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21 November 2023

Contact: [REDACTED]
Telephone: [REDACTED]
Email: [REDACTED]

Lena Nash
Special Counsel

By email: [REDACTED]
Copy: [REDACTED]

Dear Lena,

Special Commission of Inquiry into offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre - request for institutional statement

I refer to the letter dated 2 November 2023 requesting a statement from a representative from the NSW Ombudsman.

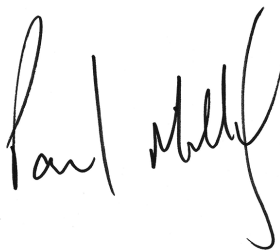
I note that I am voluntarily providing the enclosed statement of information addressing the questions outlined in your 2 November letter pursuant to the discretion afforded me under s 34(1) of the *Ombudsman Act 1974 (Act)*.

By way of explanation, I draw your attention to s 35(1) of the Act, which provides that neither I nor any staff of my office are competent or compellable to give evidence or produce any document in any legal proceedings. I am advised that this provision prohibits me and my staff from appearing as a witness or otherwise giving evidence in an inquiry of a Royal Commission or Special Commission of Inquiry.

However, because of that provision, last year I asked the Government to introduce legislation to amend the Act to enable me to voluntarily assist a Commission of Inquiry by voluntarily providing information. Section 34(1) of the Act was consequently amended (by the *Ombudsman Legislation Amendment Act 2022*) to authorise me to do so.

If you have any further queries, please contact [REDACTED] on [REDACTED] or email to [REDACTED].

Yours sincerely



Paul Miller
NSW Ombudsman

Statement for the purposes of
The Special Commission of Inquiry into
Offending by Former Corrections Officer Wayne Astill at Dillwynia Correctional Centre

This statement is provided under section 34(1)(n) of the Ombudsman Act 1974 (NSW).

1. I provide this statement at the request of the Special Commission into Offending by Former Corrections officer Wayne Astill at Dillwynia Correction Centre (**Special Commission**).
2. My name is Paul Richard Miller. I am the New South Wales Ombudsman, holding office under the *Ombudsman Act 1974* (NSW) (**Ombudsman Act**), and have held this position since 1 May 2021. Prior to my appointment as NSW Ombudsman, I was the Acting NSW Ombudsman from 24 August 2020.
3. My functions are primarily set out in the Ombudsman Act, the *Community Services (Complaints, Reviews and Monitoring) Act 1993* (NSW) (**CS CRM Act**) and the *Public Interest Disclosures Act 2022* (NSW) (**PID Act**). I also have the functions of head of agency of the NSW Ombudsman's Office under the *Government Sector Employment Act 2013* (NSW) (**GSE Act**) and accountable authority under the *Government Sector Finance Act 2018* (NSW) (**GSF Act**).

The role, functions and powers of the Ombudsman

4. The NSW Ombudsman is an independent statutory office, established by the NSW Parliament under the Ombudsman Act. The Ombudsman is appointed by the Governor for a term of up to seven years, and is eligible for reappointment. Proposed appointments are subject to a right of veto by the statutory parliamentary committee established under the Ombudsman Act. The Ombudsman can only be removed by the Governor upon address by both Houses of Parliament.
5. Staff of the Ombudsman are employed in the Ombudsman's Office, which is a 'separate agency' under the GSE Act and a 'separate GSF agency' under the GSF Act. All employer functions in relation the Ombudsman's Office, including in respect of Deputy Ombudsman and Assistant Ombudsman appointed under the Ombudsman Act, are exercised by the Ombudsman. The NSW Ombudsman is structurally, functionally and operationally independent of the Government, any Minister or any Government agency.
6. The current functions of the NSW Ombudsman are outlined in its most recent [2022-23 Annual Report](#), at pages 9 to 13.

7. A core function of the Ombudsman is to receive and handle complaints about the conduct of public authorities. 'Conduct' includes any action or inaction (or alleged action or inaction) relating to a matter of administration. A 'public authority' includes both agencies (such as the Department of Communities and Justice (**DCJ**), of which Corrective Services NSW (**Corrective Services**) and Youth Justice NSW are divisions) and individual officials (such as the Commissioner of Corrective Services and staff of Corrective Services).
8. The Ombudsman can only deal with complaints about conduct 'relating to a matter of administration'. Depending upon the circumstances, there may be a question as to whether sexual harassment in the workplace relates to a matter of administration. However, we would consider that sexual harassment or sexual assault by a Corrections Officer of an inmate would relate to a matter of administration, and consequently is something about which a complaint could be made under the Ombudsman Act. The conduct of Corrective Services in dealing with any complaint about such alleged sexual harassment or assault would also be conduct relating to a matter of administration, which could separately be the subject of complaint to the Ombudsman.
9. If we were to receive a complaint from an inmate and in that complaint that inmate disclosed sexual assault by a corrections officer, the first action we would take is to determine whether the matter had been referred to the NSW Police Force (**NSWPF**) for investigation. Where conduct may constitute both criminal conduct and maladministration (such as the criminal assault by a corrections officer of an inmate), it would generally be appropriate for the matter to be investigated (by NSWPF) and dealt with as a criminal matter rather than, or at least in priority to, any administrative investigation. It may also be appropriate for a referral to be made to another agency, such as ICAC if the complaint is about corrupt conduct.
10. We cannot handle complaints about the conduct of a public authority if it is 'excluded conduct' set out in schedule 1 of the Ombudsman Act. Excluded conduct includes conduct of a public authority relating to:
 - (a) the appointment of a person as an officer or employee, or (b) matters affecting a person as an officer or employee (unless the conduct arises from the make of a public interest disclosure under the PID Act) (clause 12); and
 - an alleged violation of privacy (clause 17).
11. In relation to custodial services and community corrections, the agencies we receive complaints about include:

