



# ANNUAL REPORT

2015–16



 **ACT Ombudsman**

OMBUDSMAN AN OFFICER OF  
THE ACT LEGISLATIVE ASSEMBLY



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**ACT**  
Government



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Australian Capital Territory

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# A. TRANSMITTAL CERTIFICATE



4 October 2016

Mrs Vicki Dunne MLA  
Speaker  
Legislative Assembly for the ACT  
London Circuit  
CANBERRA ACT 2600

Dear Speaker

I present to you my Annual Report for 2015–16.

This report has been prepared to fulfil my obligations under the *Annual Reports (Government Agencies) Act 2004*.

I certify that the information in the attached Annual Report is an honest and accurate account and that all material information on the operations of the ACT Ombudsman has been included for the period 1 July 2015 to 30 June 2016.

Section 15 of the *Annual Reports (Government Agencies) Act 2004* requires that you table the Report before the Legislative Assembly.

Yours sincerely

A handwritten signature in black ink, appearing to read "Colin Neave".

Colin Neave  
ACT Ombudsman

## **Contacting the ACT Ombudsman**

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The ACT Ombudsman Annual Report 2015–16 is available on the website.

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## B. ORGANISATIONAL OVERVIEW AND PERFORMANCE

### B.1 Organisational overview

#### The Ombudsman's role and functions

The ACT Ombudsman's role is to resolve complaints and monitor the actions of government agencies and the police under the *Ombudsman Act 1989* and other legislation.

The strategic vision for the Ombudsman's office (the office) is:

- to provide *assurance* that the Government entities and prescribed private sector organisations that the office oversees act with *integrity* and treat people fairly, and
- to *influence* enduring systemic *improvement* in public administration in Australia.

The Ombudsman can deal with most complaints involving the administrative actions of agencies and police, including requests made to them under the *Freedom of Information Act 1989* and whistleblower disclosures under the *Public Interest Disclosure Act 2012*.

The Ombudsman monitors police use of covert powers through inspections conducted under the *Crimes (Controlled Operations) Act 2008*, the *Crimes (Assumed Identities) Act 2009*<sup>1</sup> and the *Crimes (Surveillance Devices) Act 2010*.

The Ombudsman can investigate, however initially, the office encourages people to work through their concerns with agencies or police. The office does this by working with agencies and police to ensure they provide accessible and effective complaint-handling processes to the public.

When the Ombudsman does investigate, it is done independently and impartially. The aim in all cases is to resolve complaint disputes fairly

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<sup>1</sup> No inspections have been conducted in this monitoring role as ACT Policing has advised that it has not applied any of the provisions under this Act.

and to help agencies improve their services.

Investigations are conducted in private and the Ombudsman has broad powers to access information held by agencies. The Ombudsman cannot compel agencies or police to follow its recommendations. If agencies or police do not act on recommendations or otherwise act unfairly, the Ombudsman can report to the relevant ministers, or release a public report on the matter.

The work of the office helps people access remedies. These range from better explanations for actions, through to decisions being reconsidered or actions expedited. Other remedies include apologies and changes to law, policy or practices that help others in the future.

By virtue of the transitional arrangements in place at the time of self-government, the Commonwealth Ombudsman is also the ACT Ombudsman. The ACT Ombudsman role is delivered by the Commonwealth Ombudsman under a Services Agreement between the ACT Government and the Commonwealth Ombudsman.

A Senior Assistant Ombudsman and a dedicated team has day-to-day responsibility for managing the relationship with directorates. The office's Operations area handles complaints about directorates and the office's National Assurance and Audit area is responsible for undertaking the office's inspections responsibilities.

#### Strategic engagement and performance

In 2015–16 the office held a forum with peak community and professional bodies to hear from them about their service-delivery experiences and expectations of government agencies and police—refer to Part M [page 12]. The office will be using this information to reflect its priorities and to shape the conversations with directorates about community needs.

Through the Ombudsman's complaint work the office maintains an engagement with administrative decision-makers and those who deliver services to the public in the ACT Public Service (ACTPS). The office met with executive teams and business managers to discuss the role and the need to engage effectively with complainants before disputes are escalated to the Ombudsman.

The office expressed its interest in briefings from directorates and agencies on planned initiatives and policy changes that could foreseeably result in public approaches to make complaints.

