

Most complaints that result in preliminary inquiries are finalised following such inquiries. Sometimes this is because the information we receive suggests no further action is warranted and we are in a better position to explain to the complainant why this is the case. In other cases, our inquiries prompt agencies to take corrective action to resolve the complaint (for example, by reviewing a decision, providing an apology or undertaking some other corrective action) or to provide the complainant with reasons or further information that addresses their concerns.

Suggestions — 20 suggestions made in respect of 11 actionable complaints finalised in 2021–22

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

Of the 20 suggestions made:

- 14 were accepted and implemented by agencies the subject of the complaint
- agencies were in the process of implementing 4 of our suggestions
- 1 suggestion was not accepted or implemented
- we are awaiting an agency's response with respect to 1 suggestion.

Conciliation of complaints — 1 conciliation conducted in 2021–22

Section 13A of the Ombudsman Act enables us to seek to deal with a complaint by formal conciliation. Conciliation is held on a voluntary basis and the parties may withdraw at any time. Conciliation may be conducted with the assistance of a professional conciliator or mediator. Where this happens, the conciliation

process is internally ‘ring fenced’ from any other action we may take on the complaint, to ensure that the conciliation discussions can take place in a frank, confidential and ‘without prejudice’ environment.

Conciliation can be a highly effective means of resolving complaints, particularly where the complainant and the agency also need to maintain an ongoing relationship (such as a school or university student, a tenant in public housing or a person in care). However, historically we have rarely undertaken formal conciliations because we lacked sufficient resources to do so.

As outlined in ‘Legislative and legal matters’ in section 1.3, the new *Ombudsman Legislation Amendment Act 2022* enhanced our conciliation function by permitting us to recoup a reasonable fee from the public authority for a conciliation service.

Formal investigations —1 commenced in 2021–22

Most actionable complaints we receive do not result in a formal investigation. 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, or irrelevant grounds or considerations
- 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 s 13 of the Ombudsman Act.

In 2021–22 we:

- commenced 1 new investigation
- completed 5 investigations.

More information about the investigations is included in section 2.4 ‘Achieving reforms through investigations and reports’.

Time taken to finalise actionable complaints

Table 2. Time taken to finalise actionable complaints

Timeframe	Number	%
Under 1 week	7,538	61
8 to 30 days	2,366	19
1 month to 6 months	2,195	18
More than 6 months	264	2



A SAMPLE OF THE WIDE VARIETY OF COMPLAINTS WE DEALT WITH

Our complaint-handling jurisdiction is incredibly broad. It includes all NSW Government departments and local councils, as well as hundreds of other state public authorities — from public universities to state-run utilities and cultural institutions. We also receive complaints about state-funded community service providers, of which there are approximately 2,000.

The following is a snapshot of some of the wide variety of complaints we handled in 2021–22:

- An elderly man complained to us about a delay by the **Department of Communities and Justice Housing** (DCJ Housing) in issuing him with a credit refund. We discovered that he had been making double rental payments which DCJ Housing had not identified for some time, leading to \$16,000 in credit accruing. Because of our intervention, DCJ Housing expedited a refund of approximately \$16,000 and apologised to the man. We also prompted DCJ Housing to explore whether it can run reports on rental credit to stop the situation occurring again.
- A young person contacted us to complain about **Youth Justice NSW** and the way he was treated by one of its intervention teams. He was no longer involved with the justice system but wanted to prevent other young people having the same experience. Because of our inquiries, a Youth Justice director contacted the young person directly, and had a detailed discussion with him about his experiences. The young person agreed for his feedback to be shared with the relevant team, to inform and improve their work with young people in future.
- **Revenue NSW** agreed to overturn 2 penalty notices and instead issue a caution to a vehicle owner who was unable to move their vehicle from a timed parking zone while unwell and self-isolating with COVID-19.
- We successfully conciliated a matter between foster carers, regarding various issues relating to 3 of their 5 foster children, and the **out-of-home care (OOHC) provider** who managed the foster arrangement. As a result, the parties reached clear agreements and the carers informed us that the OOHC provider's customer service had improved since the conciliation.
- **Department of Education** — NSW Police were called to a school concerning a student's behaviour. The student has a known disability that impacts their behaviour. We found the school had other options to try before escalating to NSW Police. The Department accepted our suggestion to apologise to the student and their family for their experience.
- **Transport for NSW (TfNSW)** — We received a complaint by a man who was repeatedly refused a driver licence by TfNSW over the course of a year, which among other things was impeding his ability to secure employment. We found that the man's name change in the 1990s, and again while living overseas, complicated his application. Through our involvement, TfNSW agreed that, given the man had more than enough identity documents to prove his current name, it would grant a one-off exemption from the policy requiring him to present a NSW Births Deaths and Marriages certificate with the same name. Once granted a NSW driver licence, the man was then able to commence employment in NSW.
- **Local council** — We assisted a vulnerable man with limited means obtain an extension on a vehicle impound notice from his local council. The man was told to move his vehicle by a certain date, or it would be impounded. He could not move his vehicle because it had broken

down. He had no means to pay for towing to a different location. After our inquiries, the council allowed a one-week extension, and the man was able to repair and move his vehicle without penalty.

- **Fair Trading** — We assisted a woman to obtain her auctioneer accreditation, after Fair Trading initially only issued her a restricted class of real estate licence, with no authority to conduct auctions. Confusion about her qualifications had led to the dispute, as the units of study the woman completed were superseded while she was enrolled. Once we became involved, Fair Trading reassessed available information and issued her with the accreditation.
- **University** — A university student with vision impairment complained about significant delays by a university in providing suitable textbooks for her. She had to withdraw from subjects because she could not obtain the required texts. Following our inquiries, the university refunded the student the money she had paid for the textbooks and apologised. It also took steps to prevent this happening again.
- **Corrective Services NSW** — An inmate working in the Greyhounds as Pets program contacted us to complain the dogs were not being cared for during a Corrective Services NSW staff strike. We alerted the centre's general manager to ensure the dogs were cared for, regardless of the staffing situation during the strike period.
- **Land and Housing Corporation** — When an elevator in a public housing block had been broken for 2 weeks, a woman experiencing mobility issues complained to us that she could not exit her home. We made inquiries with the Land and Housing Corporation, who fast-tracked the repairs and ensured its contractor fixed the lift within days.

Reviews of our decisions

In 2021–22 we accepted 26 requests from complainants who asked us to review a decision we had made about their complaint. Reviews are accepted and conducted in accordance with our Request for a Review of a Decision policy.

Most requests for review are received when we have decided to close a complaint following initial assessment or after preliminary inquiries, and not to commence a formal investigation. As noted above, very few complaints lead to a formal investigation under the Ombudsman Act.

Of the 26 requests for review:

- We affirmed the original decision for 14 reviews.
- We reopened 5 complaints and made inquiries of the agency about 3 of the complaints. In relation to the other 2 reopened matters, we made suggestions to the agency under s 31AC of the Ombudsman Act.
- 7 of the reviews were still open as of 1 July 2022.

We aim to finalise all reviews within less than 3 months of request. However, only 54% of reviews were completed within this timeframe, primarily due to resource constraints and the prioritisation of resources toward handling original complaints. We are seeking to increase the efficiency of our review processes to improve their timeliness.

Reviewing the circumstances of a child in care

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

The continuing impact of our work

The consorting law

Consorting is a controversial offence as it involves the criminalisation of social interactions between people, who may be otherwise unconnected by criminal activity. The object of the offence is to allow police to disrupt and intervene pre-emptively to prevent future offending.

In February 2012 consorting laws in NSW were modernised as part of a suite of amendments designed to assist police to tackle organised crime and criminal gangs. Parliament acted in response to increased concern about drive-by shootings. The controversial nature of the new consorting law was acknowledged by Parliament in requiring the NSW Ombudsman to prepare a report about the first 3 years of the operation of the new consorting law.

Our 2016 report *The Consorting Law — Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900*¹⁷ examined the use of the new consorting law by the NSW Police Force during its first 3 years of operation. The report made 20 recommendations for improvement.

Of the Ombudsman's 20 recommendations outlined in its 2016 report, the government:

- supported 13 recommendations
- supported in part 1 recommendation
- supported in principle 5 recommendations
- did not support 1 recommendation.

Given the consorting laws were introduced primarily to impede organised crime and disrupt the establishment and operation of criminal networks, a number of our recommendations were directed to ensuring that this was kept the primary focus of the police's use of the laws, and that it not be used indiscriminately for any activity that might otherwise happen to meet the definition of 'consorting'.

On 26 October 2021, the Law Enforcement Conduct Commission (LECC) released a discussion paper as part of a review of this legislation: *Discussion Paper: Review of the Operation of the Amendments to the Consorting Law under Part 3A Division 7 of the Crimes Act 1900*.¹⁸

In this discussion paper, the LECC reiterated our concerns and supported proposals to amend police standard operating procedures and training for police to ensure officers consider the context and circumstances of 'consorting' when deciding whether and how to apply the law.

The LECC stated the development and implementation of a quality assurance process would strengthen confidence and consistency among officers in their use and recording of the consorting law. It would also provide a framework for consistent ongoing monitoring.

The discussion paper also raised concerns about the disproportionate application of the consorting law to Aboriginal and Torres Strait Islander people, which was consistent with the concerns we reported in our 2016 report. We are pleased that the LECC will continue to assess the use of the consorting laws against Aboriginal and Torres Strait Islander people during the remainder of the review.

17. NSW Ombudsman, [The Consorting Law — Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900](#) (Report, April 2016).

18. Law Enforcement Conduct Commission, [Discussion Paper: Review of the Operation of the Amendments to the Consorting Law under Part 3A Division 7 of the Crimes Act 1900](#) (Report, October 2021).



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

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

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

Improving complaint-handling capability and systems

National complaint-handling standard

Standards Australia's *Guidelines for Complaint Management in Organizations* (AS 10002:2022) is recognised in Australia as the best practice standard in complaint management. It provides guidance on the planning, design, implementation, operation, maintenance and improvement of a complaint management system.

Our office had an active role in reviewing the standard in 2021 as a participant in the Standards Australia review committee. The revised standard was released in March 2022.

We will be updating our complaint-handling guidelines and training offerings dedicated to effective complaint handling so that they are in line with the new standard.

Commitments to effective complaint handling

Our office continues to promote the Commitments to Effective Complaint Handling (the Commitments), which we developed in collaboration with agencies from all clusters. The Commitments were originally endorsed by the Secretaries Board in 2016 and remain the foundational principles of good complaint handling in the NSW public sector. The Commitments guide us in our complaint handling and other functions, and we continue to promote them to agencies.

In August 2021 we wrote to all secretaries and local council general managers to reiterate the Commitments, as well as to invite them to take the opportunity to contribute to the review of the complaint-handling standard noted above.

In September 2018 we tabled a special report on the implementation of the Commitments,¹⁹ which included a recommendation that our functions be expanded to include reviewing agency complaint-handling systems against the Commitments. In August 2022, that 2018 report was referred to when the new *Ombudsman Legislation Amendment Act 2022* was passed, which has now given us that function – see 'Legislative and legal matters' in section 1.3.

The Commitments will be a core document against which we will conduct future reviews of complaint-handling systems under the new function.

Promoting improvements through investigations and reports

In 2021–22, we commenced 1 investigation and completed 5 investigations.

As at 30 June 2022, we had 5 open investigations.

Investigation reports

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

When the investigation is completed, a final report on the investigation will be provided to the relevant agency and its responsible minister under s 26 of the *Ombudsman Act 1974* (**Ombudsman Act**). The report will include any findings of wrong conduct. It may include recommendations for corrective action in respect of the particular wrong conduct as well as for systemic and administrative improvements.

If the Ombudsman provides a s 26 report to a responsible minister and is not satisfied that sufficient steps have been taken in due time as a result of that report, the Ombudsman may make a report to Parliament under s 27 of the Ombudsman Act. In that case, the minister must make a statement to Parliament within 12 sitting days in response to the report.

Section 27 report regarding strip searches of children and young people in detention

We made 1 follow-up report to Parliament under s 27 of the Ombudsman Act²⁰ because we were not satisfied that sufficient steps had been taken in response to our s 26 report: *Strip Searches Conducted After an Incident at Frank Baxter Youth Justice Centre*.

The minister responded to that s 27 report in Parliament on 11 August 2022, noting that the government rejects the recommendations made in our report, including in particular our recommendation that legislation be amended to provide that:

- A strip search of a child or young person in youth detention should never require the removal of all of their clothes, all at once.

19. NSW Ombudsman, [Complaint Handling Improvement Program: Commitments Implementation Review](#) (Report, 31 August 2018).

20. NSW Ombudsman, [Strip Searches Conducted After an Incident at Frank Baxter Youth Justice Centre](#) (Report, 8 June 2021).

- Strip searches in youth detention centres should not be conducted routinely, but only if there is reasonable suspicion of hidden contraband or an imminent risk to health and safety.
- A search should involve the least intrusive search method required to achieve its purpose.
- A search should involve the removal of no more clothing than is necessary to achieve its purpose.

The minister's reasons for rejecting these recommendations are published on the Parliament's website.²¹

Formal investigations — summary report 2021–22

Whether or not a special report has been prepared in respect of a particular investigation, it is the Ombudsman's current practice to publish and present to Parliament a special report annually that summarises the formal investigations that were completed in the previous 12 months.

In the period from October 2021 to September 2022, the Ombudsman completed 4 formal investigations.

This investigations summary report will be tabled at the same time as this annual report.

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

Under s 31 of the Ombudsman Act, the Ombudsman can separately provide special reports to be tabled in Parliament at any time.

We may produce a special report following an investigation, if the investigation identified matters of public interest, especially where these may have broader implications beyond the particular complaint and the agency or service provider involved.

Special report about an investigation

In 2021–22 we published 1 special report about an investigation.

Investigation into the procurement of an acting executive director at the former NSW Department of Planning and Environment

This report was tabled on 19 October 2021.²²

Other special reports

In addition to reports related to specific investigations, we published 3 other reports in 2021–22.

Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021

This report was tabled on 19 October 2021.²³

In this report we stated our support of the new Bill, which rewrote the state's whistleblower protection laws. We assessed the Bill against the 38 recommendations made by the Parliamentary Ombudsman Committee, as well as further recommendations made by the Parliamentary Independent Commission Against Corruption (ICAC) Committee in a separate report in 2018. Our report explained how the new Bill addresses many of the weaknesses in the existing PID Act.

The new machinery of government: using machine technology in administrative decision-making

On 29 November 2021 we tabled a special report to Parliament on public sector use of automated decision-making (ADM) tools.²⁴ The report examined the intersection between agency use of ADM and the requirements of administrative law and good conduct principles.

We included several case studies in the report including a summary of our investigation of Revenue NSW's use of ADM in the administration of garnishee orders for unpaid fines.

The Ombudsman's jurisdiction to investigate when there are related court proceedings

This report was tabled on 4 May 2022.²⁵

It responded to a provision of the Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022, which proposed an amendment to the Ombudsman Act. The amendment concerned the Ombudsman's jurisdiction to investigate complaints in circumstances where there may be related court proceedings.

21. [Hansard and House Papers — Ministerial Statement Youth Justice Centres.](#)

22. [Investigation into the procurement of an acting executive director at the former NSW Department of Planning and Environment](#)

23. [Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021.](#)

24. NSW Ombudsman, [The new machinery of government: Using machine technology in administrative decision-making](#) (Report, 29 November 2021).

25. [The Ombudsman's jurisdiction to investigate when there are related court proceedings.](#)

Examining automated decision-making

As noted above, this year we published a ground-breaking report on the use of ADM in public-sector administrative decision-making. We identified some key risks, including that - unless carefully designed, implemented and monitored - the use of ADM:

- may not comply with the norms of administrative law. Such contraventions may risk unfair treatment, adverse findings of maladministration and potentially result in decisions or actions being held by a court to have been unlawful and/or invalid
- may be capable of producing new forms of large-scale systemic injustices, to which the existing framework and institutions of administrative law are ill-equipped to respond.

Since tabling the report, we have been proactively looking for ADM-related issues in complaints to us, as well as continuing to engage with Revenue NSW on their use of ADM.

We have also engaged with academic and government stakeholders. We were invited to present on the report to a number of forums including: the Alan Turing Institute²⁶, the University of NSW, the NSW Legal Assistance Forum and the Law Society of NSW. Additionally, we have engaged with a range of key stakeholders within NSW Government including the NSW Privacy Commissioner, NSW AI Advisory Committee, the Secretaries Board, Office of Local Government and the General Counsel Group.

In order to guide our work in this significant and evolving area, we have developed a three-year strategy. Through our strategy, we are seeking to increase transparency of ADM, enhance oversight, and contribute to public debate on the use of ADM for administrative decision-making. Part of our longer-term vision is that public sector agencies use ADM for administrative decision-making that aligns with law and good conduct principles; and that members of the community have greater awareness of how agencies use ADM tools in decisions that affect them. The first major obstacle to that vision is a lack of visibility of ADM (both within agencies and the public more broadly).

In our report, we noted that agencies (including local councils) do not currently have a specific obligation to report on their use of ADM. This means that we do not know how many agencies are using or developing ADM to assist them in the exercise of their statutory functions, or in what ways.

A key piece of work to increasing transparency of ADM will be our planned research project to comprehensively map the ADM tools used (or planned to be used) in administrative decision-making across the NSW public sector and local government sector.

Monitoring and assessment of Aboriginal programs

We have had a change in leadership with the appointment of Leanne Townsend, Deputy Ombudsman Aboriginal Programs following the departure of the inaugural holder of that office, Danny Lester.

In 2021 the COVID-19 lockdown prevented scheduled community visits from June to October. However, the Aboriginal Programs team conducted 88 engagement meetings between 1 July 2021 and 30 June 2022 (with the majority held virtually).

The Annual Aboriginal Procurement Advisory Committee (APAC) Forum was facilitated by the Aboriginal Programs Branch on 31 May 2022. The purpose of APAC is to monitor and support the NSW Government's Aboriginal Procurement policy.

Monitoring the delivery of community services and related programs

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

Child protection — system performance

We are reviewing performance information to assess 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 (OOHC).

26. The [national institute for data science and AI](#) in the United Kingdom.

The scope of our review includes early intervention and family preservation services, statutory responses to Risk of Significant Harm (ROSH) reports and the OOH sector.

We intend to table a report on this work in Parliament in 2022–23.

Appeal process for kinship carer applicants

In 2018, we heard from grandparent carer support groups about the then Department of Family and Community Services (FACS). They were concerned FACS did not give people the option of an internal review of its decisions to reject applications to become authorised kinship carers for children removed from their families. FACS agreed with us that there was merit in establishing such an option and committed to considering this in 2019.

Since then, we monitored the department's progress in establishing an internal review mechanism, which it told us it was undertaking as part of a broader review of its carer authorisation policy.

DCJ, which brought together the former FACS and Department of Justice, published the policy and the internal review option in early 2022.

Review of DCJ complaint handling systems — 'Family Is Culture'

In October 2019, the *Family Is Culture Report*²⁷ recommended (recommendation 10) that DCJ conduct an independent review of their complaint-handling system. In 2021, we advised DCJ of our intention to undertake a review ourselves, which would be undertaken on our own initiative (rather than commissioned by DCJ) and using our existing independent functions, but that would be inclusive of the issues raised in recommendation 10.

However, we deferred our review given DCJ's decision to commission PricewaterhouseCoopers to undertake an audit, which was finalised in November 2021.

In March 2022, the Office of the Children's Guardian provided a special report to the Minister for Families and Communities, highlighting that

several important aspects of recommendation 10 remained unresolved and suggesting that the Ombudsman should proceed with our planned review.

We have now taken steps to proceed with our independent review. The review will focus on the qualitative experience and needs of Aboriginal complainants — including families, children, carers, community members or organisations seeking to support Aboriginal complainants.

We have appointed a dedicated Aboriginal Assistant Ombudsman, George Blacklaws, to lead this work.