- Corrective Services (DCJ)
- Justice Health and Forensic Health Network
- Private prison providers¹ – GEO, Serco Australia, MTC, St Vincents Health
- Youth Justice NSW (DCJ).

12. Any person may make a complaint to us. Section 12(3) of the Ombudsman Act provides:

- (3) *If a person detained by, or in the custody of, a public authority (a **detained person**) requests to make a complaint to the Ombudsman, the public authority or other person superintending the detained person must—*
- (a) *take all steps necessary to facilitate the making of the complaint by the detained person, and*
 - (b) *if the complaint is made orally—make reasonable arrangements for the detained person to make the complaint in a way that is not recorded or monitored, and*
 - (c) *if the complaint is made in writing—send to the Ombudsman, as soon as practicable, the written matter addressed to the Ombudsman, unopened.*

13. We are fully independent and impartial – neither the NSW Government nor any of the organisations we receive complaints about can tell us how to handle those complaints including whether or not to take action in respect of a complaint, the action we take, or the conclusions or opinions we make (including, in respect of an investigation, findings or recommendations we make).

14. We may receive complaints in writing or orally.

15. Part 4B of the Ombudsman Act provides protections to persons who complain to or assist the Ombudsman. This extends to any staff or inmate who may provide information to or assist the Ombudsman. It is a serious criminal offence for a person to take detrimental action (or cause detrimental action to be taken) against a person because (or for reasons that include) the person making a complaint to the Ombudsman, or providing information or other assistance to the Ombudsman.

Number of relevant Ombudsman Office staff

16. The complaint handling functions of the Ombudsman in respect of custodial services are primarily undertaken by staff in the Detention and Custody Unit (**DCU**), which is within the Complaints and Resolution Branch (**CRB**). CRB is led by a statutory officer, the Deputy Ombudsman, Complaints and Resolution.

¹ The *Crimes (Administration of Sentences) Act 1999*, s 246 provides that when a correctional centre is being managed under a management or sub-management agreement, the Ombudsman Act and regulations under the Act apply.

17. The DCU is comprised of the Manager, Detention & Custody, two Team Leaders, two Senior Assessment Officers, five Assessment Officers and a part-time Research and Support Officer. The Full-Time Equivalent (FTE) staff within DCU as at 20 November 2023 is 10.4.
18. Due to enhanced budget funding in 2021-22 and 2022-23, staffing levels in DCU have increased over the past 18 months. This has particularly enabled DCU to commit to a more frequent visits program (information about which is set out in our Annual Report).
19. The DCU can also draw on other staff from across CRB to assist with its responsibilities where necessary. In particular, staff of the Assessments Unit (which is the general intake area for complaints about other public authorities) can make staff available to assist with 'overflow' phone calls from inmates and detainees as required (for example, on very busy days, where DCU staff are on visits, or where DCU staff are offline at training). CRB staff outside the DCU will also assist from time to time with conducting visits to correctional and youth justice centres. Resourcing matters and priorities are discussed regularly among the CRB leadership team.
20. The Ombudsman's Office also has an Investigations and Major Projects Branch (**IMPB**) that includes a team of senior specialist investigators and reports to the Deputy Ombudsman, Investigations and Major Projects. When a formal investigation (in respect of any public authority within the Ombudsman's jurisdiction) is commenced, a dedicated investigation team will be formed, which will typically be led or supported by a specialist investigator from IMPB. Other members of the investigation team may be drawn from IMPB, CRB (including DCU) or other areas of the office as relevant. The IMPB currently includes 5 principal investigation officers.