The Ombudsman's office continues to offer expertise to directorates and agencies at the planning and design stage of new initiatives and in public communication campaigns. Through proactive engagement with the ACTPS, the office aims to ensure that public complaints are dealt with effectively and provide feedback for continuous improvement.

The office participated in the regular meetings of the Alexander Maconochie Centre Oversight Agencies Working Group convened by ACT Corrective Services. The oversight agencies have also convened a regular meeting, in which the office participates. These meetings are a way to share concerns or interests and to coordinate appropriate responses, if and as required.

As part of ongoing stakeholder engagement with ACT Policing, the office attended the Winchester Police Centre to meet with the Child Sex Offenders Registry team. This followed substantial amendments to the legislation for the ACT Child Sex Offender register, including the introduction of entry and search warrants for the purpose of verifying the personal information reported by child sex offenders. The new warrant regime falls under the Ombudsman's inspection jurisdiction, and the visit was used to discuss ACT Policing's plans for its implementation.

## Outlook and priorities

Like other agencies, the role of this office will continue to evolve. As the ACT Government's activities and citizens' expectations of governments change, so must the Ombudsman.

The Ombudsman's office is pleased that the ACT Government has considered it for a new function; with the anticipated development of a Reportable Conduct scheme. In 2016–17 there will be considerable focus and energy on preparation for and successful delivery of this function.

The Reportable Conduct scheme is an employment-based child protection scheme. It supports institutions that provide services to children by obliging them to deal with allegations of certain inappropriate conduct by their employees. The scheme is based on a well-regarded model, which the NSW Ombudsman oversees in that state. The scheme was funded in the 2016–17 Budget. The office is continuing to work with the ACT Government in order to achieve the successful implementation of this important scheme, expected to be operational in July 2017.

The amended *Crimes (Child Sex Offenders) Act 2005* expanded the office's monitoring role in relation to entry and search powers. The office has developed new methodologies to monitor ACT Policing's compliance with the new provisions, and is preparing for the additional inspections function that will increase the work associated with the annual inspection of the ACT Child Sex Offenders Register.

## B.2 Performance analysis

The ACT Ombudsman role is delivered by the Commonwealth Ombudsman under a Services Agreement. Quarterly performance reports are provided to the Speaker and the Head of Service on complaints received and investigated.

Information about the office's complaints work is provided below. Information about the inspections work is provided at Part 4 [page 10].

All public contact with the office is recorded as an approach. Not all approaches are complaints requiring further action. People may be seeking information on how to raise a concern with government agencies or police. Others are concerned about the actions of an entity or action not in the Ombudsman's jurisdiction.

The Ombudsman does not take further action on approaches when:

- the concern is resolved during that contact
- the person is referred to a more appropriate agency
- the office would be unable to access a better remedy by investigating
- the matter is or has been before a court or tribunal.

For approaches that are within jurisdiction and require further action, the office usually contacts the agency for further information and provides it with an opportunity to respond to the complaint. Often this contact is sufficient for the complaint to be resolved.

Remedies obtained by complainants may be at the initiative of agencies or suggested by the office. These may include the Ombudsman providing the complainant with a better explanation of what the agency or police did and why. The Ombudsman’s community reputation for independence and impartiality often means complainants are more receptive to messages from this office than those of agencies or police about whom they have lodged a complaint. Through complaint contact, the office aims to rebuild trust in agencies and police in cases where their actions appear to have been fair and reasonable.

The Ombudsman uses complaints to encourage agencies to improve their administration and provide ACT residents with assurance about government actions. The office works constructively with agencies, including providing feedback on complaint policy or service delivery.

