



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Disclosure Log Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

Application Details	
Ref. No.	CMTEDDFOI 2024-149
Date of Application	1 May 2024
Date of Decision	1 July 2024
Processing time (in working days)	41
Fees	N/A
Decision on Access	Full Release
Information Requested (summary)	Memorandum of understanding under which the Commonwealth Ombudsman provides to the ACT Government for acting as ACT Ombudsman.
Publication Details	
Original application	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision notice	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Documents and schedule	<input checked="" type="checkbox"/> Published <input type="checkbox"/> N/A
Decision made by Ombudsman	N/A
Additional information identified by Ombudsman	N/A
Decision made by ACAT	N/A
Additional information identified by ACAT	N/A

From: [REDACTED]
To: [CMTEDD FOI](#)
Subject: FOI Act 2016 request
Date: Wednesday, 1 May 2024 11:18:50 PM

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The FOI Officer
Chief Minister, Treasury & Economic Development
ACT

I seek the following information under the FOI Act 2016.

Background

The commonwealth ombudsman acts as the first tier merit review body for all ACT FOI Act 2016 decisions made by ACT ministers and agencies. The commonwealth ombudsman also acts as the ACT Ombudsman 1989.

Information sought

1. Provide information including memorandum of understanding, formal agreement or the like under which the commonwealth ombudsman provides to the ACT Government FOI review services and for acting as ACT ombudsman.
2. If the ACT government provides funding, grant or reimbursements for such services either to the commonwealth ombudsman directly or the Commonwealth Government, provide information showing payments made for such services for the financial years 2020 till 2023 inclusive.

[REDACTED]



FREEDOM OF INFORMATION REQUEST – NOTICE OF DECISION

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 1 May 2024.

Specifically, you have sought access to the following information:

- 1. Provide information including memorandum of understanding, formal agreement or the like under which the commonwealth ombudsman provides to the ACT Government FOI review services and for acting as ACT Ombudsman.*
- 2. If the ACT Government provides funding, grant or reimbursements for such services either to the Commonwealth Ombudsman directly or the Commonwealth Government, provide information showing payments made for such services for the financial years 2020 till 2023 inclusive.*

Authority

I am an Information Officer appointed by the CMTEDD Director-General under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

In accordance with section 40 of the Act, CMTEDD is required to provide a decision on your access application within 30 days.

As this matter required third party consultation, the decision due date was extended by 15 working days, in accordance with section 40(2) of the Act.

Therefore, a decision is due by **5 July 2024**.

Decision on access

Searches of CMTEDD records have identified two documents within the scope of your request.

I have decided to grant **full access** to both documents.

Exemptions claimed

Schedule 1 of the Act: Information taken to be contrary to the public interest.

No Schedule 1 factors were identified. Therefore, this has not been a relevant factor.

Public Interest Test

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process, I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test, to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and Schedule 2 of the Act.

Schedule 2 of the Act: Factors to be considered when deciding the public interest.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the ‘public interest’.

Factors favouring disclosure (under Sch 2, Section 2.1)

- *Section 2.1(a)(iv) - ensure effective oversight of expenditure of public funds.*

The material within scope of this request reasonably provides insight into the expenditure and service arrangements between the ACT Government and the Office of the Commonwealth Ombudsman. The services agreement can be accessed online but I have included a copy in the documents to be provided to you. I have included a link below:

[ACT-Ombudsmans-Services-Agreement-with-the-ACT-Government.pdf](#)

I am satisfied that these factors favouring disclosure carry significant weight. However, these factors are to be balanced against the factors favouring nondisclosure. I did not identify any factors favouring non-disclosure in relation to the material within scope of this request.

Having applied the test outlined in section 17 of the Act, I am satisfied that the pro-disclosure intent of the Act is met and will provide you with access to all information held by CMTEDD within the scope of your request.

Charges

Processing charges are not applicable for this request because the number of pages released to you is below the charging threshold of 50.

Online publishing – Disclosure Log

Under section 28 of the Act, CMTEDD maintains an online record of access applications called a [disclosure log](#).

Your original access application and my decision will be published on the CMTEDD disclosure log. Your personal contact details will not be published.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published, or a longer period allowed by the Ombudsman.

We recommend using this form [Applying for an Ombudsman Review](#) to ensure you provide all of the required information. Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman
GPO Box 442
CANBERRA ACT 2601

Via email: actfoi@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal
GPO Box 370
Canberra City ACT 2601
Telephone: (02) 6207 1740
<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact the FOI Team by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au.