More than Shelter — Addressing the Legal and Policy Gaps in Supporting Homeless Children: A Progress Report

In October 2020 we published a report assessing DCJ's progress in dealing with the problems previously identified in our June 2018 report, *More than Shelter — Addressing Legal Gaps in Supporting Homeless Children*.²⁸

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

In February 2021, DCJ published its plan to implement the new recommendations. In July 2021, DCJ published a revised policy to guide responses to unaccompanied homeless children who are aged 12–15. The new version contains a stronger statement about DCJ's role in supporting youth homelessness services. It also commits DCJ to regularly monitoring implementation of the policy to ensure that outcomes align with its purpose and goals.²⁹

In March 2022, as per our recommendation, DCJ published a final report on its implementation of the recommendations.³⁰

We are planning to publicly report on our assessment of DCJ's response to our recommendations in late 2022.

27. Independent Review of Aboriginal Children in OOH, *Family Is Culture* (Report, 25 October 2019).

28. NSW Ombudsman, *More than Shelter — Addressing Legal and Policy Gaps in Supporting Homeless Children: A Progress Report* (Report, 19 October 2020); NSW Ombudsman, *More than Shelter — Addressing Legal and Policy Gaps in Supporting Homeless Children* (Report, 21 June 2018).

29. Department of Communities and Justice, *Unaccompanied Children 12–15 Years Accessing Specialist Homelessness Services Policy*.

30. Department of Communities and Justice, *More than Shelter* (Report, December 2021).

Access to homelessness services

The NSW homelessness system is intended to be accessible to all people who need support. Providers are unable to meet all needs — for reasons including resources and risk — but our work shows that some people are being turned away for inappropriate reasons.

This problem is not new. Nearly 20 years ago, we reported on extensive exclusions of homeless people, and relationships between access to services and people's complex needs.

As a result of our more recent complaint work, we decided to review access to Specialist Homelessness Services (SHS) for people with complex needs. We consulted selected SHS providers, peak homelessness bodies and DCJ. We also reviewed the adequacy of policies that govern the circumstances in which homeless people can be excluded or evicted from services.

In August 2022 we tabled a report that recommended improvements to the response to homeless people with complex needs.³¹

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

The Ombudsman monitors and reviews certain child deaths — those that are a result of, or cause suspicion of, abuse or neglect, and deaths of children in care or detention. Each year approximately 25 deaths of children are reviewable.

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

Most reviewable child deaths involve families known to the child protection system. Well-recognised child protection issues — including family violence and relationship breakdown, parental mental illness, and parental alcohol and

drug use — are often present in families where children have died in circumstances of abuse or neglect.

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

- providing comment or feedback about individual matters through correspondence and reports
- consultation and discussions about policies, procedures, systemic issues and prevention initiatives
- oversight of agency internal reviews of cases, and referrals for review where relevant
- formal actions under the Ombudsman Act — such as preliminary inquiries and investigation
- providing our reviews to the NSW Coroner's Office (on request) to assist coroners in making decisions about inquests and potential lines of inquiry.

Comprehensive details of our recommendations and our monitoring of their implementation are included in our biennial child death reports, which are available on our website. Since 2019, our biennial report of reviewable child deaths and the biennial report of the deaths of children by the NSW Child Death Review Team (see further below) have been combined into a single report. The most recently published combined report, the *Biennial Report of the Deaths of Children in New South Wales: 2018 and 2019: Incorporating Reviewable Deaths of Children*,³² was tabled in the NSW Parliament on 24 August 2021. The report concerns the deaths of 989 children who died in NSW in 2018 and 2019 and includes information about long-term trends in child mortality. The next biennial child death report will be tabled in 2023.

Convening the NSW Child Death Review Team

The Ombudsman convenes the NSW Child Death Review Team (CDRT), which consists of experts in health care, child development, child protection and research, as well as representatives of key

31. NSW Ombudsman, [Specialist homelessness services: helping people with high or complex needs](#).

32. NSW Ombudsman, [Biennial Report of the Deaths of Children in New South Wales: 2018 and 2019: Incorporating Reviewable Deaths of Children](#) (Report, 24 August 2021).

government agencies. The purpose of the CDRT is to prevent or reduce the deaths of children in NSW. Approximately 450–500 children aged 0–17 years die in NSW each year.

The main purpose of the CDRT is to analyse the deaths of children by cause, demographic and other factors, to identify trends and patterns, and to make recommendations that may assist in preventing or reducing the likelihood of child deaths. The CDRT maintains a register of child deaths and undertakes research that aims to assist with the prevention or reduction of child deaths.

Comprehensive details of the CDRT's activities, work and recommendations, and the progress of agencies in implementing recommendations are included in the CDRT's annual reports and the combined biennial child death reports, which are available on our website.³³

Improving agency responses to the COVID-19 pandemic

During 2021–22 we continued to monitor the NSW Government's response to the COVID-19 pandemic. This included the fourth (Delta variant) and fifth (Omicron variant) waves of the pandemic.

The number of COVID-related complaints to the Ombudsman rose significantly in the second year of the pandemic. We received 1,046 COVID-related actionable complaints in the 2021–22 financial year — more than double the number received in 2020–21.

The largest increase in complaints concerned the custodial system: there were 5 times as many complaints in 2021 about custodial services than there had been in 2020–21.

We published a special report to Parliament on 7 September 2022, *The COVID-19 Pandemic: Second Report*,³⁴ which provides further analysis of the complaints received by the Ombudsman on our office, and the government's response, since our March 2021 report on the COVID-19 pandemic.³⁵

Improving the public interest disclosures system

The NSW Ombudsman is the lead oversight agency for the *Public Interest Disclosures Act 1994* (**PID Act**). Our statutory functions include:

- promoting public awareness and understanding of the Act and providing information, advice, assistance and training
- issuing guidelines and other publications to assist public authorities, investigating authorities and public officials
- auditing and monitoring the exercise of functions under the Act and compliance with the Act by public authorities
- providing reports and recommendations about proposals for legislative and administrative changes to further the objectives of the Act.

In performing our statutory functions, we aim to:

- increase awareness of the procedures for making public interest disclosures and the protections provided by the PID Act
- improve the handling of disclosures and the protections and support for people who make them
- improve identification and remedying of problems and deficiencies revealed by disclosures
- ensure an effective statutory framework is in place.

As an investigating authority, we also receive, investigate and otherwise deal with public interest disclosures made to our office about maladministration.

The NSW Ombudsman chairs the Public Interest Disclosures (PID) Steering Committee, a statutory advisory mechanism for key stakeholders to provide advice to the ministers responsible for administering the PID Act — the Premier and the Attorney General.

We are refreshing our strategic approach to undertaking some of our functions. We have:

- developed an audit framework that focuses on a targeted, risk-based approach
- undertaken a training needs analysis to ensure our training offering is targeted appropriately and effectively.

33. For [CDRT annual reports](#). For [biennial child death reports](#).

34. NSW Ombudsman, *The COVID-19 Pandemic: Second Report* (Report, 7 September 2022).

35. NSW Ombudsman, *2020 Hindsight: The First 12 Months of the COVID-19 Pandemic* (Report, 22 March 2022).

We have recently conducted an audit of 6 local councils. In late 2022, we will table a report to Parliament to highlight key themes and recommendations arising from the audit to assist agencies to review their own practices as they begin to prepare for the new *Public Interest Disclosures Act 2022* (**PID Act 2022**).

In late 2022 we will table our PID annual report in Parliament detailing the activities we have undertaken to fulfil our responsibilities under the PID Act. The PID Steering Committee will also table a separate annual PID report.

Public Interest Disclosures Act 2022

The NSW Ombudsman has enhanced oversight functions under the new legislation. These functions include:

- promoting public awareness of the new PID Act
- providing information, advice, assistance and training to agencies and public officials
- developing and publishing guidelines and other materials
- auditing and monitoring agencies on how they undertake their functions under the new PID Act
- receiving notifications and reporting from agencies
- providing conciliation of disputes under the new PID Act.

As the PID Act 2022 will affect all NSW public agencies, and given our oversight function, we will be working over the coming months to prepare for its commencement in late 2023. A major focus for us will be developing and sharing resources to assist public agencies to meet their obligations under the new PID Act.

These resources will include new guidelines, fact sheets, toolkits, e-learning training modules, awareness materials and face-to-face communication for the new legislation.

We will provide regular updates on the new legislation through the PID e-Newsletter, and publish information as it becomes available on the Ombudsman's website as well as social media platforms. We invite public officials to subscribe to receive the [PID e-News and updates through our website](#).

In the meantime, we are continuing to undertake our advisory, monitoring and auditing functions under the current PID Act to ensure that public agencies are supported in the exercise of their responsibilities in the existing PID Act.

Further details on the PID Act 2022 can be found under 'Recent and prospective legislative amendments' in section 1.3.

Monitoring implementation of our recommendations

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

Below are some examples of outcomes achieved and improvement made by agencies that responded positively to our recommendations made in investigation reports. More information about these investigations can be found in the Annexure to our 2020–21 annual report.³⁶

Wollongong City Council

We made 8 recommendations to Wollongong City Council in October 2021 after investigating its management of planning and development issues associated with a contaminated site.

In response to our recommendations, the council:

- changed its record systems to include information about the contamination of the site that gave rise to the complaint
- trained staff on what to do when considering and granting applications to develop land which could potentially be contaminated
- updated its standard development assessment template to ensure staff addressed any questions about potential contamination before recommending approval or refusal of development applications.

We continue to monitor 4 outstanding recommendations.

36. NSW Ombudsman, [Annual Report 2020–21](#).

Transport for NSW investigation into enforcement actions under marine legislation

In August 2021, we made 9 recommendations to Transport for NSW (TfNSW) to improve its handling of maritime licensing and compliance issues. These recommendations came out of an investigation into enforcement action that TfNSW took against the former owner of a derelict boat, months after he had sold the boat to another person.

As a result of our investigation, TfNSW has:

- withdrawn the invoice it issued to the former owner of the boat for disposing of the boat
- updated its compliance and enforcement policies and procedures, which will help staff make better decisions when they are enforcing the *Marine Safety Act 1998* and other relevant legislation.

TfNSW is continuing to provide us with updates on the remaining recommendations, including work being done on reforming vessel registration to address the increasing risk of ageing and derelict boats in NSW waterways.

Wingecarribee Shire Council

In February 2021, we made 7 recommendations to Wingecarribee Shire Council to address issues relating to charging developers with water and sewerage management fees. The investigation came about when a developer complained that she had been charged fees that were \$150,000 above the amount specified when she first obtained development consent.

As a result of our investigation, the Council:

- refunded excess water and sewerage fees paid by the complainant
- wrote to other developers who might also be eligible for a refund or lower charges for their developments
- advertised the possible availability of refunds to other eligible developers
- strengthened relevant compliance and governance processes we had identified as being insufficient.

Broken Hill City Council

We issued a special report to Parliament, *An Inherent Conflict of Interest: Councils as Developer and Regulator*,³⁷ in December 2020. This was

after we investigated and found Broken Hill City Council had breached the *Environmental Planning and Assessment Act 1979* (EP&A Act) by allowing its own unfinished Civic Centre to be used for large public functions, despite not having the necessary certification that it was safe to do so.

In response to our recommendations the Council:

- agreed to engage an external or independent third party or another council to make development assessments where Council was the proponent and to ensure that, where it took this action, the agreement was publicly advertised
- ensured that all staff and managers attended PID training and undertook to hold refresher training annually
- took action to counsel the General Manager for their breach of the EP&A Act and the procurement guidelines
- tasked its Audit, Risk and Improvement Committee to review the procurement framework and then posted the revised policy on its website.

The Office of Local Government issued a formal warning letter to the council about its breach of the EP&A Act and undertook monitoring activities to satisfy itself that the council had improved its processes.

As this investigation uncovered systemic issues, we also made recommendations to the Department of Planning, Industry and Environment (now the Department of Planning and Environment (**DPE**)) and the Office of Local Government.

Amendments have been made to the Environmental Planning and Assessment Regulation 2022 to strengthen transparency and accountability in the planning system. The amendments, which come into effect in April 2023, will require councils to have a conflict-of-interest policy that documents how they will manage any potential conflict of interest that may arise when a council assesses development applications where they have a commercial interest in the outcome. To assist councils, DPE has also prepared *Council-related Development Application Conflict of Interest Guidelines*, which can be found on the NSW Planning Portal.

37. NSW Ombudsman, [*An Inherent Conflict of Interest: Councils as Developer and Regulator*](#) (Report, 15 December 2020).

The continuing impact of our work

Preventing the deaths of children through child vehicle restraints

Properly used seatbelts and child restraints can prevent deaths of children in vehicle crashes. In the Child Death Review Team's (CDRT) 2019 report, *The Role of Child Restraints and Seatbelts in Passenger Deaths of Children Aged 0–12 years in NSW*,³⁸ the CDRT made 4 recommendations to TfNSW to address issues identified in our review — all of which were supported.

In 2019, NSW Police launched a child vehicle restraint program in Sydney's west to assist vulnerable families ensure they have the correct seats for their children and the training to correctly install and use the restraints in their vehicle.

The program began with police from Mount Druitt Police Local Area Command working with community groups and local councils to reach out to vulnerable families to ensure they had access to a correct child restraint which was installed professionally, and that they were trained in fitting and using the seat properly. In 2020, after proving a success in Sydney's west, the program was launched in western NSW and far-west NSW and then in the state's south-west.

In March 2021, a statewide rollout of the program began. The program is now partnered with Kidsafe NSW and provides accredited child restraint training to designated police officers, health workers and community transport workers. Vulnerable families are provided with a new, compliant car seat and are trained to install and use it correctly. The program currently relies on donations from community groups and private organisations, and negotiations are underway for TfNSW to provide additional funding.

In addition to this program, NSW Police, in consultation with Revenue NSW's Hardship Support Program and TfNSW, developed a diversion scheme which is being trialled in Sydney's south-west (from June 2021). The scheme aims to provide those drivers who would otherwise receive a fine when a child is not properly restrained with an option to obtain a compliant restraint and have the restraint fitted by an authorised installer. The driver would then be given a caution in lieu of a fine. If successful, this scheme will be trialled in selected areas across NSW before being rolled out across the state.

38. Child Death Review Team, *The Role of Child Restraints and Seatbelts in Passenger Deaths of Children Aged 0–12 years in NSW* (Report, 5 June 2019).

Supporting agencies and service providers through training

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

We offer 4 distinct areas of training:

1. Complaint handling
 - a) Fundamentals of complaint handling
 - b) Managing unreasonable conduct by a complainant
 - c) Effective complaint management systems.
2. Access and equity
 - a) Aboriginal cultural appreciation
 - b) Supporting young people to make complaints and advocate for systems change.
3. Investigation and administrative law
 - a) Investigating misconduct in the public sector
 - b) Administrative law in the public sector.
4. Public interest disclosures management.

Our core workshops are:

- Fundamentals of complaint handling
- Public interest disclosures training
- Managing unreasonable conduct by a complainant.

The COVID-19 pandemic had a major impact on our face-to-face training operations and provided us with an opportunity to redesign our training for online delivery.

During 2021–22 we delivered:

- 16 PID training sessions to 335 NSW public officials
- 106 complaint-handling, access and equity, and investigation skills workshops to 1,426 participants located in NSW, across Australia and in Canada.

We paused delivery of our Aboriginal cultural appreciation training during this period. We are currently undertaking a review, with the goal of improving this offering and resuming training in 2022–23.

Our new blended-learning business model continues to be successful, with overwhelmingly positive learner feedback.

Training business review

We commissioned a review of our training business in 2021–22. This review was particularly timely following the impact of the pandemic, and was focused on considering the objectives, processes, delivery modes, future capability requirements and structure of our external training function going forward.

During the next financial year, the training team will work towards specific changes for a sustainable model to be actioned over 3 horizons:

1. Horizon 1 — Realign, refocus and ensure continuity
2. Horizon 2 — Integrate and formalise the training unit within the core functions of the Ombudsman
3. Horizon 3 — Expand training to extend the Ombudsman's reach and influence across the sector.

Table 3. Training workshops delivered by topic

Topic	Workshops	Participants
Public interest disclosures	16	335
Complaint handling	98	1,318
Investigation skills	8	108
Access & equity	0	0
Total	122	1,761

Further information about our PID training will be included in our 2021–22 PID annual report.

Table 4. Workshops by sector (excluding PID training)

Sector	Workshops
State government agencies	53
Community service providers	7
Local government	2
Public sector agencies outside NSW	2
Mixed community and public sector agencies	16
Australian government agencies	16
International agencies	6
Private organisations	4

During 2021–22, around half of all participants completed evaluations of our training (excluding PID).

Of these:

- 90% rated our training overall as excellent/good.
- 95% rated our trainers as excellent/good.
- 93% rated the content covered in the training as excellent/good.
- 90% would recommend our training to others.

We will publish PID training evaluation results in the forthcoming PID 2021–22 annual report.



Feedback about our training

'A thorough course in the fundamentals, inspiring to promote ongoing best practice and commitment to being a transparent and customer focused organisation within the legislative boundaries in which we operate.'

'Excellent [online] content, visually interesting, engaging topics, interactive, excellent scenarios, with lots of good strategies presented.'

'The facilitator was brilliant. Very informative and interactive. They made the session very engaging.'

'[I learnt] how to better deal with people and deescalate situations.'

'Made me feel empowered.'



2.5 Providing a trusted source of independent advice to Parliament

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

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

Supporting Members of Parliament to serve their constituents

Complaint referrals from Members of Parliament

In 2021–22, Members of Parliament referred 12 complaints to us.

Special reports to Parliament

Tabling reports in Parliament is a key aspect of our role. The reports we tabled in 2021–22 were:



Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021 (Report, 19 October 2021)³⁹



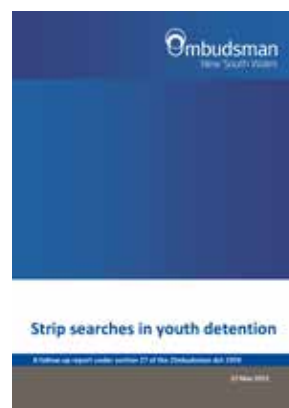
Investigation into the procurement of an acting executive director at the former NSW Department of Planning and Environment (Report, 19 October 2021)⁴⁰



The new machinery of government: Using machine technology in administrative decision-making (Report, 29 November 2021)⁴¹



The Ombudsman's jurisdiction to investigate when there are related court proceedings (Report, 4 May 2022)⁴²



Strip searches in youth detention: a follow-up report under Section 27 of the Ombudsman Act 1974 (Report, 12 May 2022).⁴³

39. NSW Ombudsman, [*Special report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021*](#).

40. NSW Ombudsman, [*Investigation into the procurement of an acting executive director at the former NSW department of planning and environment*](#).

41. NSW Ombudsman, [*The new machinery of government: Using machine technology in administrative decision-making*](#).

42. NSW Ombudsman, [*The Ombudsman's jurisdiction to investigate when there are related court proceedings*](#).

43. NSW Ombudsman, [*Strip searches in youth detention: A follow-up report under section 27 of the Ombudsman Act 1974*](#).

Advice to Parliament on legislative proposals

We provided advice on the following proposals. For more information on legislative amendments that affect our jurisdiction, see 'Legislative and legal matters' in section 1.3.

Children and Young Persons (Care and Protection) Amendment (Family is Culture) Bill 2022

This Bill contained an amendment relating to the Ombudsman's jurisdiction to investigate complaints in circumstances where there may be related court proceedings. The Ombudsman made a special report to Parliament on this amendment (see above in 'Special reports to Parliament').

Public Interest Disclosures Bill 2022

The Ombudsman made a special report to Parliament on this Bill (see above in 'Special reports to Parliament'). The Bill received assent and is now the *Public Interest Disclosure Act 2022*.

Draft Animal Welfare Bill 2022

The Ombudsman made a short submission to the inquiry into animal welfare policy in NSW by the Standing Committee on State Development.