Mechanisms to receive complaints and actions taken in response

21. When inmates complain to us we usually record their name and MIN. If we decide to contact an agency to make preliminary inquiries we will usually (with the consent of the inmate) inform the agency of the name of the individual who has complained. Inmates at times wish to remain anonymous. In some instances this will impact our ability to handle or resolve the issues and we discuss the implications of this with the complainant.
22. Complaints may come to us via:
 - phone
 - in person
 - written correspondence

- email or on-line complaint form available on our website (not available for people while detained in custody).
23. In relation to inmates of correctional facilities, most complaints are received by phone. Inmates can call us on a yard phone or tablet (if they have one) between 9am-12pm and 1pm-4pm Monday to Friday. Calls are free and not monitored by Corrective Services staff.
 24. Complaints are also received in person when our staff visit correctional facilities. We visited 15 adult correctional centres, 1 transitional centre and 1 court cell complex, as well as 6 youth justice centres in 2022-23.
 25. DCU staff inform centre management of a planned visit, generally several weeks beforehand, to enable centre staff to have time to display posters informing inmates as to details about when Ombudsman staff will be on-site. Inmates can let correctional officers know before the visit that they would like to speak to DCU or they can do so without notice as DCU staff move throughout the centre. When DCU staff arrive at each unit they will usually organise to have an announcement made over a loud-speaker that they are available if inmates would like to speak to them. Sometimes an inmate will telephone this office ahead of a pre-announced visit to let DCU know that they would like to speak to them in person when on-site.
 26. During visits DCU staff will often try to speak to members of the Inmate Delegate Committee (who have a good understanding of the types of issues at the centre and whether they are being resolved efficiently). DCU staff always visit any segregation/multi-purpose units to ask people in segregation type conditions whether they would like to speak to them.
 27. Depending on the layout of the centre and the number of people who want to speak to DCU, discussions can occur in yards, units, worksites, holding rooms, or interview rooms. DCU staff always interview each inmate in pairs. Correctional officers are usually in line-of-sight but out of hearing.
 28. We receive written complaints from inmates sent by post. Letters between this office and inmates are not opened by centre staff. When we write to an inmate the letter is placed in an envelope addressed to the inmate. This envelope is enclosed in another envelope addressed to the governor, together with a letter informing the governor that the inner envelope/mail is to be given to the inmate without being opened, inspected or read by any person other than the inmate. There is a space for the inmate to sign, acknowledging they have received the inner envelope unopened. We have arranged with Corrective Services that this acknowledgement form is placed by staff on the inmate's file.

29. We can also receive complaints from an inmate upon referral by another body, for example, the Health Care Complaints Commission,² the Inspector of Custodial Services³ or an official visitor.⁴ According to the Inspector's 2022-23 Annual Report, official visitors received 8,513 complaints in respect of custodial services during the last financial year. The Inspector referred two complaints to us during this period.
30. Staff working in correctional centres can contact this office in a similar fashion to inmates - by telephone, by mail or in person (either during a correctional centre visit or by visiting our office at George St, Sydney). Staff can ring our general line during business hours (9am to 4pm Monday to Friday) which is a free 1800 number. They will be transferred to a member of DCU if one is available and if not, their details will be taken down and a DCU member will return their call. In addition to the channels for making a complaint outlined above, public officials can use an online complaint form, which is accessible from the website – www.ombo.nsw.gov.au.
31. Complaints and other disclosures of wrongdoing made to the Ombudsman's Office by custodial staff or other public officials may be public interest disclosures (**PIDs**) under the PID Act (which repealed and replaced the *Public Interest Disclosures Act 1994* on 1 October 2023).
32. Every front-line staff member of CRB (including all staff of the DCU), together with the Deputy Ombudsman, have been designated as 'disclosure officers' for the purpose of receiving PIDs from public officials (other than those who work in the Ombudsman's Office itself). This means that a disclosure by a public official to any of those Ombudsman staff will be a PID, provided it otherwise has the features of a PID under the PID Act.
33. Where the Ombudsman's Office receives a PID, it will decide whether to investigate the PID (for example, if the disclosed conduct appears to constitute serious maladministration under the Ombudsman Act), to refer it to a more appropriate agency (such as the ICAC, in the case of a disclosure of corrupt conduct), or to take some other action (such as to monitor the relevant misconduct investigation, if that is being undertaken by the relevant agency itself).
34. CRB (including DCU) staff receive regular training on the PID Act and are supported by a dedicated Public Interest Disclosures Unit (**PID Unit**) within the Systems Oversight Branch of

² Ombudsman Act, ss 42 and 43.

³ See section 10(1)(b) of the *Inspector of Custodial Services Act 2012* (NSW)

⁴ The Inspector of Custodial Services oversees a program regarding Official Visitors appointed under section 228 of the *Crimes (Administration of Sentences Act) 1999* (NSW)

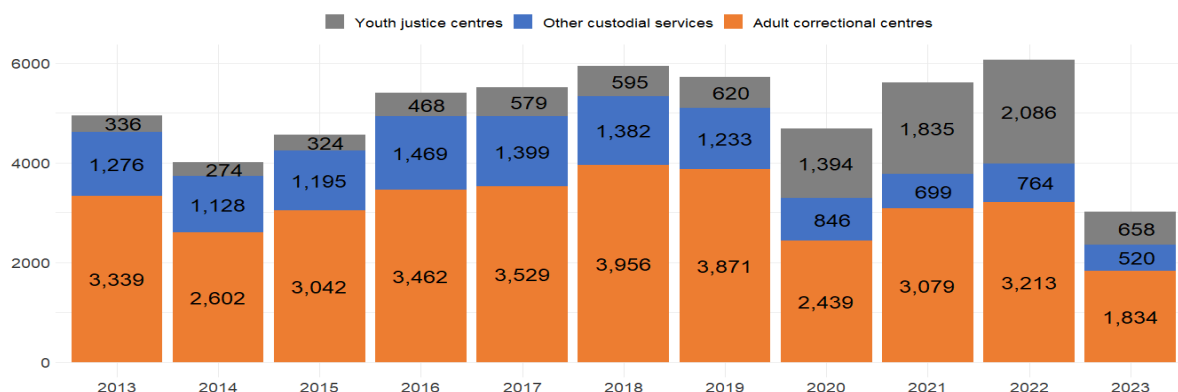
the office. The PID Unit is also responsible for providing guidance and training to public sector agencies about handling PIDs.