Yours sincerely



Emma Hotham
Information Officer
Chief Minister, Treasury and Economic Development Directorate

1 July 2024



ACT
Government

Chief Minister, Treasury and
Economic Development

FREEDOM OF INFORMATION REQUEST SCHEDULE

WHAT ARE THE PARAMETERS OF THE REQUEST

Reference No.

1. Provide information including memorandum of understanding, formal agreement or the like under which the commonwealth ombudsman provides to the ACT Government FOI review services and for acting as ACT Ombudsman.
2. If the ACT Government provides funding, grant or reimbursements for such services either to the Commonwealth Ombudsman directly or the Commonwealth Government, provide information showing payments made for such services for the financial years 2020 till 2023 inclusive.

CMTEDDFOI 2024-149

Ref No	Page number	Description	Date	Status	Reason for Exemption	Online Release Status
1	1-16	Document – Services Agreement between Australian Capital Territory and Commonwealth of Australia – 1 July 2020 – 30 June 2025	07/09/2020	Full release	N/A	Yes
2	17	Table – Amounts paid by the ACT Government to Commonwealth Ombudsman	undated	Full release	N/A	Yes
Total No of Docs						
2						



**SERVICES AGREEMENT
BETWEEN
AUSTRALIAN CAPITAL TERRITORY
AND
COMMONWEALTH OF AUSTRALIA**

1 July 2020 – 30 June 2025

PARTIES: **AUSTRALIAN CAPITAL TERRITORY**, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988 (Cth)* (**Territory**) represented by the Chief Minister, Treasury and Economic Development Directorate.

COMMONWEALTH OF AUSTRALIA, represented by the Office of the Commonwealth Ombudsman (**Ombudsman**).

1 Purposes

- 1.1. Under s 28 of the *ACT Self-Government (Consequential Provisions) Act 1988 (Cth)*, the person holding office as the Commonwealth Ombudsman is taken to be the ACT Ombudsman until an appointment is made under this Act. As no such appointment has been made, the Commonwealth Ombudsman (the Ombudsman) is the ACT Ombudsman.
- 1.2. This Agreement sets out the financial and other arrangements between the Territory and the Ombudsman in relation to services provided by the Ombudsman from **1 July 2020 to 30 June 2025**:
- as ACT Ombudsman under the *ACT Self-Government (Consequential Provisions) Act 1988 (Cth)* (the SG Act) and the *Ombudsman Act 1989 (ACT)* (the Act);
 - as the ACT Ombudsman under other ACT laws including:
 - the *Freedom of Information Act 1989* (the FOI Act);
 - the *Public Interest Disclosure Act 2012* (the PID Act);
 - the *Children and Young People Act 2008* (the CYP Act);
 - the *Crimes (Controlled Operations) Act 2008*;
 - the *Crimes (Child Sex Offenders) Act 2005*;
 - the *Crimes (Surveillance Devices) Act 2010*; and
 - the *Crimes (Assumed Identities) Act 2009*.
 - as the Inspector of the Integrity Commission under the *Integrity Commission Act 2018* (the IC Act);
 - as the Principal Officer to the Judicial Council under the *Judicial Commissions Act 1994* (the JC Act);
 - as Commonwealth and Law Enforcement Ombudsman, exercising powers and performing functions under the *Australian Federal Police Act 1979* (AFP Act) in relation to community policing services provided to the ACT by the Australian Federal Police (the AFP) from, and including, 30 December 2006; and
 - as Commonwealth and Law Enforcement Ombudsman, exercising powers and performing functions under the *Ombudsman Act 1976 (Cth)* (the Ombudsman Act) in relation to community policing services provided to the ACT by the AFP.
- 1.3. The Territory and the Ombudsman first entered into a Memorandum of Understanding (MOU) in October 1998 for the Ombudsman to be funded to perform functions and exercise the powers of the ACT Ombudsman. A second MOU was entered into in September 2001 for the period commencing 1 July 2001. A Service Agreement was subsequently signed to cover the period from 31 March 2008 (previous Services Agreement).
- 1.4. The arrangements set out in this Agreement apply from **1 July 2020**, replacing the previous Service Agreement.