Our parliamentary oversight committee

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

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

In 2021–22, the committee had to postpone its hearings to review annual and other reports of oversight bodies on a number of occasions. At the date of preparing this annual report, we are due to appear before the committee on 17 October 2022.

Contribution to other parliamentary inquiries

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

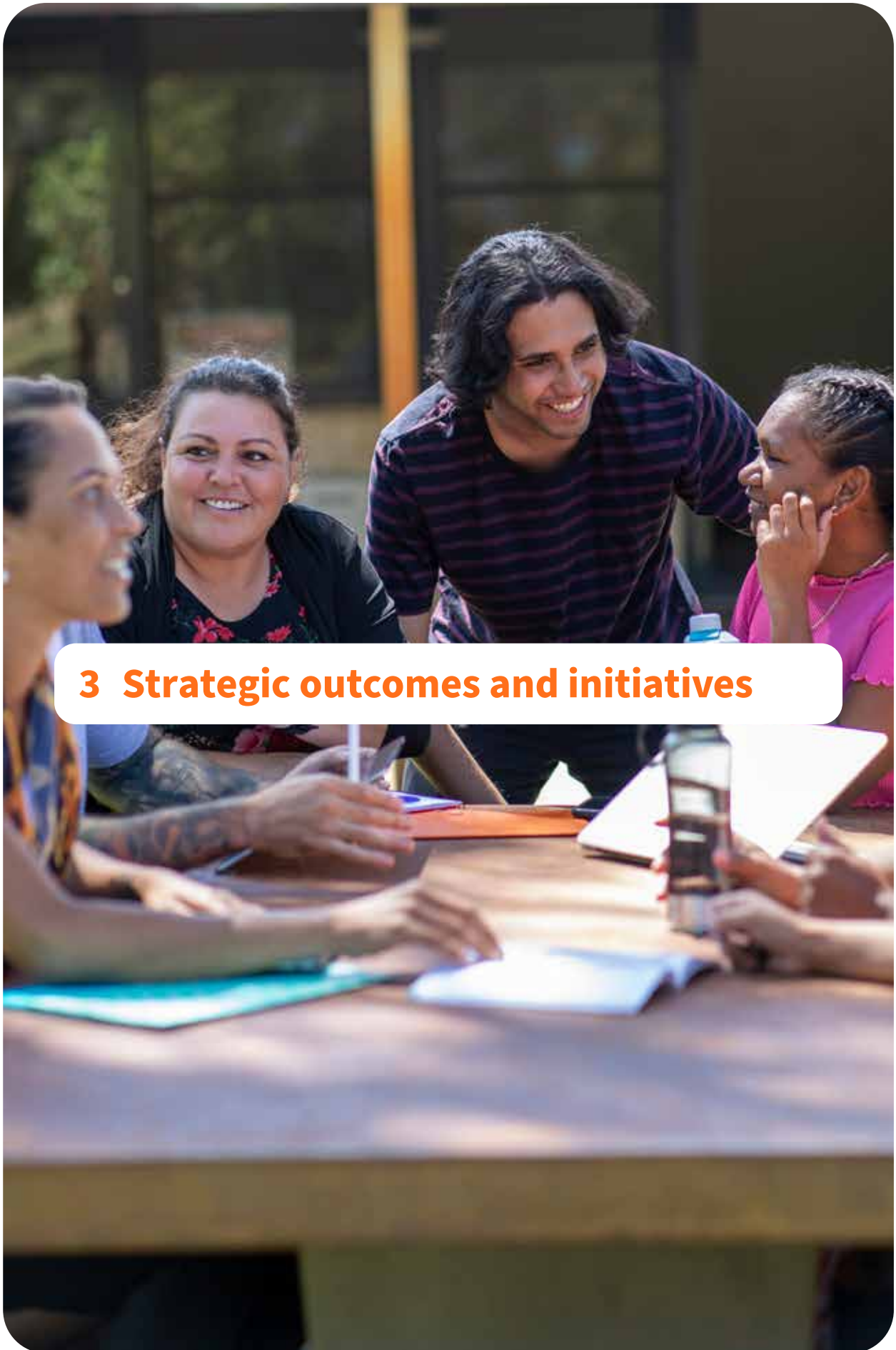
During 2021–22, we contributed to 3 parliamentary inquiries:

- We appeared before the Public Accountability Committee for its Inquiry into the NSW Government's management of the COVID-19 pandemic on 17 September 2021.
- We appeared before the Legislative Council Portfolio Committee No 1 Inquiry into the Public Interest Disclosures Bill 2021 on 15 November 2021, followed by a supplementary written submission on 18 November 2021.
- We made a submission to the Select Committee Inquiry into the response to major flooding across NSW in 2022 on 16 May 2022.

Recruitment panels for statutory or parliamentary offices

During 2021–22 the NSW Ombudsman participated as a member of a panel to assess and recommend candidates for the appointment of the Chief Commissioner and Commissioner of the Law Enforcement Conduct Commission (LECC).

Those roles are appointed by the Governor on the recommendation of the Premier and Attorney General, and proposals for appointment must first be submitted to the Parliamentary Committee on the Ombudsman, the LECC and the Crime Commission for the purpose of considering a veto.



3 Strategic outcomes and initiatives

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

The plan included the 10 strategic outcomes we are seeking to achieve between 2020 and 2025 and over 40 initiatives to help us do that. This spread shows highlights of our achievements during this reporting period.

Strategic outcomes



1. Consistent and best practice service provision and quality standards



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



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



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



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



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



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



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



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



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

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

3.1 Strategic outcomes highlights

Services and impact

Consistent and quality service

- Implemented measures to capture additional data on complainants who identify as Aboriginal or Torres Strait Islander
- Completed our Internal Audit Manual
- Participated in a range of national and international forums, including attending Annual General Meeting of ANZOA Members and convening Australia and New Zealand Child Death Review and Prevention Group conference

Evidence-based, relevant and impactful

- Tabled Biennial Report of the Deaths of Children in NSW (incorporating reviewable child deaths) and developed a revised framework for the preparation of future reports
- Tabled special reports in Parliament on the use of machine technologies in government decision making and to call on the government to explain why it has not implemented our recommendations to enact safeguards for the strip searching of children and young people by prison officers
- Rolled out business intelligence dashboards
- Improved analysis and reporting of data through actions such as a new 'extract, transform and load' process
- New data warehouse developed for Register of Child Deaths and the Disability Death Reviews database



Engagement and relationships

Accessibility to, and trust of, the most vulnerable

- Completed Stage 1 of our Digital Customer Access and Service Roadmap, including rewrite of website in plain English
- Children and young people action plan endorsed by Executive
- Rolled out corporate ID refresh across office

Respect and trust of agencies

- Rolled out fact sheets and training for staff on agencies within jurisdiction
- Completed a training services business review
- Completed PID training needs analysis and operating model consultation, and external consultancy to advise on new PID Audit Framework

Independence underpinned by relationship with Parliament

- Wrote to the government regarding Public Accountability Committee recommendations concerning proposed funding processes for independent integrity agencies
- Tabled 5 reports to Parliament
- Commenced roll out of new social media content strategy

Leadership and governance

Unified leadership and robust governance

- Held executive and extended leadership planning day and all staff events
- Appointed 3 new executive positions to support a new function, branch and project
- Engaged external support to roll out a '360 review' leadership program

Clarity of purpose

- Met with the Human Rights Commissioner to discuss OPCAT and its delayed implementation
- Reviewed and updated memorandums of understanding and Information Sharing Agreements with other oversight agencies

People and culture

Employer of choice with an engaged workforce

- Launched an online learning and development platform to support staff training requirements and performance development plans
- Implemented our Health & Wellbeing Action Plan and Diversity & Inclusion Action Plan
- Engaged several interns as a disability internships program
- Held the Office's second annual Employee Recognition Awards
- Developed a Future Ways of Working model

Systems and processes

Modernising systems

- Completed implementation of major Information and Communication Technology projects, including an Enterprise Resource Planning system.
- Implemented Cyber Security Incident Plan and testing

Tools to drive continuous improvement

- Conducted preliminary analysis of customer and stakeholder experience surveys, and commenced planning survey process for 2022–23



1: Consistent and quality service

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

Strategic initiatives	Status	2021–22 Key actions
1.1. Review the demographic and geographic provision of our services to promote alignment to areas of greatest need and where our work can have its greatest impact	Underway	<p>Developed draft Language Services Guidelines to ensure staff communicate effectively with people from culturally diverse communities.</p> <p>Continued to ensure people who contact our office have access to an interpreter through Telephone Interpreting Services and to work with Multicultural NSW about improvements to our language services.</p> <p>Implemented new fields in our case management system (CMS) to capture additional data on complainants who identify as Aboriginal or Torres Strait Islander.</p>
1.2. Embed streamlined and consistent complaint-handling workflows, including through the development of new knowledge management and workflow tools	Underway	<p>Continued to improve operating procedures for our Complaints and Resolution Branch and commenced recruitment of a technical writer to complete these processes in 2022–23.</p> <p>Completed scoping and preliminary design activities for a SharePoint-based complaints and resolution knowledge management system.</p>
1.3. Develop and apply an independent internal review and quality assurance framework	Underway	<p>Commenced assurance mapping (due for completion in December 2022), which will visually present all assurance activities of the office, both internal and external, as they apply to the office's risks, and identify any potential gaps.</p> <p>Completed an Internal Audit Manual, endorsed by our external auditor and Audit and Risk Committee (ARC), and approved by the Ombudsman.</p> <p>ARC endorsed and Ombudsman approved our 2021–22 Internal Audit Plan.</p>
1.4. Strengthen links with counterpart Ombudsman in other Australian and international jurisdictions, to share best practice and to consider opportunities for joint investigations or projects if appropriate	Ongoing	<p>Participated in a range of national and international forums, including:</p> <ul style="list-style-type: none"> attended the Annual General Meeting of ANZOA Members in November 2021 convened the Australia and New Zealand Child Death Review and Prevention Group conference in May 2022 with a focus on shared best practice for reviews. All jurisdictions agreed in principle to national child death data collection practices Chief Deputy Ombudsman participated in regular meetings with state Ombudsman counterparts throughout the year to exchange information and discuss common issues Staff participated in the following ANZOA webinars <ul style="list-style-type: none"> ‘Identifying systemic issues to influence policy and lead change’ ‘Engaging with Aboriginal communities’ ‘Creating psychologically safe workplaces in a hybrid/post-COVID environment’ ‘Engaging with young people’.



2: Evidence-based, relevant and impactful

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

Strategic initiatives	Status	2021–22 Key actions
2.1. Continue to embed rigorous governance processes for the approval and organisation of investigations and other major projects, and their effective project management	Underway	Developed a revised framework for the preparation of the biennial report on the death of children under Pts 5A and 6 of the Community Services (Complaints, Reviews and Monitoring) Act 1993 (CS CRAMA) to ensure timeliness, early identification of report focus and supporting research, and targeting of review resources. Revised existing and developed new investigation procedures and templates to guide the preparation of investigation notices, investigation planning and report writing.
2.2. Review investigation processes with a view to more timely, flexible and scalable investigation approaches, appropriate to the nature of the relevant investigation	Completed	Strategic initiative activities completed in prior period.
2.3. Increase focus on the delivery of systemic investigations, major emerging issues and system monitoring reports to Parliament	Underway	<p>Tabled a special report in Parliament on the use of machine technologies in government decision-making, The new machinery of government: Using machine technology in administrative decision-making.</p> <p>Tabled a report in Parliament, Strip searches in youth detention: A follow-up report under section 27 of the Ombudsman Act 1974, calling on the government to explain why it has not implemented our recommendations to enact safeguards for the strip searching of children and young people by prison officers</p> <p>Held Executive and Extended Leadership Planning Day in May 2022 and All Staff Day in June 2022, with a focus on future work planning.</p> <p>Enhanced our investigation proposal processes.</p>
2.4. Enhance our analytic capabilities and build the evidence base to better understand the causes and contributing factors of preventable child deaths, including in particular demographic and social factors	Underway	<p>Continued research projects to review:</p> <ul style="list-style-type: none"> risk and preventive factors in suicide deaths of Aboriginal children, with literature review and service-mapping components completed, supported by draft thematic analysis from reviews and data. Public report to be tabled in 2023 factors contributing to, and preventive strategies for, the hypoxia-related deaths of newborn infants, with development of key themes and suggested recommendations for improvement. <p>Tabled <i>Biennial Report of the Deaths of Children in NSW</i> (incorporating reviewable child deaths) in August 2021.</p>

Strategic initiatives	Status	2021–22 Key actions
2.5. Review and refresh our approach to reviewing the deaths of persons with disability in residential care, to ensure consistency with the work of recently established agencies including the NDIS and the Ageing and Disability Commission, and to better focus our preventive recommendations on those, such as NSW Health, that we oversight	Completed	<i>Disability Inclusion Amendment Act 2022</i> commenced on 1 July 2022. As a result, the Ombudsman no longer has jurisdiction to review deaths of adults with disability in residential care. Such services are now overseen by the NDIS Quality and Safeguards Commission.
2.6. Pursue an enhanced program of visits to correctional centres and Youth Justice centres to improve access to our services, as well as to enhance the capacity of our staff to deal with complaints through a strong working understanding of the corrective system and the unique context in which complaints may arise in such settings	Ongoing	Visited 12 custodial facilities (10 correctional centres and 2 Youth Justice centres) compared to 27 in previous period. Visits took place between late June 2021 and late October 2021, and between December 2021 and March 2022 — visits were paused during COVID lockdowns.
2.7. Invest in improved customer and case management data collection, workflows and analytics capabilities, to improve end-to-end customer experience, drive efficiencies, enhance the early identification of systemic issues, improve accountability through better data reporting and support the targeting of resources	Commenced	<p>Received funding for new case management system (CMS) as part of the 2022–23 state budget.</p> <p>Reviewed the usage of issues/topics in CMS to provide recommendations on enhancements.</p> <p>Commenced the structuring and capture of agency details in the CMS and scoped enhancements needed for improved reporting.</p> <p>Rolled out business intelligence dashboards.</p> <p>Improved analysis and reporting of data through actions such as new ‘extract, transform and load’ (ETL) process that has significantly reduced the ETL time and effort for data processing.</p> <p>New data warehouse developed which holds information from CMS, the Register of Child Deaths (RCD) and the Disability Death Reviews database.</p>



3: Accessibility to, and trust of, the most vulnerable

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

Strategic initiatives	Status	2021–22 Key actions
3.1. Fully review and refresh all our external communications, including a new website designed around improved user experience	Underway	Completed Stage 1 of our Digital Customer Access and Service Roadmap (website content and information architecture) in May 2022 with the review and rewrite of content on our current website.
3.2. Strengthen links with other community bodies, and consider external collaborations, that will support our community engagement, particularly with vulnerable cohorts	Underway	Children and young people action plan endorsed by the Executive at July 2021 meeting. Commenced production of youth video with external provider — to be delivered in August 2022.
3.3. Review and refresh our branding and all communications, including to ensure that they are accessible and consistently in plain, courteous and non-bureaucratic English	Underway	Rolled out corporate ID refresh across office, with new internal and external templates aligned to an updated visual identity, including our reports to Parliament. Developed internal resources to embed plain English practices across organisation, including training and regular newsletter articles. Website content rewritten in plain English, achieving a year 7 reading level for most website pages and a year 5 level for most complaint-related pages.
3.4. Develop and implement a community engagement strategy that proactively reaches out to cohorts that most need our services	Completed	Community engagement strategy developed in previous reporting period. Refer 'Community engagement' in section 2.3 for details of the implementation of this strategy.
3.5. Review intake processes, to provide faster and more efficient responses to enquiries or referral of out-of-jurisdiction complaints, including consideration of a technology-assisted phone answering and referral system, more user-friendly online complaints forms, and messaging and 'chat bot' capability	Underway	Funding allocated for a new online complaint portal and virtual assistant as part of the Digital Customer Access and Service roadmap to be implemented from 2023–24.



4: Respect and trust of agencies

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

Strategic initiatives	Status	2021–22 Key actions
4.1. Comprehensively map the bodies we oversight, and develop a scalable approach to regular engagement and monitoring	Underway	Fact sheets and training for staff on agencies within jurisdiction completed and rolled out across the Complaints and Resolution Branch.
4.2. Explore opportunities for enhanced conciliation/alternative dispute resolution (ADR) service provision to resolve complaints in a manner that is fast, cheap and effective	Not yet commenced	Conducted 1 conciliation in September 2021.
4.3. Modernise and enhance our educational and training service provision, to ensure it aligns with our strategic purpose around public sector improvement and provides an adequate return on investment (ROI)	Underway	Completed a training services business review that aligns business with our strategic goals and provides a clear 3-year implementation plan. Completed PID training needs analysis and operating model consultation.
4.4. Develop, in consultation with stakeholders, a refreshed approach to our ‘monitoring’ and ‘auditing’ functions, particularly in respect of: <ul style="list-style-type: none"> community services, to ensure clarity of roles, consistency of approach, and prioritisation and proportionality of effort PIDs, to ensure we target delivery of our training services, use our data effectively, and focus on auditing to improve PID handling 	Commenced	Completed external consultancy to advise on new PID Audit Framework. Finalised new PID team operating model, which is due to commence in 2022–23. Wrote to state and local government leadership regarding complaint-management commitments and to encourage participation in review of the Australian Standard on complaint handling. Engaged a consultant to develop draft guidelines for new <i>Public Interest Disclosures Act 2022</i> (PID Act 2022).



5: Independence underpinned by relationship with Parliament

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

Strategic initiatives	Status	2021–22 Key actions
5.1. Engage with the clerks of the Parliament and other statutory oversight bodies to develop a shared working model for ‘parliamentary statutory officers’	Commenced	Continue to engage with Parliament and other independent statutory oversight offices on matters of shared interest. Wrote to the government when it responded to the Public Accountability Committee recommendations concerning proposed new funding processes for independent integrity agencies, including to provide a detailed model for how those recommendations could be implemented in a manner consistent with the principles of ‘responsible government’.
5.2. Proactively communicate the work we do and its value, including through a program of more regular reporting on our monitoring of projects and investigations to Parliament	Underway	Tabled 5 reports to Parliament. Commenced rollout of new social media content strategy, achieving growth in audience and engagement across all channels and use of boosted content to increase reach for our reports.
5.3. Work with Parliament to explore improved service provision to support Parliament and its members	Underway	Outreach activities paused due to COVID-19 pandemic. The Hon Wes Fang, new Chair of our Parliamentary Committee, and Attorney General, The Hon Mark Speakman SC addressed our staff at a leadership planning day and all-staff day respectively.



6: Unified leadership and robust governance

Strategic outcome: Unified leadership and a clear strategy, supported by rigorous governance structures

Strategic initiatives	Status	2021–22 Key actions
6.1. Embed this Strategic Plan so that it is internalised by staff and reflected in all that we do	Completed and now ongoing	Held executive and extended leadership planning day and all staff events, with a focus on our Strategic Plan.
6.2. Review organisational structures, committee structures, reporting lines and resourcing allocation to ensure all work is aligned to strategy	Ongoing	Amended the structure of the Executive team by appointing 3 new executive positions to support creation of Investigations and Major Projects Branch, to oversee new mandatory disease testing function and commencement of the PID Act 2022, and to review complaint handling practices arising from 2019 Family Is Culture report.
6.3. Develop and share internally a comprehensive office-wide rolling 12-month program covering all events, investigations, projects and other significant work across the office	Completed and now ongoing	Strategic initiative activities completed in prior period.
6.4. Support our emerging leaders including through the extended leadership team and structured leadership and management training	Underway	Engaged external support to rollout a '360 review' leadership program from late March 2022 (due to finish in October 2022). Developed and launched online content in staff learning and development platform to improve Grade 11/12 business skills.