35. If a public official wants to contact the PID Unit (either for advice and/or to make a complaint, which will be managed by DCU) they can either email the general email address at info@ombo.nsw.gov.au or contact the PID Unit direct at pidadvice@ombo.nsw.gov.au.

Contacts and complaints data

36. From January 2013 to June 2023, this office received 55,446 contacts about custodial services. These contacts include actionable complaints, as well as other contacts such as mandatory youth justice notifications and requests for information. Most (75%) of the contacts were from inmates. The majority of custodial service contacts we received from January 2013 to June 2023 are about adult correctional centres (see **Figure 1**). The main way that inmates contacted us was by telephone (26,795; 87%). We received 2,725 (9%) contacts from inmates during visits to correctional centres.

Figure 1 (nb: 2023 figures are for the half year from 1 January 2023 to 30 June 2023)



From January 2013 to June 2023, Dillwynia was the 10th most complained about adult correctional centre. During that time, we received 1,318 actionable complaints from inmates in this centre, representing 4.3% of all actionable complaints from inmates about adult correctional centres.

Figure 2 shows the number of actionable complaints inmates made about Dillwynia each year from January 2013 to June 2023. The number of actionable complaints has increased considerably since 2021. This may be partly due to the population increase at the centre towards the end of 2020.⁵

When we receive a complaint from an inmate, we record the correctional centre or custodial service that is the subject of the complaint. This may not necessarily be the correctional centre where the inmate was detained at the time of making the complaint. We do not

⁵ A media release from DCJ on 27 November 2020 outlines that new accommodation at Dillwynia Correctional Centre (Area 1 – Medium - Maximum security) was opened. This increased the number of beds at Dillwynia from 283 to 531 (248 additional beds).

record where the inmate was located when they complained. Therefore, we cannot identify how many complaints about Dillwynia were made by inmates when detained at Dillwynia, or if inmates made complaints about Dillwynia after they transferred to another centre, or once they had been released.

Figure 2 (nb: 2023 figures are for the half year from 1 January 2023 to 30 June 2023)

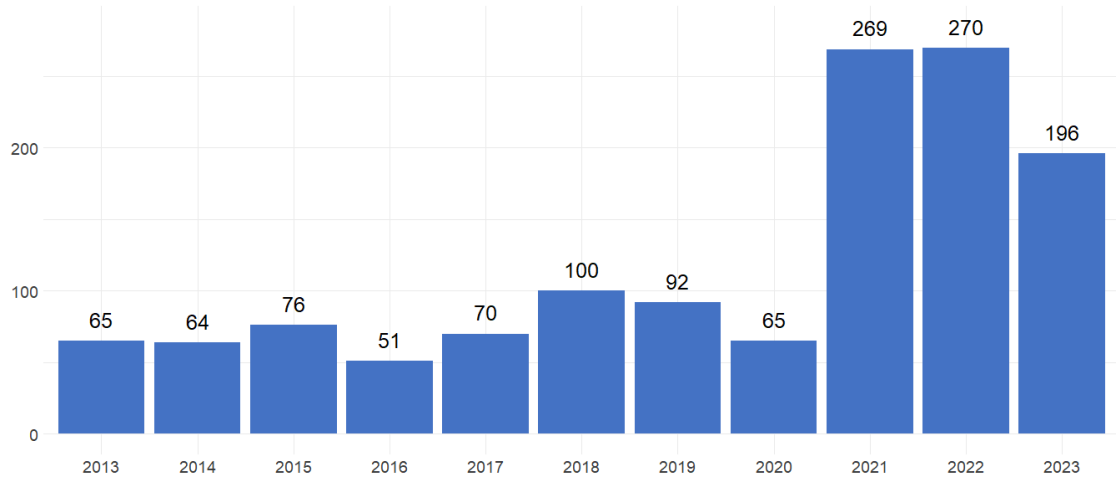


Table 1 shows the top 15 issues raised in complaints from inmates across all adult correctional centres each year from January 2013 to June 2023 (i.e., for 6 months only for 2023).

The most common issues raised in complaints by inmates about adult correctional centres were:

- daily routine
- property issues
- medical issues
- officer misconduct
- unfair discipline.

In relation to sub-issues raised about ‘officer misconduct’, the most common were unfair treatment, assault, threats/harassment, and failure to comply with procedures.