- 1.5. The ACT Ombudsman is an Officer of the Legislative Assembly under section 4A of the Act. This arrangement has been in place since the Act was amended by the *Officers of the Assembly Legislation Amendment Act 2013* (Officers Act).
- 1.6. The Officers Act inserted ss 20AB and 20AC into the *Financial Management Act 1996* (FM Act) to provide a legislative framework for Officers of the Legislative Assembly to seek funding through the Speaker as part of the annual budget process.
- 1.7. This legislative framework was not, however, applied for the ACT Ombudsman, until the arrangements changed on 1 July 2020. These arrangements are reflected in this Agreement.
- 1.8. The funding amounts referenced in this Agreement are those agreed to for the relevant financial year, following the annual determination of the ACT Ombudsman budget.
- 1.9. The ACT Ombudsman budget will be determined on an annual basis, via the process outlined in the budget protocols for the Ombudsman. These protocols operate in broad accordance with the spirit of ss 20AB and 20AC of the FM Act concerning budget appropriations for Officers of the Legislative Assembly of the ACT.
- 1.10. In regard to the performance by the Ombudsman of the functions set out in the legislation referred to in paragraph 1.2 and under this Agreement, the Ombudsman and the Territory acknowledge that:
- the Ombudsman is required to act in accordance with relevant legislation, and to exercise his or her other functions with independence and impartiality;
 - the Ombudsman is required to investigate in private and may disclose information to the public only in accordance with relevant legislation;
 - Members of the Executive must not seek to influence the Ombudsman, or dictate how he, or she, may perform functions or exercise powers;
 - the ACT Legislative Assembly must not seek to influence the Ombudsman, or dictate how he, or she, may perform functions or exercise powers, other than by enacting legislation affecting the functions and powers of the Ombudsman in his, or her, capacity as ACT Ombudsman; and
 - no Territory official may seek to influence the Ombudsman, or dictate how he, or she, may perform functions or exercise powers.
- 1.11. Nothing in this Agreement may be read so as to require the Ombudsman to act unlawfully.
- 1.12. In the interests of transparency and consistent with open access obligations under the FOI Act, this Agreement will be publicly available on the internet website of the ACT Ombudsman and the directorate responsible for administering the Agreement.

2 General

2.1 The Territory and the Ombudsman:

- will use their best endeavours to promote a mutually co-operative and professional relationship between themselves, as well as between their respective staff members and representatives; and

- agree that the Ombudsman will assist the Territory's delivery of targeted and effective services to the ACT community, by providing information to facilitate the analysis of trends and issues in relation to:
 - public administration in the ACT; and
 - community policing services provided to the ACT by the AFP.
- 2.2 The Territory and the Ombudsman recognise that the Office of the Commonwealth Ombudsman, which currently performs the role of the ACT Ombudsman, is a Commonwealth Government entity that is required to comply with Commonwealth legislation. This includes the resource management framework, which governs how officials in the Commonwealth public sector use and manage public resources.
- 2.3 The Ombudsman will also comply with ACT legislation where relevant (for example, where the relevant legislation refers to the ACT Ombudsman specifically or an Officer of the ACT Legislative Assembly), noting that it is not a Territory agency. The Ombudsman will also follow processes outlined in the ACT Cabinet Handbook and the Assembly Process Handbook.
- 2.4 Part 3 of the Act provides for certain conditions of service to be met, where a person who is not the Commonwealth Ombudsman, is appointed as the ACT Ombudsman. While these provisions do not apply to the Ombudsman, it is recognised that the Ombudsman:
- is already required to disclose personal and financial interests to the relevant responsible Minister under the *Public Governance, Performance and Accountability Rule 2014*;
 - should not undertake any paid employment or unpaid activity that is inconsistent with ACT Ombudsman functions; and
 - will advise the Speaker if a leave of absence has been granted for more than four weeks under the *Ombudsman Act 1976* (Cth) or a resignation notice has been given to the Governor General, and will outline any acting arrangements that have been put in place.

3 Activities to be undertaken by the Ombudsman

- 3.1 The activities to be undertaken by the Ombudsman under this Agreement in relation to specific functions, including financial and related arrangements, are set out in separate schedules to this Agreement as outlined below:
- **Schedule A** - activities to be undertaken as the ACT Ombudsman under the Act (other than Reportable Conduct) and in relation to community policing;
 - **Schedule B** – Reportable Conduct activities to be undertaken as the ACT Ombudsman under the Act;
 - **Schedule C** – activities to be undertaken as the ACT Ombudsman under the FOI Act;
 - **Schedule D** – activities to be undertaken as the Inspector under the IC Act; and
 - **Schedule E** – activities to be undertaken as the Principal Officer under the JC Act.