7: Clarity of purpose

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

Strategic initiatives	Status	2021–22 Key actions
7.1. Seek a review of the <i>Community Service (Complaints, Reviews and Monitoring) Act 1993</i> to clarify Parliament's intentions regarding the Ombudsman's ongoing functions	Not commenced	Note the <i>Disability Inclusion Amendment Act 2022</i> clarified the Ombudsman no longer has jurisdiction for reviewing deaths of persons with disability in residential care. Such critical incidents are now overseen by the NDIS Quality and Safeguards Commission.
7.2. Continue to engage with government and Parliament to modernise our governing legislation to ensure our functions and powers remain appropriate	Ongoing	Ombudsman Legislation Amendment Bill introduced to Parliament in June 2022 and was passed in August 2022.
7.3. Continue to seek clarity from the government and Parliament regarding the implementation of the Optional Protocol to the Convention against Torture (OPCAT), and its impact on our mandate	Underway	Ombudsman met with the Human Rights Commissioner in March 2022 to discuss OPCAT and its delayed implementation (now scheduled for January 2023). Sought advice and updates from the Attorney General on progress made by the NSW Government in working towards the January 2023 commencement.
7.4. Continue to engage with the government and Parliament about opportunities for merger or colocation with strategically aligned independent oversight offices to enhance operational synergies and corporate efficiency	Underway	Reviewed and updated, as appropriate, memorandums of understanding and Information Sharing Agreements with other oversight agencies with 2 remaining Pt 6 arrangements in drafting stage (Health Care Complaints Commission and Office of Local Government).



8: Employer of choice with an engaged workforce

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

Strategic initiatives	Status	2021–22 Key actions
8.1. Implement a refreshed Performance Development Program, which is supported by a leading-edge Human Capital Management (HCM) system	Completed	Launched an online Learning and Development platform to support staff training requirements and performance development plans.
8.2. Implement our Health and Wellbeing Action Plan	Completed and now ongoing	Implemented our Health & Wellbeing Action Plan, including: <ul style="list-style-type: none"> • Employee Assistance Program (EAP) provider training sessions • Resilience training • Key external health and wellbeing days recognised as per office calendar of events • External review of psychological support model across the office (report due later in 2022) • Promoted individual counselling sessions to all staff to support health and wellbeing
8.3. In collaboration with our Diversity and Inclusion (D&I) Advisory Forum, implement a range of D&I initiatives to promote greater inclusion and support diversity, including cultural inclusion training, and a recruitment and retention strategy to promote the employment of Aboriginal people and diverse community members	Ongoing	Implemented Diversity & Inclusion Action Plan (including developing a calendar of events celebrating diversity and inclusion; and promoting staff participation in cultural inclusion programs and training) Ensured senior officers and the Diversity and Inclusion Advisory Forum regularly review demographic data about employees to assist in determining internal priorities and programs Engaged several interns as part of the 'Stepping Into' Disability Internships program
8.4. Support initiatives for employee mobility and development to complement business needs and staff development	Ongoing	Established working group to respond to outcomes from 2021 People Matter Employment Survey and began addressing key areas (learning and development, grievance handling and recruitment)
8.5. Develop and implement an employee recognition program to recognise excellence and reinforce our organisational values	Completed and now ongoing	Held the office's second annual Employee Recognition Awards
8.6. Reinforce our commitment to flexible working	Underway	Developed a Future Ways of Working model aimed at updating key policies and agreements to enhance flexibility while ensuring business needs are met (model to be rolled out in 2022–23)
8.7. Develop and apply an internal communications strategy, including a new intranet and cross-office newsletter, which supports knowledge sharing and a unified and collaborative culture	Underway	Continued to improve internal communication channels through refresh of staff newsletter, to build stronger engagement through staff meeting structure and develop the brief for a new intranet (to be rolled out by end of 2022)



9: Modernising systems

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

Strategic initiatives	Status	2021–22 Key actions
9.1. Invest in modernised systems that support a digital working environment and that make accessing our services easier and more efficient	Underway	Confirmed systems/portals requirements for effective support of new Public Interest Disclosure and Mandatory Disease Testing functions Completed implementation of major Information and Communication Technology (ICT) projects, including: <ul style="list-style-type: none">• Enterprise Resource Planning system• records management system upgrade• HR system upgrade• business intelligence data visualisation platform.
9.2. Enhance our cyber security framework	Underway	Implemented Cyber Security Incident Plan and testing. Completed cyber security risk assessment.
9.3. Undertake a comprehensive refresh of all internal policies and procedures, and keep them under continuous review	Underway	Created the following new or revised policies: <ul style="list-style-type: none">• Audit and Risk Committee Charter• External Agency Resources policy• Internal Audit Charter and Manual• Media and Social Media policy• Technology and Device Management policy.



10: Tools to drive continuous improvement

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

Strategic initiatives	Status	2021–22 Key actions
10.1. Develop a regular survey program for obtaining feedback on complainant and stakeholder experiences, outcomes and satisfaction surveys	Commenced	Conducted preliminary analysis of customer and stakeholder experience surveys, and commenced planning survey process for 2022–23.
10.2. Develop and apply tools to track the acceptance, implementation and impact of our advice and recommendations	Underway	(Refer ‘Monitoring implementation of our recommendations’ in section 2.4 for additional outcomes related to this initiative). Commenced review of improved mechanisms for reporting to Parliament on implementation of recommendations.
10.3. Review and refresh all internal key performance indicators (KPIs) to ensure they are measurable and meaningful, and that relevant data can be collected and analysed to report against these KPIs	Commenced	Conducted preliminary analysis of KPIs, engaging external support to develop a refined suite of organisational KPIs during 2022–23.

Appendices

A. Audited financial statements



The Ombudsman's Office financial statements

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



INDEPENDENT AUDITOR'S REPORT

Ombudsman's Office

To Members of the New South Wales Parliament

Opinion

I have audited the accompanying financial statements of the Ombudsman's Office (the Office, which comprises the Statement by the Ombudsman, the Statement of Comprehensive Income for the year ended 30 June 2022, the Statement of Financial Position as at 30 June 2022, the Statement of Changes in Equity and the Statement of Cash Flows, for the year then ended, notes comprising a Statement of Significant Accounting Policies, and other explanatory information.

In my opinion, the financial statements:

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

My opinion should be read in conjunction with the rest of this report.

Basis for Opinion

I conducted my audit in accordance with Australian Auditing Standards. My responsibilities under the standards are described in the 'Auditor's Responsibilities for the Audit of the Financial Statements' section of my report.

I am independent of the Office in accordance with the requirements of the:

- Australian Auditing Standards
- Accounting Professional and Ethical Standards Board's APES 110 'Code of Ethics for Professional Accountants (including Independence Standards)' (APES 110).

I have fulfilled my other ethical responsibilities in accordance with APES 110.

Parliament promotes independence by ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their roles by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General
- mandating the Auditor-General as auditor of public sector agencies
- precluding the Auditor-General from providing non-audit services.

I believe the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Other Information

The Office's annual report for the year ended 30 June 2022 includes other information in addition to the financial statements and my Independent Auditor's Report thereon. The Ombudsman of the Office is responsible for the other information. At the date of this Independent Auditor's Report, the other information I have received comprise the Statement by the Ombudsman.

My opinion on the financial statements does not cover the other information. Accordingly, I do not express any form of assurance conclusion on the other information.

In connection with my audit of the financial statements, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on the work I have performed, I conclude there is a material misstatement of the other information, I must report that fact.

I have nothing to report in this regard.

Ombudsman's Responsibilities for the Financial Statements

The Ombudsman is responsible for the preparation and fair presentation of the financial statements in accordance with Australian Accounting Standards, the GSF Act, GSF Regulation and Treasurer's Directions. The Ombudsman's responsibility also includes such internal control as the Ombudsman determines is necessary to enable the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Ombudsman is responsible for assessing the Office's ability to continue as a going concern, disclosing as applicable, matters related to going concern and using the going concern basis of accounting.

Auditor's Responsibilities for the Audit of the Financial Statements

My objectives are to:

- obtain reasonable assurance about whether the financial statements as a whole are 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 OR www.auasb.gov.au/auditors_responsibilities/ar6.pdf . The description forms part of my auditor's report.

The scope of my audit does not include, nor provide assurance:

- that the Office carried out its activities effectively, efficiently and economically
- about the assumptions used in formulating the budget figures disclosed in the financial statements
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about any other information which may have been hyperlinked to/from the financial statements.



Lisa Berwick
Director, Financial Audit Branch

Delegate of the Auditor-General for New South Wales

29 September 2022
SYDNEY

27 September 2022

Statement by the Ombudsman

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

- have been prepared in accordance with the provisions of the Australian Accounting Standards (which include Australian Accounting Interpretations), the requirements of the *Government Sector Finance Act 2018* and Treasurer's Directions issued under the Act, and
- present fairly the Ombudsman's Office financial position, financial performance and cash flows.



Paul Miller
Ombudsman

Ombudsman's Office

Statement of Comprehensive Income for the year ended 30 June 2022

	Notes	Budget 2022 \$'000	Actual 2022 \$'000	Actual 2021 \$'000
Continuing operations				
Expenses excluding losses				
Employee-related expenses	2(a)	21,516	17,240	16,904
Operating expenses	2(b)	2,877	5,451	5,110
Depreciation and amortisation	2(c)	3,968	3,150	3,537
Finance costs	2(d)	185	178	234
Total expenses excluding losses		28,546	26,019	25,785
Revenue				
Appropriations	3(a)	25,886	25,379	25,915
Sale of goods and services from contracts with customers	3(b)	567	628	418
Grants and other contributions	3(c)	-	1,243	57
Acceptance by the Crown of employee benefits and other liabilities	3(d)	969	(64)	(121)
Other income	3(e)	-	1	-
Total revenue		27,422	27,187	26,269
Operating result		(1,124)	1,168	484
Losses on disposal	4	-	(14)	-
Other losses	5	-	(45)	(1,581)
Net Result		(1,124)	1,109	(1,097)
Other comprehensive income				
Total other comprehensive income		-	-	-
TOTAL COMPREHENSIVE INCOME		(1,124)	1,109	(1,097)

The accompanying notes form part of these financial statements.

Ombudsman's Office

Statement of Financial Position as at 30 June 2022

	Notes	Budget 2022 \$'000	Actual 2022 \$'000	Actual 2021 \$'000
ASSETS				
Current Assets				
Cash and cash equivalents	7	866	2,693	1,148
Receivables	8	907	899	1,159
Total Current Assets		1,773	3,592	2,307
Non-Current Assets				
Property, plant and equipment				
- Plant and equipment		2,241	1,792	2,193
Total property, plant and equipment	9	2,241	1,792	2,193
Right-of-use assets	10	5,938	4,928	7,104
Intangible assets	11	945	950	923
Total Non-Current Assets		9,124	7,670	10,220
Total Assets		10,897	11,262	12,527
LIABILITIES				
Current Liabilities				
Payables	12	1,263	884	670
Contract liabilities	13	-	140	68
Borrowings	14	2,939	2,938	2,739
Provisions	15	1,790	1,942	1,868
Total Current Liabilities		5,992	5,904	5,345
Non-Current Liabilities				
Borrowings	14	3,954	3,955	6,893
Provisions	15	1,023	1,019	1,014
Total Non-Current Liabilities		4,977	4,974	7,907
Total Liabilities		10,969	10,878	13,252
Net Assets / (Liabilities)		(72)	384	(725)
EQUITY				
Accumulated funds		(72)	384	(725)
Total Equity		(72)	384	(725)

The accompanying notes form part of these financial statements.

Ombudsman's Office

Statement of Changes in Equity for the year ended 30 June 2022

	Notes	Accumulated Funds \$'000
Balance at 1 July 2021		(726)
Net result for the year		1,109
Total comprehensive income for the year		<u>1,109</u>
Balance at 30 June 2022		<u>384</u>
Balance at 1 July 2020		372
Net result for the year		(1,097)
Total comprehensive income for the year		<u>(1,097)</u>
Balance at 30 June 2021		<u>(726)</u>

The accompanying notes form part of these financial statements.

Ombudsman's Office

Statement of Cash Flows for the year ended 30 June 2022

	Notes	Budget 2022 \$'000	Actual 2022 \$'000	Actual 2021 \$'000
CASH FLOWS FROM OPERATING ACTIVITIES				
Payments				
Employee related		(20,547)	(17,242)	(17,108)
Suppliers for goods and services		(2,882)	(5,952)	(6,687)
Finance costs		(168)	(168)	(221)
Total Payments		(23,597)	(23,362)	(24,016)
Receipts				
Appropriations (excluding equity appropriations)		25,886	25,379	25,915
Sale of goods and services		567	628	418
Grants and other contributions		-	1,243	57
Other		-	1,023	930
Total Receipts		26,453	28,273	27,320
NET CASH FLOWS FROM OPERATING ACTIVITIES	19	2,856	4,911	3,304
CASH FLOWS FROM INVESTING ACTIVITIES				
Purchase of property, plant and equipment		(694)	(324)	(367)
Purchase of intangible assets		(90)	(303)	(151)
NET CASH FLOWS FROM INVESTING ACTIVITIES		(784)	(627)	(518)
CASH FLOWS FROM FINANCING ACTIVITIES				
Payment of principal portion of lease liabilities		(2,739)	(2,739)	(2,549)
NET CASH FLOWS FROM FINANCING ACTIVITIES		(2,739)	(2,739)	(2,549)
NET INCREASE/(DECREASE) IN CASH AND CASH EQUIVALENTS				
		(657)	1,545	237
Opening cash and cash equivalents		1,533	1,148	911
CLOSING CASH AND CASH EQUIVALENTS	7	876	2,693	1,148

The accompanying notes form part of these financial statements.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

1 Statement of Significant Accounting Policies

(a) Reporting entity

The Ombudsman's Office (the Office) is a NSW government entity and is controlled by the State of New South Wales, which is the ultimate parent. Our role is to make sure that public and private sector agencies and employees within our jurisdiction fulfill their functions properly. We help agencies to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best practice in administration. The Office is independent of the government agencies and non-government organisations that we oversight. The Office is a not-for-profit entity (as profit is not its principal objective) and it has no major cash generating units.

The financial statements for the year ended 30 June 2022 have been authorised for issue by the Ombudsman on 27 September 2022.

(b) Basis of preparation

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

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

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

Judgements, key assumptions and estimations that management has made are disclosed in the relevant notes to the financial statements.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency, which is the Office's presentation and functional currency.

(c) Statement of compliance

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

(d) Accounting for the Goods and Services Tax

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

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

Cash flows are included in the Statement of Cash Flows on a gross basis. However, the GST components of cash flows arising from investing and financing activities which are recoverable from, or payable to, the ATO are classified as operating cash flows.

(e) Comparative information

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

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

(i) Effective for the first time in FY2021-22

The accounting policies applied in FY2021-22 are consistent with those of the previous financial year.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

(i) Issued but not yet effective

NSW public sector entities are not permitted to early adopt new AAS, unless Treasury determines otherwise.

The following new AAS have not yet been applied and are not yet effective.

- AASB 17 *Insurance Contracts*
- AASB 2020-1 *Amendments to Australian Accounting Standards – Classification of Liabilities as Current or Non-current*
- AASB 2020-3 *Amendments to Australian Accounting Standards – Annual Improvements 2018-2020 and Other Amendments*
- AASB 2020-6 *Amendments to Australian Accounting Standards – Classification of Liabilities as Current or Non-current – Deferral of Effective Date*
- AASB 2021-2 *Amendments to Australian Accounting Standards – Disclosure of Accounting Policies and Definition of Accounting Estimates*
- AASB 2021-5 *Amendments to Australian Accounting Standards – Deferred Tax related to Assets and Liabilities arising from a Single Transaction*
- AASB 2021-6 *Amendments to Australian Accounting Standards – Disclosure of Accounting Policies: Tier 2 and Other Australian Accounting Standards*
- AASB 2021-7a *Amendments to Australian Accounting Standards – Effective Date of Amendments to AASB 10 and AASB 128 and Editorial Corrections*
- AASB 2021-7b *Amendments to Australian Accounting Standards – Effective Date of Amendments to AASB 10 and AASB 128 and Editorial Corrections*
- AASB 2021-7c *Amendments to Australian Accounting Standards – Effective Date of Amendments to AASB 10 and AASB 128 and Editorial Corrections*

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

(ii) 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 FY2021-22 on an 'as needs' basis from the Crown.

(iii) Impact of COVID-19 on Financial Reporting for FY2021-22

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

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

The Office's financial statements for the year ended 30 June 2022 have not been significantly impacted by COVID-19.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

(4) Superannuation on Annual Leave Loading

The Office is aware of a recent Federal Circuit and Family Court of Australia decision released on 27 July 2022 regarding whether superannuation is payable on annual leave loading. The Office has determined that it is not probable a liability arises to pay superannuation on annual leave loading. This position has been formed based on current inquiries, other information currently available to management, and after considering the facts from a decision in the Federal Circuit and Family Court of Australia: *Finance Sector Union of Australia v Commonwealth Bank of Australia* [2022] FedCFM26 409. That decision confirmed that, in relation to the industrial agreement considered in that case, annual leave loading did not form part of ordinary time earnings and therefore, did not require superannuation contributions to be made under superannuation guarantee legislation because the obligation to pay annual leave loading was not referable to ordinary hours of work or to ordinary rates of pay. Rather, it was paid by reference to the period of annual leave, and for the purpose of compensating employees for their loss of opportunity to work additional hours at higher rates during this period.

This position will be re-assessed in future reporting periods as new information comes to light on this matter.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

	2022 \$'000	2021 \$'000
2 Expenses Excluding Leases		
(a) Employee related expenses		
Salaries and wages (including annual leave)* *	14,950	14,664
Superannuation – defined benefit plans	63	43
Superannuation – defined contribution plans	1,309	1,279
Long service leave	(130)	(167)
Workers' compensation insurance	44	60
Payroll tax and fringe benefit tax	791	748
Redundancy	213	277
	17,240	16,904

*\$30,000 of employee related costs have been capitalised in intangible assets, and therefore excluded from the above (2021: \$124,000).

	2022 \$'000	2021 \$'000
(b) Other operating expenses include the following:		
Auditor's remuneration – audit of the financial statements	54	37
Finance lease outgoings	51	70
Insurance	60	50
Fees	574	440
Telephones	72	73
Stores	19	47
Training	220	254
Printing	7	13
Travel	23	45
Consultants	959	1,541
Contractors	1,612	1,454
Expense relating to short-term leases	-	23
Maintenance – non-employee related*	1,152	678
Other	648	385
	5,461	5,110

* Reconciliation – Total maintenance expense

Maintenance expense – contracted labour and other (non-employee related),
as above

Employee related maintenance expense included in Note 2(a)

Total maintenance expenses included in Notes 2(a) and 2(b)

1,152	678
86	87
1,238	765

Recognition and Measurement

Maintenance expense

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

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

Insurance

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

Lease expense

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

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

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

	2022 \$'000	2021 \$'000
(c) Depreciation and amortisation expense		
Depreciation		
Right-of-use assets	2,131	2,746
Leasehold improvements	404	383
Plant and equipment	296	232
Furniture and fittings	24	24
Total depreciation expense	2,855	3,385

	2022 \$'000	2021 \$'000
Amortisation		
Software	295	152
Total amortisation expense	295	152
Total depreciation and amortisation expense	3,150	3,537

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

	2022 \$'000	2021 \$'000
(d) Finance costs		
Interest expense from lease liabilities	168	221
Unwinding of discount and effect of changes in discount rate on provisions	10	13
	178	234

Recognition and Measurement

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

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

3 Revenue

Recognition and Measurement

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

(a) Appropriations and transfers to the Crown

	2022 \$'000	2021 \$'000
Summary of Compliance		
Original Budget per Appropriation Act	25,886	26,457
Variations made to the appropriations during the financial year		
- COVID-19 pandemic and inflation (per Section 34 of the Appropriation Act)	202	-
Total spending authority from parliamentary appropriations, other than deemed appropriations	26,088	26,457
Add:		
Own source revenue money received during the year	966	647
Own source revenue balance brought forward from prior years	1,148	911
Total:	28,202	28,015
Less: total expenditure	(26,830)	(26,326)
Variance	2,372	1,690
Less:		
The spending authority from appropriations lapsed at 30 June	(709)	(642)
Own source revenue balance carried forward to the following year	1,663	1,148

Recognition and Measurement

Parliamentary appropriations other than deemed appropriations

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

The Appropriation Act 2021 appropriates the sum of \$26.1 million to the Premier out of the Consolidated Fund for the services of the Office for the year 2021-22.