Table 1

Issue	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
DAILY ROUTINE	552	509	581	730	725	877	709	441	544	684	446
PROPERTY	320	230	270	260	283	392	353	199	248	285	153
MEDICAL	207	103	195	215	146	73	226	325	380	460	193

OFFICER MISCONDUCT	175	197	193	267	289	260	253	123	218	150	105
UNFAIR DISCIPLINE	163	148	164	201	169	173	207	121	91	90	59
OTHER	201	131	110	126	161	182	90	177	196	111	84
TRANSFERS	148	119	131	139	149	149	144	95	124	136	75
RECORDS/ADMINISTRATION	132	113	169	127	130	137	159	57	47	58	41
VISITS	102	74	88	124	128	143	181	61	84	108	74
BUY UPS	175	100	119	81	80	105	105	56	86	118	47
SEGREGATION	72	71	109	121	104	169	135	70	93	87	41
CLASSIFICATION	132	93	84	99	106	134	133	82	89	70	30
WORK & EDUCATION	109	80	62	83	91	99	99	49	80	86	64
CASE MANAGEMENT	115	98	111	129	109	102	106	32	23	34	28
FAIL ENSURE SAFETY	41	39	43	62	101	117	130	59	58	72	27

The categories of complaints made to the Ombudsman from inmates at Dillwynia and the number of complaints in each category since 2013 are shown in Table 2, along with the top 15 issues.

In relation to sub-issues raised by inmates about officer misconduct, the most common were unfair treatment, threats/harassment, and failure to comply with procedures.

Table 2

Issues	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
DAILY ROUTINE	10	20	32	14	15	32	28	28	93	106	72
OFFICER MISCONDUCT	3	10	7	8	6	12	7	2	37	19	19
OTHER	8	6	4	1	4	4	2	9	20	12	16
MEDICAL	2	1	6	3	1	4	4	2	19	22	11
WORK & EDUCATION	4	3	4	1	7	7	2	4	9	13	12
PROPERTY	7	5		2	3	11	7	5	9	8	8
UNFAIR DISCIPLINE	1	4	8	6	5	3	6	1	9	6	7
MAIL	1		1	2	2	1	1	1	13	10	19
FOOD & DIET	4	3	1		4	4	2	3	6	10	4
VISITS	1	1	1	2	2	1	9	1	9	6	6

BUY UPS		1	3	2	1	3	2	1	9	9	3
RECORDS/ ADMIN	4	5	2	1	4		1	1	6	4	3
TRANSFERS	7	2	3		2	2	3		3	6	
CASE MANAGEMENT	4	1		4	3	2	2	1	4	2	1
SECURITY		2	1		5	2	2		3	6	1

How we handle complaints, generally

37. In general terms, our work in relation to complaints includes:

- **Assessment of the information provided**

We assess every complaint we receive. Our first task is to confirm that the complaint is one that we are authorised to handle. If the complaint is one we cannot handle, we will provide information or assistance to the person to navigate to the right place to make their complaint. Where relevant, we will also assess if the complaint is a PID, and if it is deal with it in accordance with the PID Act.

- **Assistance to make a complaint to the agency**

If a person is complaining about an agency's conduct, but has not yet raised their complaint directly with that agency, we can provide advice about how best to do so. In some cases, if the person consents, we can directly refer the complaint to the agency.

- **Inquiries and other action to assist to resolve the complaint**

Where complaints cannot be resolved directly with the agency (or if the person has already attempted to raise their complaint with the agency but remains dissatisfied with its response, or the person is vulnerable and having difficulty navigating complaint-handling systems) in some cases we take further steps to assist in seeking a resolution. We might do this by contacting the agency ourselves to seek further information and an explanation about what happened. We can also undertake informal or formal conciliation (including through the use of a professional internal or external mediator).

We can also make **preliminary inquiries** in accordance with section 13AA of the Ombudsman Act. Preliminary inquiries are made for the purpose of deciding whether to make particular conduct of a public authority the subject of an investigation. However, in practice, the making of preliminary inquiries more frequently results in a resolution of the complaint without proceeding to investigation, for example because the agency is prompted by those inquiries to take appropriate action in response to the complaint, or because the agency provides an explanation for its action or inaction that indicates that an investigation is not warranted.

(We can also undertake preliminary inquiries of our own motion, where an issue comes to our attention otherwise than by receipt of a complaint.)

- **Referral of complaints about public authorities for investigation**

Since September 2022, we have had an express power under section 12A of the Ombudsman Act to formally refer a complaint about a public authority to that public authority for it to investigate and report back to us.

12A Referral of complaints about public authorities for investigation

(1) The Ombudsman may, if the Ombudsman considers it appropriate, refer a complaint about the conduct of a public authority to the public authority for investigation.

(2) The public authority must report to the Ombudsman on the outcome of the referral.

(3) The Ombudsman may, when referring the complaint to the public authority, make recommendations on whether, and in what way, the public authority may investigate or otherwise deal with the complaint.

(4) The Ombudsman may monitor the progress of the public authority's investigation of the complaint.