### Summary of complaint statistics

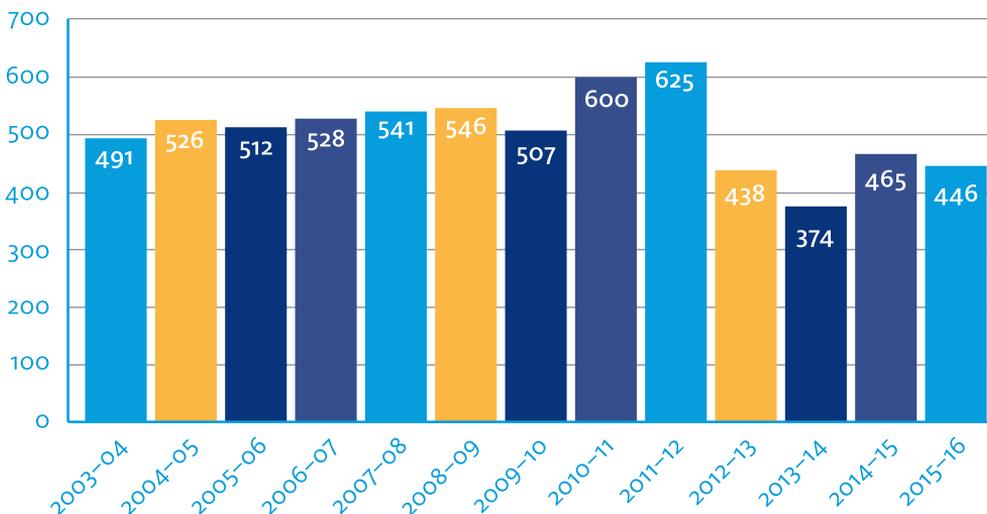
In 2015–16 the Ombudsman received 568 approaches: 446 about directorates and 122 about police. In 2014–15 the Ombudsman received 590 approaches: 465 about directorates and 125 about police.

In 2015–16 directorates accounted for four per cent fewer approaches than in 2014–15. Police accounted for two per cent fewer approaches compared with the previous year.

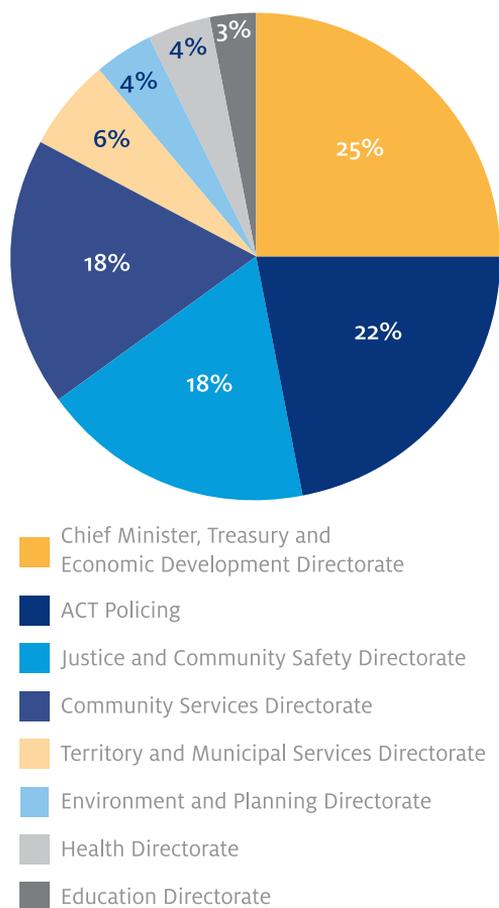
In 2015–16 the office finalised 586 approaches: 459 about directorates and 127 about police. The Ombudsman investigated 91 approaches: 74 about directorates and 17 about police. In comparison, in 2014–15 the office finalised 603 approaches: 478 about directorates and 125 about police. The Ombudsman investigated 114 approaches: 100 about directorates and 14 about police.

Further details of the complaints received and finalised are at Appendix 1.

**Figure 1: Approaches received about directorates (excluding ACT Policing), 2003–04 to 2015–16**



**Figure 2: Spread of approaches and complaints received about directorates and ACT Policing, 2015–16**



### Sharing expertise

In November 2015 the office delivered a training package to rangers from the Territory and Municipal Services Directorate, ‘*Getting it right the first time—undertaking sound, reasonable and lawful administration*’. The purpose of the training was to provide practical knowledge reinforced through group discussions on the frameworks for administrative actions, applied to on-the-job situations. Two half-day courses were provided to a total of 35 officers. The course was well-received and all participants said they would recommend it to their colleagues.

## B.3 Scrutiny

The Ombudsman appeared before the Standing Committee on Public Accounts in November 2015 and the Select Committee on Estimates 2016–17 in June 2016. No recommendations were made to the Ombudsman in the reports of these Committee inquiries.