Note: information about service standards in relation to the above functions will be included on the ACT Ombudsman website, and reported on quarterly (see section 5 below).

- 3.2 It is acknowledged that the activities in specific Schedules may need to be amended on an annual basis, or as required, including where:
- the ACT Ombudsman budget for a particular financial year is determined to be less than the amount the Ombudsman stated was required to undertake the above functions;
 - the Ombudsman considers it appropriate to prioritise specific activities for a particular financial year to exercise maximum influence in terms of improvements to public administration in the ACT; and
 - the Ombudsman considers it necessary to de-prioritise certain activities for a particular financial year due to a substantial increase in workload volumes.
- 3.3 The Territory and Ombudsman agree that any variation to the activities in specific Schedules will be managed via variation to this Agreement (an exchange of letters) between the Ombudsman and the directorate responsible for managing this Agreement, which is currently the ACT Chief Minister, Treasury and Economic Development Directorate (CMTEDD).
- 3.4 The relevant directorates maintain policy responsibility for the required activities. For example:
- Where amendments to **Schedule C** are required, consultation will occur with the Justice and Community Safety (JACS) prior to any exchange of letters.
 - Where amendments to **Schedule E** are required, consultation will occur with JACS and the Judicial Council prior to any exchange of letters.
- 3.5 The Ombudsman will co-operate with and participate in any inquiry conducted by the ACT Legislative Assembly, which is relevant to the Ombudsman. This includes annually appearing before the following Committees:
- Budget Estimates Committee;
 - the Standing Committee on Public Accounts in relation to the Annual Report Hearings and other inquiries; and
 - the Standing Committee on the Integrity Commission in relation to the Annual Report for the Inspector function and other inquiries.
- 3.6 The Ombudsman will provide responses to Questions on Notice from the ACT Legislative Assembly as required and in the required time frames.
- 3.7 If requested, the Ombudsman will provide the relevant sections of any ANAO financial audit report or internal audit, which covers management of its Territory funding, to CMTEDD and/or the ACT Audit Office for its review.
- 3.8 The Ombudsman will also co-operate with the ACT Audit Office where they are undertaking an inquiry into programs that the ACT Ombudsman delivers on behalf of the Territory (for example, oversight of the FOI Act), or the Territory requests a review of ACT Ombudsman delivered functions to be undertaken.
- 3.9 A member of the ACT Executive, a Director-General or a Territory agency head, may request the Ombudsman to conduct an investigation in relation to a particular matter. Such a referral is at the sole discretion of the Ombudsman to decide, see section 4B of the Act (Independence of the Ombudsman). The Ombudsman will consider whether the investigation can be undertaken within existing resources and if it is consistent with current office priorities. Alternatively, a charge for these services may be required (see section 6).

4 Activities to be undertaken by the Territory

- 4.1 To facilitate the Ombudsman's performance of his or her functions, as ACT Ombudsman, the Territory will advise the Ombudsman's Office as soon as practicable about:
- proposed changes to, and the introduction of, relevant legislation or significant policy that may affect the role of the Ombudsman;
 - any possible new functions for which the Ombudsman is being considered, and any related changes to funding arrangements;
 - changes to administrative arrangements; and
 - changes to directorate contact details.
- 4.2 The Territory will provide the Ombudsman with information in a manner consistent with its obligations under the Commonwealth Protective Security Framework, which is aligned with ACT Government protect security arrangements, as well as the ACT Cabinet Handbook and Assembly Process Handbook.