(5) The public authority must, on the request of the Ombudsman, provide documents and other information relating to the complaint.

(6) The Ombudsman may, if the Ombudsman considers it appropriate, also continue to deal with the complaint.

(7) In this section—

complaint includes part of a complaint.

After the agency has completed an investigation referred to them, we will advise whether:

- we are satisfied with the outcome and will monitor any undertakings made
- we may ask for more information or action to be taken
- we are not satisfied and may decide to take action (note, we may decide to intervene in the investigation at any point).

Guidance for agencies about the handling of referred complaints is on our website: [Handling referred complaints - NSW Ombudsman](#).

We have referred one complaint to Corrective Services under section 12A of the Ombudsman Act. This is a matter alleging officer misconduct.

- **Provision of information and comments to agencies**

Under section 31AC of the Ombudsman Act, we can provide information and comments to an agency regarding a complaint. Following preliminary inquiries, we sometimes take this approach to help agencies ensure they are:

- acting reasonably and lawfully
- understand their responsibilities to the public, and
- follow best practice in public administration.

- **Conciliation**

Section 13A of the Ombudsman Act enables this office to deal with a complaint by formal conciliation. It is not a power that we have traditionally employed frequently (primarily due to inadequacy of resources). In 2022-23 we ran one conciliation, which was successful. It was in a community services context. Section 74 of the PID Act 2022 also provides that an agency can request the Ombudsman deal with particular matter types by way of voluntary dispute resolution.

Since October 2023, CRB has had a staff member whose role is to co-ordinate conciliations and voluntary dispute resolutions under the PID Act. In CRB there are some staff trained in mediation techniques. We intend to roll out (refresher) mediation/conciliation training in early 2024 to build up our capacity to offer conciliations to agencies and complainants in appropriate circumstances. We can also retain a mediator (external to this office) to assist an Ombudsman conciliator. This would generally be reserved for more complex matters or disputes requiring particular technical expertise.

The Deputy Ombudsman, Complaints and Resolution and our Communications Team are collaborating on initiatives to promote our conciliation services more widely from 2024 onwards. Conciliation can be an effective complaint resolution mechanism, particularly where there is an ongoing relationship between the parties that has been damaged. However, where there is a significant power imbalance, for example inmate and correctional centre, this may militate against offering a conciliation as an effective means to resolve a complaint.

- **Formal investigations of serious or systemic wrong conduct**

In some cases, it may appear from a complaint or our preliminary inquiries that conduct has occurred that is administrative wrong conduct of a kind referred to in section 26 of the Ombudsman Act. This is conduct that is:

- (a) *contrary to law,*
- (b) *unreasonable, unjust, oppressive or improperly discriminatory,*
- (c) *in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory,*
- (d) *based wholly or partly on improper motives, irrelevant grounds or irrelevant consideration,*
- (e) *based wholly or partly on a mistake of law or fact,*
- (f) *conduct for which reasons should be given but are not given,*
- (g) *otherwise wrong,⁶*

If we receive a complaint and it appears to us that an organisation has engaged in administrative wrong conduct, we have the power to commence a formal investigation under the Ombudsman Act. We cannot commence an investigation unless it appears to us that such wrong conduct has occurred.

Very few of the complaints we receive result in a formal investigation of this kind. We will generally commence an investigation only where the suspected wrong conduct is very serious or involves a systemic injustice, and where we would not be duplicating an

⁶ Ombudsman Act, s 26 (1).

appropriate alternative avenue for investigation or redress (such as if there is already a misconduct or criminal investigation on foot, in the case of individual officer wrong conduct).

- **Opportunities to improve practices**

Complaints can help us to identify and make comments to organisations about better ways they can do their jobs properly and meet their responsibilities to the people who rely on their services.

Complaints we receive can also help to inform our training and education programs for public service employees so that their organisations can improve both service delivery and their own internal complaint handling processes.

- **Reviews of complaints handling systems**

In accordance with section 25A of the Ombudsman Act (which only commenced in August 2022), the Ombudsman may review the systems of a public authority for handling complaints. In doing so the Ombudsman may require the head of the public authority to provide information about the systems, including the operation of the systems.

Sharing information with other investigatory and oversight agencies

38. Section 11 of the *Independent Commission Against Corruption Act 1998* provides that the Ombudsman has a duty to notify the Independent Commission Against Corruption any matter that the Ombudsman suspects on reasonable grounds concerns or may concern corrupt conduct.
39. In accordance with section 42 of the Ombudsman Act, we have memoranda of understanding with other complaint-handling agencies – including the Health Care Complaints Commission, the Legal Services Commissioner, the Anti-Discrimination Board and the Privacy Commissioner – which provide for the management of complaints, including their potential referral to a more appropriate body. A complaint may not be referred from one agency to another except with the express consent of the complainant.
40. We also share information with the Inspector of Custodial Service as per section 10 of the *Inspector of Custodial Services Act 2012*. We are in the process of refreshing our memorandum of understanding with that office.
41. We would usually provide a complainant who alleged criminal conduct with information as to how they might wish to report a matter directly to police. If an inmate did not wish to inform staff in a particular part of a correctional centre that they wanted to contact police, one option we have is to contact an alternative officer at Corrective Services (with the inmate’s consent). In such a case we would generally follow up to ensure police had been notified. In addition, if an inmate told us they had informed a correctional officer that they wished to report a matter to police but this hadn’t occurred, we could make inquiries with

the centre to determine what action, if any, had been taken in relation to the inmate's request, and the reasons for this.