The Ombudsman is taken to have been given an appropriation out of the Consolidated Fund under the authority s4.7 of the Government Sector Finance Act 2018, at the time the Office receives or recovers any deemed appropriation money, for an amount equivalent to the money that is received or recovered by the Office.

The spending authority of the Ombudsman from the Appropriations Act 2021 and that of the Ombudsman from deemed appropriation money has been delegated/sub-delegated to officers of the Office.

The summary of compliance has been prepared on the basis of aggregating the spending authorities of the Ombudsman for \$26.1 million for the services of the Office. It reflects the status at the point in time this disclosure statement is being made.

	2022 \$'000	2021 \$'000
(b) Sale of goods and services from contracts with customers		
Rendering of services	628	418
	628	418

Recognition and Measurement

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

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

	2022 \$'000	2021 \$'000
(c) Grants and other contributions		
Digital Restart Fund	1,030	-
Crown funded redundancies	213	-
Disability Reportable Incidents - Grant from Department of Communities and Justice	-	57
	<u>1,243</u>	<u>57</u>

Recognition and Measurement

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

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

(d) Acceptance by the Crown of employee benefits and other liabilities

The following liabilities and / or expenses have been assumed by the Crown:

	2022 \$'000	2021 \$'000
Superannuation - defined benefit	63	43
Long service leave provision	(130)	(167)
Payroll tax on superannuation	3	3
	<u>(64)</u>	<u>(121)</u>

	2022 \$'000	2021 \$'000
(e) Other income		
Other	1	-
	<u>1</u>	<u>-</u>

	2022 \$'000	2021 \$'000
4 Losses on Disposal		
Losses on disposal of plant and equipment	(14)	-
	<u>(14)</u>	<u>-</u>

	2022 \$'000	2021 \$'000
5 Other Losses		
Impairment loss – Right-of-use assets	(45)	(1,581)
	<u>(45)</u>	<u>(1,581)</u>

Recognition and Measurement

Impairment losses on non-financial assets

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

Trade receivables and contract assets – Note 8

Property, plant and equipment – Note 9

Leases – Note 10

Intangible assets – Note 11

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

6 Program Groups of the Office

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

	2022 \$'000	2021 \$'000
7 Current Assets – Cash and Cash Equivalents		
Cash at bank and on hand	2,693	1,148
	<u>2,693</u>	<u>1,148</u>
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)	2,693	1,148
Closing cash and cash equivalents (per Statement of Cash Flows)	<u>2,693</u>	<u>1,148</u>
Refer Note 20 for details regarding credit risk and market risk arising from financial instruments.		

	2022 \$'000	2021 \$'000
8 Current Assets – Receivables		
Trade receivables from contracts with customers	182	85
GST receivable	123	234
Long service leave refundable	-	-
Other receivables	89	61
	<u>394</u>	<u>380</u>
Less Allowance for expected credit losses		
- Trade receivables from contracts with customers	-	-
Total expected credit losses	-	-
Prepayments	505	779
	<u>899</u>	<u>1,159</u>

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

Recognition and Measurement

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

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

Subsequent measurement

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

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

	Leasehold Improvements \$'000	Plant and Equipment \$'000	Furniture and Fittings \$'000	Total \$'000
9 Property, Plant and Equipment				
<i>At 1 July 2020 – fair value</i>				
Gross carrying amount	5,361	1,576	406	7,343
Accumulated depreciation	(3,761)	(861)	(256)	(4,878)
Net carrying amount	1,600	715	150	2,465
<i>Year ended 30 June 2021</i>				
Net carrying amount at beginning of year	1,600	715	150	2,465
Purchases of assets	110	252	5	367
Disposals	-	-	-	-
Depreciation expense	(383)	(232)	(24)	(639)
Net carrying amount at end of year	1,327	735	131	2,193
<i>At 1 July 2021 – fair value</i>				
Gross carrying amount	5,463	1,798	363	7,624
Accumulated depreciation	(4,136)	(1,063)	(232)	(5,431)
Net carrying amount	1,327	735	131	2,193
<i>Year ended 30 June 2022</i>				
Net carrying amount at beginning of year	1,327	735	131	2,193
Purchases of assets	-	305	19	324
Disposals	(1)	-	-	(1)
Depreciation expense	(404)	(296)	(24)	(724)
Net carrying amount at end of year	922	744	126	1,792
<i>At 30 June 2022 – fair value</i>				
Gross carrying amount	5,144	1,911	382	7,437
Accumulated depreciation	(4,222)	(1,167)	(256)	(5,645)
Net carrying amount	922	744	126	1,792

Recognition and Measurement

Acquisition of property, plant and equipment

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

Capitalisation thresholds

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

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

Restoration costs

The present value of the expected cost for the restoration or cost of dismantling of an asset after its use is included in the cost of the respective asset if the recognition criteria for a provision are met.

Depreciation of property, plant and equipment

Depreciation is provided for on a straight-line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life to the Office.

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

Depreciation rates used:

- | | |
|--------------------------|---|
| ▪ Leasehold improvements | Useful life of 10 years or to the end of the lease, if shorter. |
| ▪ Plant and equipment | 20%–25% (2021: 20%–25%) |
| ▪ Furniture & fittings | 10% (2021: 10%) |

Right-of-Use Assets acquired by lessees

The Office has elected to present right-of-use assets separately in the Statement of Financial Position.

Further information on leases is contained at Note 10.

Revaluation of property, plant and equipment

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP21-09) and Treasurer's Direction 'Valuation of Physical Non-Current Assets at Fair Value' (TD21-05). TD21-05 and TPP21-09 adopt fair value in accordance with AASB 13, AASB 116 and AASB 140 Investment Property.

Non-specialised assets with short useful lives are measured at depreciated historical cost, which for these assets approximates fair value. The Office has assessed that any difference between fair value and depreciated historical cost is unlikely to be material.

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

Impairment of property, plant and equipment

As a not-for-profit entity with no major 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 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.

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. The reversal is recognised in other comprehensive income and is treated as a revaluation increase, except to the extent that an impairment loss on the same class of asset was previously recognised in net result; then the reversal recognised in net result.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

16 Leases

Entity as a lessee

The Office leases office building space and the lease contracts are typically made for fixed periods of 5 years but may have extension options. Lease terms are negotiated on an individual basis and contain a wide range of different terms and conditions. The lease agreements do not impose any covenants, but leased assets may not be used as security for borrowing purposes. The Office does not provide residual value guarantees in relation to leases.

AASB 16 Leases (AASB 16) requires a lessee to recognise a right-of-use asset and a corresponding lease liability for most leases.

The Office has elected to recognise payments for short-term leases and low value leases as expenses on a straight-line basis, instead of recognising a right-of-use asset and lease liability. Short-term leases are leases with a lease term of 12 months or less. Low value assets are assets with a fair value of \$10,000 or less.

Right-of-use assets under leases

The following table presents right-of-use assets that do not meet the definition of investment property.

	Buildings \$'000
Balance at 1 July 2021	7,104
Depreciation expense	(2,131)
Impairment loss	(45)
Balance at 30 June 2022	<u>4,928</u>
Balance at 1 July 2020	11,481
Depreciation expense	(2,746)
Impairment loss	(1,581)
Balance at 30 June 2021	<u>7,104</u>

Lease liabilities

The following table presents liabilities under leases:

	2022 \$'000	2021 \$'000
Balance at 1 July	9,632	12,181
Interest expenses	168	221
Payments	(2,907)	(2,770)
Balance at 30 June	<u>6,893</u>	<u>9,632</u>

The following amounts were recognised in the Statement of Comprehensive Income during the period in respect of leases where the entity is the lessee:

	2022 \$'000	2021 \$'000
Depreciation expense of right-of-use assets	2,131	2,746
Interest expense on lease liabilities	168	221
Expense relating to short-term leases	-	23
Impairment loss	45	1,581
Total amount recognised in the Statement of Comprehensive Income	<u>2,344</u>	<u>4,571</u>

The total cash outflows for leases of \$2.9 million in FY2021-22 (FY2020-21: \$2.8 million).

Recognition and Measurement

The Office assesses at contract inception whether a contract is, or contains, a lease. That is, if the contract conveys the right to control the use of an identified asset for a period of time in exchange for consideration.

The Office recognises lease liabilities to make lease payments and right-of-use assets representing the right to use the underlying assets, except for short-term leases and leases of low-value assets.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

Right-of-use assets

The Office recognises right-of-use assets at the commencement date of the lease (i.e. the date the underlying asset is available for use). Right-of-use assets are initially measured at the amount of initial measurement of the lease liability, adjusted by any lease payments made at or before the commencement date and lease incentives, any initial direct costs incurred, and estimated costs of dismantling and removing the asset or restoring the site.

The right-of-use assets are subsequently measured at cost. They are depreciated on a straight-line basis over the shorter of the lease term and the estimated useful lives of the assets, as follows:

- Buildings 5 years and 3 months

The right-of-use assets are also subject to impairment. The Office assesses, at each reporting date, whether there is an indication that an asset may be impaired. If any indication exists, or when annual impairment testing for an asset is required, the Office estimates the asset's recoverable amount. When the carrying amount of an asset exceeds its recoverable amount, the asset is considered impaired and is written down to its recoverable amount. After an impairment loss has been recognised, it is reversed only if there has been a change in the assumptions used to determine the asset's recoverable amount. The reversal is limited so that the carrying amount of the asset does not exceed its recoverable amount, nor exceed the carrying amount that would have been determined, net of depreciation, had no impairment loss been recognised for the asset in prior years. Such reversal is recognised in the net result.

Lease liabilities

At the commencement date of the lease, the Office recognises lease liabilities measured at the present value of lease payments to be made over the lease term. Lease payments include fixed payments (including in substance fixed payments) less any lease incentives receivable.

The lease payments are discounted using Treasury Corporation rate. The Office is an agency in the General Government sector that does not borrow funds in the market. Instead we receive appropriations from the Crown and where the Crown needs additional funding, Treasury Corporation will go to market to obtain these funds. Therefore, we use Treasury Corporation rates as our incremental borrowing rates as instructed by Treasury.

After the commencement date, the amount of lease liabilities is increased to reflect the accretion of interest and reduced for the lease payments made. In addition, the carrying amount of lease liabilities is remeasured if there is a modification, a change in the lease term, a change in the lease payments (e.g. changes to future payments resulting from a change in an index or rate used to determine such lease payments) or a change in the assessment of an option to purchase the underlying asset.

The Office's lease liabilities are included in borrowings.

Short-term leases and leases of low-value assets

The Office applies the short-term lease recognition exemption to its short-term leases of machinery and equipment (i.e., those leases that have a lease term of 12 months or less from the commencement date and do not contain a purchase option). It also applies the lease of low-value assets recognition exemption to leases of office equipment that are considered to be low value. Lease payments on short-term leases and leases of low value assets are recognised as expense on a straight-line basis over the lease term.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

11 Intangible Assets

	Software \$'000
At 1 July 2020	
Gross carrying amount	2,541
Accumulated amortisation	(1,741)
Net carrying amount	800
Year ended 30 June 2021	
Net carrying amount at beginning of year	800
Additions	
- Internally developed	124
- Externally acquired	151
Disposals	-
Amortisation	(152)
Net carrying amount at end of year	923
At 1 July 2021	
Gross carrying amount	2,748
Accumulated amortisation	(1,825)
Net carrying amount	923
Year ended 30 June 2022	
Net carrying amount at beginning of year	923
Additions	
- Internally developed	30
- Externally acquired	304
Disposals	(12)
Amortisation	(295)
Net carrying amount at end of year	950
At 30 June 2022	
Gross carrying amount	2,581
Accumulated amortisation	(1,631)
Net carrying amount	950

Recognition and Measurement

The Office recognises intangible assets only if it is probable that future economic benefits will flow to the Office and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition. Following initial recognition, intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for our intangible assets, they are carried at cost less any accumulated amortisation and impairment losses.

The useful lives of intangible assets are assessed to be finite. The Office's intangible assets are amortised using the straight-line method over a period of five to ten years. The amortisation rates used for computer software are 10% to 20% (2021: 10% to 20%). The amortisation period and the amortisation method for an intangible asset with a finite useful life are reviewed at least at the end of each reporting period.

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than its carrying amount, the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

	2022 \$'000	2021 \$'000
12 Current Liabilities – Payables		
Accrued salaries, wages and on-costs	727	311
Creditors	157	359
	884	670

Refer Note 20 for details regarding liquidity risk, including a maturity analysis of the above payables.

Recognition and Measurement

Payables represent liabilities for goods and services provided to the Office and other amounts. Short-term payables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

Payables are financial liabilities at amortised cost, initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in net result when the liabilities are derecognised as well as through the amortisation process.

	2022 \$'000	2021 \$'000
13 Contract Assets and Liabilities		
Contract liabilities – current	140	68
Contract receivables (included in Note 8)	182	85

Recognition and Measurement

Contract liabilities include consideration received in advance from customers in respect of training programs. The balance of contract liabilities at 30 June 2022 was the result of payments received in advance, and it is the Office's obligation to deliver training programs to a customer for which the Office has received consideration. The initial liability is measured at the amount of consideration received from the customer.

Revenue recognised that was included in the contract liability balance at the beginning of the year

68 –

	2022 \$'000	2021 \$'000
14 Current / Non-Current Liabilities – Borrowings		
Lease liabilities (see Note 10)		
– Current	2,938	2,739
– Non-current	3,955	6,893
	6,893	9,632

Refer Note 20 for details regarding liquidity risk, including a maturity analysis of the above borrowings.

Recognition and Measurement

Borrowing represents interest bearing liabilities mainly raised through lease liabilities.

Borrowings classified as financial liabilities at amortised cost are initially measured at fair value, net of directly attributable transaction costs. These are subsequently measured at amortised cost using the effective interest method. Gains and losses are recognised in net result when the liabilities are derecognised as well as through the amortisation process.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

15 Current / Non-Current Liabilities – Provisions

	2022 \$'000	2021 \$'000
Current provisions		
Annual leave	1,108	1,055
Annual leave loading	182	134
Provision for related on-costs on annual leave	170	152
Provision for related on-costs on long service leave	482	527
Total current provisions	1,942	1,868
Non-current provisions		
Provision for related on-costs on long service leave	48	52
Restoration costs	971	962
Total non-current provisions	1,019	1,014
Aggregate employee benefits and related on-costs		
Provisions - current	1,942	1,868
Provisions - non-current	48	52
Accrued salaries, wages and on-costs (see Note 12)	727	311
	2,717	2,231

The value of annual leave and associated on-costs expected to be taken within 12 months is \$1.5 million (2021: \$1.3 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 \$36,000 (2021: \$89,000) and \$494,000 (2021: \$510,000) after 12 months.

	2022 \$'000	2021 \$'000
Movement in restoration costs		
Carrying amount at beginning of year	961	948
Additional provision recognised	-	-
Unwinding / change in the discount rate	10	13
Carrying amount at end of year	971	961

The restoration costs are non-current liabilities and were recognised for the estimate of future payments for restoration of the office fit out upon termination of the current accommodation lease. The lease was renewed for five years, commencing in October 2019.

Recognition and Measurement

Salaries and wages, annual leave and sick leave

Salaries and wages (including non-monetary benefits) and paid sick leave that are expected to be settled wholly within 12 months after the end of the period in which the employees render the service are recognised and measured at the undiscounted amounts of the benefits.

Annual leave that is not expected to be settled wholly before 12 months after the end of the annual reporting period in which the employees render the related service is required to be measured at present value in accordance with AASB 119 *Employee Benefits* (although short-cut methods are permitted).

Actuarial advice obtained by NSW Treasury has confirmed that using the nominal annual leave balance plus the annual leave entitlements accrued while taking annual leave (calculated using 8.4% of the nominal value of annual leave (2021: 8.4%)) can be used to approximate the present value of the annual leave liability. The Office has assessed the actuarial advice based on our circumstances and has determined that the effect of discounting is immaterial to annual leave. All annual leave is classified as a current liability even where the Office does not expect to settle the liability within 12 months as the Office does not have an unconditional right to defer settlement.

Unused non-vesting sick leave does not give rise to a liability as it is not considered probable that sick leave taken in the future will be greater than the benefits accrued in the future.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

Long service leave and superannuation

The Office's liabilities for long service leave and defined benefit superannuation are assumed by the Crown. The Office accounts for the liability as having been extinguished, resulting in the amount assumed being shown as part of the non-monetary revenue item described as 'Acceptance by the Crown of employee benefits and other liabilities'.

Long service leave is measured at the present value of expected future payments to be made in respect of services provided up to the reporting date. Consideration is given to certain factors based on actuarial review, including expected future wage and salary levels, experience of employee departures, and periods of service. Expected future payments are discounted using Commonwealth government bond rate at the reporting date.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employee's salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employee's superannuation contributions.

Consequential on-costs

Consequential costs to employment are recognised as liabilities and expenses where the employee benefits to which they relate have been recognised. This includes outstanding amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax.

Other provisions

Provisions are recognised where 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 1.57% (2021: 1.41%), which is a pre-tax rate that reflects the current market assessments of the time value of money and the risks specific to the liability. When discounting is used, the increase in the provision due to the passage of time (i.e. unwinding of discount rate) is recognised as a finance cost.

16 Commitments

Capital commitments

Aggregate capital expenditure for the acquisition of computer hardware and software contracted for at balance date and not provided for:

	2022 \$'000	2021 \$'000
Within one year	13	488
Later than one year and not later than five years	-	-
Later than five years	-	-
Total (including GST)	13	488

17 Contingent Liabilities and Contingent Assets

There are no contingent assets or liabilities for the year ended 30 June 2022 (2021: nil).

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

18 Budget Review

The budgeted amounts are drawn from the original budgeted financial statement presented to Parliament in respect of the reporting period. Subsequent amendments to the original budget are not reflected in the budgeted amounts. Major variances between the original budgeted amounts and the actual amounts disclosed in the financial statements are explained below.

Net result

Actual net result of \$1.1 million surplus was recorded compared to a budgeted loss of \$1.1 million. This is primarily due to:

\$3.5 million savings on employee related expenses as a result of high volume of staff turnover and delays in filling vacant positions, offset by \$2.6 million higher spend in contractors and consultants to backfill budgeted positions and support organisation-wide projects.

\$0.8 million savings due to end of year actuarial adjustments of Crown Entity related expenses.

\$0.8 million savings on Right-of-Use assets depreciation as a result of the impairment loss booked in FY2020-21.

Lower net revenue of \$0.2 million which includes a combination of lower appropriation revenue due to underspend in total expenses, lower end of year actuarial adjusted Crown Entity related revenue, offset by \$1.0 million Digital Restart Fund received for cyber security work.

Assets and Liabilities

The Office had Net Assets of \$0.4 million compared to a budget of Net Liabilities of \$0.01 million.

Total assets were higher than budget by \$0.4 million mainly due to \$1.8 million increase in cash, as a result of the Digital Restart Fund received, offset by \$1.5 million decrease in Right-of-Use assets and Property, Plant and Equipment, as a result of the depreciation and impairment.

Total liabilities were \$0.1 million lower than budget mainly due to lower payables of \$0.3 million due to timing, offset by \$0.2 million increase in current provisions.

Cash flows

Cash and cash equivalents were \$1.8 million higher than budget mainly due to \$1.0 million Digital Restart Fund and \$1.0 million GST refund received, offset by \$0.2 million lower payments for operating expenses.