5 Reporting and Governance

- 5.1 The Ombudsman will publish an annual report in respect of the previous financial year, and will table the report in accordance with Territory annual reporting timeframes and processes. As an Officer of the Legislative Assembly, the ACT Ombudsman's annual report is required to be provided to the Speaker for presentation to the Legislative Assembly.
- 5.2 It is noted that the *Annual Reports (Government Agencies) Directions* made under the *Annual Reports (Government Agencies) Act 2004* do not, however, apply to the ACT Ombudsman, as an Officer of the Legislative Assembly.
- 5.3 The Ombudsman will, nevertheless, seek to include similar information in this report to that required under these directions, other than where this information is reported in the Commonwealth Ombudsman Annual Report for the Office of the Commonwealth Ombudsman – for example, detailed financial information consistent with Commonwealth agency reporting obligations (see paragraph 2.2 above). While financial statements will not be included, the annual report, will, however, explain the funding made available to the Ombudsman for that year and how this has been allocated to the specific functions outlined in schedules to this Agreement.
- 5.4 As outlined in **Schedules C and D**, the Ombudsman will also publish reports on an annual basis, as required, under the FOI and IC Acts.
- 5.5 In addition, the Ombudsman will provide a report, within **30 working days** of the end of each quarter to the ACT Head of Service and Director-General of CMTEDD. These reports will also be published on the ACT Ombudsman website.
- 5.6 These quarterly reports will set out the information related to functions performed by the Ombudsman in **Schedules A - C**. A brief summary of activities or focus areas may be included in relation to **Schedule D – E**.
- 5.7 These reports must not contain any personal information that is not already publicly available without the consent of the person concerned.
- 5.8 Every second quarter, the covering letter to the ACT Head of Service, enclosing the quarterly report, will also include a high level summary of the ACT Ombudsman financial position for the relevant financial year.
- 5.9 The Ombudsman may discuss these quarterly reports at the Strategic Board (made up of all Directors-General).

- 5.10 The Ombudsman may, from time to time, provide additional reports as outlined under the Act in relation to investigations of actions conducted under the Act.
- 5.11 The Act provides that the ACT Ombudsman may delegate the ACT Ombudsman's functions under that Act or another Territory law. The current delegations instrument will be made available via the ACT Ombudsman website.

6 Agreed funding amounts and charges for services

- 6.1 As noted above, the ACT Ombudsman budget will be determined on an annual basis via the process outlined in the budget protocols for the Ombudsman.
- 6.2 The agreed funding amounts for a particular financial year will be confirmed in writing via a letter from the ACT Chief Minister to the Ombudsman, once the annual budget process is finalised, or as otherwise agreed between the ACT Chief Minister and the Ombudsman, where budget processes are unexpectedly delayed and interim arrangements are required.
- 6.3 The total agreed funding amount to be provided to the Ombudsman will be included in the budget papers for the directorate responsible for administering this Agreement.
- 6.4 The funding amount for services provided by the Ombudsman on behalf of the Territory can also be changed, on an interim basis, via an exchange of letters between the Ombudsman and the ACT Chief Minister, including, where it is agreed that:
- the Ombudsman will commence the performance of new functions on behalf of the Territory, as outlined at section 10.3;
 - a function undertaken by the Ombudsman has changed significantly, due to substantial increases in volumes and/or responsibilities that cannot be managed by re-prioritising activities for the financial year or providing reduced service standards for a limited period in consultation with the Territory; or
 - the Ombudsman undertakes an independent review or investigation of a specific matter at the request of a member of the ACT Executive, a Director-General or a Territory agency head, that the Ombudsman considers to fall outside current office priorities and available resources.

7 Additional revenue

- 7.1 Formal training in complaints handling and investigation for Territory agency staff or AFP staff, may be provided by the Ombudsman on a cost recovery basis.
- 7.2 Formal training in allegation handling and investigations involving Reportable Conduct for staff of designated and non-designated entities may be provided by the Ombudsman on a cost recovery basis.
- 7.3 Formal training in the assessment of access applications and publication of open access information under the FOI Act for Territory agency staff may be provided by the Ombudsman on a cost recovery basis.
- 7.4 Formal training of Integrity Commission staff may be provided by the Ombudsman on a cost recovery basis.

8 Payment arrangements

- 8.1 The Ombudsman will provide the Territory with one properly rendered, tax invoice in respect of the services to be delivered under this Agreement in that financial year.
- 8.2 The invoice will be generated after 31 August of the relevant year. Unless stated otherwise, the services provided by the ACT Ombudsman are exclusive of GST.

Note: the above arrangements are in place due to the Supply Period arrangements that operate until the Appropriation Bills have passed in the Legislative Assembly. Each year, the Appropriation Bills are debated in the Legislative Assembly in August. Even though the Ombudsman is not being appropriated directly, these bills need to pass before the relevant funding will be available to the Ombudsman.

- 8.3 The Territory will pay a properly rendered tax invoice provided under paragraph 8.1 within **30 days** of receipt.
- 8.4 Payments in relation to additional services provided under this Agreement are due and payable within 30 days of the provision of a properly rendered tax invoice to the Territory by the Ombudsman.