42. If an inmate complained to us about the (allegedly criminal) conduct of a correctional officer, but told us they did not wish to complain to the police, this would not preclude us from making preliminary inquiries or taking other action in accordance with the Ombudsman Act. Depending on the circumstances, if it appeared to us (for example, from those inquiries or from other action, such as viewing CCTV footage) that a criminal offence had been committed we may be required to ensure the matter was reported to police.

Engagement with Corrective Services

43. The Ombudsman is not under any obligation to notify or report to an agency that a complaint has been received about that agency. In practice, if we are making preliminary inquiries with Corrective Services about a complaint we will need to provide sufficient detail in order that a meaningful response can be provided (when we receive a complaint from a number of individuals at a correctional centre or a complaint about a general issue it is easier to make inquiries without identifying individual complainants).
44. The Deputy Ombudsman and staff of DCU generally have a constructive relationship with Corrective Services and other agencies operating custodial facilities. There are monthly liaison meetings with Executive staff at Corrective Services, at which there are discussions regarding current issues, recent complaints and at which further information can be sought by this office regarding particular operational or structural changes or challenges. Meetings are held with the governor or Manager of Security during each visit to a centre, and ad hoc meetings held about individual complaints or issues.
45. When we make preliminary inquiries under section 13AA of the Ombudsman Act, staff of Corrective Services are generally responsive. There can sometimes be delays in the provision of information, or a lack of detail in responses. When this has occurred, either the Deputy Ombudsman or the Manager of DCU, or both, ask to meet with relevant parties to discuss the reasons for this. There have been occasions when we have sought the intervention of senior personnel in head office to facilitate a timely or more detailed response to inquiries.
46. Under section 31AC of the Ombudsman Act, we can furnish information to a public authority and make comments with respect to a complaint. Corrective Services has been generally responsive to such comments, which can involve suggested changes to policy or procedure, or for example, reconsidering findings of guilt in relation to correctional centre charges.

47. There have been occasions when Corrective Services has not agreed with our recommendations. For example, in 2021 we reported on our investigation of strip searches of young people conducted by Corrective Services staff (from adult correctional centres) who had been called in to quell a disturbance at a youth justice facility: see [Investigation Report](#). We recommended that Corrective Services staff be prohibited from conducting ‘full naked body’ strip searches of young people. This recommendation was rejected, and was the subject of a subsequent ‘default’ report to Parliament: see [Default Report](#).
48. There have also been occasions when Corrective Services have challenged our jurisdiction to make preliminary inquiries. For example, in 2021 Corrective Services argued that we could not make inquiries about conduct relating to a death in custody, or to the internal (critical incident) investigation of such a death. It argued that, as the matter was before the court (i.e. the Coroner), it was excluded from our jurisdiction. For the reasons more fully explained in a [Special Report](#) to Parliament, that argument is not correct, and we understand that Corrective Services no longer presses its previous view.

Effectiveness of complaint handling systems

49. The vast majority of victims of sexual violence generally do not report this to the police.⁷ Reporting abuse and other matters in institutional settings has additional challenges and there are likely many reasons why people in custody choose not to complain about matters that affect them. A key barrier is that when making a complaint about an officer, an inmate will usually be expected to report to a fellow officer or staff member at the centre. In our experience, and given the inherent vulnerability and power imbalance, this can mean that an inmate may not be willing to follow through on making a complaint using the internal systems put in place within custodial services – even in instances where there is a serious allegation, such as assault by staff. It is difficult to compare the closed custodial environment to other public sector agencies, and it is hard to overstate the importance of their access to an external, independent and impartial outlet for complaints.
50. The Corrective Services Support Line (**CSSL**) provides a useful option for inmates to raise complaints outside of the confines of the centre they are located. It is DCU’s experience that CSSL staff follow up on issues raised by inmates, usually by emailing centres to understand whether inmate’s concerns have been dealt with. It is unclear, if centres do not respond, or fail to respond appropriately, what further action is undertaken or can be undertaken by CSSL staff and how much influence they have in resolving issues at the local level. DCU is of

⁷ <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/2021-22>.

the understanding that if CSSL fails to effectively resolve a matter, inmates may be told to contact the Ombudsman.