19 Reconciliation of Cash Flows from Operating Activities to Net Result

Reconciliation of cash flows from operating activities to the net result as reported in the Statement of Comprehensive Income as follows:

	2022 \$'000	2021 \$'000
Net cash used on operating activities	4,911	3,304
Depreciation and amortisation expense	(3,150)	(3,537)
(Increase) in provisions	(77)	(89)
(Decrease) / Increase in prepayments	(274)	219
(Increase) / Decrease in payables	(214)	497
Increase in receivables	14	34
(Increase) in contract liabilities	(72)	(68)
Losses on disposal of assets	(14)	-
Capitalised employee related costs	30	124
Impairment loss	(45)	(1,581)
Net result	1,109	(1,097)

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

29 Financial Instruments

The Office's principal financial instruments are outlined below. These financial instruments arise directly from the Office's operations or are required to finance the Office's operations. The Office does not enter into or trade financial instruments, including derivative financial instruments, for speculative purposes.

The Office's main risks arising from financial instruments are outlined below, together with the Office's objectives, policies and processes for measuring and managing risk. Further quantitative and qualitative disclosures are included throughout these financial statements.

The Ombudsman has overall responsibility for the establishment and oversight of risk management and reviews and agrees policies for managing each of these risks. Risk management policies are established to identify and analyse the risks faced by the Office, to set risk limits and controls and to monitor risks. Compliance with policies is reviewed by the Office on a continuous basis.

(a) Financial instrument categories

Class	Note	Category	Carrying Amount	
			2022 \$'000	2021 \$'000
Financial Assets				
Cash and cash equivalents	7	Amortised cost	2,693	1,148
Receivables ¹	8	Amortised cost	271	146
Financial Liabilities				
Payables ²	12	Amortised cost	884	670
Borrowings	14	Amortised cost	6,893	9,632

Note:

1. Excludes statutory receivables and prepayments (i.e. not within scope of AASB 7).
2. Excludes statutory payables and unearned revenue (not within scope of AASB 7).

The Office determines the classification of its financial assets and liabilities after initial recognition and, when allowed and appropriate, re-evaluates this at each financial year end.

(b) Financial risks

(i) Credit risk

Credit risk arises when there is the possibility that the counterparty will default on their contractual obligations, resulting in a financial loss to the Office. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for credit losses or allowance for impairment).

Credit risk arises from the financial assets of the Office, including cash, receivables and authority deposits. No collateral is held by the Office and the Office has not granted any financial guarantees.

Credit risk associated with the Office's financial assets, other than receivables, is managed through the selection of counterparties and establishment of minimum credit rating standards.

The Office considers a financial asset in default when contractual payments are 90 days past due. However, in certain cases, the Office may also consider a financial asset to be in default when internal or external information indicates that the Office is unlikely to receive the outstanding contractual amounts in full before taking into account any credit enhancements held by the Office.

Cash and cash equivalents

Cash comprises cash on hand and bank balances within the NSW Treasury banking system.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

Receivables – trade receivables

Collectability of trade receivables is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand.

The Office applies the AASB 9 simplified approach to measuring expected credit losses which uses a lifetime expected loss allowance for all trade receivables.

To measure the expected credit losses, trade receivables have been grouped based on shared credit risk characteristics and the days past due.

The expected loss rates are based on historical observed loss rates. The historical loss rates are adjusted to reflect current and forward-looking information on macroeconomic factors affecting the ability of the customers to settle the receivables. The Office has identified GDP and the unemployment rate to be the most relevant factors, and accordingly adjusts the historical loss rates based on expected changes in these factors.

Trade receivables are written off when there is no reasonable expectation of recovery. Indicators that there is no reasonable expectation of recovery include, amongst others a failure to make contractual payments for a period of greater than 365 days past due.

The loss allowance for trade receivables as at 30 June 2022 and 2021 was determined as follows:

30 June 2022 \$'000					
Current	< 30 days	30-60 days	61-90 days	> 91 days	Total
Expected credit loss rate	-	-	-	-	-
Estimated total gross carrying amount	-	-	-	-	-
Expected credit loss	-	-	-	-	-
30 June 2021 \$'000					
Current	< 30 days	30-60 days	61-90 days	> 91 days	Total
Expected credit loss rate	-	-	-	-	-
Estimated total gross carrying amount	-	-	-	-	-
Expected credit loss	-	-	-	-	-

The Office is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors as at 30 June 2022 and 2021.

(ii) Liquidity risk

Liquidity risk is the risk that the Office will be unable to meet its payment obligations when they fall due. The Office continuously manages risk through monitoring future cash flows and maturities planning to ensure adequate holding of high quality liquid assets.

During the current and prior year, there were no defaults of borrowings. No assets have been pledged as collateral. The Office's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk. Liabilities are recognised for amounts due to be paid in the future for goods and services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in NSW Treasury Circular 11-12. For small business suppliers, where terms are not specified, payment is made not later than 30 days from date of receipt of a correctly rendered invoice. For other suppliers, if trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received. The Office did not pay any penalty interest during the financial year.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

The table below summarises the maturity profile of the Office's financial liabilities based on contractual undiscounted payments, together with the interest rate exposure:

	Weighted Average Effective Int. Rate %	Nominal Amount ² \$'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
2022								
Payables ¹		884	-	-	884	884	-	-
Borrowings								
Lease liabilities	4%	7,058	7,058	-	-	3,050	4,008	-
Total		<u>7,942</u>	<u>7,058</u>	<u>-</u>	<u>884</u>	<u>3,934</u>	<u>4,008</u>	<u>-</u>
2021								
Payables ¹		670	-	-	670	670	-	-
Borrowings								
Lease liabilities	4%	9,985	9,985	-	-	2,907	7,058	-
Total		<u>10,655</u>	<u>9,985</u>	<u>-</u>	<u>670</u>	<u>3,577</u>	<u>7,058</u>	<u>-</u>

Note:

- The amounts disclosed are the contractual undiscounted cash flows of each class of financial liabilities based on the earliest date on which the entity can be required to pay. These amounts include both interest and principal cashflows and therefore will not reconcile to the amounts disclosed in the statement of financial position.
- The amount disclosed here exclude statutory payables and unearned revenue (not within scope of AASB 7).

(iii) Market risk

Market risk is the risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. The Office's exposure to market risk is primarily through interest rate risk on the Office's borrowings. The Office has no exposure to foreign currency risk and does not enter into commodity contracts.

The effect on profit and equity due to a reasonably possible change in risk variable is outlined in the information below for interest rate risk. A reasonably possible change in risk variable has been determined after taking into account the economic environment in which the Office operates and the time frame for the assessment (i.e. until the end of the next annual reporting period). The sensitivity analysis is based on risk exposures in existence at the Statement of Financial Position reporting date. The analysis is performed on the same basis as for 2021. 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:

	2022 \$'000		2021 \$'000	
	-1%	+1%	-1%	+1%
Net Result	(27)	27	(11)	11
Equity	(27)	27	(11)	11

(c) Fair value measurement

Fair value recognised in the Statement of Financial Position

Management assessed that cash, trade receivables, trade payables, and other current liabilities approximate their fair values, largely due to the short-term maturities of these instruments.

Ombudsman's Office

Notes to the financial statements for the year ended 30 June 2022

21 Related Party Disclosures

There were 12 individuals who fulfilled key management personnel (KMP) roles at some point during the year (7 KMP individuals in 2021). The increase in KMP numbers was due to the impact of Executives turnover and having temporary acting Executives in place.

Compensation for these KMP are as follows:

	2022 \$'000	2021 \$'000
Salaries	2,236	1,771
Post-employment benefits	204	159
Total remuneration	<u>2,440</u>	<u>1,930</u>

The Office did not enter into transactions with close family members or entities controlled or jointly controlled by our KMP.

During the year, the Office entered into transactions on arm's length terms and conditions with other entities controlled by NSW Government. These transactions include:

- Insurance under Treasury Managed Fund Scheme
- Long Service Leave and Defined Benefit Superannuation assumed by the Crown
- Appropriations (and subsequent adjustments to appropriations)
- Transactions relating to the Treasury Banking System
- Payment for the audit of our financial statements
- Receipts from the provision of training and related services
- Grants and contributions related to funding specific programs and projects
- Leasing of properties from Property NSW

22 Events after the Reporting Period

There were no events after the reporting period 30 June 2022.

End of audited financial statements

B. Additional complaints data



B.1 Categorisation of contacts and complaints

We categorise contacts received by our office into 6 categories:

1. actionable complaints
2. excluded complaints
3. requests for information
4. notifications
5. misdirected contacts
6. Feedback Assist.

Actionable complaints

These are complaints that we are authorised by legislation to receive and, if necessary, to investigate under the *Ombudsman Act 1974* (**Ombudsman Act**) or the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (**CS CRAMA**).

An actionable complaint under s 12 of the Ombudsman Act 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'. Conduct refers to action or inaction relating to a matter of administration.

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

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

Excluded complaints

These are complaints to our office that are about a NSW public authority (as defined in the Ombudsman Act) or a service provider (as defined in CS CRAMA), but where the conduct complained about is excluded from our jurisdiction by Sch 1 of the Ombudsman Act. Excluded complaints include complaints to us about:

- conduct of a minister or a Member of Parliament (excluded by Item 1 of Sch 1)

- conduct of a judge, court or tribunal (excluded by Item 2 of Sch 1)
- conduct of the NSW Police Force (excluded by Item 13 of Sch 1)
- conduct of a person acting as a legal adviser to or legal representation of a public authority (excluded by Item 6 of Sch 1)

Requests for information

People (including both members of the public and public officials) often contact us to seek information, advice or other assistance about a public authority or community service rather than making a complaint. This includes where public officials contact us to request advice or assistance about how to make or deal with public interest disclosures.

Notifications

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

- notifications of the segregation of detainees (Youth Justice) for more than 24 hours under cl 10(2) (a) of the Children (Detention Centres) Regulation 2015
- notifications of the deaths of children occurring in NSW under Pts 5A and 6 of CS CRAMA.

Misdirected contacts

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

Feedback Assist

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

Under s 35E of the Ombudsman Act, our office has a role in receiving, reviewing and, where appropriate, referring to relevant agencies any feedback provided via the Feedback Assist widget.

B.2 Complaints about state government departments and other public authorities (excluding local councils, custodial services and community services)

Table 5. Finalised actionable complaints by cluster or category/public authority*

Cluster or category/public authority	Number	% of total complaints about cluster or category	% of total complaints about state government departments and other public authorities*
Customer Service	1,670	100	29
Service NSW	959	57	17
Revenue NSW	384	23	7
Fair Trading	185	11	3
Other	142	9	2
Communities and Justice	1,445	100	25
DCJ Housing	956	66	17
NSW Trustee and Guardian	218	15	4
Legal Aid Commission of New South Wales	82	6	1
Other	189	13	3
Planning and Environment	565	100	10
Land and Housing Corporation	374	66	7
Department of Planning and Environment	62	11	1
Environment Protection Authority	20	4	0
Other	109	19	2
Transport and Infrastructure	558	100	10
Roads and Maritime	364	65	7
Transport for NSW	182	33	3
Other	12	2	0
Education	488	100	9
TAFE NSW	230	47	4
Department of Education (including public schools)	198	41	3
TAFE Digital	31	6	1
Other	29	6	1
Universities	374	100	7
Western Sydney University	88	24	2
University of Sydney	53	14	1
Charles Sturt University	41	11	1

Cluster or category/public authority	Number	% of total complaints about cluster or category	% of total complaints about state government departments and other public authorities*
Other	192	51	3
Local health districts⁴⁴	250	100	4
Sydney Local Health District	57	23	1
Hunter New England Local Health District	47	19	1
South-Eastern Sydney Local Health District	26	10	0
Other	120	48	2
Health	221	100	4
Ministry of Health	100	45	2
Health Care Complaints Commission	67	30	1
NSW Ambulance	12	6	0
Other	42	19	1
Treasury	80	100	1
icare	73	91	1
Other	7	9	0
Regional NSW	28	100	0
Department of Primary Industries	7	25	0
Other	21	75	0
Premier and Cabinet**	9	100	0
Enterprise, Investment and Trade	12	100	0
Liquor and Gaming NSW	8	67	0
Other	4	33	0
Independent integrity agencies	9	100	0
NSW Electoral Commission	9	100	0
Other and agency not named	37	100	1
Total	5,746		100

* This table excludes complaints about:

- local councils (see Table 6 below)
- Corrective Services NSW, Youth Justice NSW and the Justice Health and Forensic Mental Health Network (see Tables 8 and 10 below)
- the provision of community services by Department of Communities and Justice (see Table 12 below)

**We only report on individual organisations about which we have received 5 or more complaints. No organisations met this threshold within the Premier and Cabinet cluster.

44. While local health districts (LHDs) sit under the Ministry of Health from an administrative perspective, we have listed them in their own category in this table. This is due to the relatively high number of actionable complaints we receive about LHDs.

Observations

In 2021–22, we finalised 5,746 actionable complaints about NSW Government departments and other public authorities. The most frequently raised issues included complaints about: customer service, the complaint-handling process, the merits/reasoning of a decision, charges and fees, and the outcome of a complaint or review process.

Examples of agencies we received significant numbers of complaints about in 2021–22 include:

- Land and Housing Corporation (LAHC) — consistent with prior years, complaints are most commonly about delays in responding to and completing maintenance requests, and the response of LAHC to complaints made about maintenance.
- DCJ Housing — nearly half of the complaints we received about DCJ Housing concerned customer service, with about half of those about delay.
- Department of Education — we continue to receive complaints about student suspensions including in relation to vulnerable children (including Aboriginal and Torres Strait Islander children, children with disability, those who have experienced complex trauma, and/or children in out-of-home care), and this remains a common theme. We are also tracking complaints about how schools are managing student-to-student bullying in accordance with their student discipline policies.
- TAFE NSW — while we receive many complaints about TAFE, we have not identified clear patterns of a systemic nature, and complaints are generally resolved when we contact the relevant campus.
- Universities — complaints about universities have decreased; we expect this is largely because there have been significantly fewer international students studying in Australia since the outbreak of COVID-19.

B.3 Complaints about local government

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

Council	Number	% of all local council complaints finalised	Resident population	Rate – complaints per 100,000 residents
Central Coast Council	158	7	345,809	46
Canterbury-Bankstown Council	81	3	380,406	21
Northern Beaches Council	66	3	274,041	24
Georges River Council	63	3	160,272	39
Sutherland Shire Council	62	3	232,369	27
Mid-Coast Council	60	2	94,395	64
Blacktown City Council	59	2	382,831	15
Lake Macquarie City Council	54	2	207,775	26
Clarence Valley Council	46	2	51,730	89
Inner West Council	46	2	201,880	23

Observations

In 2021–22, we finalised 2,405 actionable complaints about councils, including 2 complaints about county councils.

Table 6 above shows the 10 councils with the highest number of actionable complaints. Actionable complaints about these councils represent 29% of all the local government actionable complaints we finalised in 2021–22.

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

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

We have seen an increase in complaints about delays or inaction on enforcement action. As COVID-19 lockdowns prevented non-essential inspections from taking place, councils are working through a backlog of investigations. There is an ongoing impact of backlogs, including slipping customer service standards, delays in responding to complainants, and delays in responding to our preliminary inquiries.

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

Table 7. Notifications about segregation and separation in Youth Justice centres

Youth Justice centre	Segregation	Separation	Total
Cobham Youth Justice Centre	47	426	473
Frank Baxter Youth Justice Centre	67	328	395
Reiby Youth Justice Centre	15	374	389
Acmena Youth Justice Centre	12	296	308
Orana Youth Justice Centre	6	184	190
Riverina Youth Justice Centre	0	121	121
Total	147	1,729	1,876

Observations

There have been increases in Youth Justice notifications regarding both segregation and separations exceeding 24 hours since 2020–21. Segregations rose 46% compared to 2020–21 and separations rose by 7% over the same period. We are continuing to monitor trends and liaise with Youth Justice when issues are identified at different centres.

Table 8. Finalised actionable complaints about adult correctional centres*

Correctional centre	Number of complaints	% of total complaints	% of security level
Maximum security			
Clarence Correctional Centre	348	12	14
Parklea Correctional Centre	299	11	12
Dillwynia Correctional Centre	263	9	11
Junee Correctional Centre	241	8	10
Metropolitan Remand Reception Centre	208	7	8
South Coast Correctional Centre	182	6	7

Correctional centre	Number of complaints	% of total complaints	% of security level
Mid North Coast Correctional Centre	157	6	6
Shortland Correctional Centre	133	5	5
Metropolitan Special Programs Centre	130	5	5
Bathurst Correctional Centre	117	4	4
Goulburn Correctional Centre	90	3	4
Silverwater Women's Correctional Centre	67	2	3
Hunter Correctional Centre	47	2	2
High Risk Management Correctional Centre	46	2	2
Lithgow Correctional Centre	40	1	2
Long Bay Hospital Correctional Centre	38	1	2
Wellington Correctional Centre	27	1	1
Tamworth Correctional Centre	23	1	1
Macquarie Correctional Centre	22	1	1
Special Purpose Centre	20	1	0
Total (Maximum security)	2,498	88	100
Medium security			
John Morony Correctional Centre	55	2	63
Cooma Correctional Centre	19	1	22
Broken Hill Correctional Centre	13	0	15
Total (Medium security)	87	3	100
Minimum security			
Cessnock Correctional Centre	88	3	34
Geoffrey Pearce Correctional Centre	44	2	17
Kirkconnell Correctional Centre	32	1	12
St Heliers Correctional Centre	26	1	10
Glen Innes Correctional Centre	22	1	9
Dawn De Loas Correctional Centre	14	1	6
Mary Wade Correctional Centre	11	0	5
Oberon Correctional Centre	7	0	3
Emu Plains Correctional Centre	6	0	2
Mannus Correctional Centre	6	0	2
Total (Minimum security)	256	8	100
Total	2,841	100	100

* Centres are categorised by their highest security level as some centres house inmates with different security classifications.

Observations

We received a similar number of complaints about correctional centres as last year (2,841 compared with 2,882). With the exception of Dilwynnia Correctional Centre, the top 7 centres from which we received complaints are the biggest correctional centres in the state, all having capacity to house over 900 inmates. Dilwynnia is the largest centre for female inmates.

When an inmate from a publicly managed correctional centre complains about their health care, the complaint is recorded against Justice Health (see Table 10). Complaints about health care in privately managed prisons (Parklea, Clarence and Junee correctional centres) are recorded against the centre the inmate is calling from, as healthcare in those locations is generally not provided by Justice Health.

In 2021–22, we finalised 2,841 actionable complaints about adult correctional centres. The 2 main issues we received complaints about were:

- daily routine — this includes issues such as the amount of time inmates spend out of their cell and access to activities or programs
- medical issues — such as delays in access to treatment.

This is unsurprising considering during most of 2021–22 the custodial system was significantly impacted by the COVID-19 pandemic. COVID-19 entered centres despite routine quarantining of all fresh admissions, temperature testing of staff, the use of personal protective equipment and suspension of in-person visits. The combination of lock-ins and staff shortages meant many inmates had reduced access to shower facilities, clean clothes, programs, work and in-person contact with loved ones. Access to medical services was also impacted.

We also continued to receive complaints about property (for example, items being lost or damaged during transit), officer misconduct (allegations of rudeness or harassment to more serious allegations such as excessive or inappropriate use of force), visits (which were not possible at times due to COVID-19), transfers and unfair discipline.

Table 9. Finalised actionable complaints about Youth Justice centres

Youth justice centre	Number	%
Cobham Youth Justice Centre	5	24
Orana Youth Justice Centre	4	20
Acmena Youth Justice Centre	3	14
Frank Baxter Youth Justice Centre	3	14
Reiby Youth Justice Centre	3	14
Riverina Youth Justice Centre	3	14
Total	21	100

Observations

In 2021–22, we finalised 21 actionable complaints about Youth Justice centres. The number of complaints we have received from young people in custody has decreased in recent years. This is likely to be due to the lower number of detainees in custody and to our program of visits being significantly interrupted by the COVID-19 pandemic. We are reinvigorating our visits program in early 2022–23 and are considering ways to best engage young people and provide them with information about how we can help resolve complaints.