The report, *Review of Auditor-General’s Report No. 2 of 2016: Maintenance of Public Housing* by the Standing Committee on Public Accounts in June 2016, made the following recommendation (#15) to the Ombudsman:

*The Committee recommends that, where possible, the ACT Ombudsman give consideration to detailing in future annual reports a breakdown of complaints concerning public housing issues as received by the Office for the applicable reporting period.*

The Ombudsman will consider how best to give effect to the Committee’s recommendation in 2016–17.

## C. FINANCIAL MANAGEMENT REPORTING

In 2015–16 the ACT Government paid a total of \$1,147,415 (including GST) to the Commonwealth Ombudsman in accordance with the Services Agreement. It consisted of \$540,141 for ACT Ombudsman services and \$607,274 for complaint handling and oversight in relation to ACT Policing.

# PART 4—AGENCY-SPECIFIC ANNUAL REPORTING REQUIREMENTS

The Ombudsman has statutory responsibility for inspecting the records of law enforcement agencies in relation to the use of certain covert and intrusive powers under ACT legislation.

During the 2015–16 inspections, ACT Policing was cooperative and provided the office with sufficient access to relevant information.

Overall, the inspections found ACT Policing's records relating to controlled operations and its use of surveillance devices to be comprehensive and adequate. ACT Policing accepted the findings and acknowledged its positive working relationship with the office. The results of these inspections are discussed below.

## Controlled operations

The *Crimes (Controlled Operations) Act 2008* allows ACT Policing to conduct controlled (covert) operations in the ACT. The Ombudsman is required to inspect the records of ACT Policing at least once every 12 months to determine the extent of compliance with the Act.

During 2015–16 the office conducted two inspections of ACT Policing's records associated with all controlled operations authorities that had either expired or were cancelled in 2015.

## Inspection criteria

The following inspection criteria were applied to assess compliance:

1. Did the agency obtain the proper authority to conduct the controlled operation?
2. Were activities relating to a controlled operation covered by an authority?
3. Were agency records comprehensive and adequate?
4. Was the agency cooperative in facilitating the inspection?

## Inspection findings

At the first inspection, ACT Policing was assessed as compliant with the requirements of the Act. However, an authority was identified which should have been presented for inspection during 2014–15. The office had not been made aware of this authority at that time due to an administrative oversight, and instead examined it at this inspection. The office also identified a small number of discrepancies between original records and reports, but these were all minor and administrative in nature.

The results of the second inspection conducted under the *Crimes (Controlled Operations) Act 2008* have not yet been finalised and will be reported in the 2016–17 annual report.

## Surveillance devices

The *Crimes (Surveillance Devices) Act 2010* establishes a framework for the use of surveillance devices by law enforcement officers in the ACT. The Ombudsman may inspect the records of ACT Policing to determine the extent of compliance with the Act.

During 2015–16 the office conducted two inspections which examined ACT Policing's records associated with all warrants that had either expired or were revoked in 2015.

## Inspection criteria

The following inspection criteria were applied to assess compliance:

1. Did the agency have the proper authority for the use and/or retrieval of the device?
2. Were surveillance devices used and/or retrieved in accordance with the authority of warrants?
3. Was protected information properly stored, used and disclosed?

4. Was protected information properly destroyed and/or retained?
5. Were agency records comprehensive and adequate?
6. Was the agency cooperative in facilitating the inspection?

## Inspection findings

At the first inspection, ACT Policing was assessed as compliant with the requirements of the Act, except in the instances discussed below. The office also noted an issue in relation to ACT Policing’s annual reporting under s 38 of the Act.

ACT Policing disclosed four instances of non-compliance with s 10 of the Act, which specifies who may issue a surveillance device warrant. Four warrants were issued by a judge who was not appointed to the ACT Supreme Court. Consequently, these warrants were invalid. ACT Policing acknowledged that this was the result of officers not following set procedures for warrant applications.

ACT Policing also disclosed that surveillance devices were unlawfully deployed under one of the invalid warrants. The office notes the remedial actions taken by ACT Policing when this issue was identified, which included ensuring that the one device still in use was disabled and seeking a new warrant from an eligible judge.

The results of the second inspection conducted under the *Crimes (Surveillance Devices) Act 2010* have not been finalised and will be reported on in the 2016–17 annual report.