51. Inmates often tell us they are unable to get through to CSSL on the offender telephone system. DCU's Manager requested to meet with CSSL in August 2023 to better understand how they approach their work, including current challenges. Staff confirmed that workload is a challenge and that at times they turn the phone lines off in order to seek to resolve existing matters. In response, DCU staff informed CSSL that we would likely make inquiries in circumstances where we might otherwise usually have expected inmates to follow up with CSSL in the first instance but inmates have told us they were having difficulty getting through to CSSL.
52. It is critical for staff at Corrective Services to understand their obligations under the PID Act 2022. We have recently developed a range of training and guidance material to assist agencies and public officials to understand the PID Act 2022 (see, for example, <https://www.ombo.nsw.gov.au/guidance-for-agencies/pid-act-2022>). Our PID Unit has been liaising with DCJ about implementing training across the agency and a member of our PID unit recently attended a liaison meeting with Corrective Services to discuss the new Act and the ways we can assist agencies to ensure staff understand how to make and deal with PIDs.

Improving access to Ombudsman and oversight of custodial facilities

53. There is information about the Ombudsman in the inmate induction booklets. It has been reported to DCU staff by inmates that inmates do not always receive a booklet on arrival in custody/at a centre.
54. Posters about accessing our office are distributed to all custodial facilities for display by telephones and on noticeboards. During visits DCU staff review whether posters are on display and regularly send out new copies, as posters at times get ripped down or damaged. We are currently making arrangements to have information about the role of the Ombudsman placed on inmate tablets. We also intend to develop a video for inmates about the role of this office and how to make a complaint to be placed on tablets, to improve accessibility to our complaint handling services.
55. Our current visits schedule and phone operating hours are constrained by available resources.
56. In NSW there are different bodies overseeing custodial facilities including the NSW Ombudsman and Inspector of Custodial Services. I understand that this at times causes

confusion for staff and inmates who can find it difficult to distinguish the respective roles of different agencies.

57. Our office and the Inspector operate under a Memorandum of Understanding (**MoU**), which provides for information sharing and clarification of respective roles. Both of our agencies visit custodial facilities and interact with Corrective Services and other agencies on issues identified during those visits. Our office handles complaints, both individual and systemic. The Inspector administers the official visitors, who can receive complaints. The Inspector cannot investigate individual complaints, except insofar as they relate to systemic issues present in the custodial environment.
58. I have suggested that there may be benefits if the functions of these officers were merged, or brought closer together. Co-locating visits, complaint-handling and investigation functions would provide greater clarity to both the agencies and complainants. As a very small organisation with limited resources, the Inspector would also benefit from access to the broader corporate and support resources of our office. A merger would also enhance the perceived independence of the Inspector's office. Currently the Inspector's staff are employed by DCJ and are reliant on DCJ for internal office funding and corporate support. The existing dependency on DCJ (which also includes Corrective Services and Youth Justice, the agencies that are oversighted by the Inspector) may also mean that the Inspector could not currently meet international standards for nomination as a relevant oversight body under the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**).
59. I have previously suggested the NSW Government move expeditiously to nominate, fund and operationalise National Preventive Mechanisms (**NPMs**) in accordance with Australia's obligations under the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. NPMs are tasked with proactively inspecting and monitoring places of detention.

Additional matters for consideration


60. A number of previous inquiries, and associated recommendations, might usefully inform the work of this one, including the following:
- The **Royal Commission into Institutional Responses to Child Sexual Abuse** made a range of recommendations to improve the safety of institutions, and to better prevent and respond to sexual abuse.⁸ In terms of vulnerability and power imbalances, the situation

⁸ https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_recommendations.pdf.

of inmates in custodial facilities may in some respects be somewhat analogous to children in institutions.

- In December 2022 the final report of a **cultural review of the adult custodial corrections system in Victoria** was published.⁹ The review was announced to examine and identify solutions to reform the adult corrections system with the vision for a safer, fairer, more modern and more capable system, free from breaches of integrity and workplace harm.
- In July 2018, there were a number of reports about sexual and other inappropriate relationships between Corrective Services NSW officers and inmates. As a result the NSW Government established **Taskforce Themis**, led by retired Assistant Commissioner of the NSW Police Force, Mark Murdoch to assess and report on the circumstances of a number of inappropriate relationships between Corrective Services employees and inmates, dating back to 2007. The report into Taskforce Themis, and its findings and recommendations have not been publicly released, and the extent (if any) to which recommendations have been implemented has not been reported.

61. We also understand that SafeWork NSW is currently working to support businesses to take proactive steps to prevent sexual harassment in the workplace and has recently released a Respect at Work Strategy 2023-2027. It is likely that if Corrective Services and other agencies seek to better educate staff about sexual harassment and inappropriate behaviour, and better equip workplaces to prevent and respond to sexual harassment of staff, this may also indirectly benefit people detained. In particular, given the challenges for people to report inappropriate sexual behaviour when they are victimised (particularly if the perpetrator is their gaoler), it is critical for staff and others coming into custodial facilities to be able to identify and respond appropriately when they witness or otherwise become aware of sexual harassment (as well as other forms of misconduct).



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⁹ <https://www.correctionsreview.vic.gov.au/wp-content/uploads/2023/03/Cultural-Review-of-the-Adult-Custodial-Corrections-System-final-report-Safer-Prisons-Safer-People-Safer-Communities.pdf>