9 Term

- 9.1 This Agreement commences on the date of this Agreement and expires on **30 June 2025**, unless terminated or varied as provided for under paragraph 10 of this Agreement.
- 9.2 Variations to the Schedules may be needed each year following the agreed budget process for ACT Ombudsman funding as outlined above.

10 Termination and variation

- 10.1 The Territory and the Ombudsman agree that either of them may:
- seek a variation of this Agreement, by providing notice in writing;
 - seek a replacement of this Agreement, by providing a minimum of three months' notice in writing; or
 - terminate this Agreement by giving a minimum of three months' notice in writing.
- 10.2 In the event that this Agreement is terminated or varied to remove a particular function outlined in the Schedules, the Territory and the Ombudsman agree to provide each other with reasonable assistance to enable the functions performed by the Ombudsman as ACT Ombudsman, or in relation to the policing arrangement, to be performed by some other entity.
- 10.3 Where it is agreed that additional functions are to be undertaken by the Ombudsman and commenced during a particular financial year, it is intended that funding for these be managed initially via an exchange of letters between the ACT Chief Minister and the Ombudsman, with the relevant function to be included as a schedule in this Agreement when it is updated for the following financial year. These letters should also specify any additional funding that will be provided to the Ombudsman for the relevant financial year.

11 Consultation

- 11.1 The Territory and the Ombudsman will initiate consultations with the other party when either of them considers it appropriate to do so.
- 11.2 The Ombudsman will consult with other oversight agencies in the ACT including the ACT Human Rights Commission, the ACT Inspector of Correctional Services, the ACT Auditor-General, the ACT Public Sector Standards Commissioner, the ACT Integrity Commissioner, to ensure that the oversight agencies work together to ensure effective oversight of areas of mutual concern, and avoid duplication of effort.

12 Dispute resolution

- 12.1 Any dispute over the interpretation or application of this Agreement must first be the subject of negotiation between the parties to resolve that dispute.

12.2 Neither the Territory, nor the Ombudsman, may initiate action to terminate this Agreement until after the expiry of **30 days** from a request to open negotiations to resolve such dispute.

13 Severability

13.1 Those parts of this Agreement that relate to the Ombudsman's exercise of his, or her, responsibilities under ACT legislation may be severed from those parts that relate to his or her responsibilities under Commonwealth legislation.

14 Dictionary

14.1 In this Agreement, unless the contrary intention appears:

Agreement means this agreement and includes the schedules and attachments to this agreement.

ACT Ombudsman refers to the Office of Ombudsman established by s 4 of the Act

community policing means services provided to the ACT by the AFP

Executive means the ACT Executive established by s 36 of the SG Act and constituted by the Chief Minister, and other Ministers as are appointed by the Chief Minister

Ombudsman means the Commonwealth Ombudsman established by s 4 of the *Ombudsman Act 1976*, who, under s 28 of the SG Act, is taken to be the ACT Ombudsman until the Speaker appoints an ACT Ombudsman.

Territory agency means an administrative unit or prescribed authority established under a law of the ACT and, for the avoidance of doubt, it does not include ACT Policing.

EXECUTED AS A AGREEMENT ON.....

7/9/20

SIGNED for and on behalf of the)
AUSTRALIAN CAPITAL TERRITORY)
in the presence of:)

CU

Signature of Territory delegate

A Kaleske
Signature of witness

Kathy Leigh
Print name

SARAH KALESKE
Print name

SIGNED for and on behalf of the)
COMMONWEALTH OF AUSTRALIA in)
the presence of:)

[Signature]

Signature of Commonwealth Ombudsman

L Macleod
Signature of witness

MICHAEL MANTHORPE
Print name

LOUISE MACLEOD
Print name

Schedule A

***Activities to be undertaken as the ACT Ombudsman under the Act
(other than Reportable Conduct) and in relation to community policing***