## Assumed identities

The *Crimes (Assumed Identities) Act 2009* facilitates investigations and intelligence gathering in relation to criminal activity by providing for the lawful acquisition and use of assumed identities in the ACT. The Ombudsman may inspect records of ACT Policing to determine the extent of compliance with the Act.

To date, no inspections have been conducted under the Act as ACT Policing has advised that it has not applied any of the provisions.

## Child Sex Offenders Register

The ACT Child Sex Offenders Register (the register) is established by the *Crimes (Child Sex Offenders) Act 2005* (ACT).

The register must contain current information relating to the identity and whereabouts of people living in the ACT who have been convicted of sexual offences against children.

The Ombudsman is required to monitor ACT Policing’s compliance with Chapter 4 of the Act which specifies how ACT Policing must manage the register, including whether all necessary information is included on the register and whether there are sufficient controls on the use and disclosure of information from the register.

In 2015–16 the office finalised one inspection. ACT Policing was assessed as compliant with Chapter 4, except in one instance, which is discussed below. The office also identified a small number of errors in the register. Following the inspection, ACT Policing advised that it rectified all identified errors.

Chapter 4 requires the Chief Police Officer to ensure that the register is accessed only by people who are authorised by the Chief Police Officer or under a regulation. The instance of non-compliance arose because ACT Policing advised that certain law enforcement officers working in child protection had been granted access to the register, though they were not authorised in the manner required by Chapter 4.

In response, the Chief Police Officer issued an updated instrument of authorisation.

The detailed report on the results of this inspection was provided to ACT Policing and the Minister for Police and Emergency Services in April 2016.

## M. Community engagement and support

The Ombudsman has maintained its engagement with the ACTPS again this year. The office engages with community members on an individual basis as part of the complaint-handling role.

In August 2015 the Ombudsman convened a forum attended by 20 representatives of community and professional peak bodies. Its purpose was to learn about complaints that were not being made and what the barriers were and about experience of service with ACT public service agencies. It was hoped that this would enable the office to get ahead of complaint trends and to work with directorates to continue to improve the system for those who may not be speaking up for themselves.

The key complaint themes noted from the discussions included: concern about issues with access and service as a result of a reliance on website material and centralised contact points; agencies not responding directly to issues raised and inadequate explanation of the basis or reasons for decisions or with an unnecessary reliance on technical jargon; recurring issues leading to a loss of confidence in agencies' commitment to 'continuous improvement' and; that complaining to agencies was at times considered onerous and confusing.

This was challenging information, and when ACTPS complaint-handlers were asked what they thought the community and professional peak bodies would say, they came up with a similar list. The office agreed with the complaint-handlers that it would work with them to develop an ACT-wide complaint standard. This work will take place over the coming year.

In June 2016 the Ombudsman hosted an Indigenous Roundtable in Canberra. This is part of a series of nationwide meetings by the Commonwealth Ombudsman, typically in conjunction with the local state Ombudsman. In Canberra there was the advantage of having both services present in the one office. It was an opportunity to provide information about the role and activities of the Ombudsman

and hear from community representatives about their experience of government service. The office will continue to work with a number of the representatives on particular matters raised.

On four occasions Ombudsman staff attended outreach activities during student information days at the various Canberra Institute of Technology campuses across Canberra. These activities provided briefings to student groups on the role of the Ombudsman as well as an opportunity for students to talk to staff about any issues or concerns.

## N. Justice and community safety

### N.2 Freedom of information

The Ombudsman receives and investigates complaints about the handling of applications made under the *Freedom of Information Act 1989* (FOI Act). In 2015–16 the Ombudsman finalised 29 approaches made about requests for information made to directorates. Twelve approaches sought guidance on how to make a request for information to a directorate and seven related to the merits of a decision and were referred for review by the agency or to the ACT Civil and Administrative Tribunal (ACAT). Four complaints were investigated and the remaining six were miscellaneous matters that were withdrawn or closed.

The Ombudsman received 12 requests for information from seven parties under section 14 of the FOI Act. These requests resulted in the following actions: eight led to the release of information with minor exemptions, two were withdrawn and two were refused access as there was no material held. Where there was a release of information, six were completed in less than 31 days and two were completed in not more than 45 days. No cases went to review by ACAT and no fees were charged in relation to these applications.