Table 10. Finalised actionable complaints about other custodial services

Agency	Number	%
Justice Health	374	58
Corrective Services NSW	179	28
Community Corrections	48	8
Court escort/Security unit	22	3
The Forensic Hospital	7	1
Women's Transitional Centres	7	1
Youth Justice NSW	6	1
State Parole Authority	3	0
Amber Laurel Correctional Centre*	2	0
Kariong Correctional Centre*	2	0
Compulsory Drug Treatment Correctional Centre	1	0
Total	651	100

* Complaints about Amber Laurel and Kariong are included in this category as both are Intake and Transit Centres.

Observations

In 2021–22, we finalised 651 actionable complaints about other custodial and corrections-related services, mainly about Justice Health. While the Health Care Complaints Commission handles complaints that raise concerns about the expert opinion or professional conduct of a health care practitioner, we deal with complaints about administrative issues, such as access to a clinic.

B.5 List of custodial facilities visited during 2021–22

Table 11. Custodial facilities visited

Custodial facility	Date/s of visit
Correctional centres	
Dawn De Loas Correctional Centre	27 October 2021
Long Bay Hospital	2 November 2021
South Coast Correctional Centre	24 November 2021
Kariong Correctional Centre	8 December 2021
Glen Innes Correctional Centre	1 March 2022
Tamworth Correctional Centre	3 March 2022
St Heliers Correctional Centre	14 March 2022
Cessnock Correctional Centre	15 and 16 March 2022
High Risk Management Centre Correctional Centre	17 and 18 May 2022
Metropolitan Special Programs Centre	31 May 2022
Youth Justice centres	
Frank Baxter Youth Justice Centre	8 December 2021
Cobham Youth Justice Centre	24 March 2021

B.6 Actionable complaints about community service providers

Table 12. Finalised actionable complaints about community service providers by service area*

Service area	Number	%
Out-of-home-care home-based – foster care	214	31
Statutory child protection	212	30
Out-of-home-care home-based – kinship care	138	20
Out-of-home care - intensive therapeutic care	43	6
Out-of-home care - other	33	5
Early intervention/family support	15	2
Specialist homelessness services - adult	15	2
After care/leaving care	8	1
Specialist homelessness services - youth	8	1
Neighbourhood centre	7	1
Adoption	4	1
Disability services	1	0
Specialist homelessness services - unknown	1	0
Total	699	100

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

Observations

In 2021–22, we finalised 699 actionable complaints about the Department of Communities and Justice (DCJ) and other community service providers. The Ombudsman may make inquiries in response to a complaint about the provision, failure to provide, withdrawal, variation of administration of a community service by DCJ or persons/organisations funded, licensed or authorised by the Minister for Families and Communities or the Minister for Seniors.

The most frequently raised issues in actionable complaints were:

- case management and casework undertaken by out of home care (OOHC) providers
- casework practice
- customer service
- responses to risk of significant harm reports
- management of complaints to DCJ and other community service providers.

B.7 Notifications received

Table 13. Notifications received by type in 2021-22

Notification type	Number
Youth Justice (segregations and separations)	1,876
Deaths of children that occurred in NSW	465
Deaths of persons with a disability in supported group accommodation	12
Total	2,353

See above at Table 7 for notifications about Youth Justice segregation and separations.

Observations

Youth Justice notifications increased compared to 2020-21, as discussed in Appendix B.4. Child death notifications were similar to the previous reporting period. We will report on deaths occurring in the 2020-2021 calendar years in 2023, when we publish the next Child Death Review Team biennial report of the deaths of children. On 30 June 2022, we ceased to hold the reviewable deaths of persons with a disability function (see 'Recent and prospective legislative amendments' in section 1.3). We intend to publish a report with regards to this function later in 2022.

C. Our people and workplace



C.1 Our people

Officers and employees

Number of staff

As at 30 June 2022 our workforce consisted of 125 people.

Our staff have diverse skills and experience, and come from a range of backgrounds, including community and social work, legal, planning, investigative, law enforcement and child protection.

Our staff are employed under the provisions of the *Government Sector Employment Act 2013*, 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.

Note: Tables 15 (2018 and 2019) and 14 (2020, 2021 and 2022) have been presented separately below due to an office-wide restructure which occurred in 2019.

Table 14. FTE staff levels 2020–22 (as at 30 June)

Branch	2020 ⁽¹⁾	2021 ⁽¹⁾	2022
Complaints and Resolution (previously Complaints and Investigations)	41.4	52.1	43.9 ⁽²⁾
Investigations and Major Projects (created in 2021–22)	N/A	N/A	8.6
Monitoring and Review (previously Projects and Systemic Reviews)	24.3	27.3	21.5 ⁽³⁾
Aboriginal Programs (previously Engagement and Aboriginal programs)	12.6	10.4	6.0 ⁽⁴⁾
Legal, Governance and Risk	3.8	3.0	4.0
Corporate Services	17.1	21	21.4
Enabling Services (including Data Analytics, Communications, Engagement and Training Units)	N/A	N/A	9.8
Executive Strategy and Support ⁽⁵⁾	4.0	5.0	6.0
Total	103.2	118.8	121.2

(1) Prior year numbers have been updated following further data quality checks

(2) Previously included staff within the Investigations and Major Projects Branch; created in 2021–22

(3) Previously included the Data Analytics Unit — now within the Chief Operating Officer Division

(4) Previously included the Communications, Engagement and Training Unit — now within the Chief Operating Officer Division

(5) Includes Divisional Executives. Branch Executives are counted within their respective branches

Table 15. FTE staff levels 2018–19 (as at 30 June)

	2018	2019
Statutory officer	6.0	6.0
Investigative, systemic review, project, research and legal	129.9	104.6
Inquiries and assessment	11.1	10.0
Investigative and administrative support	23.0	21.8
Community engagement and training	4.2	4.5
Corporate — Human resources, finance, information technology and governance	18.6	17.8
Total full-time equivalent	192.8	164.7

Senior executive

Table 16. Senior executive levels (all executives employed as at 30 June)

	2018		2019		2020		2021		2022	
Band	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
Band 4 (equivalent)	0	1	0	1	0	1	0	1	0	1
Band 3	0	0	0	1	0	1	0	0	0	0
Band 2	0	2	0	0	0	0	2	0	1	1
Band 1	0	2	8	1	6	1	2	1	6	0
Total	7	5	8	3	6	3	4	2	7	2
Total (male and female)	12		11		9		6*		9	

* 3 executive roles vacant as at 30 June 2021

Table 17. Senior executive remuneration — average range across all positions (as at 30 June 2022)

	2021		2022	
Band	Range \$	Average \$	Range \$	Average \$
Band 4 (equivalent)	487,051–562,650	502,300	499,251–576,700	512,545
Band 3	345,551–487,050	N/A	354,201–499,250	N/A
Band 2	274,701–345,550	274,701	281,551–354,200	326,345
Band 1	192,600–274,700	249,890	197,400–281,550	254,439

Table 18. Senior executive remuneration as a percentage of total employee-related expenditure (as at 30 June)

	2018	2019	2020	2021	2022
Percentage of total employee-related expenditure	12.2%	15.4%	15.1%	11.4%*	14.5%

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

People Matter Employment Survey results

We conducted the 2021 People Matter Employment Survey (PMES) in August 2021.

We recorded a significant improvement generally across our 2021 PMES results compared to the previous year.

Our response rate was 100%, and our engagement score was stable at 64%. Flexible working (90%), risk and innovation (84%) and diversity and inclusion (80%) were our highest scoring areas.

We have undertaken actions to respond to our lowest scoring areas: learning & development (54%), grievance handling (55%) and recruitment (59%). These include:

- a policy spotlight on Grievance Management Policy and Procedure in Staff News
- a leadership development program facilitated by Human Synergistics
- promoting and educating staff on new and emerging recruitment opportunities.

Table 19. PMES 2021 results: key topics — comparison against public sector average

Satisfaction area	Ombudsman %					Public sector average %
	2017	2018	2019	2020	2021	2021
Outcomes						
Employee engagement	72	70	59	64	64	67
Job satisfaction	76	74	60	61	63	69
Wellbeing	N/A	N/A	65	63	69	69
Customer service	N/A	N/A	65	67	71	73
Purpose and direction						
Role clarity and support	77	76	67	63	63	67
Job purpose and enrichment	N/A	N/A	N/A	N/A	78	72
Risk and innovation	50	43	83	78	84	75
Work environment						
Health and safety	N/A	90	81	N/A	75	73
Grievance handling	39	32	20	41	55	46
Inclusion and diversity	80	78	68	77	80	74
Teamwork and collaboration	75	83	67	64	68	67
Flexible working	N/A	83	78	86	90	66
Enabling practices						
Recruitment	71	59	45	63	59	48
Learning and development	59	46	40	47	54	57
Pay	78	81	68	75	81	59
Recognition	70	75	62	N/A	70	63
Feedback and performance management	N/A	N/A	55	58	68	61
Leadership						
Senior managers	58	53	28	68	69	59
Decision-making and accountability	N/A	N/A	N/A	64	70	61
Communication and change management	67	66	51	66	68	58
Employee voice	N/A	N/A	N/A	70	75	69
Action on survey results	55	52	36	59	68	47
Participation rate	58	71	59	100	100	44

Personnel and industrial relations policies and practices

We have the following personnel policies and practices in place:

- Access and equity policy
- Bullying, harassment and discrimination policy and procedure
- Collateral flexible working hours agreement
- Consultative arrangements policy
- Dealing with misconduct allegations policy and procedure
- Diversity and inclusion framework
- Grievance management policy and procedure
- Overtime policy
- Performance development policy and framework
- Purchased leave policy
- Reasonable adjustment policy
- Recording of time worked policy
- Salary packaging policy
- Study assistance.

Work health and safety

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

- COVID-19 Safety Protocols for the Office (COVID-safe plan)
- Direction regarding COVID-19 vaccination
- Health & wellbeing policy and framework
- Work Health & Safety — Committee terms of reference
- Work Health & Safety — First aid policy

- Work Health & Safety — Policy
- Work Health & Safety — Return to work program
- Work Health & Safety — Safe driving policy
- Working from home policy.

Work Health and Safety committee

We have a Work Health and Safety (WHS) Committee, made up of elected staff and nominated management representatives, who actively work to identify and resolve safety concerns. The committee reviews and actions the results of internal audits and inspections, identifies work health and safety hazards and risks, and understands the impact of operational and business requirements on the safety and wellbeing of our staff. We did not undertake any internal WHS audits during the reporting period.

Work health safety injuries and incidents

There was 1 work-related injury, no work-related incidents and 1 non-work-related incident during 2021–22, which were immediately reported and addressed. The work-related injury reported was repetitive strain pain related to typing. The non-work-related incident was related to pre-existing medical conditions.

Workers' compensation claims

We participate in the icare Treasury Managed Fund, a self-insurance scheme for the NSW public sector. There were no new claims in 2021–22. As at 30 June 2022, there was one open claim.

Table 20. Workers' compensation — 5-year comparison

	2017–18	2018–19	2019–20	2020–21	2021–22
Claims brought forward	0	1	0	1	1
New claims	1	0	1	1	0
Re-opened claims	0	0	0	1	2
Claims closed	0	1	0	2	2
Open claims 30 June	1	0	1	1	1

Table 21. Workers' compensation incidence rate — 5-year comparison

	2017–18*	2018–19	2019–20	2020–21	2021–22
Number of submitted claims	1	0	1	1	0
FTE staff number	192.8	164.7	106.7	122.0	119.1
Incidence rate (%)	0.00	0.00	0.94%	0.82%	0%

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

C.2 Diversity and inclusion

Workforce diversity

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

Table 22. Trends in the distribution index for workforce diversity groups

Workforce diversity group	Benchmark	2018	2019	2020	2021	2022
Women	100	99	101	101	101	101
Aboriginal and/or Torres Strait Islander people	100	N/A	N/A	N/A	N/A*	N/A*
People whose first language spoken as a child was not English	100	90	89	89	93	90
People with disability	100	92	94	N/A	N/A*	N/A*
People with disability requiring work-related adjustment	100	N/A	N/A	N/A	N/A*	N/A*

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

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

Table 23. Trends in the representation of workforce diversity groups

Workforce diversity group	Benchmark	2018	2019	2020	2021	2022
Women	50.0%	76.5%	77.7%	69.7%	70.1%	76.2%
Aboriginal and/or Torres Strait Islander people	3.3%	2.3%	2.7%	3.3%	4.5%	4.0%
People whose first language spoken as a child was not English	23.2%	21.2%	19.7%	23.0%	26.4%	27.0%
People with disability	5.6%	10.1%	10.6%	8.2%	6.8%	9.0%
People with disability requiring work-related adjustment	N/A	1.4%	1.4%	1.6%	0.7%	0.8%

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 (24 June 2022)

Remuneration level of substantive position	Total staff (men, women & unspecified)	Respondents	Men	Women	Unspecified gender	Aboriginal and/or Torres Strait Islander people	People from racial, ethnic, ethno-religious minority groups	People whose language first spoken as a child was not English	People with disability	People with disability requiring work-related adjustment
\$0-\$72,077	3	3	0	3	0	0	1	1	1	0
\$72,078-\$81,158	5	5	0	5	0	0	0	1	1	1
\$81,159-\$96,540	3	3	0	3	0	0	1	1	0	0
\$96,541-\$110,064	26	26	5	21	0	1	9	6	4	0
\$110,065-\$124,901	49	49	15	34	0	3	15	14	3	0
\$124,902-\$151,609	31	31	9	22	0	0	6	9	2	0
\$151,610 and above (Executive)	8	8	1	7	0	1	2	1	0	0
Total	125	125	30	95	0	5	34	33	11	1

Diversity and inclusion framework

Our organisation has a diverse and inclusive workplace culture that embraces and values the many communities, places and perspectives of the people we serve. We have a staff-led Diversity and Inclusion (D&I) Advisory Forum that supports the implementation of a range of D&I initiatives to promote greater inclusion and support diversity. This includes our D&I framework, which sets out our commitment to inclusive work practices and culture and identifies key existing and planned initiatives to support diversity and inclusion in the workplace.

Key actions undertaken include:

- through the support of the Australian Network of Disability (AND), engaging various interns as part of the 'Stepping Into' Disability Internships program
- with AND, conducting a Dignified Access Review of our workplace
- supporting and raising awareness of various diversity and inclusion events.

Proposed workforce diversity strategies

We have proposed the following strategies for 2022-23:

- implementation of the recommendations from the Dignified Access review
- implementation of a workforce strategy that incorporates diversity and inclusion initiatives, supported by a recruitment and selection framework with guidance and support materials for inclusive recruitment practices.

C.3 Multicultural plan

Release of our multicultural plan

In 2020–21 we reported on the publication of our NSW Ombudsman Multicultural Plan 2021–22, which sets out our:

- commitment to people from culturally diverse backgrounds
- workforce diversity profile
- work with culturally diverse people and communities
- 2021–22 priorities.

We outline implementation of this plan below. Our 2022–23 Multicultural Plan will be developed in the next reporting period. The full plan is published on the policies section of our website.

Multicultural plan actions

We continued to conduct outreach and engagement activities to ensure people from culturally diverse communities understand our role, can access our services, and have trust and confidence that we will help.

Activities undertaken this year include:

- establishing a working group to monitor the delivery of projected outcomes in our multicultural plan
- continuing to promote our new translated complaints fact sheets to people from culturally diverse backgrounds, as well as distribute them to the services that support this group
- participating in 18 interagency meetings with services that support people from a multicultural background, including newly arrived migrants and refugees
- delivering information sessions to raise awareness of our services at the Mount Druitt Ethnic Communities Agency as well as the Multicultural Disability Advocacy Association
- continuing to monitor our translation and interpreter tracking register to ensure we are meeting the needs of people who contact our office
- continuing to build staff capability through the SBS Inclusion program, which all staff are required to complete

- celebrating Refugee Week, during which we invited a guest speaker to talk to us about his settlement experience in Australia as a refugee
- celebrating Harmony Day.

In 2022–23, we will:

- develop our new Multicultural Plan Action Plan
- develop our Reconciliation Action Plan
- finalise our new Language Services Guidelines
- work towards finalising our new Operating Principles and Procedures for Working with People from a Culturally Diverse Background
- upskill staff on working with interpreters
- review and update the register of people in our office who are accredited translators and interpreters (including AUSLAN)
- continue to engage and deliver training sessions and workshops to newly arrived migrants and refugees, and to staff at the services who support them
- continue to collaborate and strengthen our relationships with other government and nongovernment agencies who support people from culturally diverse backgrounds.

C.4 Governance, insurance and risk

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

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

Risk management and insurance activities

Our risk management framework provides the principles and processes for all risk management activities across our office. In 2021–22, we continued to implement strategies to mature our approach to risk management. Our Audit and Risk Committee (ARC) provided us with independent assistance about our risk management practices. The ARC met 6 times and operated in accordance with NSW Treasury requirements.

Key activities included:

- continued work with KPMG to uplift risk management maturity, including the refresh of our strategic risks and risk appetite statements, the creation of risk metrics and the review of our risk management framework and policy
- go-live of our new governance, risk and compliance tool
- a reassessment of our fraud and corruption risks
- a renewed focus on the identification, reporting and management of conflict of interests for staff and executive, including the introduction of a new bi-annual confirmation process
- timely revisions to critical office-wide policies such as the Code of Ethics and Conduct, the delegations and authorisations manual, the working in the office framework, and the media and social media policy
- regular attendance by the Governance and Risk unit at all-staff and branch meetings to explore risk management topics in detail for staff awareness and learning.

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

Completing internal audits

The ARC recommended the approval of the 2021–22 internal audit program to the Ombudsman after consultation with the outsourced internal audit provider and the Executive team. The ARC has closely monitored the development of the internal audit strategy and the completion of audits.

Key activities included:

- a review of records management, complaints assessment process and cyber security policy compliance
- follow-up of previous internal audit recommendations. The majority of identified issues in completed reviews were classified as 'moderate', the second highest rating. This meant that the issues represented a control weakness, which could have or is having some adverse effect on the ability to achieve process objectives and required near-term management action
- preparation of an internal audit annual report, consisting of the results of the Quality Assurance and Improvement Program and service provider performance assessment
- the development and approval of a new risk-based, rolling three-year internal audit plan. It will be refreshed each year to ensure it remains current and relevant, and that it responds to changes in our environment and operations.

Internal audit and risk management policy attestation



Internal Audit and Risk Management Attestation Statement - 2021-2022 Financial Year NSW Ombudsman's Office

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

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

Membership

The independent chair and members of the Audit and Risk Committee during the 2021-2022 financial year were:

- Christine Feldmanis, Independent Chair appointed 24 May 2017 to 23 May 2022
- Vicki Allen, Independent Member appointed 23 August 2017 to 23 May 2022 then Independent Chair appointed 24 May 2022 to 23 May 2025
- Peter Scarlett, Independent Member appointed 27 June 2021 to 26 June 2026
- Robyn Gray, Independent Member appointed 24 May 2022 to 23 May 2027.

Paul Miller
NSW Ombudsman
11 August 2022

Chris Clayton
Chief Audit Executive
11 August 2022

Cyber security attestation

ABN 76 325 886 267

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Our reference: 2022/105108

Cyber security attestation statement for the 2021-22 financial year for the NSW Ombudsman's Office

I, Paul Miller, am of the opinion that the NSW Ombudsman's Office (**the Office**) has identified and is actively managing cyber security risks in a manner consistent with the guidance set out in the NSW Government Cyber Security Policy (**the Policy**). Identified cyber security risks have been assessed and are being managed within the constraints of existing resources and capabilities of the Office.

Governance arrangements are in place to assess and manage the cyber security maturity and initiatives of the Office.