Purpose

1. This Schedule is an attachment to the Agreement. It sets out:
 - the arrangements between the Territory and the Ombudsman for the provision of services by the Ombudsman in accordance with the *Ombudsman Act 1989 (ACT)* (the Act)
 - the arrangements between the Territory and the Ombudsman for the provision of services by the Ombudsman in relation to community policing. These services are performed by the Ombudsman in his or her role as the Commonwealth Ombudsman and/or the Law Enforcement Ombudsman.
2. Under section 8 of the *Australian Federal Police Act 1979* (AFP Act), the Territory has entered into an arrangement with the Commonwealth Minister for Home Affairs under which it pays the Commonwealth for the provision of police services ('the policing arrangement').
3. Under this Agreement, the Territory is to pay the Ombudsman for performing functions and exercising powers under the *Complaints (Australian Federal Police) Act 1981* (AFP Complaints Act) and the AFP Act in relation to community policing services provided by the AFP to the ACT under the policing arrangement.
4. It is noted that the Ombudsman also oversees the use of covert powers by the AFP:
 - as the Commonwealth Ombudsman under the following legislation:
 - *Crimes Act 1914*;
 - *Criminal Code Act 1995*;
 - *Telecommunications Act 1977*;
 - *Surveillance Devices Act 2004*; and
 - *Telecommunications (Interception and Access) Act 1979*.
 - As the ACT Ombudsman under the:
 - *Crimes (Surveillance Devices) Act 2010*;
 - *Crimes (Controlled Operations) Act 2008*; and
 - *Crimes Assumed Identities Act 2009*.

Required activities as ACT Ombudsman

2. Activities to be undertaken by the Ombudsman in his or her capacity as ACT Ombudsman, under the Act and this Agreement are:
 - managing individual complaints received about Territory agencies, including informal resolution and/or formal investigation when warranted;
 - conducting own motion investigations in relation to Territory agencies;
 - the performance of required functions and the exercise of powers under the PID Act;
 - the performance of required functions and the exercise of powers under Division 2.2 of the Act in relation to the *Crimes (Child Sex Offenders) Act 2005 (ACT)*;
 - outreach activities directed to informing the public and Territory agency staff about the role of the Ombudsman;

- advice to the ACT on the implications for service delivery of proposed policy changes, either by way of the Executive (Cabinet) process, or otherwise;
 - submissions to relevant formal inquiries, including Legislative Assembly Committees;
 - liaison with Territory agency staff on the development of improved complaint handling procedures and best practice public administration;
 - monitoring of Territory agency complaints handling mechanisms, including via the annual Complaint Assurance Program; and
 - formulation of recommendations to improve public administration.
5. Services provided by the ACT Ombudsman relating to the Reportable Conduct scheme are outlined separately at **Schedule B**.

Required activities in relation to community policing

6. Activities to be undertaken by the Ombudsman under this Agreement or relevant legislation in regard to community policing services provided to the Territory by the AFP include:
- managing individual complaints received about ACT policing, including informal resolution and/or formal investigation when warranted;
 - conducting own motion investigations in relation to ACT policing;
 - outreach activities directed to informing the public and ACT policing staff about the role of the Ombudsman in terms of ACT Policing oversight;
 - submissions to relevant formal inquiries, including Legislative Assembly Committees;
 - liaison with ACT policing on the development of improved complaint handling procedures and best practice public administration; and
 - monitoring of ACT policing complaints handling mechanisms, including via the annual Complaint Assurance Program and the inspection of AFP records relating to the handling of complaints under the AFP Act.
7. The Ombudsman will inform the ACT Minister responsible for police of the outcome of significant investigations relating to ACT community policing. That advice will be provided as soon as practicable, subject to procedural fairness requirements.
8. In addition to notifications the Ombudsman is required by law to give to a Minister in the course of an investigation, the Ombudsman will, where it is lawful and appropriate to do so, copy to the ACT Minister responsible for police matters any notification they are required by the AFP Complaints Act to give to the Commonwealth Minister responsible for the AFP where the investigation relates to action taken under the policing arrangement.

Reporting

9. The quarterly report, outlined at paragraph 5.5 of the Agreement, as well as the ACT Ombudsman annual report, will include information about:
- the number of complaints about Territory agencies and ACT Policing received by the Ombudsman;
 - the timeliness of complaints processed;
 - the results and outcomes of investigations conducted; and
 - complaint trend identified by the Ombudsman.

Schedule B

Reportable Conduct activities to be undertaken as the ACT Ombudsman under the ActPurpose

1. This Schedule is an attachment to the Agreement. It sets out the arrangements between the Territory and the Ombudsman for the provision of services by the Ombudsman in relation to the Reportable Conduct scheme in accordance with the *Ombudsman Act 1989* (the Act).

Required activities

2. In addition to the activities outlined in **Schedule A**, the Ombudsman in his or her capacity as ACT Ombudsman, under the Act and this Agreement will perform the functions and exercise the powers required of the Ombudsman under Division 2.2A of the Act.