## O. Public sector standards and workforce profile

### O.2 Public Interest Disclosure scheme (PID)

The Ombudsman is a 'disclosure officer' under the *Public Interest Disclosure Act 2012* and may investigate disclosable conduct of the Head of Service. The Ombudsman can also take complaints and review the handling of a PID.

Two disclosures were made during the reporting period and referred to the head of the respective directorate for investigation. Four parties made six complaints about the handling of a disclosure; of which, two investigations were undertaken.

## P. Territory records

The Ombudsman has a records-management program that was approved by the Director of Territory Records. The office operates in line with the *Territory Records (Records Disposal Schedule—Ombudsman Complaint Management Records) Approval 2011 (No 1) (NI 2011–93)*.

# APPENDIX 1

## Approaches and complaints received and finalised about directorates and ACT Policing 2015–16

Directorate/Agency	Total received	Not investigated	Investigated	Total finalised	Action expedited	Apology	Decision changed or reconsidered	Explanation	Financial remedy	Law, policy or practice changed	Other non-financial remedy	Remedy provided by agency without Ombudsman intervention	Total remedies*
<b>Chief Minister, Treasury and Economic Development Directorate</b>	144	123	34	157	6	3	7	32	2	2	1		53
Access Canberra	58	48	12	60	3	2	2	14	1	1	1		24
Chief Minister, Treasury and Economic Development	46	41	11	52	2		1	9					12
ACT Revenue Office	20	19	4	23				3		1			4
University of Canberra	20	15	7	22	1	1	4	6					13
<b>Community Services Directorate</b>	104	95	11	106	1	2	2	16			1	1	23
Community Services Directorate	18	17	1	18				2					2
Housing ACT	86	78	10	88	1	2	2	14			1	1	21
<b>Education and Training Directorate</b>	19	17	2	19	0			3					3
Canberra Institute of Technology	6	5	1	6				2					2
Education and Training	13	12	1	13				1					1
<b>Environment and Planning Directorate</b>	20	17	1	18	1								1
<b>Health Directorate</b>	20	20	0	20									
<b>Justice and Community Safety Directorate</b>	105	86	21	107	1		3	16	3	1	1	1	26
ACT Corrective Services	46	34	15	49			2	10	3			1	16
ACT Court or Tribunal	14	14	1	15				2		1	1		4
Justice and Community Safety	19	15	2	17			1	1					2
Legal Aid ACT	6	5	1	6				1					1
ACT Law Society	5	5		5									
Public Advocate of the ACT	1	1		1									
Public Trustee for the ACT	14	12	1	13				1					1
<b>Territory and Municipal Services Directorate</b>	34	27	6	33	1		4	6	1	1	1	1	15
ACTION Bus	3	3		3									
Territory and Municipal Services	31	27	6	30	1		4	6	1	1	1	1	15
<b>ACT Directorates TOTAL</b>	446	385	74	459	9	5	16	72	6	4	4	3	119
<b>ACT Policing</b>	122	110	17	127	3		6	3			1	1	14
<b>ACT GOVERNMENT</b>	568	495	91	586	12	5	22	75	6	4	5	4	133

\*Multiple remedies may result from the same investigation

# GLOSSARY AND ABBREVIATIONS

<b>ACAT</b>	ACT Civil and Administrative Tribunal
<b>ACC</b>	Australian Crime Commission
<b>ACT</b>	Australian Capital Territory
<b>ACTPS</b>	ACT Public Service
<b>AFP</b>	Australian Federal Police
<b>approaches</b>	all public contact made with the office of the ACT Ombudsman
<b>Cth</b>	Commonwealth
<b>directorates</b>	administrative units of ACT Government business
<b>office, the</b>	the Office of the ACT Ombudsman
<b>PID</b>	Public Interest Disclosure

# COMPLIANCE STATEMENT

## Report on omissions and reasons for non-compliance

The Commonwealth Ombudsman discharges the role of ACT Ombudsman.

The ACT Ombudsman is not required to comply with the Annual Report Directions under the *Annual Reports Act*, but the Commonwealth Ombudsman is required to comply under the Services Agreement with the ACT Government.

Because the Commonwealth Ombudsman discharges the role of ACT Ombudsman, many omitted items are separately reported in the Commonwealth Ombudsman Annual Report 2015–16, which is available at [ombudsman.gov.au](http://ombudsman.gov.au)

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