The Office's cyber incident response plan is up to date and has been tested during the 2021-22 reporting period. The Office plans to continue testing its cyber incident response plan on a yearly basis.

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

During the 2021-22 reporting period, the Office made progress towards greater cyber security maturity in line with the requirements of the Policy. During the reporting period, the Office received funding to further improve its cyber security maturity. A detailed three-year plan has been developed to deliver a program of work that will improve compliance with the Policy and increase maturity levels against the Australian Cyber Security Centre Essential Eight.

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

Paul Miller
NSW Ombudsman
28 September 2022

C.5 Privacy and Personal Information Protection Act compliance

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

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

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

C.6 Public interest disclosures

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

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

Internal reporting policy

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

- The internal reporting policy and internal reporting form is available on our staff intranet and website.
- New staff are required to read the internal reporting policy as part of their induction.

- Information about how to make a report about wrongdoing is provided on posters at our office.
- Email communications to all staff have promoted the PID Act and encouraged staff to make internal reports.

PID statistics

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

In 2021–22, we did not receive any public interest disclosures from members of staff about our office.

(Note: The Ombudsman is also an investigating authority under the PID Act and may receive public interest disclosures from public officials about other public authorities. Information about the public interest disclosures we receive and deal with as an investigating authority are included in our separate annual reports on oversight of the PID Act. All these annual reports are published on our website, including the latest report.⁴⁵)

C.7 Government Information (Public Access) Act

Public access to our information

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

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

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

45. NSW Ombudsman, [Oversight of the Public Interest Disclosures Act 1994 Annual Report 2020–21](#) (Report, 13 December 2021) .

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

In accordance with the GIPA Act we also:

- proactively release 'open access information' such as information guides, policy documents and reports tabled in Parliament
- conduct regular reviews of other kinds of government information that should be made publicly available.

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

Our website provides information about our most recent publications, activities and other information that may be of public interest. This includes public reports and publications, and selected policies, such as our strategic plan and code of ethics and conduct.

Statistical information about access applications

We received 2 valid GIPA applications and 5 invalid GIPA applications in 2021–22.

Table 25. Invalid GIPA applications

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

Table 26. Number of (valid) GIPA applications by type of applicant and outcome*

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media	0	0	0	0	0	0	0	0
Members of Parliament	0	0	0	0	0	0	0	0
Private sector business	0	0	0	0	0	0	0	0
Not-for-profit organisations or community groups	0	0	0	0	0	0	0	0
Members of the public (application by legal representative)	0	0	0	0	0	0	0	0
Members of the public (other)	1	1	0	0	0	0	0	0

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

Table 27. Number of (valid) 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)	1	1	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 cl 4 of Sch 4 to GIPA Act) about the applicant (the applicant being an individual).

Table 28. Other public interest considerations against disclosure: matters listed in table to s 14 of GIPA Act

Matter	Number of occasions when application not successful in whole or in part
Responsible and effective government	0
Law enforcement and security	0
Individual rights, judicial processes and natural justice	1
Business interests of agencies and other persons	0
Environment, culture, economy and general matters	0
Secrecy provisions	0
Exempt documents under interstate Freedom of Information legislation	0
Total	1

Table 29. Timeliness of decisions

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

Table 30. Number of applications reviewed under Pt 5 of the GIPA Act (by type of review and outcome)

	Decision varied	Decision upheld	Total
Internal review	0	1	1
Review by Information Commissioner*	0	1	1
Internal review following recommendation under s 93 of Act	0	0	0
Review by NCAT	0	0	0
Total	0	2	2

* The Information Commissioner does not have the authority to vary decisions, but can make recommendations to the original decision-maker. The data in this case indicates that a recommendation to vary or uphold the original decision has been made by the Information Commissioner.

Table 31. Applications for review under Pt 5 of the GIPA Act (by type of applicant)

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

C.8 Complaints about us

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

In 2021–22, we received 17 formal complaints about the services we provided or the actions of our staff. Issues raised in the formal complaints included allegations of:

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

In 10 cases we found the complaints were substantiated or partially substantiated, and we apologised to the complainant. We also reviewed our processes to ensure that we learnt from the complaints and improved our practices.

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

C.9 Finance

Revenue, expenses and financial position

Revenue

The majority of our revenue comes from the NSW Government in the form of a consolidated fund appropriation. This is used to meet both

recurrent and capital expenditure. Note 3 within the financial statements provides details of the revenue received for the year (\$27.187 million).

With the resumption of training following COVID-19 disruptions, training revenue increased significantly when compared to 2019–20 and 2020–21, exceeding our budget forecast by \$61,000. Due to long service leave provision adjustments, acceptance by the Crown of employee benefits and other liabilities is noted as a negative revenue of \$64,000. Refer to financial statements for additional detail.

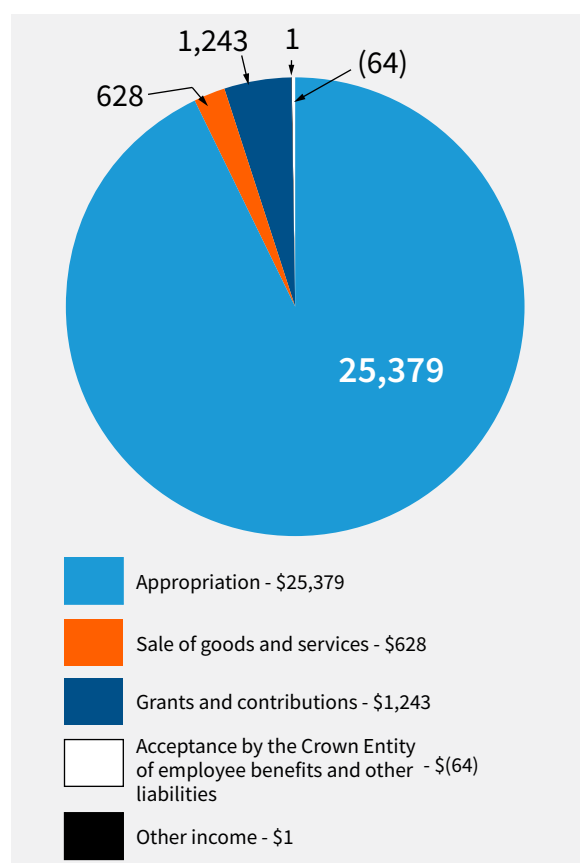
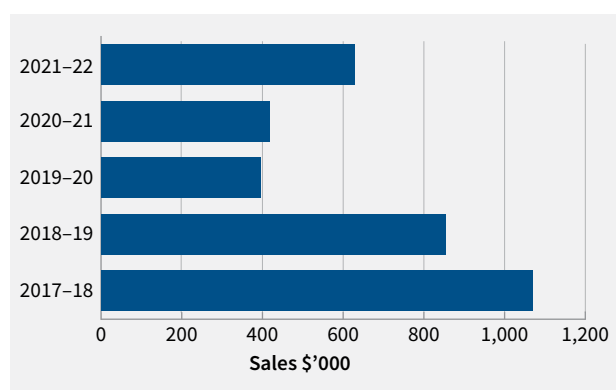
Figure 7. 2021–22 revenue (\$'000)

Figure 8. Training revenue



Expenses

Total expenses recorded was \$26.019 million, \$2.527 million less than budget primarily due to staff turnover and vacancies throughout the year. Employee-related expenses accounted for 66% of total expenses.

The significant operating expenses included consultants (\$0.959 million), contractors (\$1.612 million), maintenance (\$1.152 million) and fees⁴⁶ (\$0.574 million).

Figure 9. 2021-22 expenses (\$'000)

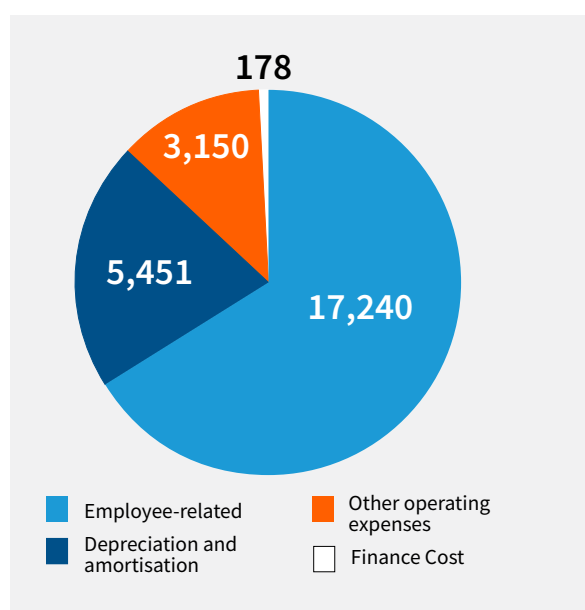
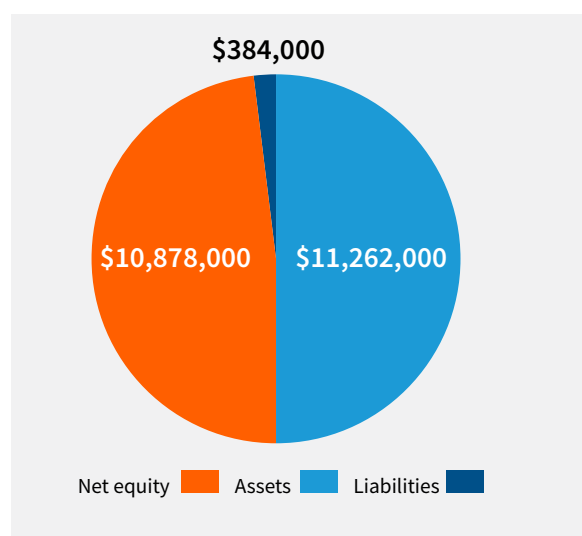


Figure 10. Financial position as at 30 June 2022



Financial position as at 30 June 2022

The net operating result for the year ended 30 June 2022 is a surplus of \$1.109 million.

Net assets have increased from net liabilities of \$0.725 million as at 30 June 2021 to net assets of \$0.384 million as at 30 June 2022.

Financial statements

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

46. Including, but not limited to, internal audit fees, legal fees, membership fees, storage fees, transcription and translation fees and trainer fees.

Consultants

Table 32. Consultancies valued at \$50,000 or more

Category	Consultant	Nature	Cost \$*
Information technology	Content Ark Pty Ltd	Deliver new website content with supporting audit, review and strategic work	107,397
Information technology	IQ3 Pty Ltd	Cyber security risk assessment	71,170
Management services	Centre for Inclusive Design	Cultural decoding and omnibus survey to understand where and how people use and think of the NSW Ombudsman	82,500
Management services	The University of Wollongong	Suicide prevention review — Aboriginal children — advisory services	83,763
Organisational review	Deloitte Touche Tohmatsu	Develop operating models and implementation roadmaps for Public Interest Disclosure and Mandatory Disease Testing	122,646
Organisational review	Deloitte Touche Tohmatsu	Develop detailed implementation plan covering requirements for PID operating model	93,676
Organisational review	The Trustee for Strategic Project Partners Trust	Delivery of external training business review	105,532
Total (inc GST)			666,684

*Figure rounded to whole dollars

Table 33. Consultancies valued at less than \$50,000 — aggregate cost

Category	Count	Cost \$* (inc GST)
Finance and accounting/Tax	2	16,904
Information technology	17	205,850
Management services	9	147,380
Organisational review	2	13,886
Total (inc GST)		384,020

Payment of accounts

Table 34. Accounts due or paid within each quarter 2021–22

Measure	Sep	Dec	Mar	Jun
All suppliers				
Numbers of accounts due for payment	534	356	362	516
Numbers of accounts paid on time	525	354	355	484
Actual percentage of accounts paid on time (based on number of accounts)	98%	99%	98%	94%
Dollar amount of accounts due for payment	\$2,368,834	\$2,301,525	\$2,197,685	\$4,313,119
Dollar amount of accounts paid on time	\$2,306,378	\$2,296,909	\$2,115,095	\$4,122,473
Actual percentage of accounts paid on time (based on \$)	97%	100%	96%	96%
Number of payments for interest on overdue accounts	Nil	Nil	Nil	Nil
Number of payments for interest on overdue accounts	Nil	Nil	Nil	Nil
Small businesses				
Number of accounts due for payment to small business	31	48	42	64
Number of accounts due to small business paid on time	29	48	40	54
Actual percentage of small business accounts paid on time (based on number of accounts)	94%	100%	95%	84%
Dollar amount of accounts due for payment to small businesses	\$120,947	\$183,680	\$201,652	\$686,840
Dollar amount of accounts due to small business paid on time	\$114,043	\$183,680	\$199,086	\$587,292
Actual percentage of small business accounts paid on time (based on \$)	94%	100%	99%	86%
Number of payments to small businesses for interest on overdue accounts	Nil	Nil	Nil	Nil
Interest paid to small businesses on overdue accounts	Nil	Nil	Nil	Nil

Figure 11. 2020–21 and 2021–22 All suppliers' accounts paid-on-time comparison

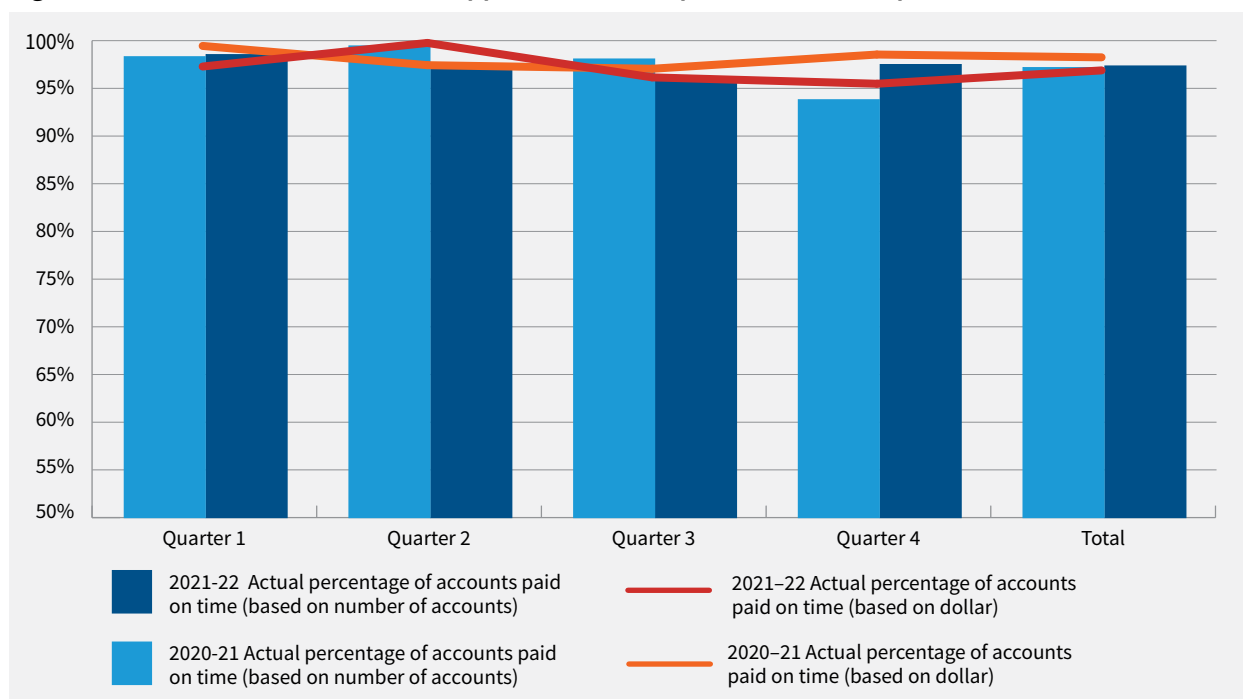
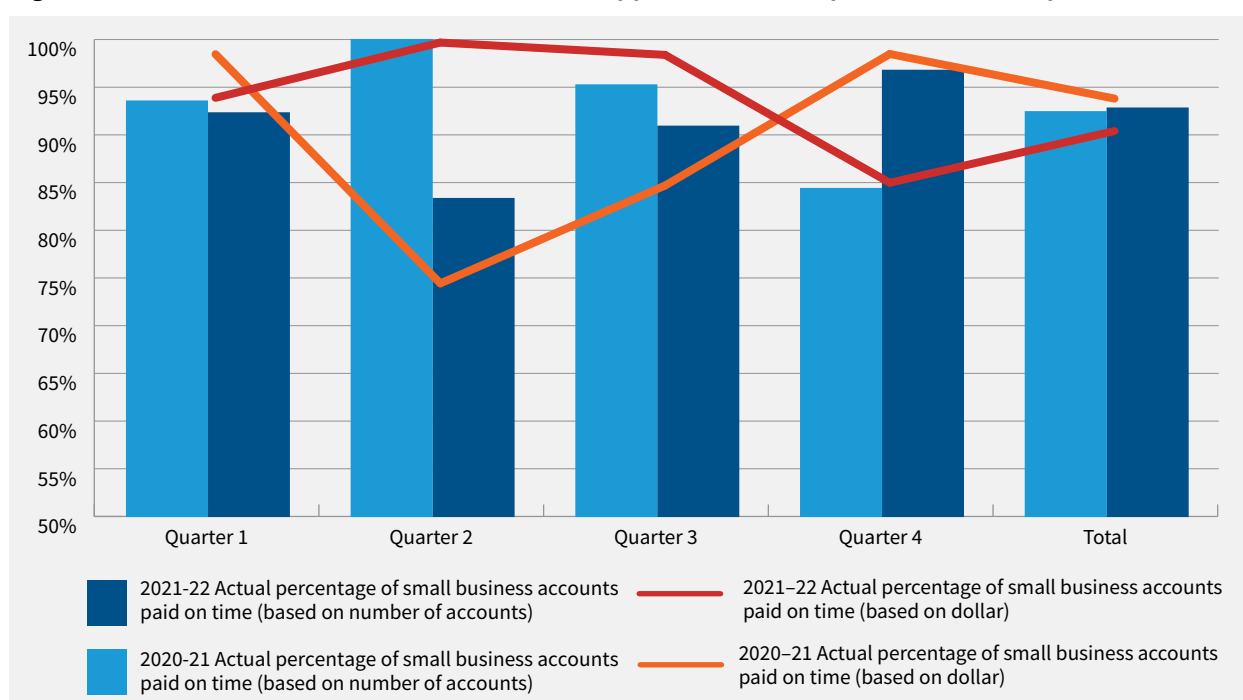


Figure 12. 2020–21 and 2021–22 Small business suppliers' accounts paid-on-time comparison



The charts above indicate that on-time payments generally improved for the first three quarters during this reporting period compared to the previous reporting period. However, they decreased in the last quarter, due to temporary process delays caused by implementing a new Enterprise Resource Planning (ERP) system.

Late payments especially in the last quarter arose because of:

- internal delays in purchase order processing
- delays in confirmation of goods and service receipting
- issues with the provision of invoices to the accounts payable team as result of the change to the new ERP system
- staff taking time to get familiar with the new process.

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
All suppliers	\$	\$	\$	\$	\$	\$
September 2021	23,105	0	0	0	0	23,105
December 2021	71,717	0	0	0	0	71,717
March 2022	66,412	0	0	0	0	66,412
June 2022	122,877	866	0	0	0	123,743
Small businesses	\$	\$	\$	\$	\$	\$
September 2021	6,830	0	0	0	0	6,830
December 2021	16,666	0	0	0	0	16,666
March 2022	0	0	0	0	0	0
June 2022	6,540	0	0	0	0	6,540

After-balance date events

Financial operations

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

Other operations

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

Service delivery

There are no after-balance events that have affected the delivery of our services to the community.

C.10 Report production and access

Table 36. Total external costs incurred in the production of this report*

Item	Cost
Editing and project management services	\$7,000
Proofreading and indexing services	\$2,497

*This report is published on our website at: <https://www.ombo.nsw.gov.au/news-and-publications/publications/annual-reports>.

Index of full-length URLs

Number corresponds with footnote number.

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