Reporting

3. The quarterly report, outlined at paragraph 5.5 of the Agreement, as well as the ACT Ombudsman annual report will include information about:
 - the number of allegations of which the Ombudsman was notified;
 - the outcome of these allegations; and
 - the number of allegations referred to the Australian Federal Police (AFP).

Schedule C

*Activities to be undertaken as the ACT Ombudsman under the FOI Act*Purpose

1. This Schedule is an attachment to the Agreement. It sets out the arrangements between the Territory and the Ombudsman for the provision of services by the Ombudsman in accordance with the *Freedom of Information Act 2016* (FOI Act).

Required Services

2. The Ombudsman, in his or her capacity as the ACT Ombudsman, is to perform the functions and exercise the powers required of the Ombudsman under Part 7 of the FOI Act in accordance with any statutory timeframes, including:
 - reviews of decisions;
 - investigating complaints;
 - extensions of time;
 - monitoring of the open access information scheme;
 - monitoring compliance with the ACT Chief Minister's annual statement, and
 - reporting annually on the operation of the FOI Act.
3. The Ombudsman agrees to maintain the developed set of FOI guidelines and hold regular FOI practitioners forums (at least two a year).

Reporting

4. Each year, the Ombudsman will prepare a report on the annual operation of the FOI Act and give the report to the Speaker for presentation to the Legislative Assembly as required under s 67 of the FOI Act.
5. The quarterly report, outlined at paragraph 5.5 of the Agreement, as well as the ACT Ombudsman annual report will include information about:
 - the number of complaints, review applications and extension of time applications received;
 - the outcome of these applications and complaints; and
 - trends in agency compliance with the FOI Act.

Schedule D

Activities to be undertaken as the Inspector under the IC ActPurpose

1. This Schedule is an attachment to the Agreement. It sets out the arrangements between the Territory and the Ombudsman for the provision of services by the Ombudsman in accordance with the *Integrity Commission Act 2018* (IC Act).
2. Section 229 provides for the Ombudsman to be the Inspector of the Integrity Commission (the Inspector) until an appointment is made.

Required Services

3. The Ombudsman, in his or her capacity as the ACT Ombudsman, will perform the functions and exercise the powers required of the Inspector under Part 5 of the IC Act in accordance with any statutory timeframes.
4. This includes completion of an annual operational review as required under s 280 of the IC Act.

Reporting

5. The Ombudsman will prepare an annual report for the Inspector function as required under Division 5.4.3 of the IC Act. This will include reporting on the annual operational review referred to above.

Schedule E

Activities to be undertaken as the Principal Officer under the JC ActPurpose

1. This Schedule is an attachment to the Agreement. It sets out the arrangements between the Territory and the Ombudsman for the provision of services by the Ombudsman in accordance with the *Judicial Commissions Act 1994* (JC Act).
2. Section 5H of the Act provides that the Council is to be supported in the exercise of its functions by a Principal Officer and other staff considered suitable by the Council.
3. The Principal Officer is to exercise such functions as are delegated by the Council. Section 5I(2) sets out the functions that cannot be delegated.

Required Services

4. The Ombudsman will be the Principal Officer of the Council and will provide one or more staff members from the Ombudsman's office to assist in performing the Principal Officer role in accordance with s 5H of the Act. The staff member(s) must be considered suitable for the role by the Council.
5. The Principal Officer and staff will undertake the Council's complaint functions as are delegated to the Principal Officer by the Council pursuant to s 5I and will provide such assistance or support as required in relation to all the Council's complaint functions.

Reporting

6. The Principal Officer will draft a report to the Attorney-General each year as required by s 61A of the Act for the Council's consideration. This report will be separate to the ACT Ombudsman annual report.

Charges

7. Outgoings such as audio recording, medical examinations and legal support are subject to the Council's prior approval and must be separately invoiced to the Principal Registrar, ACT Courts and Tribunal.
8. It is noted that the ACT Courts and Tribunals have agreed to provide the Council with:
 - access to meeting rooms;
 - support in obtaining files; and
 - transcripts and, if required, recordings of hearings.

Amounts Paid by ACT Government to Commonwealth Ombudsman

Financial Year	Vendor/Customer Name	Total
FY2022-23	COMMONWEALTH OMBUDSMAN ACT	\$ 3,925,266
FY2021-22	COMMONWEALTH OMBUDSMAN ACT	\$ 2,855,704
FY2020-21	COMMONWEALTH OMBUDSMAN ACT	\$ 1,955,652